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## Legal Brief\*

Vol. 12

Number 5

May 2020

### WHAT HAVE THE COURTS RULED ABOUT COVID-19, SHARED CUSTODY, RIGHTS OF ACCESS AND THE RETURN TO SCHOOL?

The Covid-19 pandemic has turned the daily lives of the entire Québec population upside down, especially that of blended and separated families. This situation has brought its share of concerns and questions to parents of children in shared custody as well as parents whose children have access rights.

The purpose of this legal brief is to enlighten parents on the courts' decisions and comments regarding custody, access rights and school attendance in the context of this pandemic.

#### **Is it enough for a parent to invoke the Covid-19 pandemic to suspend or change the type of custody or access rights for a child?**

According to the Superior Court, although the Covid-19 pandemic represents a health emergency and causes fear among parents, it is not in and of itself a sufficient reason to justify a change in custody or access rights.<sup>1</sup> Thus, as long as the parents are not infected with Covid-19, do not have symptoms suggestive of the disease, are not in compulsory quarantine and respect the health instructions issued by government authorities, the Superior Court considers that it is not justified to deprive a child of contact with his parents by modifying his custody or his access rights.<sup>2</sup>

#### **Can a parent change the custody arrangements without the other parent's consent and without asking the court?**

According to the Superior Court, when a disagreement arises between parents as to the best custody arrangements to be adopted during the Covid-19 pandemic, a parent must not take the law into his own hands by unilaterally modifying the custody arrangements. The issue must be brought before a court.<sup>3</sup>

#### **Are court orders and judgments still in force?**

Despite the Covid-19 pandemic, court orders and judgments regarding custody and support are still valid, continue to apply and must be observed.<sup>4</sup>

#### **Does the fact that a parent works for an essential service justify ceasing all access rights?**

In *Droit de la famille – 20506, 2020 QCCS 1125*, the Superior Court stated that the mere fact that a parent works in an essential service is not in and of itself sufficient reason to change the terms of custody of a child.<sup>5</sup>

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#### What has the Superior Court ruled when the two parents disagree on a child's return to school?

Here are some principles that we can draw from the various judgments to date on the issue of a child's return to school that guide the courts in their decision-making.

The courts remind us that the question of a child returning to school is a matter that falls under parental authority.<sup>6</sup> When parents disagree on a matter of parental authority, they can submit the issue to a court.<sup>7</sup>

Decisions relating to a child are made in the best interest of the child, giving consideration to "the moral, intellectual, emotional and physical needs of the child, to the child's age, health, personality and family environment, and to the other aspects of his situation".<sup>8</sup>

Each case is unique. Thus, each judgment must be rendered on its particular facts and according to the particular characteristics of the child or children concerned.<sup>9</sup>

Assessment of the risk of contamination with Covid-19 is a matter for government authorities, not the courts.<sup>10</sup>

The *Education Act* gives the right to every child to attend school and the obligation to attend from the age of 6 to 16.<sup>11</sup> It also gives parents the obligation to take the necessary measures to ensure that their child attends school as required.<sup>12</sup>

Return to class has not been made mandatory by the government authorities.<sup>13</sup>

We hope this legal brief has answered some of your questions. If you need legal advice in the context of the Covid-19 pandemic, please contact the Covid-19 legal aid clinic, known by the French name Clinique d'assistance juridique Covid-19. It is a free legal advice telephone line available to the public.

You can reach the clinic at the following numbers:

- 1-866-699-9729 (toll free)
- 418-838-6415 (Québec City)
- 514-789-2755 (Montreal)
- 819-303-4080 (Gatineau)

More information on the Covid-19 legal aid clinic is available at:

<https://www.justice.gouv.qc.ca/communiques/clinique-dassistance-juridique-covid-19-ligne-telephonique-de-conseils-juridiques-gratuits/>

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## WHAT HAVE THE COURTS RULED ABOUT COVID-19, SHARED CUSTODY, RIGHTS OF ACCESS AND THE RETURN TO SCHOOL? (continued)

- <sup>1</sup> [Droit de la famille — 20474 2020 QCCS 1051](#), paragraph 20; [Droit de la famille — 20593 2020 QCCS 1281](#), paragraphs 5 and 7; [Droit de la famille — 20554 2020 QCCS 1239](#), paragraphs 10 to 14; [Droit de la famille — 20506 2020 QCCS 1125](#), paragraph 15.
- <sup>2</sup> [Droit de la famille — 20554 2020 QCCS 1239](#), paragraphs 10 to 14.
- <sup>3</sup> [Droit de la famille — 20543 2020 QCCS 1215](#), paragraphs 10 and 11; [Droit de la famille — 20554 2020 QCCS 1239](#), paragraph 11; [Droit de la famille — 20606 2020 QCCS 1366](#), paragraph 11.
- <sup>4</sup> [Droit de la famille — 20506 2020 QCCS 1125](#), paragraph 12; [Droit de la famille — 20474 2020 QCCS 1051](#), paragraph 10; [Droit de la famille — 20515 2020 QCCS 1150](#), paragraphs 22 and 23; [Droit de la famille — 20543 2020 QCCS 1215](#), paragraph 10; [Droit de la famille — 20578 2020 QCCS 1287](#), paragraph 15.
- <sup>5</sup> [Droit de la famille — 20506 2020 QCCS 1125](#), paragraph 17.
- <sup>6</sup> [Droit de la famille-20682 2020 QCCS 1547](#), paragraph 6; [Droit de la famille — 20684 2020 QCCS 1549](#), paragraph 6.
- <sup>7</sup> Articles 600 and 604 C.C.Q.; [Droit de la famille-20682 2020 QCCS 1547](#), paragraph 7; [Droit de la famille — 20684 2020 QCCS 1549](#), paragraph 7.
- <sup>8</sup> Article 33 C.C.Q.; [Droit de la famille-20682, 2020 QCCS 1547](#), paragraphs 6 to 8; [Droit de la famille — 20684 2020 QCCS 1549](#), paragraphs 8, 9 and 10; [Droit de la famille — 20639 2020 QCCS 1460](#), paragraph 11; [Droit de la famille — 20641 2020 QCCS 1462](#), paragraph 12.
- <sup>9</sup> [Droit de la famille — 20684 2020 QCCS 1549](#), paragraphs 8, 9 and 10.
- <sup>10</sup> [Droit de la famille — 20639 2020 QCCS 1460](#), paragraphs 7 to 9; [Droit de la famille — 20641 2020 QCCS 1462](#), paragraphs 8 to 10; [Droit de la famille — 20684 2020 QCCS 1549](#), paragraph 25.
- <sup>11</sup> Sections 1 and 14 *Education Act*, c. I-13.3.; [Droit de la famille — 20639 2020 QCCS 1460](#), paragraph 12; [Droit de la famille — 20641 2020 QCCS 1462](#), paragraph 13; [Droit de la famille — 20684 2020 QCCS 1549](#), paragraph 25.
- <sup>12</sup> Section 17 *Education Act*, c. I-13.3.; [Droit de la famille — 20639 2020 QCCS 1460](#), paragraph 13; [Droit de la famille — 20641 2020 QCCS 1462](#), paragraph 14; [Droit de la famille — 20684 2020 QCCS 1549](#), paragraph 25.
- <sup>13</sup> [Droit de la famille — 20684 2020 QCCS 1549](#), paragraphs 5 and 25; [Droit de la famille-20682 2020 QCCS 1547](#), paragraph 5; Concerning the return of children to school during the Covid-19 pandemic, see also: [Droit de la famille — 20671 2020 QCCS 1536](#) and [Droit de la famille — 20683 2020 QCCS 1548](#).

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