

Applicant(s) / *Requérant(e)(s)*:

David Joseph Waugh  
Counsel: Michael R Nyhof

Respondent(s) / *Intimé(e)(s)*:

Kathrine Danielle Bowen

July 23, 2020 by Zoom teleconference

The applicant (“father”) moves for an order rescinding the requirement that he “shall not have anyone else present during his time with the child” as contained in subparagraph 2(b) of the temporary order of the Leach J. dated April 22, 2020.

The respondent (“mother”) opposes the relief sought.

The father brings this motion because he submits that circumstances have changed. He points out that the London region has advanced towards stage 3 of Covid-19 restrictions. They are being relaxed. He wants to be able to engage in the same activities with the same amount of restrictions as is required of the mother. The people he wants to introduce the child to are within his family bubble, that is, his mother and her partner. His mother is a support to him. He wants to be able to enjoy the benefit her assistance has and can provide. As well, the child has a close relationship with his paternal grandmother. In practical terms he has a three-week access visit with the child upcoming but only two weeks of holiday. He wants his mother to be able to help him during this third week.

The mother argues that the father has not demonstrated that he has nor will comply with safety measures needed to protect their son.

Mr. Nyhof advises that the reason subparagraph 2(b) was included was at the father’s suggestion to demonstrate that he can and would take the needed steps to ensure the safety of the parties’ seven year old child.

For the reasons that follow I am satisfied that there has been a material change since the order of Leach J. was granted and that it is in the child’s best interests to rescind the requirement that the applicant not have anyone else present during his time with the child.

I accept the mother’s concerns as legitimate based on the father’s past actions. These are well and clearly addressed in the endorsement of Leach J. appended to the affidavit of the mother at Exhibit “B” and which resulted in a three-week suspension of his parenting time. However, the evidence discloses, and I accept as set

out below, that the father now understands and follows required Covid-19 restrictions. The current differences in the mother's and father's analysis of the father's behavior arises because of their respective interpretations of the meaning of subparagraph 2(b).

The order states that while Covid-19 remains the subject of government directions and *pending further order of the court* the applicant is to meticulously follow Covid-19 safety measures and report to the mother the activities and steps he took to keep the child safe well in his care. The use of the phrase "*pending further order of the court*" is consistent with the court having the jurisdiction to review existing restrictions to ensure that they are sufficient, in all the circumstances, to ensure the safety and well-being of the child during the Covid-19 pandemic. At the time this subparagraph was ordered it was not clear that the father sufficiently respected the need to follow Government directions. The father's evidence now discloses that since the order of Leach J. was granted, he has been chastened and understands and follows required to government directions.

Rescinding subclause 2(b) to be does not in any way take away from the father's obligation to "meticulously adhere to Covid-19 safety measures" and to continue to report to the mother. For example, he is not to allow the child close contact with anyone outside of his bubble. If the father's brother is not part of the bubble then he must maintain social distancing and wear a mask (if indoors at this time) in the presence of the child.

The only difference that will arise because of the court rescinding subparagraph 2(b) is that the child can be part of a bubble that includes the father his mother and her partner. This is consistent with current Covid-19 directions.

The child will now be able to engage in activities in the same manner he does while in his mother's care. This will relieve the stress, as disclosed in the evidence, of there being different Covid-19 expectations in the home of each parent.

The mother interprets the word "present" in clause 2 (b) to mean "in the vicinity of" the child. This means that the father is not able to take the child to any outside activities where other people may be such as an outdoor restaurant patio or park. This is too restrictive an interpretation.

I interpret clause to be to mean that the father was not to share his parenting time in the company of other persons.

When the Government directions are followed the child, accompanied by the father or other person in his bubble, can be in venues where there are other people but only if they maintain social distance and all other required safety measures. If required regulations are not being followed the child is to be removed as he must not be placed in that situation.

It is consistent with the Covid-19 government regulations that the father has available to him the assistance of the child's paternal grandmother and her partner to help care for the child when he is unavailable during his

parenting time and to generally enjoying their company. They have an ongoing positive relationship. The mother recognizes this as she stated in her affidavit at paragraph 12 “I believe amending para. 2 (b)... to allow [the paternal grandmother and her partner] to be in [the child’s] presence during the [father’s] access time while still following stipulations and provisions of the orders... would provide a safe solution to the [father’s] concerns regarding his employment fulfillments while also facilitating an in person relationship with the [father’s] parents and respecting the Order.”

Accordingly, an order shall issue that subparagraph 2 (b) of the temporary order of Leach J. dated April 22, 2020 being the requirement that the applicant “shall not have anyone else present during his time with the child” be rescinded.

In the circumstances of the Covid-19 emergency, this endorsement is deemed to be an Order of the court that is operative and enforceable without any need for a signed or entered, formal, typed order.

The parties may submit formal orders for signing and entry once the court re-opens; however, this endorsement is an effective and binding Order from the time of release.



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Tobin J.