

NOTICE TO THE PROFESSION

PRACTICE DIRECTION FOR ALL FAMILY MATTERS AT THE OCJ BRAMPTON

RELEASED FEBRUARY 7, 2022

This Local Practice Direction is made to update the Practice Direction released on November 29, 2021.

Due to the prevalence of the Omicron variant the plans set out in the previous direction have been suspended.

This direction is subject to change from time to time as may be necessary and is intended to address issues only at the Ontario Court of Justice at Brampton.

CHANGES TO COURT HEARINGS

Everything set out below is subject to provincial health guidelines and/or further direction from the Office of the Chief Justice of the OCJ.

The move to in person hearing for all substantive issues and contested matters in both domestic and child protection matters has been suspended. Beginning January 4, 2022 and continuing until at least April 4, 2022, the Trial Coordinator (TC) has been instructed to change all matters scheduled to be heard in person to Zoom or teleconference hearings. Counsel and self-represented parties will receive a Zoom link or call-in details no later than a week before their scheduled attendance.

The only exceptions to Zoom hearings are as follows;

- a) Appearances where the case management judge specifically requires an in-person attendance.
- b) First Appearances before the First Appearance Clerk (FAC) which will continue by teleconference until further notice.
- c) FRO hearings which will continue by teleconference until further notice.
- d) Child protection first attendances on Protection Applications and Status Review (the Wednesday list) and Place of Safety Hearings which will continue by teleconference until further notice.
- e) Any matter that has already been scheduled for a teleconference.

This means that counsel and parties are requested not to bring a 14B motion for a remote hearing on any matter scheduled before April 4/22 unless they or a party have a particular health issue and cannot attend on a matter upon which they did not receive a Zoom link or call in details at least a week before. In those circumstances the 14B should be marked urgent and emailed to the court.

TRANSITIONAL STEPS

The previous plan had been to schedule in person initial case conferences by March 1, 2022 when it was anticipated that we would have a full complement of duty counsel, the re-opening of the Family Law Information Centre and mediation services on site.

Based upon that plan the initial case conference (ICC) lists were increased to 8 per day with three matters at 10 a.m. and three matters at 11:30 a.m. The revised plan is to keep scheduling ICC's at five per day in the designated time slots and hearing the matters by Zoom video or teleconference. To be on the safe side this will remain in place until May 31, 2022.

There are a number of dates in March in which matters were triple booked. Two of the matters scheduled for each of 10 a.m. and 11:30 a.m. will be rescheduled. Counsel and parties involved in re-booking will be contacted by the TC. They are asked to cooperate with the TC.'s office in having these matters heard as closely as possible to the original date.

FIRST APPEARANCES

First appearances have been by teleconference since their resumption in September 2020 initially before a per diem judge and beginning in December 2020 before the FAC.

Some problems have been identified:

- 1) Parties are not filing affidavits of personal service of the originating materials i.e. Applications or Motions to Change.
- 2) Parties are filing affidavits of email service of originating documents without providing an order authorizing email service.

If the file contains the Applicant (A's) or moving party's pleadings and proof of proper service, the FAC can schedule the matter into an ICC slot for an anticipated uncontested trial.

If the A. or moving party's pleadings and proper proof or service is not in the file the direction to the FAC in these circumstances is as follows;

- a) If the Respondent (R) does not call into the conference the matter will be referred to the back-up judge for a possible dismissal.
- b) If the R. does call into the conference and verbally acknowledges service the matter will be adjourned to a new FA date at least two weeks away for the Applicant (A) to file the affidavit of proper service or for the R. to file the responding pleadings.
- c) If the R. has not filed pleadings but does call into the conference,

The FAC may:

- i) permit the A. to email the affidavit of personal service or approved substituted service with court order directly to the FAC's email on the day of the FA so that an ICC can be set; or
- ii) permit counsel for the R. to email a letter confirming that they will go on the record and stating the agreed upon time at which responding pleadings will be filed so that an ICC can be set; or
- iii) refer to the matter to the back-up judge for further direction.

Counsel should not count on these options.

If prior to receiving this Notice counsel have served by email without an order they may file a motion form and affidavit (a 14B motion) to validate service and the affidavit in support must include evidence that personal service could not be achieved and that the email the documents were sent to was recently used by the responding party. The motions judge will consider all of the evidence in determining whether service should be validated.

Justice Philip J. Clay
Local Administrative Judge
OCJ Brampton Family