



Ministry of the Attorney General	Superior Court of Justice Family Court	Regional Municipality of Hamilton-Wentworth	Court House 55 Main Street West Hamilton Ontario L8P 1H4	Tel/Tél.: (905) 645-6250
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Ministère du Procureur general	Cour de la famille	Municipalité régionale de Hamilton- Wentworth	Palais de justice 55, rue Main ouest Hamilton Ontario L8P 1H4	Fax/Télec.: (905) 645-6264
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Memorandum

TO: The Profession and Self-Represented Litigants

FROM: Regional Senior Justice Glithero
Local Administrative Justice C. Lafreniere

RE: 2010 Family Court Schedule

DATE: March 1, 2010

1. TRIAL SITTINGS

Trials sittings will continue in 2010 as per the attached schedule. The Trial Coordinator will make every effort to accommodate requests not to call trials on dates where counsel is unavailable, but sometimes it cannot be avoided. Please consult with the opposing counsel or party to determine if each side is available for the required number of days to complete the trial. Please state the reasons for non availability within the sitting. Counsel should be speaking with each other and not simply faxing a letter to the Trial Coordinator with available dates.



The expectation is that counsel will be available for the three-week sitting that has been selected by them. Once called for trial counsel are expected to re-schedule or adjourn other matters or seek the assistance of an agent to deal with other matters scheduled. It has become evident that counsel are attempting to deal with case management meetings and other court attendances during the morning and afternoon recesses of their trial. The timing of recesses is not guaranteed and it is unlikely that a conference can be accommodated by the other court during the trial court's morning recess and the other court may be on a recess at the same time or

occupied with another matter. The usual result is that the trial is held down. This practice results in wasted trial time and trials not being completed in the set time.

Counsel are reminded that they may have more than one matter in a sitting, however, they cannot schedule more days than are available in the sittings, i.e. 15 trial days in one sitting or, if the sitting is two weeks, 10 days.

If counsel schedule more than one matter in one sitting, the expectation is that you are prepared to have your matters called one after the other.



Please do not schedule vacation time during the sitting that you have selected. If you wish to take vacation during the sitting you have selected, you must adjourn your matter to a later sitting at the earliest possible date.

If counsel will be requesting an adjournment of the trial they must file a letter, with proof of service, with the Trial Office asking to be on the Purge Court list. Only those files will be brought into Court and spoken to by the presiding justice.

If a matter is not reached in a sitting, it is automatically placed on the following sitting. If counsel is not available on the next sitting, the Trial Coordinator must be notified and the matter spoken to in Purge Court.



If a matter is scheduled for 3 days or less, counsel may jointly advise of the week in the sitting they prefer to have the matter heard. The Trial Office will attempt to accommodate the request, but does not guarantee it will be able to. This practice will allow counsel to schedule other matters for the other weeks of the sitting. However, it is expected that counsel will ensure that they are available for the week they have selected and be flexible during the other weeks.

2. TRIAL RECORDS

Rule 23 provides that Trial Record must be filed by the Applicant 30 days before the trial. The Respondent may file or add to the Record no later than 7 days before the trial.



The Trial Record must be filed by the beginning of the trial sitting selected by counsel. The trial sitting begins with the Purge Court set when the trial time was scheduled.

If a Trial Record has not been filed in accordance with the Rules counsel must attend at Purge Court.

3. PROCEDURES FOR FAMILY LONG MOTIONS

All motions are returnable on Friday at 10 a.m., unless the court schedule is changed for holidays, conferences, etc. If counsel, prior to the return date, agree that the motion will take longer than one hour to hear, they may file a factum and a Request

for Listing with the Trial Office prior to the return date and no appearance is necessary. If they cannot agree on filing timeframes they will appear on Friday and decide upon timelines with the judge's input, if necessary. The Trial Coordinator will allow the responding party five days to file their factum after the applicant has served theirs before the matter will be called. This procedure also applies to motions for summary judgment on family matters.

4. PROCEDURES FOR C.F.S.A. MOTIONS FOR SUMMARY JUDGMENT AND TEMPORARY CARE HEARINGS

Motions for Temporary Care Hearings or Motions for Summary Judgment should be set before the Case Management Justice on their Monday CFSA administrative lists or a Friday Motions list for scheduling. If counsel, prior to the return date, agree that the motion will take longer than one hour to hear, they may file a factum and a Request for Listing with the trial office prior to the return date and no appearance is necessary. If they cannot agree on filing timeframes they will appear on Monday and decide upon timelines with the judge's input, if necessary. The Trial Coordinator will allow the responding party five days to file their material before the matter will be called. Factums are required for motions for summary judgment, but are **not required** for temporary care hearings.

5. CHILDREN'S LAW REFORM ACT ORDERS IN A CHILD PROTECTION CASE

Under new section 57.1 of the *CFSA*, the court may place a child or children into the custody of someone, other than the child's parent or foster parent, and have that order be a final order that is deemed to be a custody order under the *Children's Law Reform Act (CLRA)*. The court may also make access and restraining orders that are deemed to be *CLRA* orders. Counsel should prepare the order using the Form 25 General form, not an order form for C.F.S.A. matters. A new file is not opened **unless and until** a motion to change is filed under the C.L.R.A.

- Restraining orders made under section 57.1 of the *CFSA* must be sent to the police with a CPIC Restraining Order Information Form (CROIF) for registration on to CPIC.
- Parties seeking to change an order made under section 57.1 of the *CFSA* will bring a motion to change the order pursuant to Rule 15. The motion to change will start a new family court file.

5. SCHEDULING CASE/SETTLEMENT/TRIAL MANAGEMENT CONFERENCES

When calling the Trial office for case conference dates, please ensure an answer or reply to a motion to change has been filed. If the case conference requested is for a motion to change custody or access, please advise the trial office when booking the

hearing as 30 minutes will be set aside, instead of the normal 15 minutes.

If counsel require more time for conferences, the trial coordinator will schedule the amount of time requested. Conferences can be set for half days and full days, if required.

Lists are being filled with matters not ready, therefore, resulting in last minute adjournments and wasting valuable court time.


If you are calling for a Settlement or Trial Management Conference date, please know your Case Management Justice.

Urgent Case Conferences: We will continue to provide urgent Case Conference dates on any Thursday for matters that cannot wait the normal time. An answer or affidavit in response must be filed. This procedure will now apply to motions to change a final order. If the case is an application, no motion material may be served or filed prior to the hearing of the case conference. The parties/counsel are required to attend at 10:00 am and commence negotiations or mediation. If unsuccessful, the parties/counsel will have a case conference before a Justice at 2:30 p.m.


Timelines for filing case conference briefs: The person who is booking the case conference has the responsibility of filing their brief 7 days prior to the conference, ie if the conference is arranged by the respondent or responding party, they file 7 days in advance and the moving party has 4 days.

6. ADJOURNING CONFERENCES

Case conferences may be adjourned by Confirmation Form 14c up to 2 days prior to the court date. There will be a limit of two adjournments on consent prior to event without an appearance being necessary. If the parties/counsel request a third adjournment, a date will be set before the Case Management Justice to be spoken to.

 **There will be no consent adjournments of Settlement Conferences or Trial Management Conferences, without an appearance by both counsel, because of the shortage of case management time.** If, disclosure or a report, is required for the Settlement Conference the case will not be given a future date. When disclosure is complete or the report is received, counsel may contact the Trial Office and arrange for a Settlement Conference date. Otherwise, it is expected, barring unforeseen circumstances, the conference will proceed on the date selected by counsel at the Case Conference hearing.

7. ADJOURNING MOTIONS

 There will be a limit of two adjournments on consent for motions without having to

appear. This is in keeping with Regional policy. The third adjournment will be either set to be spoken to before a judge or adjourned sine die.

Motions will be held on Thursday, April 1st, 2010 preceding Easter weekend.

8. ADJOURNING FIRST APPEARANCES

There will be a limit of one adjournment before the Rule 39 clerk if the matter was adjourned to a First Appearance Court for Minutes of Settlement. If Minutes are not filed, the case will be returned before the Case Management Justice.

There will be a limit of three adjournments on regular First Appearances, after which the parties must adjourn for a Case Conference or file an Affidavit 23C.

9. RESTRAINING ORDERS



When a restraining order is requested by application or motion please include in your endorsement section the attached endorsement sheets on **pink paper** and ensure that the parties' information is complete

When a restraining order is granted by the Court it will not be sent to the police until a C.R.O.I.F. is filed. Please come to Court with a prepared C.R.O.I.F. when requesting a restraining order.

10. FILING DEADLINES FOR ALL HEARINGS EXCEPT APPREHENSIONS

All filings, including proof of service, must be complete by **2:00 p.m. two days prior** to the hearing, except those filings that are covered by the rules.

11. DISMISSAL NOTICES

- a. If a party requests a conference after receiving a Notice of Approaching Dismissal and fails to attend on the court date the matter will be dismissed. There will not be a second Notice sent out.
- b. When a Justice extends the timelines by any amount of time and parties have already received one Notice, the matter must be dealt with within that timeframe or a Dismissal order will be sent out. Our system will not allow for more than one notice so you must keep track of your dates.

12. JUDICIAL CONFERENCES

The conference dates for 2010 will be:

May 5th – 7th, 2010

June 2nd – 4th, 2010

November 3rd – 5th, 2010

There will be no courts during these time periods. The CFSA Wednesday administrative lists will be on the preceding Tuesday morning. The Motions list, which is normally heard on Friday, will also be heard on Tuesday during any conference week. Any counsel/parties requiring judicial intervention during these periods must contact the Trial Office.

13. WRITTEN SUBMISSIONS

All **costs** submissions are to be forwarded to the trial office at the presiding Justice's home location. A copy should also be filed at the court office where the matter was heard.

14. AFFIDAVIT DIVORCES, MINUTES OF SETTLEMENT, AFFIDAVIT 23 C's

These documents should be filed in the continuing record, not in the order basket. Also please note that if paragraph 11 of the Form 36: Affidavit for Divorce is not completed, a divorce order cannot be granted. It is not sufficient to state that the parties have shared custody and agree there should be no support paid. The court must be advised as to the incomes of the parties and the specific time share in order to determine whether or not the arrangement complies with the governing Child Support Guideline legislation.

15. CONFIRMATIONS – 14C



If a confirmation is not filled out properly, i.e. **identifying specifically** what judge needs to read, along with location of the material in the Continuing Record, the motion/conference **will not be heard.**

Regional Senior Justice Glithero

Local Administrative Justice C. Lafreniere