



MEMORANDUM

To: Hamilton Law Association
c/o Robert Hooper, President

From: Harrison S. Arrell
Regional Senior Justice Arrell – Superior Court of Justice
Central South Region

RE: **Masters circuiting Hamilton Sopinka**

Date: August 29, 2017

I am pleased to inform you that commencing the week of September 18th, 2017 the public and bar will have access to the services of a Master at the John Sopinka Courthouse.

The following Masters will be circuiting Hamilton one week per month:

- Master Andrew T. Graham will be circuiting in September & October, 2017 hearing matters for one week in Hamilton for each of those months.
- From November onwards the Hamilton week will be handled by one of three Masters; Master Karen E. Jolley, Master Michael P. McGraw & Master Priti T. Sugunasiri. It is likely that it will not be the same Master hearing matters in Hamilton each month; it will be a rotation of the three Masters listed above.

I attach bios of each of these Masters which highlights their areas of expertise.

I also attach a helpful list of matters that Masters can deal with. Please be advised that any matters that can be dealt with by a Master will likely be scheduled to be heard before a Master. I intend to utilize the services of our Masters as much as possible, to assist our bench and the public.

The Hamilton Sopinka trial coordinators will be scheduling the Masters generally as follows:

Monday – Civil Pretrials

Tuesday – Assist with regular motions list (am), Long Motion (pm)

Wednesday – Long Motion

Thursday – Assist with regular motions list (am), Long Motion (pm)

I would encourage the Hamilton Bar to utilize this valuable resource in order to permit the most expeditious and least costly resolution of your matters.

I welcome any questions, concerns or comments you or your colleagues might have.

cc. The Honourable Madam Justice J. A. Milanetti
Local Administrative Justice, Hamilton

cc. Hamilton trial coordinators

Master Andrew Graham

Master Andrew Graham is originally from Halifax, Nova Scotia where he graduated from the University of King's College in 1979 and then completed his LL.B. at Dalhousie University in 1982. After being called to the Bar in Ontario in 1985, he practiced personal injury and insurance law at Benson Percival Brown until his appointment as a Master in 2006. He has been an Instructor in the Advocacy and Civil Litigation sections of the Ontario Bar Admission Course. During his last two years in practice, he also worked as a mediator.

Master Graham is fluent in French and in his law practice appeared in both the Superior Court and the Court of Appeal on bilingual matters. Since his appointment to the court in June, 2006 he has heard bilingual motions and conducted bilingual pre-trial conferences. He also speaks Spanish.

Since April, 2010, Master Graham has been circuiting to Brampton and occasionally to Milton to conduct pre-trial conferences and more recently, short motions. He is also a regular participant in the Masters Motion education session for the Toronto Lawyers Association and the Courtrooms and Classrooms program for visiting high school students.

Master Graham's interests outside the law include playing and coaching soccer, playing tennis and birdwatching. He has also traveled extensively, and has enjoyed numerous trips to various Latin American countries as well as to other destinations including Australia, Malaysia and India.

MASTER KAREN JOLLEY

Master Jolley was called to the Ontario Bar in 1989. She obtained her Bachelor of Laws degree from Osgoode Hall in 1987 and her Masters of Law degree in Civil Litigation and Dispute Resolution from Osgoode Hall in 2000.

Master Jolley practised in the area of commercial litigation and administrative law, first at Smith Lyons and then at McCague Wires Peacock, where she was a partner. From 2002 until her appointment in 2017, she was a managing partner at Wires Jolley LLP, a boutique litigation practice.

She has extensive experience in all stages of the litigation process and has argued before all levels of the Ontario courts and appeared before the Supreme Court of Canada. She has also acted as counsel in private commercial arbitration matters across the country.

In addition, Master Jolley has significant experience in the field of professional regulation. She was prosecution counsel for many years to one of Ontario's accounting bodies and also regularly defended professionals before the College of Veterinarians of Ontario and the Financial Services Tribunal. She drafted the Rules of Professional Practice governing discipline and capacity hearings for the Certified General Accountants of Ontario and was responsible for the overhaul of the enforcement process of the Standards of Professional Responsibility for the Financial Planning Standards Council of Ontario.

In 2017 Master Jolley was appointed as a Case Management Master of the Ontario Superior Court of Justice. In that capacity she hears interlocutory motions, references and conducts pre-trials and case conferences.

Biography of Master Michael Phillip McGraw

Master McGraw was appointed to the court in February 2017. Prior to his appointment, Master McGraw practiced litigation at Blake, Cassels & Graydon LLP in Toronto for over 17 years as a summer student, articling student, Associate and Partner.

Master McGraw's practice focused on general commercial, restructuring and insolvency and construction litigation. His general commercial practice included litigation related to fraud, pensions, financial services, insurance, labour and employment, real estate, intellectual property, tax, securities, class actions, environmental, general corporate, landlord-tenant, criminal, quasi-criminal and Aboriginal law. In the context of insolvency law, Master McGraw's practice focused on the enforcement of security and property rights, restructurings, receiverships, bankruptcies, priority disputes, equipment leasing, claims processes and other issues in the context of insolvencies, creditors' rights and collections. His construction practice emphasized lien and trust claims, contractual and damage claims, claims processes and insolvencies.

Master McGraw regularly appeared before the Ontario Superior Court of Justice (Regular Civil and Commercial Lists), the Ontario Court of Appeal and the Bankruptcy Court on behalf of Canadian, U.S. and foreign creditors, debtors, financial institutions, multinational corporations, manufacturers, retailers, service providers, and court-appointed receivers, monitors and trustees. Master McGraw is a former executive member of the Ontario Bar Association Insolvency Law and Construction Law sections and a speaker and author on restructuring and insolvency and construction law.

Master McGraw is a graduate of the University of Waterloo, Honours B.A., English (Dean's List); and the University of Ottawa, Masters of Physical Education (Administration) and L.L.B. (Summa Cum Laude, Silver Medal).

Master McGraw is a former employee and volunteer with Hockey Canada and an active volunteer youth hockey, baseball and soccer coach in Toronto.

Master P. Tamara Sugunasiri

Master P. Tamara Sugunasiri was appointed as a Master of the Superior Court of Justice on March 1, 2017. Master Sugunasiri is a graduate of the University of Windsor Law and has a Masters in Philosophy.

She was called to the bar in 2000. Prior to her appointment, she practiced civil litigation as Senior Counsel at the federal Department of Justice in Toronto. In that role she represented various government departments in primarily tort litigation and judicial reviews at all levels of court in Ontario as well as the Federal Court and Federal Court of Appeal. She also practiced in the area of bankruptcy and insolvency law for eight years, constitutional law for one year and served as Discipline Counsel at the Law Society of Upper Canada for one year.

Master Sugunasiri has taught civil litigation and legal research and writing to Humber paralegal students and has been faculty on numerous OBA and Advocates' Society programs. Most recently she has written in the area of contract law in the Annual Review of Civil Litigation and appears on the faculty of Osgoode's LLM program in Advanced Trial Advocacy.

She was also an executive member of the Administrative and Regulatory Law Group of the Advocates' Society. Outside of court, Master Sugunasiri coaches soccer and sits on the steering committee of 100 Women Who Care - a local group dedicated to fundraising for small registered charities who are servicing the east end of Toronto. In the past she has sat on the boards of Mothercraft Society and the South Asian Legal Clinic of Ontario.

MOTIONS THAT MUST BE MADE TO A JUDGE

- Rule 7.07.1(1): Leave to discontinue an action by or against a party under a disability.
- Rule 7.08(1): Approve settlement of a claim by or against a person under disability.
- Rule 7.08(2): Judgment on consent in favour of or against a party under disability.
- Rule 7.09(1),(2): Pay money in favour of a person under a disability other than into court.
- Rule 10.02: Continue an action in the absence of an estate representative or appoint a representative if there is no executor.
- Rule 19.05: Judgment on the statement of claim where defendant noted in default.
- Rule 20.04 Summary judgment if the only genuine issue is a question of law or if the court must weigh evidence/evaluate credibility or conduct a mini-trial
- Rule 21.01(1): Strike a pleading on the ground that it discloses no reasonable cause of action OR determine a question of law raised by a pleading.
- Rule 21.01(3): Dismissal or stay of action on the ground that the court has no jurisdiction OR a party does not have legal capacity OR another action is pending between the parties OR the action is frivolous, vexatious or an abuse of process.
- Rule 22.01(1): Special case on a stated question of law.
- Rule 23.01(2): Leave to discontinue an action by or against a party under a disability.
- Rule 24.1.15(5) Judgment in terms of agreement at mediation when a party fails to comply.
- Rule 34.15(2): Contempt order respecting failure to attend or misconduct at an examination.
- Rule 37.14(4): Motion to vary or set aside an order of a Judge.
- Rule 40.01 Interlocutory injunction, mandatory order, or appointment of a receiver.
- Rule 43.04(3): Interpleader that raises a genuine issue of fact or of law.
- Rule 47.02(2): Strike a jury notice on the ground that the action “ought to be tried without a jury”.

- Rule 48.11: Restore an action to the trial list if struck off the list by a judge.
- Rule 49.09(a): Judgment in the terms of an accepted offer to settle.
- Rule 51.06(1): Order based on an admission in an affidavit or examination.
- Rule 51.06(2): Order based on admission in a pleading or response to request to admit.
- Rule 54.02(1),(2): Direct a reference of a whole proceeding or to determine an issue.
- Rule 54.09(2),(4): Oppose confirmation of a referee's report.
- Rule 60.08(16): Garnishment hearing that raises a genuine issue of fact or of law.
- Rule 60.11: Contempt order to enforce an order requiring a person to do an act or to discharge or vary a contempt order.
- Rule 60.18(5): Contempt order where a debtor has concealed or made away with property to defeat creditors.
- Rule 72.03(1): Pay money out of court to the credit of a person under disability.
- s. 101(1) CJA Interlocutory injunction, mandatory order, or appointment of a receiver.
- s. 107(1) CJA Transfer an action from one court to another where two or more proceedings are pending in two or more different courts.

MASTERS' MOTION JURISDICTION AND MATTERS WITHIN THE EXCLUSIVE JURISDICTION OF JUDGES

PROVISIONS GRANTING JURISDICTION TO MASTERS

CJA s. 87(2): (2) Every master has the jurisdiction conferred by the rules of court in proceedings in the Superior Court of Justice.

CJA s. 86.1(6): (6) A case management master has,
 (a) the jurisdiction of a master conferred by the rules of court;
 and
 (b) the case management jurisdiction conferred by the rules of court.

CJA s. 66(2)(h): (2) The Civil Rules Committee may make rules for the courts described in subsection (1), even though they alter or conform to the substantive law, in relation to...
 (h) jurisdiction of masters and case management masters including the conferral on masters and case management masters of any jurisdiction of the Superior Court of Justice, including jurisdiction under an Act, but not including the trial of actions or jurisdiction conferred by an Act on a judge;

Rule 37.02(2) (2) A master has jurisdiction to hear any motion in a proceeding, and has all the jurisdiction of a judge in respect of a motion, except a motion....

Rule 37.04 A motion shall be made to the court if it is within the jurisdiction of a master or registrar and otherwise shall be made to a judge.

Rule 1.03(1) "Court" includes a master having jurisdiction to hear motions under Rule 37 and a case management master

PROVISIONS GRANTING EXCLUSIVE JURISDICTION TO JUDGES

RULE 21: DETERMINATION OF AN ISSUE BEFORE TRIAL

Rule 21.01(1): Motions to determine a question of law raised by a pleading or to strike a pleading on the ground that it discloses no reasonable cause of action must be made to a Judge.

Rule 21.01(3): Motions to stay or dismiss an action on the ground that (a) the court has no jurisdiction over the subject matter, (b) that a party does not have legal capacity to sue or be sued, (c) another action is pending between the parties or (d) the action is frivolous or vexatious or an abuse of process of the court must be made to a Judge.

[Contrast with rule 25.11 where Masters may strike all or part of a pleading on the ground that it is scandalous, frivolous or vexatious or is an abuse of process of the court. Note also the general power of the court, including Masters, to stay an action under s. 106 of the Courts of Justice Act.]

RULE 22: SPECIAL CASE

Rule 22.01(1): A motion to determine a special case on a stated question of law must be made to a Judge.

SUMMARY JUDGMENT

Rule 20.04(4): Although Masters may hear motions for summary judgment, it must be adjourned to a Judge where “the only genuine issue is a question of law.”

Rule 20.04(2.1): Only judges may weigh evidence, evaluate credibility and draw inferences at a summary judgment motion.

Rule 20.04(2.2): Only a judge may order and conduct a mini-trial.

DEFAULT JUDGMENT: MOTIONS FOR JUDGMENT ON STATEMENT OF CLAIM

Rule 19.05: Where a defendant has been noted in default and default judgment cannot be signed (e.g. for unliquidated damages or declaratory relief) a motion for judgment on the statement of claim may only be made to a Judge. Similarly see rule 19.04(3.1)(a) where a plaintiff may move for judgment on the statement of claim to a Judge where the registrar refuses to sign default judgment.

[Under rule 19.04(3.1)(b) a Master may grant default judgment on motion if the registrar refuses to sign default judgment and the Master determines that the

claim is one for which default judgment is available under rule 19.04(1) – for example because the damages are liquidated.)

Rule 19.09(2): A motion to set aside or vary a judgment on the statement of claim obtained against a defendant who has been noted in default must be made to a Judge.

JUDGMENT ON ACCEPTED OFFERS TO SETTLE

Rule 49.09(a): A motion for judgment in the terms of an accepted offer to settle must be made to a Judge when a party to an accepted offer to settle fails to comply with the terms of the offer.

[Contrast with rule 49.07(6) where the “court” may incorporate any terms of an accepted offer to settle into a judgment.]

JUDGMENT ON MEDIATED AGREEMENT

Rule 24.1.15(5) A motion for judgment in the terms of a signed agreement at mediation must be made to a Judge when a party to the agreement fails to comply with its terms.

JUDGMENT ON ADMISSIONS

Rule 51.06(1): Where an admission is made by a party in an affidavit or on an examination a motion may be made to a Judge for such order as a party may be entitled without waiting for the determination of any other question between the parties.

Rule 51.06(2): Where an admission is made by a party in a pleading or in response to a request to admit a motion may be made to a Judge for such order as a party may be entitled without waiting for the determination of any other question between the parties.

QUESTIONS OF LAW IN GARNISHMENT AND INTERPLEADER MOTIONS

Rule 60.08(16): Although Masters may on motion conduct a garnishment hearing and determine issues among the parties, it must be adjourned to a Judge where the motion “raises a genuine issue of fact or of law.”

Rule 43.04(3): Although Masters may hear a motion for an interpleader, it must be adjourned to a Judge where the motion “raises a genuine issue of fact or of law.”

DISPOSING OF ACTIONS BY OR AGAINST PERSONS UNDER A DISABILITY

Rule 37.02(2)(a): A Master does not have jurisdiction to hear a motion “for judgment on consent in favour of or against a party under a disability.”

Rule 7.08(2): Judgment may not be obtained on consent in favour of or against a party under disability without the approval of a Judge.

[It appears however that there is no bar to a Master dismissing an action by or against a person under disability that is not on consent but is based on default, for example dismissal for delay, for failure to comply with court orders, for failure to serve an affidavit of documents, etc..]

Rule 7.07.1(1): An action may be discontinued by or against a party under a
& Rule 23.01(2): disability only with leave of a Judge.

Rule 7.08(1): No settlement of a claim by or against a person under disability is binding without approval of a Judge.

Rule 7.09(1),(2): Monies payable to a person under a disability or paid to the Children's Lawyer on their behalf shall be paid into court unless a Judge orders otherwise.

Rule 72.03(1): An order for payment out of court of money in court to the credit of a person under disability may be obtained by motion to a Judge.

STRIKING JURY NOTICES

Rule 47.02(2): A motion to strike a jury notice on the ground that the action “ought to be tried without a jury” shall be made to a Judge.

[A Master does have jurisdiction to strike a jury notice under rule 47.02(1) where the grounds are that a statute requires a trial without jury or where the jury notice was delivered late (after the close of pleadings).]

ACTIONS STRUCK OFF TRIAL LIST

Rule 48.11: Where an action is struck off the trial list by a judge, it can only thereafter be placed on a trial list by a judge. If the action is struck off the list other than by a judge, then a master may restore the action to the trial list.

DIRECTING TRIAL OF AN ISSUE

Rule 37.13(2)a): A judge hearing any motion may order the trial of an issue (and adjourn the motion to the trial judge).

[There are two specific instances where Masters can order the trial of an issue. Under rule 20.04(3) a Master hearing a summary judgment motion may order a trial of an issue on damages if satisfied that the only issue is the amount to which the moving party is entitled. Under rule 43.04(2)(b) the Master can order the trial of an issue between claimants on an interpleader motion.]

[Note also that under rule 37.13(1) a Master may grant, dismiss or adjourn a motion “with or without terms” and under rule 1.05 a Master, when making an order under the rules may “impose such terms and give such directions as are just”.]

CONVERTING A MOTION INTO A MOTION FOR JUDGMENT

Rule 37.13(2): A Judge who hears a motion may in a proper case convert the motion into a motion for judgment.

DIRECTING AND CONFIRMING A REFERENCE

Rule 54.02(1),(2): A Judge may direct a reference of a whole proceeding or to determine an issue.

[There is one specific instance where Masters can direct a reference. Under rule 20.04(3) a Master hearing a summary judgment motion may grant judgment with a reference if satisfied that the only issue is the amount to which the moving party is entitled.]

[References are often directed to Masters as referees under rule 54.03(1)].

Rule 54.09(2),(4): Motions to oppose confirmation of a referee’s report or to confirm a report before the passage of time are made to a Judge.

REPRESENTATION OF A DECEASED PERSON

Rule 10.02: If an estate has an interest in the proceeding and there is no executor or administrator a Judge may order that the proceeding continue in the absence of an estate representative or appoint a person to represent the estate in the proceeding.

[Note that if a defendant has no executor or administrator a Master may appoint a litigation administrator under rule 9.02. If a plaintiff died prior to litigation a Master may direct that the proceeding continue in the name of the executor or administrator (see rules 9.03(2), (3) and (4)) and if a plaintiff dies during litigation and there is a transmission of interest (to an executor or administrator) an order to continue be obtained from the registrar under rule 11.02. However if a plaintiff dies during litigation and no executor or administrator is appointed only a Judge under rule 10.02 can appoint some other person to represent a deceased plaintiff’s estate.]

LIBERTY OF THE SUBJECT

Rule 37.02(2)(e): Masters have no jurisdiction to hear motions relating to the liberty of the subject.

CONTEMPT ORDERS

Rule 60.11: A contempt order to enforce an order requiring a person to do an act may be obtained only on motion to a Judge. If there is a finding of contempt a Judge may order imprisonment, refrain from doing an act, pay costs or comply with an order. Only a Judge may issue a warrant to arrest and bring the person to the contempt hearing. Only a Judge may discharge or vary a contempt order.

Rule 60.18(5): Where it appears from an examination in aid of execution that a debtor has concealed or made away with property to defeat creditors a Judge may make a contempt order.

Rule 34.15(2): If a person fails to comply with an order made under rule 34.14 or 34.15(1) respecting attendance at or misconduct at an examination, a Judge may make a contempt order against such person.

MATTERS RESERVED TO A JUDGE BY STATUTE

Rule 37.02(2)(a): Masters have no jurisdiction to hear motions where the power to grant relief is expressly conferred on a Judge by a statute or the rules.

INTERLOCUTORY INJUNCTIONS

Rule 40.01: Only a Judge may make an order for an interlocutory injunction,
CJA s. 101 mandatory order, or appointment of a receiver and/or manager.

TRANSFER ACTIONS FROM A DIFFERENT COURT

CJA s. 107(1) Pursuant to subsection 4, where two or more proceedings are pending in two or more “different courts”, any motion to transfer an action from one court to another (and concurrently order they be consolidated or tried together) or require one to be stayed pending determination of the other must be made to a Judge.

[Note however Masters have power under rule 6.01(1) where two or more proceedings are pending in “the court” to order consolidation or trial together or to stay one pending determination of the other. Also under rule

13.1.02(2) Masters may hear a motion to transfer a proceeding from one county to another. Presumably then s. 107 applies only to transfers to the SCJ from the Small Claims Court or courts other than the SCJ.]

VARYING AN ORDER OF A JUDGE

Rule 37.02(2)(b): A Master has no jurisdiction to vary or set aside an order of a Judge.

[Query if this includes a timetabling order made by a Judge or deadlines to complete steps made by a Judge as a term of an order or adjournment even if the order was otherwise within the jurisdiction of a Master.]

Rule 37.02(2)(c): A Master has no jurisdiction to abridge or extend a time prescribed by an order that a Master could not have made.

Rule 37.14(4): A motion to vary or set aside an order of a Judge shall be made to the Judge who made the order or any other Judge.

MISCELLANEOUS

Rule 37.02(f): A Master has no jurisdiction to hear a motion under the *Judicial Review Procedure Act*.

Rule 37.02(g): A Master has no jurisdiction to hear a motion in an appeal.

Rule 38.02: Applications shall be made to a Judge. [There are a number of rules (outside of Rule 38) that refer to specific applications without specifying they must be made to a Judge, but these must be read in conjunction with rule 38.02.]

[There is no bar to Masters hearing motions within an application that are otherwise within a Master's jurisdiction.]