

## **NOTICE**

### **MANITOBA COURT OF QUEEN'S BENCH FAMILY DIVISION**

#### **RE: MAY ADMINISTRATIVE LISTS, TRIAGE/PREREQUISITES, CHILD PROTECTION INTAKE AND NEWLY-SCHEDULED MOTIONS AND CASE CONFERENCES**

**APRIL 28, 2020**

The purpose and intent of this Notice is to provide important information to litigants and counsel in respect of the previously-announced second limitation of Court services covering the period from April 18 to May 22, 2020.

#### **May Administrative Lists**

Please keep in mind that for each Administrative List, only those matters which were cancelled from the period from **April 20 to and including May 22, 2020**, will appear on these Assignment Lists.

Once again, the Justice presiding on each Administrative List will be in contact with counsel regarding a specified teleconference time.

The judicial assignments are as follows:

1. Cancelled Case Conference Assignment List – Justice Dueck
2. Cancelled Family Trials Assignment List – Justice Dueck
3. Cancelled Child Protection Trials Assignment List – Justice Dueck
4. Family Division Triage Assignment List – Justice Johnston
5. Family Division Triage Assignment List – Justice Petersen
6. May 21, 2020 CP Intake List – Justice Hatch
7. May 21, 2020 CP Intake List – Justice Everett
8. May 22, 2020 CP Intake List – Justice Mirwaldt
9. May 22, 2020 CP Intake List – Justice Dunlop
10. ISO Assignment List – Justice MacPhail
11. FD Motions Assignment List – Justice Horst

12. FD Motions Assignment List – Justice Thomson

13. Circuit Court Assignment List – Justice Horst

There are now two FD Motions Assignment Lists. The two FD Motions Assignment Lists will provide a greater opportunity to dispose of the previously-cancelled motions. As noted in the first Notice to the Profession respecting COVID-19, the motions had been previously scheduled and presumptively set to proceed from April 20 to and including May 22, 2020. However, in the event that there are any procedural concerns prior to the FD Motions Assignment List, counsel are to directly communicate to the Presiding Judge assigned to the motion through written correspondence.

### **Triage/Prerequisites**

The Triage Assignment Lists for May will be the last. Future triage matters will be set down and dealt with on the regularly-scheduled Monday Lists and will continue to run via teleconference until further notice. A Notice to the Profession was recently (April 24, 2020) released by Senior Master Lee with respect to the operation of dockets regarding the enforcement of prerequisites.

The Triage Screening List overseen by Ms. Angie Tkachuk will continue to operate via teleconference.

Temporary measures are being implemented with respect to the online completion of the For the Sake of the Children Program, details of which will be communicated as soon as they become available.

### **Child Protection Intake**

The May 21 and 22, 2020 CP Administrative Intake Lists will be the last. After the conclusion of those Lists, given the fully-operational child protection dockets being performed by the Masters, the regular CP Intake Lists, will continue to run on the regularly-scheduled Thursdays and will continue to be conducted via teleconference until further notice.

### **Motions and Case Conferences (Expanded Services)**

Effective immediately, as it relates to the post-triage and "transition" matters, despite the continuing and obviously fluid COVID-19 crisis, the Manitoba Court of Queen's Bench Family Division will now be resuming an almost normal level of judicial service in the realm of case conferencing and interim motions. The service in this connection will now be greater than what had been previously announced. Accordingly, litigants involved in post-triage or transition matters are no longer required to establish "emergent" circumstances to secure a hearing date as they will now have access to what had been previously

unavailable hearing dates owing to the COVID crisis. The judicial service (the motion or the case conference) in this area will be undertaken remotely via teleconference/video conference. The Court will also make available the possibility of Judicially-Assisted Dispute Resolution (JADR) which, if and when utilized, will also be conducted remotely. It should be noted that these judicial services respecting motions, case conferences and JADRs represent an amendment from the previous notices and directions provided since the COVID-19 crisis.

Given the particularly high volume of cancelled trials during the April/May closure, in the event that the parties have already completed a trial readiness case conference, the Court will consider the possibility of facilitating a JADR *prior* to the Assignment List. If counsel believe that a settlement is possible through such a mechanism, subject to the Court's permission, a Judge may be assigned to conduct such a hearing. The usual correspondence and request should be made directly to me as Acting Associate Chief Justice.

### **What is Expected from Counsel and What can be Expected from the Court?**

To be clear about what the court is now offering as a result of this Notice, it should be understood that the Court will be providing case conferences and motions for newly-scheduled matters. This is not to be confused with previously-scheduled (but now adjourned) matters from March, April and May 2020, that are presently returnable to the current or any future Administrative Lists. While litigants involved in those already-adjourned matters may have access to the Court's renewed service (pursuant to this Notice) respecting motions and case conferences, for those already-adjourned matters, the rescheduling of those matters to a motions date or a case conference, must occur from the Assignment List in question. It should also be understood, that pending a decision about matters currently scheduled for June (which matters are for the moment, presumptively set to proceed) those matters cannot be pre-emptively rescheduled pursuant to this Notice until and if the already-scheduled matters are adjourned.

There will be an expectation of a high level of preparation, rigour and collaboration in counsel's approach to these conferences and motions. The identified and requisite preparation will include discussion between counsel **prior to** appearing before the presiding Justice for the purposes of narrowing and focusing the issues so as to maximize the use of the limited time available at the scheduled appearance. Counsel must be clear what it is that the presiding judge is being asked to do and what the presiding Judge is being asked to focus upon. Where submissions are being made to the presiding Judge in the context of a contested motion, counsel must, now more than ever, be focused and succinct in their submissions.

In order to secure a new case conference or motion, counsel will continue to require the leave of their assigned case conference Judge through the use of Form 70DD.

## Requirements and Limitations

The identified case management, motions and JADR conferences will be subject to the following requirements and limitations:

- In keeping with one of the defining cornerstones of the Court's model in respect of family proceedings in Manitoba, it will continue to be a requirement that a trial date be set in the event of a first case conference or if the matter is a transitional case where a trial date has yet been set. Exceptionally, during this health crisis and given the past and expected future trial cancellations, trial dates may be set outside of the Court's usual scheduling parameters.
- In the event that a previously-scheduled motion or case conference has been cancelled or may be cancelled in the future, counsel/litigants will determine whether, pursuant to this Notice, they wish a rescheduled motion or case conference (both of which would be done remotely) or whether the matter will remain on the Administrative Assignment List, at which time the canceled matter will be rescheduled for a potentially further away new case conference or motion date.

## Additional Parameters

- It is to be presumed that any matter scheduled pursuant to this Notice (case conference or motion) will not be on the *Court* record, unless directed otherwise by the Presiding Judge. The utilization of a courtroom together with the creation of a formal record through the Court's own recording system will require permission of an Administrative Judge.
- While self-represented litigants may be part of this initiative, it will remain within the discretion of the Presiding Judge to determine whether, in any given case, the process is suitable for the involvement of a self-represented litigant and, if so, the manner in which the matter will proceed (for example, on the record).
- Once leave is granted by a Judge to secure a new case conference date or a motion, counsel are to obtain available dates and times as follows:
  - Case conferences – Sharon Wolbaum by email at [Sharon.Wolbaum@gov.mb.ca](mailto:Sharon.Wolbaum@gov.mb.ca); and
  - Motions – Angie Tkachuk by email at [Angie.Tkachuk@gov.mb.ca](mailto:Angie.Tkachuk@gov.mb.ca)
- Counsel must provide their written materials to the assigned Judge by email in a PDF format on or before three clear business days prior to the hearing.

- All matters will proceed by way of teleconference or videoconference and the participating counsel will be responsible for providing conference call services, including dial-in numbers and access codes by email to the Presiding Judge on the Thursday before the week the matter is scheduled to proceed. At that same time, it is also required that counsel provide to the Presiding Judge the completed Agreement on Hearing via Teleconference or Videoconference form (copy attached) respecting the nature, details and rules of the engagement for the teleconference/videoconference.
- Notwithstanding an Agreement by counsel/litigants respecting the hearing, to be clear, the Presiding Justice continues to retain jurisdiction respecting all procedural aspects of the hearing.
- Following the case conference, the Court will prepare its regular memorandum.
- Following a motion, the Court will prepare a disposition sheet to be distributed to the litigants.
- The foregoing is subject to change. Any changes will be announced on the Court's website.

**ISSUED BY:**

***“Original signed by Acting Associate Chief Justice Dueck”***

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**The Honourable Acting Associate Chief Justice Allan Dueck  
Court of Queen’s Bench (Manitoba)**

**Date: April 28, 2020**

**QUEEN'S BENCH WINNIPEG CENTRE**

**BETWEEN:**

**Insert Name of Plaintiff/Applicant,**

Petitioner/Applicant,

- and –

**Insert Name of Defendant/Respondent,**

Respondent.

**AGREEMENT ON HEARING VIA TELECONFERENCE OR VIDEO CONFERENCE**

1. It is agreed that the terms of the Court of Queen's Bench Notice regarding Family Division Case Management Conferences, Judicially Assisted Dispute Resolution (JADR) and Interim Motions, dated April 28th, 2020 will govern.
2. The [Case Management Conference, Judicially Assisted Dispute Resolution (JADR) and Interim Motion] initiated by the [Insert Moving Party] shall proceed on [Insert Time and Date of Hearing] by way of [Teleconference or Video Conference]..
3. The instructions to join the [Teleconference or Video Conference] are as follows: [Provide detailed instructions including: (For a Teleconference) the 2 dial-in number and conference ID number or password; (For a Video Conference) the application to be used, along with a hyperlink or other instructions to join.]
4. It is to be presumed that the matter will not be on the record for Case Conferences, JADR's or motions, except as the judge may order.

5. The parties agree that for a case conference, motion or JADR, only such parts as the judge may direct shall be recorded. [If there is to be a recording made – details shall be inserted as to how the recording will be made, and how it will be made available for distribution to each party and the Court, subject to the court’s determination of what use may be made of the recording.]

6. The parties agree that the following documents will be relied upon at the [Case Management Conferences, Judicially Assisted Dispute Resolution (JADR) and Interim Motions]. [For the purpose of the Case Management Conference or motion, counsel must file a Brief, which shall include the pleadings and all existing Triage or Case Management Conference memoranda prepared by judges who presided previously on the matter]. This list, for the purposes of any adjudication and/or decision, shall be seen as the basis or foundation for that decision and in that sense, constitute the “record”:

(a) [Insert List of Documents and indicate whether they have been filed with the Court Registry.]

7. The parties agree that all documents listed in paragraph 6 herein will be provided by email (in PDF format) to the assigned judge at least three (3) clear business days prior to the scheduled appearance.

8. Should any document(s) listed in paragraph 6 herein not be filed on the Court Registry, counsel agree and undertake to file the original documents on the Court Registry as soon as possible.

9. The parties estimate that they will require [Insert Time required] for the hearing of their submissions.

[Insert Date]

AGREED TO BY COUNSEL FOR THE PARTIES:

[Insert Firm Name]

Per:

[Insert Name of Plaintiff/Applicant Counsel]

[Insert Firm Name]

Per: [Insert Name of Defendant/Respondent Counsel]