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2021 TRIAL SITTINGS MEMO

KITCHENER UNIFIED FAMILY COURT

December 11, 2020

1. As you are aware, the suspension of regular court operations during the COVID-19 health pandemic has resulted in a large volume of family court matters being placed on the upcoming trial sittings. The Superior Court of Justice, Family Court Branch in Kitchener, Ontario is committed to hearing these matters in a just and efficient manner.
2. We recognize that the trial process under the new COVID-19 reality is both complex and uncertain. In an effort to navigate some of these issues we ask for your assistance by completion of the attached **Trial Readiness Form**, by reference to the following guidelines.
3. One Trial Readiness form shall be completed per case, with input from all parties, and signed by all parties (or counsel). The suggested process is as follows:
 - a. The Applicant speaks with the Respondent, agrees on content, and files form signing on behalf of both parties.
 - b. In the alternative, the Applicant completes form, signs, and serves on the Respondent(s). Respondent may add comments to the form, and also signs. The Respondent serves the combined copy on the other parties and files with the Trial Coordinator.
4. The Trial Readiness Form is to be filed with the Trial Coordinator at Kitchener.Superior.Court@ontario.ca. Please ensure you have clearly indicated on the subject line of your email the Court File No. and File Name and that you are attaching your Trial Readiness Form.
5. Filing deadlines for the Trial Readiness Form are set out below.

A. **Trial Sittings**

6. The following are the Trial Sittings for 2021 in Kitchener. Each is a three-week sittings:

Sittings	Speak-to-Court	Trial Readiness Form due
January 25, 2021	January 18, 2021	January 8, 2021
April 6, 2021	March 29, 2021	March 19, 2021
September 7, 2021	August 30, 2021	August 20, 2021
November 8, 2021	November 1, 2021	October 22, 2021

7. If your matter is not ready to proceed, or both sides would benefit from additional time to negotiate possible settlement, we would ask that you please reach out to the opposing side(s) of your action to determine whether there is agreement to adjourn your matter to one of the other 2021 trial sittings.

B. **Availability**

8. No party, counsel, or witness will be compelled to attend court in person if they are not comfortable in doing so.

9. Likewise, we also recognize that there are individuals who prefer to attend court in-person or who do not have the technical capabilities to attend court virtually by way of the Zoom (video) platform offered. Every effort will be made to accommodate these needs and preferences, but the court cannot guarantee that every preference can be accommodated.

10. In order to properly organize your trial, we require information, in advance, as to these specific preferences. To that end, you will need to advise us whether your parties, counsel, and witnesses wish to appear in person or by Zoom attendance. Please note that, at present, we have limited hybrid courtrooms available (i.e. a courtroom that can accommodate both in-person and remote attendances at the same time).

11. In-person and hybrid proceedings may take longer to reach on the sittings due to limited court resources. Parties who are able to proceed on an entirely remote (Zoom platform) basis may have their matter heard more expeditiously. **However, the option to do a remote trial should only be chosen if you know that you have the capability to conduct a virtual trial as noted below.**

12. We will attempt to accommodate all reasonable requests.

C. Filing of Trial Record and Exhibits Briefs

13. Your matter will not be called until your Trial Record has been served and filed.

14. Presently, the filing requirements are as follows:

- a. **Your Trial Record and Exhibit Briefs** must be filed through the the **Family Submissions Online Portal**, at: <https://www.ontario.ca/page/file-family-court-documents-online>. Your fee will be required to be paid on-line through the Portal.
 - i. To access the portal, counsel will need to have a “**One-key account**” – there is a link on the website setting out how to get that key. Just scroll down about 2/3 of the page that pops up with the link above.
 - ii. Court services staff will be available to assist you or your staff if necessary. Please feel free to email Kitchener.Courthouse@ontario.ca if you have difficulties accessing the portal.
 - iii. If you have difficulties accessing the portal, after seeking the assistance of Court Services staff as provided for above, you may file an electronic copy with the court office by emailing the documents to Kitchener.Courthouse@ontario.ca. Please ensure you have noted on the subject line of your email you are attaching your Trial Record and Exhibit Briefs for ease of reference. In the alternative, you may provide electronic copies on a memory stick.
 - iv. All required fees must be paid before your matter will be finalized.
- b. **Please note that documents filed through the portal must be less than 10 MB in size.** If your documents to be filed exceed that size, you may:
 - i. file your documents as volumes (ie, volumes 1 and 2 of the Trial Record, for example); or
 - ii. when filing your paper copies (see below), you may provide electronic copies on a memory stick.
- c. At this time, in addition to electronic filing as set out above, two hard copies of your Trial Record and Exhibit Briefs must be filed physically at the courthouse. (If you have already filed through Family Submissions Online Portal, you may courier the documents to the Courthouse if you prefer not to attend in person.)
- d. For clarity, this dual filing requirement (portal AND paper) is mandatory regardless of whether your matter is proceeding remotely or in person.

- e. Please also ensure that you have properly named the document as a Trial Record in accordance with the REVISED Notice to the Profession in Central South Region re: electronic filing of documents, dated December 1, 2020.
- f. The physical and electronic copies of your Trial Record and Exhibit Brief must be identical:
 - a. Both must have a Table of Contents (and the electronic copy must be hyperlinked and bookmarked);
 - b. All Tab numbers must be consistent;
 - c. All page numbers must be consistent.
- g. We are hopeful that once a universal document sharing platform is deployed across the Province that this system of dual filing will be eliminated.
- h. **Use of Sync in some cases:** The Judge assigned to hear your trial may request that your electronic documents also be uploaded to Sync, particularly for trials heard exclusively online. (This is very straightforward as the documents will already be in electronic form.) You will be advised in due course if that is the case. **Please see Section F of this document with respect to the use of Sync.**
- i. Please note that if you are self-represented and are unable to file electronic documents either through the Portal or by email as provided for in paragraph 14(a) you should file your paper copies at the Courthouse and advise staff that you are not able to provide electronic documents.

D. Being Called to Trial

- 15. Once the court is satisfied that your matter is ready to proceed, as confirmed in the Trial Readiness Form, and a courtroom and judge become available, you will be notified by the Trial Coordinator of the date and “location” that your matter will proceed. The court will provide as much notice as possible.
- 16. If your trial will be conducted entirely remotely, the court will endeavour to offer a further Trial Management Conference with the judge hearing the trial, for the purpose of a “test run”.
- 17. Unless otherwise advised, you should expect that your trial will begin each day at 10:00 a.m. and end each day at approximately 4:30 p.m. The judge hearing the trial will determine the timing and duration of lunch breaks and morning and afternoon recesses.

E. Remote and Hybrid Trials

18. If it is anticipated that your matter will be held in full or in part by way of video (Zoom) attendance, please note the following:

1. Counsel and self-represented parties must familiarize themselves with how to share documents/share their screen on the Zoom platform;
2. The parties shall prepare an email distribution list to which additional documents may be circulated during trial, if necessary;
3. The parties must ensure that their witnesses are available and can participate via Zoom at all times during the course of the trial. To that end, the parties shall also ensure that all of their witnesses have access to and have tested the technology necessary to testify virtually, ahead of the trial.
4. It is a party or counsel's responsibility to ensure that their witnesses have been provided with the zoom-link for the trial, and the approximate time that the witness is expected to testify. The Court does not do this for the parties. Witnesses should be advised that they may be required to wait in the Zoom waiting room before testifying.
5. The parties shall immediately review and provide each of their witnesses with an electronic or paper copy of the Superior Court of Justice "Best Practices and Etiquette for Remote Hearings" at <https://www.ontariocourts.ca/scj/notices-and-orders-covid-19/remote-hearings/>.
6. The parties shall clearly communicate the following instructions to each of their witnesses before they testify:
 - a. While the witness is giving evidence, the witness shall not review any documents or access any electronic resources (internet or otherwise), other than:
 1. those documents put to them during their cross-examination;
 2. such documents as they may ask and be permitted to review;
and
 3. the affidavit sworn by the witness as their evidence-in-chief.
 - b. while the witness is giving evidence, the witness shall not refer to or rely on a script or any notes, unless permitted by the court;
 - c. while the witness is giving evidence and until the completion of such evidence, the witness shall not communicate with any other persons about the substance of their examination;

- d. the witness may communicate with counsel or another person while on a break prior to the commencement of their cross-examination, provided that any such communication is consistent with counsel's professional obligations and applicable rules of the court;
 - e. if the witness requires the assistance of a third party during his or her testimony (for instance, to assist with technology), permission to do so must be requested before the witness' testimony begins; and,
 - f. the prohibitions on recording a court hearing under the *Courts of Justice Act* (s. 136).
7. With respect to documents to be put to witnesses during their examination-in-chief, cross-examination or re-examination, counsel or the party conducting such examination should expect to put that document to the witness by using Zoom's screen sharing feature. Permission from the trial judge may also be requested to send additional documents by email to the witness and all participants (using the trial distribution list).
8. The parties shall ensure that they have back-up telephone numbers for every witness they intend to call and that each of these witnesses have counsel's phone number that they can call so that counsel and witnesses can communicate with one another in the event that the internet connection is interrupted, or some other technical problem occurs.
9. Witnesses who wish to be sworn in on a religious book must have that book in their possession and must be prepared to identify it and show it to the court before being sworn.
10. During their evidence, witnesses should have their camera positioned so that their whole face and hands are visible.
11. During witness examinations, unless the trial judge determines otherwise, the video display will be restricted to the trial judge, the witness, the examining lawyer (or party if self-represented) and opposing counsel (or party if self-represented). Other than those individuals, and the registrar, all other participants will be muted and their video function will be turned off (i.e. their faces will not be shown on the screen).
12. During breaks, as much as is practicable, participants shall mute their microphones and turn off their video for the duration of the break, rather than disconnecting from the Zoom session. At the appointed time, participants shall turn on their video to signal that they have returned from break.
13. Any objections should be indicated visually by raising the palm of your hand to the video camera, upon which whoever is speaking shall cease speaking in order for the objection to be addressed. If that is not recognized within a reasonable time, the "Chat" function at the bottom of the Zoom screen can be used.

14. All counsel, parties and witnesses shall sign into the Zoom platform using their full names so that they can be easily identified by the registrar and the court.
15. Everyone should be vigilant to any participant losing their connection by “dropping” off the Zoom screen and should voice that drop to the court immediately so that the proceeding can be paused until the participant reconnects.
16. Counsel are not expected to gown for Trial and may instead wear business attire. Make your best efforts to eliminate distractions.
17. All participants must try to locate a quiet area and minimize interruptions by others during the trial. If there are other individuals within hearing distance, they must be identified to the court immediately.
18. The virtual courtroom, using video or telephone, remains a formal court proceeding, and all participants are asked to maintain court decorum in the virtual world, just as they would in person.
19. It is strongly recommended that all participants in the trial use **headsets** with a microphone. This greatly assists the court reporter in picking up sounds and reduces feedback and echo on the line.
20. It is strongly recommended that counsel and parties use wired internet rather than Wifi if at all possible, as it tends to be more stable.

F. Specific Requirements for Trials Using Sync

19. If you are advised by the Trial Coordinator that the Sync document sharing platform will be used in your Trial, the following requirements apply, in addition to the requirements set out above:
 - a. **You must ensure that ALL of your documents are in searchable electronic (pdf) form.**
 - b. **Documents must be logically named. For example:**
 - 001 Email from S Smith to M Smith dated May 3, 2003
 - 002 School report card for G Smith dated December 12, 2018
 - 003 Applicant’s Income Tax Return 2019
 - c. All pages must be numbered from the first page to the last page.
 - d. You are encouraged to use a program such as Adobe Acrobat Pro to ensure that each document has a **Table of Contents, and is “bookmarked” and any exhibits**

“**hyperlinked**” – this will allow all participants to more easily navigate the documents during the trial.

- e. **The Court will create “Sync” folders** and will send each counsel and self-represented party links to those folders by email. The links allow for uploading of the electronic documents for the file, into applicable folders. The Sync folders will also allow you to *download* documents from each folder. The Exhibits folder will be “view only” and managed by the presiding judge. The folders you will receive links to are:
 - i. Administrative Documents
 - ii. Applicant’s Folder
 - iii. Respondent’s Folder
 - iv. Respondent 2’s Folder (if applicable)
 - v. Joint Documents
 - vi. Exhibits
 - vii. Legal Materials (for factum, briefs of authority, etc.)
- f. **You do not need to download Sync.** You will be able to use the Sync folder simply through the link which will be emailed to you.
- g. **All of your documents should be uploaded into the applicable Sync folder at least 48 hours before the Trial.** This does not affect any filing deadlines which may have been set by the Trial Management Judge.
- h. You will need to agree with other parties in your case, in advance of the trial, on documents to be uploaded into the **Joint Documents** folder. You must also prepare and upload a “**Joint Document Agreement**” setting out the agreed use of the documents. See **Schedule A** to this Document.
- i. Subject to paragraph 2(i), if a party intends to rely on **any other document at trial**, they shall upload a copy into their separate designated folder.
- j. **Documents intended to be used only in cross-examination** need not be uploaded. However, they must be saved in **searchable pdf form** and readily available for trial. These documents may be presented to a witness on cross-examination through the Zoom screen sharing function and be emailed to other parties (and the registrar), as required.
- k. Counsel and parties must jointly prepare a “**Joint Distribution List**” setting out email addresses and phone numbers for all counsel and parties. This is to be

uploaded at least 48 hours before the start of the trial **into the Sync Folder called “Administrative Documents.”** This document is essential so that the registrar can quickly contact any party or lawyer with whom communication is lost during the trial (if internet goes down, for example).

- l. Each party must also prepare a **“Witness Distribution List”** for their *own* case (For example: “Applicant’s Witness Distribution List”) setting out email addresses and phone numbers for each witness. This must be emailed to the registrar at the commencement of the party’s case. It need not be uploaded to Sync as it may contain private contact information.

- m. Counsel/parties must each prepare a **proposed Witness Schedule** for **each day of trial**, setting out who will testify and the anticipated duration of their testimony. Those schedules shall be **uploaded daily into the Sync folder labelled “Administrative Documents.”** For example:
 - i. Applicant’s Witness Schedule Day 1, November 10, 2020
 - ii. Respondent’s Witness Schedule Day 5, November 14, 2020