

Appendix "H"

Consolidated Practice Direction for the Southwest Region

Effective August 1, 2016

This Practice Direction applies to proceedings in the Superior Court of Justice, Southwest Region, effective August 1, 2016. It replaces the previous Consolidated Practice Direction for the Southwest Region that was effective on July 1, 2014.

Counsel and parties are advised to refer to the relevant Parts of the Consolidated Provincial Practice Direction as well as the Consolidated Practice Direction for Divisional Court Proceedings which are available on the Superior Court of Justice website at: www.ontariocourts.ca/scj.

Part I: Civil Proceedings

A. Introduction

1. This Part identifies scheduling and administrative changes to facilitate more expeditious and efficient litigation under the *Rules of Civil Procedure*.
2. Subject to paragraph 60, this Part *does not* apply to commercial motions or applications heard in London as described in Part IV of this Practice Direction. This Part *does* apply to contested estates matters as described in Part V below.
3. A reference in this part to a "rule" or the "rules" is a reference to the Rules of Civil Procedure.

B. Applications and Motions

4. All applications and motions will be heard on the assigned motions court day for each respective county in the Southwest Region commencing at 10:00 a.m. unless specified otherwise in this practice direction or by court order.
5. Any motion or application that requires more than 30 minutes for all parties to argue, or requires a court reporter, will be adjourned to a special appointment date.
6. Two consent adjournments of short motions (motions scheduled for 30 minutes or less) are permitted. Any further adjournment will, if permitted, be sine die returnable on four days' notice unless otherwise ordered by the presiding judge.
7. All motions and applications (including those requiring a special appointment date) must be confirmed. Confirmation forms must be filed no later than 2:00 p.m. three days before the hearing date, as required under rules 37.10.1(1) and 38.09.1(1). Communication and cooperation in completing all parts of the prescribed form is expected by the Court. The form should accurately and fully describe all materials to which the presiding judge will be referred by any party.
8. Rules 37.10.1(2) and 38.09.1(2) provide that motions and applications that are not confirmed will not be heard by the Court. Parties will not be permitted to take unconfirmed matters into motions court to request that they be added to the list.
9. For greater certainty, the *Rules of Civil Procedure*, including all timelines, are to be strictly adhered to.

C. Special Appointments for Motions and Applications

10. Special appointments are required for motions and applications that require more than 30 minutes for all parties to argue or require a court reporter.
11. Special appointments are scheduled for a date made available by the Trial Coordinator. To obtain a date, all parties or their counsel must complete a Certificate of Readiness of Special Appointment confirming they are, or will be on the assigned date, ready to proceed, the time required for the motion and whether a court reporter is required. The Certificate of Readiness of Special Appointment also includes a timetable for the completion of any step that remains to be completed at the time a special appointment is scheduled. The judge presiding in motions court will resolve any disputes relating to a date for such appointment and/or the timetable in motions court. Counsel and self-represented parties will be expected to strictly abide by the timetable and be ready to argue the matter on the assigned date.
12. Factums are required for all special appointments. Pursuant to the *Rules of Civil Procedure*, the moving party's factum shall be served and filed at least seven days before the scheduled hearing date of the special appointment. The responding party's factum shall be served and filed at least four days before the hearing.
13. Once the special appointment has been scheduled by the court, any adjournment requests must be spoken to before a judge. The Trial Coordinator must be advised of any adjournment requests and any settlements as far in advance of the hearing date as possible. In person attendance is required to speak to requests for an adjournment or to vacate a special appointment date. Adjournments will only be granted in exceptional cases.
14. Paragraphs 7 and 8 (confirmation forms) also apply to motions and applications that are scheduled as special appointments.

D. Pre-Trials

15. In order to make civil pre-trials more productive and efficient, the following guidelines should be adhered to:
 - a. Copies of medical records and reports need not be filed with your pre-trial conference brief. Instead, relevant passages from these documents shall be copied and pasted within the pre-trial conference brief itself;
 - b. Each party shall bring to the conference a separate brief containing all medical and other expert reports to the conference as required by rule 50.11;
 - c. Pre-trial conference briefs should not exceed 20 pages in length, except in the rarest of cases. Briefs that are concise tend to be the most focussed and useful for the Court;
 - d. Pre-trial conference briefs must contain all of the information mandated by rule 50 including the names and anticipated length of the evidence of each witness a party is likely to call (the "witness list") and details of all steps that need to be completed before the matter is ready to be heard (including the delivery of any other expert report) and the estimated time for completion of each outstanding step. Each witness list shall be set forth in a separate, stand-alone schedule capable of being removed from the pre-trial conference brief and attached to the pre-trial conference report completed by the presiding judge pursuant to rule 50.08(1).

E. Designated Counties for the Commencement of Mortgage Proceedings under rule 13.1.01(3)

16. Pursuant to rule 13.1.01(3), London, Windsor, St. Thomas, Chatham, Sarnia, Woodstock, Stratford and Goderich have been designated as the place for commencement of mortgage proceedings for property located anywhere in the Southwest Region.

Part II: Family Proceedings

A. Introduction

17. This Part identifies scheduling and administrative changes to facilitate more expeditious and efficient litigation under the *Family Law Rules*.
18. Unless otherwise stated, this Part applies to all family proceedings, including those in the Unified Family Court – London.
19. A reference in this part to a "rule" or the "rules" is a reference to the *Family Law Rules*.

B. Family Motions

20. Any motion that requires less than one hour for all parties to argue is treated as a regular motion.
21. All regular motions will be heard on the assigned motions court day for each respective county in the Southwest Region commencing at 10:00 a.m. unless otherwise ordered by the court.
22. All motions requiring more than one hour to argue will require a special appointment.
23. Paragraphs 11 and 12 relating to special appointments in civil cases also apply to special appointments in family cases, including the requirements for the filing of factums. However, if the Certificate of Readiness of Special Appointment – Family Cases has been completed at the case conference, no further attendance will be required in order to obtain the date for a special appointment.

14B Motions

24. Form 14B motions are governed by Part I of the Consolidated Provincial Practice Direction. Counsel and parties are advised to refer to that Practice Direction for further direction.

C. Confirmation Forms

25. Each party to a conference or motion must file a fully completed File 14C Confirmation no later than 2 p.m. two business days before the motion or conference, except urgent motions that are being brought without notice to the other party do not need to be confirmed.
26. Form 14C Confirmations must only list the specific issues that are to be addressed at that event and the specific materials that the judge should review. Communication and cooperation in completing all parts of the prescribed form is expected. The materials which the presiding judge will be referred to, by any party, should be fully and accurately described.
27. Where Form 14C Confirmation forms have not been properly completed and filed by the appropriate deadline, the event will not be heard on the scheduled day without the permission of the presiding judge.

D. Conference Briefs

28. No brief or other document for use at the conference that is required to be served or filed may be served or filed after 2:00 p.m. two business days before the date scheduled for the conference (rule 17(14.1)).

29. Any attempt to file conference briefs outside of the filing dates set out in the *Family Law Rules* will be refused at the counter. However, the parties may attend in person no later than 9:00 a.m. on the day of the conference with their conference brief and file with the Trial Coordinator provided it has been served on the other party as required in the above paragraph 24 and proof of service is attached. The Trial Coordinator will stamp the brief "FILED LATE" and place it with the materials for the presiding judge to review or not, at the judge's discretion. This process allows the court staff to comply with the Rules and for conferences to proceed in a timely manner, giving the presiding judge an opportunity to read the conference brief or refuse the brief.

E. Scheduling Family Conferences

30. Case Conferences will be limited to 7 per day to allow approximately 45 minutes for each matter scheduled.
31. Settlement Conferences will be limited to 5 per day to allow 60 minutes scheduled for each matter.

F. Settlement Conferences and Trial Scheduling Conferences

32. The settlement conference is an important step in family cases. The primary purpose of the settlement conference is to settle or at least narrow the issues in dispute. Parties (or their counsel) are required to communicate before any conference in order to attempt to narrow or resolve the issues that are in dispute, unless the parties are self-represented and are also prohibited from communicating by court order.
33. Pursuant to rule 17(5) (g), if the case is not settled at the settlement conference, one of the additional purposes of the conference is to identify the witnesses and other evidence to be presented at trial, estimate the time needed for trial and, where appropriate, to schedule the case for trial.
34. Parties are to come to the settlement conference having completed Parts 1 and 2 of the Trial Scheduling Endorsement Form. If the case has not settled at the conclusion of the settlement conference, the presiding judge will complete Part 3 of the form, or shall give directions to the parties regarding the completion of this form.
35. If necessary, the court may require the parties to attend a trial scheduling conference to canvass issues regarding the scheduling of the trial and ensure proper completion of the Trial Scheduling Endorsement Form. Each party shall complete and file their portion of the Trial Scheduling Endorsement Form with the court in advance of a trial scheduling conference in accordance with the timelines in rule 17(13.1).
36. The purpose of a trial scheduling conference includes (i) ensuring that the case is ready to proceed to trial, (ii) considering each party's list of proposed witnesses and (iii) ensuring the accuracy of the estimated time for trial. Consideration should also be given to other conditions that would be appropriate under rule 1 in order to limit the duration and scope of the trial.
37. A trial date will not normally be made available until the court has reviewed and endorsed the complete Trial Scheduling Endorsement Form. The court may however, in its discretion, provide litigants with a provisional trial date before the court has endorsed the complete Trial Scheduling Endorsement Form, where necessary. Where this has occurred, the form must be finalized no later than 60 days in advance of the trial or as directed by the presiding judge in order to retain the scheduled trial date.

G. Trial Management Conferences

38. A trial management conference should be held in family cases that have not been resolved at or before the settlement conference in order to ensure trial readiness and canvas settlement. The trial management conference should be scheduled no more than two weeks in advance of the scheduled trial date, wherever possible.
39. The purpose of a trial management conference is to confirm that parties are ready for trial, have filed their Trial Record exchanged all other material required by the Trial Scheduling Endorsement Form, provide any further directions or revisions to the Trial Scheduling Endorsement Form, and to explore any final possibilities for settlement to resolve the trial.
40. The Trial Management Conference Brief: Form 17E is no longer required. Instead the following documents must be filed at least 7 days before the Trial Management Conference:
 - a. The completed Trial Scheduling Endorsement Form must be filed by either the Applicant or the party that requested the conference;
 - b. Each party must file an offer to settle all outstanding issues; and,
 - c. Each party must file an outline of their opening statement for trial.
41. The Endorsement Volume of the continuing record should also be put before the judge at the trial management conference.
42. The judge will make any changes to Part 3 of the Trial Scheduling Endorsement Form to reflect any changes in the outstanding issues, witnesses and positions of the parties since the form was initially completed, ensure that the case is trial ready and confirm the trial sittings.
43. The completed Trial Scheduling Endorsement Form shall be filed with or added to the Trial Record. No offers to settle should be included in the Trial Record.
44. Where the case has been settled and the trial is no longer required, one of the parties shall immediately advise the Trial Coordinator so that the trial date can be vacated. A copy of any Minutes of Settlement or consent should be filed at the same time.
45. The Trial Record is to be served and filed within the timelines set out in the *Family Law Rules*.

Part III: Additional Provisions Regarding the Unified Family Court – London

A. Family Law matters

46. Paragraphs 17 – 23 also apply to all family law matters being heard in the Unified Family Court – London except for *Child and Family Services Act*
47. Previously scheduled settlement conferences, motions, special appointments or summary hearings may be adjourned on consent by obtaining a new date from the Trial Coordinator. A confirmation must then be sent in changing the dates. If the confirmation is sent there is no need for attendance by counsel/party. A separate confirmation must be filed to confirm attendance on the new date in accordance with the *Family Law Rules*. No more than two consent adjournments will be permitted before an in-person attendance is required.
48. Trial management conferences with a set trial sittings date may only be adjourned by attendance before the Local Administrative Judge or his/her designate at a time that may be arranged through the Trial Coordinator.

49. Trial adjournment requests may be made at the Trial Readiness Court if they have not already been addressed at the Trial Management Conference. Attendance is required. It is expected that if a matter is on the trial list it is ready for trial and, if not, it will be removed, and placed on another trial list, or adjourned to a date to be spoken to, at the presiding judge's discretion. At the Trial Readiness Court no order will be given to the trials and the parties will be expected to be ready when called.

B. *Child and Family Services Act* matters

50. Paragraphs 51 – 54 apply to all *Child and Family Services Act* matters being heard in the Unified Family Court – London.
51. Trials can only be adjourned to a subsequent trial date on motion with supporting affidavit material. These motions may be brought at the Trial Readiness Court or earlier before the Local Administrative Judge or his/her designate at a time that may be arranged through the Trial Coordinator. This direction applies to requests for adjournments by Children Aid Societies and any other party.
52. Temporary Care and Custody hearings and other motions may be adjourned to a subsequent date as set out above in paragraph 47 for family matters without the necessity of attendance by counsel or parties, provided that no more than two consent adjournments will be permitted before an in-person attendance is required.
53. Even with the consent of both parties, settlement conferences and trial management conferences may only be adjourned by filing a confirmation indicating an intention to adjourn accompanied by a personal attendance to explain the reasons for the adjournment. If the parties know ahead that a request to adjourn the settlement conference will be made, the matter may be brought forward to be spoken to. Where an adjournment has been granted, a confirmation form will have to be filed in advance of the new date as required by the *Family Law Rules*.
54. For child protection matters, the child protection Trial Scheduling Endorsement Form must be filed by all parties at the final Settlement Conference. This form is available on the Superior Court of Justice website.

C. General

55. Trial lists are blended with *Family Law Act/Children's Law Reform Act* matters and *Child and Family Services Act* matters, bearing in mind that *Child and Family Services Act* matters have statutory timelines under both the *Child and Family Services Act* and the *Family Law Rules* that must be respected, and will be given priority.
56. Any requests for adjournments of settlement conferences, special appointments or Temporary Care and Custody hearings should be made as early as possible so that other matters may be scheduled in their stead. This will assist in reducing time-outs for these events.

Part IV: Commercial Proceedings in London

57. The purpose of this Part is to ensure administrative steps are in place for the appropriate and timely scheduling of commercial matters.

A. Application

58. This Part applies to commercial matters in London involving the following statutes:

- a. those arising under the *Bankruptcy and Insolvency Act* (BIA) to the extent they are beyond the jurisdiction of the Deputy Registrar under section 192 of the BIA. Such matters would include, by way of example only, opposed applications for a bankruptcy order, interim receiverships;
- b. matters involving the *Companies' Creditors Arrangement Act* from the initial application until completion;
- c. matters involving the *Personal Property Security Act*;
- d. matters involving receivers appointed under the *Courts of Justice Act* whether in conjunction with or separate from an appointment under the BIA;
- e. matters involving issues arising under the *Farm Debt Mediation Act*;
- f. matters involving realization or the determination of priorities of claims arising under the *Bank Act*;
- g. matters under either the *Ontario Business Corporations Act* or the *Canada Business Corporations Act*;
- h. matters under the *Partnerships Act* or *Limited Partnerships Act*;
- i. matters under the *Bulk Sales Act*; and
- j. matters incidental to a proceeding involving a statute or subject mentioned above.

B. Procedure

- 59. Counsel shall identify to the Trial Coordinator that a commercial matter is time sensitive by completing the Time Sensitive – Commercial Scheduling Request A date for hearing shall be scheduled directly with the Trial Coordinator.
- 60. If a commercial matter is not time sensitive, motions or applications shall initially be made returnable on a regular motions date. If such a motion or application requires more than 30 minutes for all parties to argue or requires a court reporter, counsel shall complete the Certificate of Readiness of Special Appointment of Commercial Matter Form and the Region's usual procedures with respect to special appointments as set out in Part I shall apply.
- 61. Factums are required for all special appointments involving commercial matters. Pursuant to the *Rules of Civil Procedure*, the moving party's factum shall be served and filed at least seven days before the scheduled hearing date of the special appointment. The responding party's factum shall be served and filed at least four days before the hearing.
- 62. Paragraphs 7 and 8 (confirmation forms) also apply to all motions and applications for commercial proceedings in London.
- 63. Counsel and parties are directed to the provisions of rule 37.15 and encouraged to consider the appropriateness of a request for a direction that all motions in the commercial proceeding be heard by a single judge.

Part V: Additional Provisions Regarding Contested Estate Matters including a Contested Passing of Accounts

- 64. This part (in addition to Part I) applies to all contested estates matters, including a contested passing of accounts, in the Southwest Region.

65. Unless a judge has dispensed with the requirement, a contested estate matter, including a contested passing of accounts, estimated by any party to require a hearing of more than one day will not be scheduled except in accordance with an order giving directions. An order dispensing with the requirement will only be made in exceptional circumstances. Motions for directions may also be sought for a shorter contested estate matter.
66. Orders giving directions in contested matters are designed to provide the parties with a procedural framework in which to prepare the proceeding for final adjudication. Rule 75.06 provides the court with considerable discretion and flexibility to put in place a process that will ensure the just, expeditious and least expensive determination of a proceeding on its merits. Parties are expected to take time and care in preparing proposed orders giving directions for consideration by the court.
67. Draft orders giving directions should address the following matters to the extent applicable:
 - a. the issue(s) to be decided;
 - b. the identity of the parties;
 - c. whether there is any party under disability who requires representation and, if so, whether notice to the Public Guardian and Trustee or the Office of the Children's Lawyer should be directed;
 - d. whether an estate trustee should be appointed during litigation and the amount of security, if any, such an estate trustee should file;
 - e. who shall be served with the order for directions, and the method of and times for service;
 - f. whether the parties will exchange pleadings or put before the court their respective positions and the material facts upon which they rely by some other means;
 - g. procedures for bringing the matter before the court in a summary way;
 - h. any other pre-hearing steps to be undertaken, including the scope of documentary disclosure and examinations for discovery;
 - i. the necessity of and means of obtaining third party records including accounting or legal records;
 - j. the nature of any pre-hearing motion;
 - k. the delivery of any expert report and the utility of a pre-hearing meeting between experts to narrow the issues in dispute;
 - l. the date by which the matter must be set down for hearing;
 - m. a pre-trial conference;
 - n. the witnesses each party intends to call, the issues each witness intends to address, and the anticipated length of each witness' testimony including cross-examination;
 - o. a timetable for each applicable step outlined above; and
 - p. any matter relating to the conduct of the trial or hearing, including whether affidavit(s) may or will be used as the evidence-in-chief of a witness.
68. A motion for an order giving directions should be scheduled through the Trial Coordinator at 9:30 a.m. for 15-minutes if on consent and 30-minutes if contested. If the parties cannot agree on the terms of an order giving directions, each party must file with its motion material a copy of the draft order giving directions it is seeking.

Under no circumstances should any order giving directions provide that an affidavit is or affidavits are to constitute or form part of the pleadings.

69. The parties' time estimate for the hearing will be re-evaluated at the pre-trial conference. The hearing date may be vacated if the presiding judge concludes the parties have underestimated the time required.

Part VI: Forms

70. Each of the forms prescribed under the Rules of Civil Procedure and the Family Law Rules are available on the Ontario Court Forms website

71. Additional forms referred to in this Practice Direction are as follows:

- A. Certificate of Readiness of Special Appointment
- B. Certificate of Readiness of Special Appointment – Family Cases
- C. Time Sensitive – Commercial Scheduling Request
- D. Certificate of Readiness of Special Appointment for Commercial Matter
- E. Trial Scheduling Endorsement Form (TSEF – Family)
- F. Trial Scheduling Endorsement Form (TSEF – Child Protection)

Dated: July 21, 2016

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