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Stephanie Giannandrea and Jonathan Robinson

Introduction

Marian Jacko is the Children's Lawyer for Ontario.

Please tell us a little bit about your background? How — and why? — did you come to be Ontario's new Children's Lawyer? How long have you been with the OCL?

Wasay aubino kwe diz ni cos
Mukwa Dodem
Wiikwemkoong Doon ji baa
Anishnawbe kwe dow

This is the Anishnawbe language, the Ojibway language. Translated, my spirit name is Coming Dawn Woman. I belong to the bear clan and I am from Wikwemikong First Nation located on Manitoulin Island.

I am a mother, daughter, sister, and auntie. I have three beautiful children ranging in age from 13 to 28 years. I was a single parent when I started law school and my son was only three years old. He is now 28 years old. For the first eight years of his life I was in school and when I was called to the bar, he was eight years old. After articling with the Office of the Children's Lawyer in 1996-97, I returned to the OCL on contract in the Property Rights Department. In 1999 I was hired permanently and worked in the property rights department for almost 17 years. During this time, I had two daughters and in between

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having the two daughters, I completed my Master of Laws degree with York University. In terms of my education, I have a Bachelor of Social Work degree in Native Human Services from Laurentian University and a Masters of Social Work degree from the University of Toronto. I also have my Bachelor of Laws degree from the University of Toronto.

In 2015, when the Ministry of the Attorney General created the new Indigenous Justice Division, I was asked by the then newly appointed Assistant Deputy Attorney General, Kimberly Murray to work with her in this new division. I was a bit hesitant because my whole legal career up to that point was focused solely on representing children. I have great respect for Kimberly and with this respect and trust, I was able to come out of my comfort zone and entered into a secondment with the Indigenous Justice Division. Working with the Indigenous Justice Division of MAG was probably the best thing I could have done at that point in my legal career because it opened my eyes to so many other areas of the law and policy and most importantly, re-ignited my passion for advocating for Indigenous peoples. Over time, the Indigenous Justice Division became my home position until the position of the Children's Lawyer became available.

Honestly, I did not think that someone like me coming from a small Indigenous community would ever be appointed by Order-in-Council to the position of Children's Lawyer of Ontario. Regardless, I applied and again stepped out of my comfort zone and got through the interview. When I was offered the position by the Assistant Deputy Attorney General for the Victims and Vulnerable Persons Division, Juanita Dobson, I was shocked to say the least. While I was very happy and pleased, I was also frightened at the enormity of the offer, the position and the responsibility. To prepare for the position, I offered tobacco as is custom in our traditions and asked for a special ceremony to help prepare me for this very important position. My brother, Arthur Jacko Jr., was instrumental in helping me to prepare for the work that I was about to embark upon. A special preparation lodge was held in my community the weekend prior to my first day as the Children's Lawyer for Ontario and during this ceremony, I was gifted with a Turtle shell rattle and an Eagle feather and I was instructed that these items were not mine, but I could use them to help me in the work that lies ahead.

Coming from your work on the "property" side of things, what have you found to be the most challenging part of your transition? What has been the most interesting aspect arising from becoming involved in the family law work at the OCL?

Truthfully, the transition was not as difficult as I thought it would be. While I did not work in the personal rights department, I was and am very familiar with the work done in both the legal and clinical departments. In terms of what is most challenging about the job itself, I would say that every day presents a new challenge and every day in this position I have drawn upon the skills and knowledge gained through my education and also my life experiences. I often draw upon traditional teachings of Elders that I have been gifted with over time and that I carry with me.

Are there things you find that family lawyers often (or regularly) don't appreciate about the role of the OCL? Are there any misconceptions that deserve to be remedied?

The one thing that stands out for me at this time where there might be a misconception is in the role of the OCL in personal rights cases. Whether it is a custody and access or child protection case,

the lawyers representing our child clients will advocate their views and preferences or views and wishes where they are strong, consistent and independent. The office takes a rights based position on behalf of children in the course of our legal advocacy. Determining what is in the best interest of the child(ren) is a matter for the judge to decide. Our advocacy on behalf of our child clients is one part of a larger whole that the courts are presented with. I think it is important for everyone to understand this so as to not confuse our role with determining what is in the best interests of the child or children.

Social Policy

What impact do you think the new *Child, Youth, and Family Services Act, 2017*, will have on how the OCL operates?

The preamble to the *Child, Youth and Family Services Act, 2017* ("CYFSA") emphasizes that children are individuals with rights to be respected and voices to be heard. It also stresses that services provided to children and families should be child-centered. Throughout the legislation, the courts are directed to consider the child's views and preferences and to give them due weight in accordance with their age and maturity unless they cannot be ascertained.

In light of these requirements, the OCL anticipates that courts will be seeking the involvement of the OCL more frequently. The OCL generally takes a position that is consistent with the views and preferences of the child where those views are strong, consistent and independent. We believe that the courts will be looking to the OCL to ensure that they understand what the child thinks and wants. Counsel for children and young people will have an increased burden of ensuring that children's voices are heard and considered while adhering to the rules of evidence. The new legislation specifically directs the court to consider a child's views and preferences at the temporary care and custody stage. We anticipate that this will mean there is increased pressure for our lawyers to meet with their clients very early on in a case.

Sixteen and 17-year olds who are in need of protection are now eligible for services from CASs even if they were not before the court on their 16th birthday. We are already providing legal advice and advocacy to hundreds of young people in this cohort across the province.

In family law there are sometimes special provisions made for children of First Nations, Inuit, or Métis ancestry. Do you have any recommendations or advice for lawyers whose work intersects with Indigenous peoples?

There are a number of important considerations when working with First Nation, Inuit or Metis ("FNIM") families. Regardless of the specific proceeding you are involved in, it is essential to have an understanding of the historical and current treatment of FNIM families in Canada. A starting point are the Reports of the Truth and Reconciliation Commission of Canada which provide an overview of the experiences of FNIM peoples in this country, particularly in relation to the continuing legacy of the residential school system. However, it is also important to understand the specific First Nation or community you are working with as each have their own cultures, traditions and histories.

As a lawyer, you also need to know the relevant statutory scheme. For example, the recent CYFSA has a number of significant provisions that apply to FNIM families in child protection cases. The preamble to the Act sets out a number of principles in relation to providing services to FNIM families. The purposes of the Act include the recognition that FNIM peoples should be en-

titled to provide their own child protection services and that FNIM families should be provided with services that recognize their cultures, heritages, traditions, connection to their communities and the concept of the extended family. There are mandatory considerations under both the best interests test and the dispositional options available in a child protection case in relation to FNIM families. There are also new requirements on children's aid societies when providing services to FNIM families and the definition of who is considered FNIM is a significant expansion from the previous legislation.

In order to provide competent representation to FNIM children and families in child protection cases, it is essential that you understand these provisions so that you are in the best position to assist your client.

Litigation Highlights

One recent high-profile case the OCL was involved in is *Office of the Children's Lawyer v. Balev*.[1] Can you comment briefly on the significance of the case to family lawyers?

In *OCL v. B.& B.*, the Supreme Court of Canada changed the law on two key aspects of applications for the return of children under the *Hague Convention*.

The Court adopted the "hybrid approach" to determining habitual residence having regard to "the entirety of the child's situation" (para. 47), and a "non-technical approach" to considering a child's objection to removal under Article 13(2) without the imposition of formal conditions or requirements not set out in the text of the *Hague Convention* (para. 80). This is important for family lawyers because it shifts the focus of the analysis more squarely onto the child. This has implications in terms of evidence to meet the new legal tests.

In terms of habitual residence, family lawyers will now need to lead evidence about the totality of the child's circumstances and where the child's life is centred as opposed to focussing on what parents "intended". In the past, most Canadian courts relied almost exclusively on parental intentions. Now parental intent is but one factor.

In the past, where a child objected to being returned, some Canadian courts imposed a requirement that the child's objection be "strong" before the Court would consider the child's wish to return. Now, family lawyers will no longer need to lead evidence to meet any layered on requirement(s) in order to have the objecting child's views considered. They will still need to lead sufficient evidence to persuade the court to exercise its discretion not to order the return of the child, over the child's objections.

When and how does the OCL decide to take the lead in advancing issues in litigation, whether at first instance or on appeal?

The OCL represented the children at the courts below because the Court appointed the OCL under the *Courts of Justice Act*. The issues advanced were based on the circumstances and position developed on behalf of these particular children. As matters progressed, it became evident that this case presented an opportunity to revisit the law. The *Hague Convention* had not been addressed at the Supreme Court of Canada for over 20 years. During that time, growing emphasis was placed on the *United Nations Convention on the Rights of the Child* and many jurisdictions started using more child-focussed approaches to the *Hague Convention*. The OCL decided to take a proactive role to represent the interests of these children whose lives had been

[1] [2018] S.C.J. No. 16, 2018 SCC 16.

centred in Ontario for some time. Our interest in the case was heightened by the timely opportunity to call for a more child-centred approach in light of developments in the law around the world. In sum, the issues advanced will depend on the individual case and the children involved. If a case involves a potentially broader systemic impact, this could influence the role of and advocacy by the OCL going forward.

Is there other recent litigation done by the OCL that you want family lawyers to know about?

My office is frequently involved in important and precedent setting cases on behalf of our child clients. In addition to *Office of the Children's Lawyer v. Balev*, recent such cases include:

1. *Children's Lawyer for Ontario v. Ontario (Information and Privacy Commissioner).*[2] The Court of Appeal for Ontario affirmed the unique role of the OCL in the justice system and that a solicitor-client relationship exists between child's counsel and their clients.
2. *Eustace v. Eustace*[3] this is another case where the court considered the unique role of the OCL and reversed an earlier decision requiring that the OCL pay costs.

Is there any important litigation coming down the pipeline at the OCL?

While there is always new and important litigation developing, especially given the new CYFSA, there are two particular cases that the OCL is involved in, that will have broad impact.

The first is that the Information and Privacy Commissioner ("IPC") is seeking leave to the Supreme Court of Canada to appeal the decision of the Ontario Court of Appeal in *Ontario (Children's Lawyer) v. Ontario (Information and Privacy Commissioner).* The IPC is challenging a decision that confirmed that children's litigation files held by the OCL are not subject to freedom of information requests. The Court of Appeal decision is important for children's rights and confirms a child's right to a confidential relationship with their lawyer. The OCL will be asking the SCC to dismiss the application for leave to appeal. If leave is granted, the Supreme Court will need to comment on the Court of Appeal's commentary on the role of the OCL.

The second case is a Court of Appeal case that lawyers from the office will be arguing in the near future. Earlier this year, the Divisional Court issued a judgment that changed the test for summary judgment in child protection cases. Prior to the *Kawartha-Haliburton Children's Aid Society v. M.W.* case, the widely understood test was that the party bringing the motion had to show that there was a strong likelihood they would succeed at trial. However the Divisional Court reframed the test to be whether there was sufficient evidence in front of the judge to come to a decision. The Court of Appeal will be asked to provide clarity on what the test actually should be, affecting courts across the province.

Practical / Procedural

Under what circumstances does your office become actively involved in litigation? When does the OCL prepare a report, versus appoint counsel for a child?

When the OCL accepts a custody/access file, the determination of whether to assign a lawyer or a clinical investigator to complete a report depends on a variety of factors. The age of the child is an important consideration. If a child is under the

[2] [2018] O.J. No. 3249, 2018 ONCA 559.
[3] [2018] O.J. No. 2168, 2018 ONSC 2367.

age of eight years old, we will normally assign a clinical investigator to complete an investigation under s. 112 of the *Courts of Justice Act* unless there is a significant legal issue impacting the child, such as an application under the *Hague Convention*, or there are older siblings involved. In addition, we will also assign a clinical investigator to do a report in cases where there are significant clinical issues or in cases where there has been an extended period of estrangement between a child and a parent. If the child is eight years of age or more, we will most often assign a lawyer to provide legal representation under s. 89(2.1) of the *Courts of Justice Act*.

However, each case is reviewed individually, based on the intake forms we receive, to determine the most appropriate service. In some cases, the OCL also has to consider the availability of lawyers or clinicians in a particular region.

Can you explain the process for getting the OCL involved in a family law case?

The OCL only becomes involved in custody and access cases pursuant to a court order. Parties can request that a judge make an order requesting the involvement of the OCL on our standard form order which is located on our website at <http://ontariocourtforms.on.ca/en/office-of-the-childrens-lawyer-forms/>. Once the order is made, the parties must complete intake forms which are also found on our website. Once we have received the order and the intake forms, the OCL will make a determination as to whether we are prepared to accept the file and, if so, what service to provide: legal representation or the completion of a s. 112 report by a clinician.

How does a lawyer go about engaging the OCL if he or she thinks it necessary? When is it appropriate (or not appropriate) to do so?

If a lawyer representing a party in a child protection or custody/access case thinks it is necessary for the child to have a say in decisions that are being made about them or that affect them, it would generally be appropriate to ask the court to make an order seeking the involvement of the OCL.

In child protection cases, the OCL will always assign counsel if the court makes an order pursuant to s. 78 of the CYFSA. Unless there is a compelling reason to do so, there is often not a role for OCL counsel when the children are either very young or incapable of expressing views and preferences. A compelling reason to appoint the OCL for a younger child would be if there is no parent before the court or if the child has suffered serious injuries and there is concern that a parent or caregiver may have caused those injuries. For older children (age eight and older) there is an expectation that the court will hear and consider what a child thinks or wants, so an OCL appointment would be appropriate.

In custody/access cases, the court makes a request that the OCL consider providing services either under s. 89 or s. 112 of the *Courts of Justice Act*. The OCL reviews intake forms provided by the parents to determine if it can be helpful to the children. We cannot accept all of the cases referred to our office, so we try to provide services in those cases where there is a clear role for our office, either in providing the court with a child's views and preferences or assisting the parties to reach a child-focused resolution.

If the children are young (usually under eight) the OCL will generally assign the case to a clinician to prepare a Children's Lawyer Report under s. 112 of the *Courts of Justice Act*. We also frequently assign clinicians to cases where there are concerns that a child is being unduly influenced by a parent. The clinician will interview the parties, observe contact between the parties and the

children and speak to professionals and other significant people involved with the family and ultimately make recommendations that s/he believes are in the child's best interests.

Where older children are capable of voicing views and preferences and the issues between the parties affect the child, the OCL will usually assign counsel who will meet with the child and family and ultimately take a position that is consistent with the child's views and preferences. In some cases, a clinician will be assigned to assist the lawyer. This may be done where the parents disagree about the wishes of the child or there are complex issues and it is necessary to give the court evidence about the context of the child's views and preferences.

Family lawyers are faced with different options to advance evidence of a child's wishes. How does the appointment of the OCL compare with conducting a section 30 assessment, or a voice of the child report?

Children's lawyers generally take a position that is consistent with their client's views and preferences. The lawyer does not take a best interests position. It is the OCL's job to ensure that the court has evidence about the child's views and preferences. In the vast majority of cases, the OCL's job is to advocate a position that is consistent with the child's views and preferences or to assist the child in achieving a result that takes those views and preferences into account.

When an assessor conducts a s. 30 assessment, s/he makes recommendations that s/he believes are in the child's best interests. In some cases, qualified assessors will also conduct psychological testing and give an expert opinion.

Voice of the child reports are conducted by clinicians in custody/access cases. The clinician does not conduct an investigation. S/he will meet with the parents briefly and with the child to determine what they want and to ensure that his/her views are consistent. The clinician does not make recommendations. S/he writes a brief report to give to the court and the parties information about the child's views and preferences. Voice of the child reports are intended to be completed quickly. A voice of the child report can provide the court with the child's views and preferences within 30 days of assignment, on a particular topic when all other information pertaining to the case has been provided to the justice. The VOCs are the Office's contribution in providing faster access to justice.

If a clinical investigation has been completed, how, and under what circumstances, might a lawyer obtain the investigative notes?

A request for the clinician's notes on the investigation can be made in writing to the clinical department of the OCL. The Office will provide all parties with a copy of the notes, not just the requesting party.

How does the OCL decide to advance a position on behalf of a child? Do OCL lawyers take instructions from their clients? If not, how are the child's wishes advanced in the litigation?

Child's counsel takes a position based on the child clients expressed views and preferences, where those views are strong, consistent and independent. While children have a right to be heard, they do not have a responsibility to be heard. A child, in a minority of cases, may not wish to express views.

Child's counsel will interview parents, teachers, social workers and other people who have information about the child. Like any other, child's counsel must be prepared to advance their clients' position and know the case they must meet for the parties.

What is the OCL's approach to contact problems and estrangement? Is there a consistent

practice among your panel members when representing a child resisting contact with a parent? When might the OCL take a position that conflicts with a client's stated wishes?

The OCL does not have a single approach to contact/estrangement problems. Each case is different and therefore the response is a tailored approach. In clinical investigations, we make recommendations based on the best interest of the child.

The OCL encounters contact and estrangement problems in custody/access cases both when legally representing children (pursuant to s. 89(3.1)) of the *Courts of Justice Act* and when conducting an investigation and Children's Lawyers Report ("CLR"), pursuant to s. 112 of the CJA. In both instances, a court order is required for the OCL to deliver a service. Usually, when these issues can be identified at the OCL intake level, the service provided is a CLR. In those cases where a lawyer has been assigned to the matter, an OCL clinician/clinical agent is normally assigned to assist child's counsel in both arriving at a position on behalf of the child and may swear an affidavit and/or give oral evidence in support of that position.

Therefore all information pertinent to the case is assessed and a recommendation is given based on the evidence. It is therefore possible that a recommendation opposite to the child's stated views and preferences is given to the courts.

When a lawyer represents a child there is a solicitor-client relationship. As such, if a child's views and preferences are strong, consistent, and independent, then unless there is a safety issue regarding the child, the stated views and preferences form the basis of the OCL's position. In these circumstances, it is up to the court to determine whether the child's views and preferences are in his/her "best interests". However, if one or more of the "three prong test" is not satisfied — *i.e.*, the child's views and preferences are inconsistent, or the child has no clear or strong views and preferences and thus s/he is largely ambivalent, or the child's views and preferences have been excessively/inappropriately/influenced by a parent or sibling such that they are not necessarily a reflection of that child's own views and preferences — then child's counsel may take a position which is inconsistent with the child's stated views and preferences. There is case law which supports this perspective. This approach is also good public policy as parents should not get a message that if they inappropriately influence a child, then ask the court for a lawyer for their child, the lawyer will, effectively, simply parrot the "offending" parent's position. Indeed, doing so, would jeopardize two critically important elements of the child representation program — the independence and credibility of child's counsel.

When a CLR is conducted, it is important to note that no solicitor-client relationship exist between the clinician who conducts the investigation and the child. Section 112 of the CJA identifies that the OCL can conduct an investigation and produce a report to include recommendations regarding custody/access issues. Although a child's views and preferences may, depending on the age and circumstances of the child, be important, the clinician is not bound to make recommendations which are consistent with the child's views and preferences — even if they satisfy the "three prong test" mentioned above regarding legal representation. Thus, if a child's views and preferences have been inappropriately influenced by a parent, the CLR will include the child's stated views and preferences, but the recommendations made are solely based on the best interests of that child regardless of the child's views and preferences.

In both service delivery options, where appropriate, efforts may be made by the OCL professional

to try to connect the estranged child with a parent. This may or may not include the assistance of a counsellor (not provided by the OCL) to help reunify the parent and child. It is important to note that in some cases there may be a very valid reason(s) (*e.g.*, a parent abusing or neglecting a child) as to why a child is estranged from a parent. However, custody/access cases in which a child is estranged from parent by virtue of the other parent's inappropriate conduct are among the most difficult and may require considerable effort and time to properly address as the parties and child are usually quite polarized. In some cases, regrettably, too much damage by a parent has been done and, little, if anything, can be done to remedy the situation without further damaging the child. In many clear alienation cases arriving at a position by OCL counsel or making recommendations by OCL clinicians, may require challenging consideration based on the evidence gathered, as to what is least detrimental for the child: adversely affecting the child's short-term interests by removing him/her from the custody of the "offending" parent or adversely affecting the child's long-term interests by having the him/her continuing to reside with a parent whose conduct reflects the fact that they have not, nor are they likely able to, place their child's interests above his/her own.

How do lawyers get on the panel if they are interested?

1. Any lawyer in good standing in Ontario may apply to be on the Office of the Children's Lawyer's Personal Rights Panel. An applicant is required to submit a cover letter, curriculum vitae, writing sample and two completed reference questionnaires. The Children's Lawyer considers suitability, experience and skills.
2. If the lawyer is invited for an interview and demonstrates an aptitude for representing children and solid knowledge and good experience in family law, they may be offered "conditional" acceptance. Since all our clients are children, a firm acceptance will not be granted until the applicant obtains a "vulnerable sector screen" through the local police.
3. More detailed information is available on the Office of the Children's Lawyer page on the MAG website. Look for the link "Empanelment Opportunities".

[**Stephanie Giannandrea** and **Jonathan Robinson** are lawyers at Martha McCarthy & Company LLP. Their practices include all areas of family law.]

• Practice Tips for Toronto Region Court Houses in Ontario (OCJ) •

Jonathan Robinson

This is a further instalment in a series of practice tips that the *Ontario Family Law Reporter* is publishing on practice guidelines for regions and courthouses across Ontario. The practice tips in this instalment focus on the written and unwritten rules that practitioners must follow in Ontario Court of Justice ("OCJ") proceedings in the Toronto region, beyond what is set out in the Family Law Rules[1] ("Rules") and the "Guide for Self-Represented Litigants in Family Court Trials".[2]

[1] O. Reg. 114/99, as amended.

[2] Published both as a PDF (<http://www.ontariocourts.ca/ocj/files/guides/guide-family.pdf>) and online (<http://www.ontariocourts.ca/ocj/self-represented-parties/guide-for-self-represented-litigants-in-family-

The OCJ website lists practice directions for criminal matters, including one that intersects with family law, which is entitled "Practice Direction regarding the Integrated Domestic Violence Court at 311 Jarvis Street, Toronto (2013)".[3] This article does not cover the material found there, which briefly describes the way in which cases may be transferred to the Integrated Domestic Violence Court.

It remains a strong desideratum for there to be a widely-known and easily accessible practice direction governing the Ontario Courts of Justice. As Lon Fuller noted some time ago, legal systems must, if they wish to be legal systems, "publicize, or at least […] make available to the affected party, the rules he is expected to observe".[4] Thus, it is important to note that the two OCJ courthouses have relaxed certain filing requirements found in the Rules (as discussed below), but these changes are neither published nor is there any guarantee that these relaxations will continue in the future.

There are two OCJ courthouses in Toronto that handle family law matters. One is located downtown at **311 Jarvis Street**; the other is located at **47 Sheppard Avenue East**. Both courthouses cleave closely to the Rules.

The research for this article depends primarily on answers the Ministry of the Attorney General provided when we sought answers to how OCJ practices in Toronto addressed possible omissions or silences in the Rules. However, as the Rules were amended over the course of last summer,[5] some of the answers we received were in conflict with the most recent version of the Rules. We therefore confirmed certain practices with the trial coordinators at each courthouse.[6] The Ministry returned separate answers for each courthouse as there is no overarching (internal) practice direction for both courthouses, let alone Ontario as a whole.[7] However, the practices do seem to be the same or similar in most cases. Where the practices do not align, specific reference is made to the practice of each courthouse.

Confirmations (Forms 14C and 17F)

A Form 14C Confirmation[8] must be filed with the Registrar's Office no later than 2:00 p.m. three[9] business days before a short motion, or long motion is scheduled to be heard. A Form 17F Confirmation must similarly be filed by 2:00 p.m. three business days before the conference date.[10] These forms may be filed separately or jointly, by fax or in person. Where the form has not been filed by at least one party, it will be left to the judge to decide whether the matter will be heard.

Where a Form 14C or 17F is filed, it should include a list of materials that the party wishes the

court-trials/>). The document appears to have received its last update in June 2013.

3 See <http://www.ontariocourts.ca/ocj/legal-professionals/practice-directions/toronto-region/>.

4 Lon Fuller, *The Morality of Law*, rev. ed. (New Haven: Yale University Press, 1969) at 38.

5 New versions came into force on July 1, 2018, and August 31, 2018; for the previous enactments, see <https://www.ontario.ca/laws/regulation/990114>.

6 I owe Erica Graves a debt of gratitude for her assistance.

7 Note that the Ministry provided responses for **47 Sheppard** prior to the 2018 amendments to the Rules gaining currency. The Ministry's responses for **311 Jarvis** came after the 2018 amendments but refer to the Rules as they existed prior to July 1, 2018. This article has slightly corrected certain answers to reflect the version of the Rules currently in force.

8 All forms described in this article are available online: <http://ontariocourtforms.on.ca/en/family-law-rules-forms/>.

9 See Rules, r. 14(11)(*e*). Note that this represents a change in the Rules that came into force on July 1, 2018. Previously, it had been only two business days.

10 See Rules, r. 17(14)(*c*). Prior to July 1, 2018, parties could confirm (via Form 14C) as late as two business days before the conference.

judge to review, with clear reference to the specific volume, tab, and page numbers of the continuing record.

In both courthouses, a 14C Confirmation Form is required for urgent motions *with* notice, but not for urgent motions *without* notice.

Adjournments on consent fall under rule 14(10) of the Rules and the party making the motion may use a Form 14B instead of a notice of motion and affidavit. The parties do not need to attend if the parties have heard back and/or received a responding endorsement from the court; if not, then attendance is required.

If a Form 14C Confirmation is filed for a consent adjournment, the matter will be removed from the hearing list and the parties need not attend.

Motions

Short Motions

Neither courthouse has a set rule regarding the threshold for a short motion, though both usually consider motions under about 10 minutes to be short motions. Short motions are not specifically scheduled. Both courts attempt to hear such motions as often as the court allows, which, in practice, means they are generally heard every day. No facta are required for short motions.

Long Motions

47 Sheppard considers that a long motion is generally 60 minutes or longer. Judges usually schedule such motions, but parties may also request them through a Form 14B and may obtain possible dates from the trial coordinator in advance. Both courts hear long motions as often as the court allows, which, in practice, is generally every day. No facta are required at the OCJ. Where a factum or facta are filed on a notice with motion, subrule 14(11) of the Rules governs the timelines at **47 Sheppard**: the party making the motion shall serve the other parties at least six business days before the motion and file them at least four business days before the motion, and confirm via Form 14C as described above; the responding party or parties must serve and file at least four business days before the motion date; if responding by means of a Form 14B, it must be done not later than four business days after the motion form (Form 14B) was served on the responding person.

At **311 Jarvis** there is more flexibility in certain respects. Regarding confirmations for long motions (Form 14C), if the parties fail to file the confirmation, the matter is not bumped from the docket, but there's a chance the parties will be unable to complete the motion on the originally scheduled date and will need to return to complete the motion. It is also possible (if not advised) to file materials as late as three business days before the motion date.

Compendium

If a party wishes to file a compendium with his or her materials, the timelines for doing so are set out in Rule 14 of the Rules.

Electronic Copies of Materials

Neither courthouse allows electronic materials to be provided in addition to filing hard copies with the registrar. Nor is there a "Frequently Cited Authorities" list such as is found for the Superior Court of Justice.

Restraining Orders

A party seeking a restraining order in either court must fill out the prescribed Canadian Police Information Centre form with both parties' information along with a Restraining Order Endorsement Sheet must be completed by the party filing the motion with the client service representative at the front counter.

Case and Settlement Conferences

The parties must attend case conferences and settlement conferences even if they have counsel. Such conferences are generally scheduled for 10 to 15 minutes. At least **47 Sheppard**, if not also **311 Jarvis**, may schedule the conference for more than 15 minutes.

Case conference briefs must be filed in accordance with the Rules (r. 17(13)). If the applicant or moving party, the party should serve and file a brief at least six days before the date scheduled for the conference; if the responding party, service and filing should occur at least four business days before that date. At **47 Sheppard**, a party may be able to file at least two business days before the conference date; however, either an endorsement allowing late filing or consent from the other party or parties is required. Even so, if no confirmation is filed, the matter is not removed from the list, though the judge may refuse to hear the matter if she or he is not familiar with the issues. Similarly, at **311 Jarvis**, a failure to file a confirmation does not result in being bumped from the docket.

Video and/or teleconferencing is available for conferences at both courts, in accordance with subrules 17(16) and (17) of the Rules. Parties (including counsel) who wish to participate by telephone or video conference must seek permission from the conference judge. Parties should make the request to the judge who is conducting the conference. If a judge has not approved the request in an endorsement or order, parties can seek permission of the judge by filing a 14B motion form. Parties can contact the Trial Coordinator to make the requisite arrangements. Note that the party who has received permission to participate by teleconference must make the necessary arrangements, which includes serving and filing notice of the arrangements on all other parties.

Trials

Trial Management Conferences

Judges schedule trial management conferences (TMCs). At **311 Jarvis**, the assignment court judge schedules the TMC before case management. At **47 Sheppard**, the assignment court judge generally schedules a TMC in assignment court; the judge assigns parties a trial judge and subsequently schedules the TMC with that trial judge. Usually, the TMC must follow a settlement conference, but subrule 17(7) allows a judge to combine "part or all of a case conference, settlement conference and trial management conference".

311 Jarvis does not have a specific time for scheduling the TMC, which is scheduled at the judge's discretion. The TMC takes place, however, before assignment court. At **47 Sheppard**, parties should expect the TMC to take place three to four weeks before the trial begins.

Both courthouses require the parties to serve trial management conference briefs (Form 17E) pursuant to subrule 17(13) of the Rules. The party requesting the conference, or, as may be, the applicant or party making the motion, must serve the brief at least "six days before the date scheduled for the conference"[11] while the other party must do so at least four business days before the date of the conference.

Trial Records

The applicant must serve and file a trial record at least 30 days before the start of trial. The respondent may then serve, file and add any document to the trial record no later than seven days before the start of trial. The trial record contains a table of contents and should include the docu-

[11] Previously, the time limit was seven days; see Rules, r. 17(13.1).

ments listed in subrule 23(1) of the Family Law Rules.

Trial Dates

Parties typically secure a trial date through attendance at assignment court. At **311 Jarvis**, if a trial has been set as "standby", the trial coordinator will usually contact the parties with an update. At **47 Sheppard**, by contrast, if a trial has been set as "standby", the parties should contact the trial coordinator for updates. The latter court hears trials throughout the year. In practice, the court will usually hear at least one domestic trial per month and three or four child protection trials each quarter.

Family Law Information Centres and Duty Counsel

Every family court in Ontario has a Family Law Information Centre ("FLIC"), though not all have dedicated separate offices for that purpose.

At **47 Sheppard**, the FLIC, which is located on the ground floor, is staffed with an Information Referral Coordinator ("IRC") who can provide material on community resources, domestic violence, separation, divorce, mediation and information regarding legal services. The Client Service Representatives for the court system are available Monday to Friday, 8:30 a.m. to 5:00 p.m. Furthermore, Legal Aid Ontario has duty counsel available daily from 9:00 a.m. to 4:00 p.m. They may also stay longer if the judge requires them to do so.

At **311 Jarvis**, the FLIC also consists of an IRC, who can provide material on community resources, domestic violence, separation and divorce, and information regarding legal services. The staff are available Monday to Friday, 8:30 a.m. to 5:00 p.m. Through Legal Aid Ontario, duty counsel is available daily from 9:00 a.m. to 4:00 p.m. Again, they may also stay longer if the judge requires them to do so.

Gail Brochu, a mediator and an IRC with FLIC,[12] both confirmed how the FLICs operate and explained how the Mandatory Information Program ("MIP") works at the two courthouses. Generally, MIP sessions are scheduled for all parties by the Ministry of the Attorney General once an application is made. However, individuals who are considering but have not (yet) made an application may also attend a MIP. They should speak to the IRC at either **311 Jarvis** (416-326-1694) or **47 Sheppard** (416-250-6161) to arrange a time. **47 Sheppard** (currently) holds MIP sessions on Thursdays. **311 Jarvis** and the Superior Court of Justice located at 393 University Avenue, however, have a consolidated MIP, which is located relatively nearby at 361 University Avenue. For these latter courthouses, parties should call the IRC in advance as needed because MIP sessions are held four times per month, but not always on the same day of the week.

In Toronto, parties may also instead use the Family Law Information Program ("FLIP"), which is a free online resource hosted by Legal Aid Ontario.[13] (This service is available Ontario-wide, but parties usually need permission from a judge to substitute FLIP for MIP.) FLIP is available in two versions, and parties must be certain to use the "certificate of completion version" and be sure to print the certificate immediately upon completion of the program.

Finally, mediators (such as Gail Brochu) are available at both courthouses.

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[12] She may be reached at <gail@mediate393.ca> or <accordmediationgroup@gmail.com>.

[13] See <http://www.legalaid.on.ca/en/getting/flip.asp>.

[**Jonathan Robinson** is an associate at Martha McCarthy and Company LLP and practices in all areas of family law. Jonathan holds a JD from Osgoode Hall Law School (2017) and a PhD from the University of Toronto (2010), and maintains a keen interest in legal history and political philosophy.]

Court Information

Court House	Address	Phone	Trial Coordinator
311 Jarvis – Toronto	311 Jarvis Street Toronto, ON M5B 2C4	416-327-6868	416-327-6948
47 Sheppard – Toronto	47 Sheppard Ave. East Toronto, ON M2N 5N1	416-326-3592	416-326-7757