

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".

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## • 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<sup>1</sup> ("Rules") and the "Guide for Self-Represented Litigants in Family Court Trials".<sup>2</sup>

<sup>1</sup> O. Reg. 114/99, as amended.

<sup>2</sup> 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)”.<sup>3</sup> 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”.<sup>4</sup> 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,<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> 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<sup>8</sup> must be filed with the Registrar’s Office no later than 2:00 p.m. three<sup>9</sup> 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.<sup>10</sup> 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

<sup>5</sup> 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>>.

<sup>6</sup> I owe Erica Graves a debt of gratitude for her assistance.

<sup>7</sup> 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.

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

<sup>9</sup> 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.

<sup>10</sup> 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.

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

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

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

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”<sup>11</sup> 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-

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<sup>11</sup> 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,<sup>12</sup> 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.<sup>13</sup> (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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<sup>12</sup> She may be reached at <gail@mediate393.ca> or <accordmediationgroup@gmail.com>.

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

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#### **Court Information**

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



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