

Summary of Videoconference Between the Bench and Family Bar

February 17, 2021

1. Service of Divorce Statements of Claim (Justice Yungwirth and Justice Marriott)

- There were issues raised in Calgary as it was a common practice in Calgary that lawyers did not personally serve the Defendant. However, lawyers must now ensure personal service. There is an acknowledgement that during the Covid-19 Pandemic, lawyers can serve by email, however, after the pandemic it will be expected that Calgary counsel will have to personally serve the Defendant.

2. Filing Lead Times (Todd Nahirnik)

- This issue is being followed up rigorously - the Court has been meeting with Todd Nahirnik and representatives from the Bar. As a result of that meeting Chief Justice Moreau indicated that she had met with the Ministry and raised concerns with the Attorney General on February 10th. They acknowledge the concerns and this issue is being brought to the Ministry in order to address it.
- Todd Nahirnik addressed the challenges in email filings and indicated that the problems in Edmonton were as a result of issues before Christmas related to absences as a result of Covid. One of the areas that was particularly affected as a result of these absences was filing, contributing to Edmonton's backlog. He asked for continued patience with this system.
- Filing lead times for Edmonton
 - Family Docket Court - February 11th.
 - Family Chambers - January 21st.
 - Masters and Justice Chambers are uploading as of February 3rd with Notice; Orders without Notice February 2nd, Masters waiting on Orders as of February 8th; Justice waiting on Orders January 18th; General filing January 11th;
- Filing lead times for Calgary
 - Calgary Family Docket Court is current;
 - Family Chambers February 11th;
 - Masters and Justice Chambers are February 16th with Notice and February 12th without Notice; General filing February 11th

- They are bringing in additional staff in Edmonton for filing and they hope to have plans in place by the end of this week. They are also providing overtime relief for dealing with the backlog. They have indicated they are taking every step to deal with the time delays and looking for measures for interim relief.
- Chief Justice Moreau has received concerns from the Bar with respect to filing delays. She is grateful for the concerns of the Bar being brought to her attention and asks that Todd Nahirnik be copied on these email requests as it is typically his department that will follow up on these matters. She confirmed that she does want to receive these emails to remain updated on issues lawyers may be experiencing.
- Mr. Nahirnik had a very productive meeting with the Red Deer Court Manager, and as a result of their meeting and some adjustments made, they were able to move Red Deer filing times from four weeks to one week.
- Mr. Nahirnik referred counsel to the Rules of Court and specifically 13.41 which deals with the updated Affidavit and requirement for the original Affidavit to be held by counsel.

3. Time set aside for EICCs

- The Committee met and determined that the 2:00 pm time slots for EICCs will be extended. A memo will be going out with respect to this change. They indicated that they cannot increase times for all EICCs during the pandemic but they will be reviewing this after the pandemic. It was also noted that a Justice in Calgary sends a letter to counsel and the parties prior to the EICC and after reviewing the file. This letter may ask counsel to prioritize issues and submit documents that may assist the Justice prior to the EICC. All EICC Justices have been encouraged to consider doing this, so counsel may expect to receive letters from other EICC Justices requesting the same.
- If you are setting up an EICC, please be aware of the information that you will need. There is an obligation on counsel at the Family Docket Court to anticipate what you are going to require and to request this in that appearance.
- When scheduling EICC dates or resolution counsel dates, often alternative processes are requested and granted from the court. This is especially happening in Edmonton. The result of this is that matters are taking up several processes which contributes to long lead times while resources are limited during the pandemic. Therefore, the new protocol will be that Justices can schedule an EICC and one other backup process. However, counsel should be aware that if asking for additional processes, they may receive push-back from the Bench. The court indicated that they are trying to accommodate but the reality is that we are in a pandemic and they may only get one alternative process or none, depending on their Justice.

4. Lead Times: Calgary Family Docket/Family Chambers/Special Chambers

- Calgary Family Docket Court - March 9th
- Family Chambers - February 26th -
- 1 hour; May 4th - Half-Day; June 23rd -
- EICC May 19th
- Resolution Counsel - May 20th
- Pre-trial Conference - May 18th
- In Edmonton, same schedule list but it is March 17th, March 8th, August 12th - the Court recognizes this is a 6-month delay and they are working to address this
- August 19th, May 7th, May 11th and May 4th
- The Court recognized that there is backup in Edmonton as a result of higher volumes and multiple processes that were being given to counsel which contributed to the backlogs which is the reason for more restrictions being put in place.

5. Family Docket Court Resolution Stats

- Since May 25 – Calgary - 23% were adjourned or struck; of those not adjourned/struck, 46% were referred to ADR processes, which is an excellent number, and of those, 238 resulted in Consent Orders
- Edmonton - 20.5% adjourned or struck, 40.6% referred to ADR process and 231 consent orders

6. New Divorce Act forms effective March 1, 2021

- There is an announcement on the Court's website which links counsel to Word versions of the new forms. It was noted that there are 29 forms in total and 6 have minor amendments, however, everyone is encouraged to look at all forms as they need to be ready for the March 1st change.
- The question was asked about the length of the Affidavit of Applicant and whether items can be deleted. It was noted that if you are filing an Affidavit of Applicant and there are no children, you can remove items 14 to 17 of the Affidavit. The Court has asked that as a general rule, we do not delete anything in the forms as the forms are still new and until such time as the Court is comfortable with the forms, they may not realize what is being deleted. Clause 13, however, should never be deleted. They also asked that if items in the forms are deleted, please do not change the numbering on the form.

- They are working with Family clerks and Divorce clerks to ensure that they are caught up as of March 8, therefore do not wait to process Orders under the current legislation. There is a dedicated group of Justices processing divorces as quickly as possible. It is important to note that once March 1 comes, old forms will be rejected. There will be no grace period because the legislation does not allow for a grace period and we need to comply with the legislative requirements.

7. Update on Electronic Processes

- Calgary was having issues with without notice *ex parte* and with notice and as a result, there was a proposal put forth with the assistance of the Clerks and the Chief Justice to utilize the Emergency Duty Justice to deal with these matters. As a result, Emergency Duty Justices will deal with both. *Ex parte* without notice will go through Clerks and with notice, and the change will come in March.
- Edmonton has the same process - with notice will go to the Justice and determine if it needs to bypass Family Docket; urgent without notice will come through the Clerks. If the notice is received in the morning and there is room, every effort will be made to put it in morning Chambers. If notice is received in the afternoon, they will make the call to determine whether it can be heard that day.
- Fiats - The Court asked those present to remind counsel that when asking for a Fiat, the other side must be given notice of the Fiat. In addition, the Fiat must come in through efilg. The Bench advised that when providing the Fiat request, please indicate in the email that it is a Fiat and that email will go to the Clerks' folder. The Clerks have also advised that they have an alert set up and so the Fiat in the subject line will advance that Fiat in the process.
- Wrinkles are being ironed out with respect to granted Orders not signed by Judges and granted Orders signed by Judges. There is confusion with respect to Judges receiving Orders. They indicated that naming conventions are very important and without them, delays can occur. They gave the example of the following naming convention: SIGNED ORDER FOR FILING and GRANTED ORDER TO BE SIGNED. They ask that you use these name conventions so that they can ensure that Orders are signed by February 28.
- There is a note from the Family Supervisor that if you use "Pre disclosure" in the title, you do not need to provide the child support data sheet.
- Some lawyers are still sending in secured documents for filing. Please do not do this, as it accelerates the backlog and delay.
- When submitting Orders for consent, please do a better job at outlining in the preamble why you are requesting that particular Order. The example was given was that if you are requesting an Order to change the PN2 deadline, that you explain why. In addition, if you are requesting a severance, please explain why. They also indicated that if you are filing

a Pension Order, please put in the preamble that the Order has been approved by the Pension Administrator. If you are filing a police enforcement Order, please confirm which clauses they are needing to enforce.

8. Cross applications

- When attending Family Docket court, be prepared to address if there will be a cross-application. If you do not tell the Bench that there is a cross-application or that you anticipate a cross-application, there is an underestimate of the time required and this is causing sittings to go longer. It was confirmed that Edmonton Chambers is capped to 13 and Calgary Chambers continues to be capped to 10.
- Be aware of any cross-applications that have been filed and to ensure you do not forget about those cross-applications when bringing matters forward.
- The Court highlighted the new program through Maintenance Enforcement known as the Family Support Order Services Program. This Program allows lawyers to send draft Orders to MEP to confirm that there will not be support order issues. It was encouraged that counsel use this program

9. Concerns of the Family Bar

- There was a lengthy letter that came in from the Chair of the Edmonton North CBA and some concerns were addressed in the call, however, more specific concerns will be addressed later. One concern raised was a concern with respect to searches falling through the cracks, to the point that some counsel had given up with respect to doing searches. It was confirmed that this may be a Clerk shortage issue but it they are following up on this concern.
- The question was raised with respect to a large push in Edmonton for matters being referred to the Provincial Mediation Program. However, there is some delay with hearing from them and wanted to understand the timing. Justice Yungwirth indicated that she would follow up with respect to the timing on this particular program.
- A further question was raised with respect to when documents are sent to Special Chambers and provided in an organized format, why they are being returned in a different format. It was confirmed that this is an issue with the Clerks and that they are working on that such that that should not be an issue going forward.
- A question was raised by the South Section Chair of the CBA. The first question was with respect to an understanding that Special dates were not being booked in the summer and matters were not being struck until such time as bookings were available. It was confirmed that there was no moratorium on booking Domestic Specials into the summer and confusion with respect to the information that had been provided to counsel.

- A question was raised with respect to urgent Family trials and a note from counsel that they were told urgent Family trials were being booked into 2022. The Court confirmed that there is no moratorium with respect to urgent Family trials for 2021 and that if there is a concern, that counsel write to Associate Chief Justice Rooke.
- Concern was raised with respect to the Family Docket List and why this is not provided to counsel and those attending Family Docket. Justice Marriott indicated that changes are happening with respect to Family Docket and that the list will not be provided as there may be some inefficiencies as a result of providing that list.
- An issue was brought up with respect to service of matters outside the jurisdiction. Justice Yungwirth indicated that the Rule changes now require them to follow the Hague protocols for matters served outside Canada. As a result, they brought in a number of individuals and particular experts in this area to finalize the protocol that needs to be followed and the goal is that protocol will be disseminated to the Bar by March 1st.
- There was also a concern with respect to Statements of Claim for Divorce that had been filed in November and had not been returned. There was some indication that this may be as a result of the fee waiver. Justice Yungwirth indicated that there are concerns about long delays, that those should be brought to her attention or Justice Marriott's attention as soon as possible so that that delay can be addressed.
- The next meeting will be April 13th