Zoom Divorce

Russell Alexander's

Guide to Separation, Divorce and Family Law

Contact: info@russellalexander.com

ISBN: 978-0-9959369-4-2 (print)
ISBN: 978-0-9959369-5-9 (ePub)

Project management by Heidy Lawrance, WeMakeBooks
Cover design by Kim Monteforte Graphic Design & Self-Publishing Services
Text design and layout by Kim Monteforte Graphic Design & Self-Publishing Services
Author photo by Daphne Brookes
Edited by Andrea Lemieux
Index by Wendy Thomas

Printed and bound in Canada

This book is the result of a number of projects and live events my team have worked on throughout the pandemic. Special thanks to Kaitlyn Swindells and Michelle Mulchan for their informative descriptions of CaseLines. To Daphne Brooks for the cover concept. To Penka Bogatinov for coordinating edit suggestions. I must also extend my gratitude to the entire team at Russell Alexander Collaborative Family Lawyers for all their helpful feedback. This book was a team effort, but any errors or mistakes are entirely mine.

Contents

Preface

In early December 2021, we were starting to feel as though we were entering the beginning of the end of the COVID-19 pandemic. Of course, there were anti-vaxxers and other people who still weren't taking the pandemic seriously. However, vaccines were readily available and many people were getting their second jabs. Booster shots were being discussed. Borders were opening up and travel restrictions were easing. Kids were heading back to school and also starting to get vaccinated. Apart from COVID-19 passport requirements in Canada, restaurants, theatres, sporting events, and other activities were opening up. It felt as though things were slowly returning to "normal." Or were they?

By mid-December it felt like the beginning of the end. However, we soon learned that it was really just the end of the beginning of the COVID-19 pandemic as the Omicron variant began to take over North America.

This book examines the ongoing effects of the pandemic on separating and divorcing families and explores the rise of the Zoom divorce.

Introduction

The COVID-19 Pandemic and Divorce

MARCH 2020

Atlanta's Hartsfield–Jackson Airport, my wife and I are at the bar waiting for our connecting flight to Florida. Canada's prime minister flashes on the bar's TV news channel and is recommending that Canadians not fly internationally. A few days earlier, Ontario's provincial premier was telling everyone that it was OK to travel for March break. Things were changing quickly, almost hourly, as the pandemic spread across North America.

I had decided to schedule a "stress test" for our office network on the following Tuesday, requesting that our entire team work from home to see if our network would hold up this way. A few days later, the lockdown order was issued for Ontario. I had an emergency meeting with my management team that Sunday night. There would not be a stress test on Tuesday because as of Monday our office became fully remote. It was time to catch the first flight back to Ontario as the Canada-US border was closing.

A TIME FOR LEADERSHIP

The pandemic created fear and a leadership vacuum. Law firms that had previously adopted technology and a remote work culture were able to pivot, almost seamlessly, to working from home. Firms that did not have this head start struggled, implemented layoffs, applied for government assistance, and some shuttered their offices. We gamed out worst-case scenarios, including

cascading layoffs and preparing to deal with the possibility that some of our families and team members may become sick or even die of COVID-19.

It was time to step up and take a leading role. I promised our team there would be no layoffs (their number-one fear at that time) and that we would adapt and continue to serve our clients. We also held some of the first Zoom seminars and webinars to teach our colleagues what we had learned from a previous experience of working remotely. We retooled our website and marketing to address the concerns and answer the new questions our clients were asking, such as withholding parenting time because of COVID, social bubbles, public-health protocols, access to justice, kids returning to school, Christmas parenting time, vaccinations for children, and travel issues.

The team adapted, we became a role model for other firms, we released a new book about how to divorce during the pandemic, our client base grew and we added five new lawyers.

THE CLIENT EXPERIENCE

It has been a difficult few years for our clients as they have experienced the loss of family members, loss of jobs and careers, changing diets, disrupted exercise routines, spouses working from home, home schooling for children, and dealing with spouses and friends who were not following safety protocols.

Time passed and feelings of being disconnected from colleagues, friends, and extended family persisted. It felt as if every day was groundhog day. When was it all going to end? Will there ever be a "new normal," and if so, what would that look like?

Clients were getting cabin fever and sick of their spouses. Ordinary bumps in the road that occur in every marriage became amplified because of the stress of the pandemic. For many, not being able to travel, get back out into the community, connect with extended family and friends, and make a fresh start was leading to separation and divorce.

HOW COVID-19 VARIANTS WILL CONTINUE TO AFFECT DIVORCING FAMILIES

We are now used to the pandemic throwing curve balls at families every three or four months, especially families going through a separation or divorce. The Delta variant, and now the Omicron variant, is not any different.

Rising Divorce Rates

We can expect divorce rates to continue to rise as the stress and uncertainty of the pandemic continues. Every relationship has bumps in the road, but the last two years have shown that the pandemic amplifies these normal bumps and causes family breakdown, leading to separation and divorce. As Omicron continues to affect our daily lives, divorce rates will continue to rise.*

Disruptions to Our Daily Activities and Routines

With spiking COVID-19 rates, many of the activities we took for granted or that were returning to a semblance of "normal" were being scaled back or cancelled entirely. In Canada, this is a common experience with these early responses to Omicron and other COVID-19 variants. For example, attendance at sporting events has been restricted, seasons are put on hold, and soon are cancelled altogether.

Likewise, we are seeing similar effects on other forms of entertainment, including theatres, concerts, bars, and restaurants. Schools, colleges, and universities are extending their breaks and have started cancelling in-person exams and classes. Students are stuck in their dorms or are returning home.

Access to gyms are being restricted again, and regular exercise will be difficult to obtain, depending on the season. Eating out and our diet will continue to be affected. Travel plans, especially international travel, often have to be scaled back or cancelled altogether.

Where and When We Work

Omicron and other variants continue to affect where and how we work. Many businesses that were accelerating the return to the

office, malls, factories, and other workplaces will have to scale back any return to "normal" or cancel their plans. Industries that are able to pivot and have their workforce operate remotely will be the fortunate ones.

Self-help and Not Following Orders, Agreements, or the Status Quo

Unfortunately, not everyone has the best intentions. With various restrictions related to the pandemic, some people will use this as an excuse to change parenting time and other agreements. When this is done by just one parent, it is called "self-help," and the consequences for families, and especially children, could be dire. Disruptions to routine and the status quo are often not in the best interests of children and can lead to increased disputes and litigation. Accessing the justice system to address this conduct can be expensive, cause delay, and create further uncertainty.

The pandemic throws everyone, especially separating and divorcing couples, a curve ball every three to four months. A pattern is emerging as the years pass and bumps in the road reoccur and present parents with the same problems over and over again. COVID-19 variants increase fear and uncertainty and provide couples with fodder that unfortunately often ends in divorce.

Sources of Family Disruption

- Social distancing/bubbles
- Adhering to public health protocols
- Parenting-time disputes
- Supervised parenting time during the winter months
- Travel, vacations, and vaccinations
- Disputes about home schooling and back to in-person learning
- Spring and summer vacations
- Loss of employment and changing support obligations
- Enforcement of court orders and matters of urgency

Omicron and other variants will result in increased isolation and, unfortunately, increases in incidences of domestic violence,

with victims having limited ability to access resources and support groups.

We may see possible court closures and restricted access to an already overburdened justice system. In the administration of justice, the system has worked hard over the past two years to pivot to digital and now offers Zoom hearings and CaseLines for filing digital documents and pleadings. Courts will continue to hear emergency or urgent matters to ensure the best interests of children are protected, enforce safety protocols, and stop self-help methods and parents from taking unilateral action.

The pandemic has increased isolation and mental-health issues for individuals and the entire family unit, which Omicron and any further variants will only exacerbate.

Professionals Are Ready, Willing, and Able to Help

Despite the restrictions and deleterious effects that Omicron and other variants will cause, you can still access professional support. Family doctors, lawyers, social workers, and mental-health professionals will continue to be available. The justice system will continue to manage family conflict and ensure the best interests of children will remain paramount.

The Road Less Travelled

There is no need to run off to court when you get into a dispute with your spouse. If you do, it could take several months before you would see a judge. There are great mediators, counsellors, and divorce lawyers who have specialized training to settle matters outside of the court system. One very effective approach is "collaborative divorce," where we specifically agree not take the court route and focus on the family's goals and interests. This gives parents a voice and the power to fashion an outcome that is best for their family, which lowers the anxiety and stress that is often associated with divorce and also saves time and expense.

Patience continues to be the currency of the pandemic. Common sense and perseverance are essential. Omicron will not likely be our last variant; perhaps this is now our new normal.

LOOKING FORWARD

Surprisingly, many efficiencies and silver linings have resulted from the pandemic, such as improved access to lawyers and legal services. Lawyers can often meet new clients the same day using Zoom or Skype; the justice system has been streamlined with Zoom divorce and electronic filing (less paper, no commuting or parking, no court security and busy dockets, no more waiting in the hallways of an overcrowded court house). Lawyers and clerks are not going to look back. Zoom divorce in some format is here to stay. The justice system will not return to "normal" until 2023 at the earliest, if it ever does.

As for our team, we have offered our lawyers and clerks the option to work from home permanently. For the remaining team members we have implemented initiatives to promote balance and recognize that the labour force has changed forever, and that our time is precious. We will continue to grow and innovate and seek to provide leadership through these quickly changing times.

We have lived through the COVID-19 pandemic for over two years now. Patience is the new currency of the pandemic; however, patience is starting to run thin. As for the future, it would be nice to return to Hartsfield–Jackson for another connecting flight to Florida.

NOTE

*Recent data regarding divorce rates in Canada may be misleading. Some statistics suggest divorce rates in 2020 were down 25% and were at the lowest levels since 1973. But this data does not reflect what many family lawyers are seeing day to day. In short, our numbers are way up, and data from other countries also suggest that divorce rates are rising. The official count may be off for several reasons, including:

- Court closures means divorces filed are not being processed. There is a significant bottleneck.
- The pandemic has amplified stressors causing families to break down.
- Internal data shows that people seeking help from divorce lawyers has spiked significantly.

- Recent changes to the *Divorce Act* require couples to explore family dispute resolution before going to see a judge (which can delay matters by several months).
- The most common ground for divorce is "living separate and apart for a period of one year," but this has been proven difficult for many couples seeking to divorce during pandemic lockdowns and restrictions.
- Our numbers are up 30% to 50% and many of our colleagues indicate that they are busier than ever helping couples separate.

CHAPTER 1

The Justice System's Slow Pivot to Digital

Ontario Courts Moving to Paperless? COVID-19 Could Drive Digital Change

It's far too early to tell what the short-term future holds for us after the COVID-19 pandemic is over. Clearly, the world as we know it will be different. In some ways, it will be better. In some ways it will be worse (though we hope only temporarily).

From the standpoint of the Canadian justice system – including its judges and decision-makers, courts staff, lawyers, and the individual litigants – the long-term impact of COVID-19 will only be revealed with the passage of time. But one thing for certain is that when the health and economic crises are eventually under control, there will be a "new normal" regarding the procedures and protocols that allow justice to be dispensed in the province.

Call for Reform

In January 2020, with clients complaining that access to the justice system was limited during this time of crisis, we respectfully put out a clarion call to the Ontario government, its lawmakers, and the

judiciary to take the opportunity presented by the COVID-19 crisis to help spearhead reform to make justice more efficient, and more accessible, to all Canadians in the aftermath of the pandemic.

Specifically, we called upon all those who have influence in the current system, including the judges themselves, to support a new, modernized system of electronic filing and tracking, and a fully paperless procedure to be used throughout the courts in the province. At that time, we outlined our suggestions for how to build a new "Roadmap to Recovery" in the post-COVID-19 era.

Pre-pandemic: All Paper-Based

Before we offered our suggestions for what the "new normal" should look like, we revisited the procedural regime used by the Ontario judicial system in 2020. Regrettably, the synopsis is very short: It's almost all about paper.

All court actions, applications, and other types of legal proceedings and documents start with hardcopy forms, mandated by the Ontario Family Law Rules. These can be obtained from the court offices, and electronic versions can be downloaded from the courts' Family Law Forms Rules website (see the Resources section on page 141).

However, once completed, court forms must be printed and filed in hardcopy at the court office – with only a few minor exceptions (namely, those forms that are specifically allowed to be filed electronically through the Family Claims online portal, as prescribed under the Family Law Rules).

This means that family courts are subject to a daily deluge of litigants' and lawyers' hardcopy filings. Every application, answer/reply, set of motion materials, conference brief, conference confirmation, and trial record or continuing record must be filed with the court in paper format. The same goes for supporting documentation, such as each spouse's financial statements, which can be voluminous.

And – to make the paper trail even worse – each spouse must be personally served with their own separate hardcopy of whatever the other spouse has filed with the court. The spouse who is doing

the serving must then file an Affidavit of Service (also on paper) with the court as well, attesting to the fact that the other spouse received the documents.

In our view, this is an area in the Ontario justice system that is not only archaic, cumbersome, and downright behind-the-times, but is also woefully oblivious to the environmental cost of this needless waste of paper.

Court Closures: The Right Juncture to Reflect and Modernize

Now, with the COVID-19 pandemic, this flurry of paperwork has necessarily come to a screeching halt.

In March 2020, all regular operations of the Ontario Superior Court of Justice were suspended until further notice. All matters, including family law matters, which were originally scheduled to be heard any time after March 17, 2020, were adjourned. This included telephone and video conference appearances, unless the presiding judge ordered otherwise. There were narrow exceptions for urgent paper-based court filings, certain permitted electronic filings, and hearings for injunctions relating to matters prompted by the COVID-19 pandemic.

Likewise, the Ontario Court of Appeal was no longer conducting in-person hearings, and was encouraging parties to consider appearing by video and teleconference in appropriate cases.

In other words: Access to justice for family law litigants was temporarily at a complete standstill. At that time, there was no substantive legal activity – and no paper-filing – going on in the Ontario courts.

As seasoned family lawyers, it became apparent that it was the time to seize the opportunity and modernize the court system.

CALLS FOR REFORM

"Paperless justice," as we will call it, is not a new idea. The highly regarded website slaw.ca (see the Resources section on page 141), which bills itself as "Canada's online legal magazine" has hosted

numerous articles and blogs over the years written by a broad array of legal authors and other interested writers, each of whom proposed an upgrade to a more electronically based court filing system for courts throughout North America.

The conversation on this point has actually spanned many, many years, but with little to show for it.

As recently as 2017, for example, there was an article, "Technology Remains an Afterthought for Many Within the Legal System," curiously noting the persistent and widespread lack of computer infrastructure within even newly built courthouses in California, which of course is home to Silicon Valley, the epicenter of modern technology.

Going back to 2013, the authors of an article, "Through a Glass Darkly: The Future of Court Technology," make some predictions about the future of courthouse technology, and in foreseeing that appellate courts will go fully paperless, they cautiously declare: "We're not dumb enough to predict when, but it will happen."

Well, it hasn't happened soon enough.

Most recently, in December 2019, the pervasive reluctance by the Canadian justice system to fully embrace technology of all types has undergone more intense scrutiny: A five-part series chronicles some initiatives proposed in an assortment of scholarly papers, studies, and pilot projects conducted by the Cyberjustice Laboratory and its partners during the course of a seven-year long project (see the Resources section on page 141). Among the many worthwhile suggestions for modernizing the court system is the repeated call to at least lay the security and data-privacy groundwork needed to implement paperless courts. To date, the justice system is far behind in taking these necessary strides.

WHAT WAS IN PLACE IN 2020?

To give these proposed initiatives some context in Ontario: The shift towards a comprehensive e-filing system for court documents would not even be a major one.

The Ontario Superior Court of Justice, for example, already allows for certain types of court documents to be filed electronically

(see "Government of Ontario" in the Resources section on page 141). Even in the relatively outmoded family law process, where the provincial Family Law Rules still expressly mandate that hardcopy documents must be filed, eligible spouses can currently e-file their applications for a joint uncontested divorce or a simple divorce where no other corollary relief is being claimed (see "Government of Ontario" in the Resources section on page 141).

Conceivably, then, a switch to e-filing all court documents would not be a quantum leap, as far as the needed technological infrastructure goes.

On March 25, 2020, the Supreme Court of Canada and the Ontario Court of Appeal announced that, as a direct result of COVID-19 social/physical distancing measures, they started allowing court documents to be filed by email. The Ontario Superior Court of Justice appears to be accepting emails from parties on urgent matters.

It's regrettable that the move towards a paperless justice system was in response to a catastrophic global event like COVID-19, which made it necessary. Let's hope it isn't merely temporary.

Following are the initial steps that Ontario family courts should take, in the short term and the long term, towards installing a paperless document-filing and document-service system in courts across the province:

1. **Switch the default vantage point to create a "new normal"**
   Currently, the hardcopy-based mode of serving and filing documents is the so-called norm, and electronic filing is viewed more as a "novelty" or a "special" scenario. This script must be immediately flipped: Paperless service and filing of documents must become the accepted default, and filing of hardcopy documents must become the (rare) exception.

2. **Pivot to an entirely paperless system**
   There are many non-Ontario jurisdictions that already have paperless document service and filing systems in place (such as the courts of Colorado and Texas). In many cases, these court systems have been in place for more than a decade, and

are a fertile source of information on what does/does not work. Ontario courts should plumb these sources for information on how best to proceed with its own paperless justice initiative.

3. **Impose limits on paperless filing to only when absolutely necessary**
   Nobody expects to fully and permanently eliminate hard-copies from the Ontario justice system altogether, or all at once. There will be exceptions and limits to what can be filed electronically. However, these exceptions should be scrutinized to ensure that, from an administrative or privacy standpoint, truly cannot be avoided.

4. **Eventually, evolve to digital court rooms**
   Many of the in-person hearings that arise or are currently required as part of a typical family-law matter could easily be conducted remotely instead. These include first appearances, case conferences, motions to change, and so on.

5. **Limit in-person hearings only to trials, and to determinations involving credibility assessments**
   Courts should not require in-person attendance in a physical courtroom except where findings relating to credibility are required, or where *viva voce* testimony is essential. In-person trials with *viva voce* evidence can still be paperless and digital. Lynn Kirwin, a lawyer at Galbraith Family Law, notes:

   > Electronic trials (paperless trials), while not the norm, have been embraced by some members of the judiciary as early as 2014. For example, Justice D.M. Brown, in Bank of Montreal v Fabish, a commercial litigation case, called upon members of the judiciary and counsel to make greater use of modern information technologies in court.
   >
   > The Ontario Superior Court of Justice, Chandra v CBC, Justice Graeme Mew in 2015 held an electronic trial, in that all documents referred to at trial were stored on a database managed by the registrar and

> displayed on video screens in the courtroom. Witnesses testified remotely by video conference and were shown trial documents displayed on a screen both in the courtroom and in the room in which the witness was present. In the courtroom was seen a split screen with one frame displaying the document and the other frame showing the live witness. According to Justice Mew, sound quality was excellent, counsel and registrar were able to efficiently manage the process, and the flow of testimony was not markedly less spontaneous than it would have been if the witness had been present in court. The entire experience was, from the perspective of Justice Mew, "entirely satisfactory."

Clearly, Justices D.M. Brown and Mew were ahead of their time in implementing technology in their court rooms.

Although our proposed changes did not happen overnight, the COVID-19 crisis may be the impetus for immediate change, and may serve to hasten the Ontario courts' evolution. And not a moment too soon.

It has been reported by the Federation of Ontario Law Associations that on March 27, 2020, the Ontario Court's Chief Justice Morawetz dispatched a letter to the legal profession. It advises that as of April 6, the scope of matters eligible to be heard by a court remotely will be expanded, in keeping with the court's plan to expand its virtual operations. The Chief Justice specifically noted that one of the challenges faced by the Court, however, was that it currently had only limited ability to receive materials in electronic format, and that there is a present lack of uniformity across the province in this regard.

As the fallout from the COVID-19 crisis continued to unfurl, it became clear that the Ontario justice system was unprepared for the inevitable constraints and adjustments made necessary by the pandemic.

Yet in Ontario the current-day Family Law Rules still *require* the parties to serve file and serve paper copies, the same way it was

done one hundred years ago. In this aspect, our justice system is still lagging far behind, even though the proposals for change go back almost a decade.

This is in stark contrast to the process in several U.S. states, for example, where paperless court filings have been the norm, and indeed have been mandatory.

Colorado is one of these jurisdictions: It has had mandatory e-filing of virtually all family law documents since January 1, 2006. The process was introduced on a rollout schedule, as determined by the Colorado Supreme Court and announced through its website. The court also published directives and practice standards aimed at lawyers and at the clerks of the relevant court systems (see "Colorado Judicial Branch" in the Resources section on page 141).

Likewise, in Texas, the court system has featured mandatory e-filing by lawyers since January 1, 2014, for certain courts. This initiative was spearheaded by the Supreme Court of Texas, which amended the Rules of Civil Procedure by way of an order to specifically allow for and mandate electronic filing. Today, the process starts with a court-provided technology infrastructure, and access to it is facilitated by third-party service providers from the private sector. The lawyer obtains an account with one of them and files the document through their interface, along with the case number. It's simple, and efficient. And it's fully paperless.

As the Colorado and Texas illustrations show, these kinds of mandatory electronic filing regimes have worked well for extended periods. The benefits accrue to the numerous stakeholders in the justice system. When asked about his experience with the paperless system, a Colorado lawyer named Ken Peck replied: "I filed in a Denver court once from a tent in Grand Teton National Park, another time from a plane at 35,000', and another time from the back seat of car traveling through New Hampshire. It's life changing."

The Ontario Family Law courts' slow transition to similar models serves not only the lawyers, but also the litigants they represent. Not to mention that it would streamline the court processes directly by reducing the overall staff workload around handling and filing hard copies.

And as regrettable as it is, the COVID-19 pandemic may serve as a "shove" in the right direction: In an announcement to the legal profession made on March 15, 2020, the Chief Justice of the Ontario Courts made a broad and rather astonishing order: In light of COVID-19, "[a]ll criminal and civil matters scheduled to be heard on or after March 17, 2020 are adjourned."[1] At least in part this was done to protect the health of court staff who would otherwise be on-site, including those tasked with receiving hardcopy court materials filed by litigants. It's not a stretch to speculate that this order may not have been as comprehensive if a paperless justice system was already in place.

However, as the adage goes: Better late than never.

[1] Chief Justice Morawetz, "Suspension of Superior Court of Justice Regular Operations," March 15, 2020, Ontario Courts: Superior Court of Justice, accessed February 9, 2022. https://tinyurl.com/4smarpmz.

CHAPTER 2

The Advent of Zoom Divorce

What Is a Divorce?

THE DIFFERENCE BETWEEN SEPARATION AND DIVORCE

A separation occurs when one or both spouses decide to live apart with the intention of not living together again. Once you are separated, you may need to discuss decision-making responsibility, parenting time, and child support with your spouse. You may also need to work out issues dealing with spousal support and property. You can resolve these issues in different ways.

You can negotiate a separation agreement. A separation agreement is a legal document signed by both spouses that details the arrangements to which they have both agreed. In some jurisdictions, independent legal advice is required to make the document legally binding.

You can make an application to the court to set up decision-making responsibility, parenting time, support, and property arrangements under the provincial or territorial laws that apply to you.

You can come to an informal agreement with your spouse. However, if one party decides not to honour the agreement, you will have no legal protection.

HOW TO LEGALLY END A MARRIAGE

To legally end your marriage, you need a divorce, which is an order signed by a judge under the federal law called the *Divorce Act*.

What If We Were Never Legally Married?

If you are not legally married, divorce does not apply to you. However, you can still negotiate a separation agreement or make an application to the court under the laws in your province or territory to set up decision-making responsibility, parenting time, child support, and other arrangements. Common-law spouses have fewer rights upon separation than married couples.

DIVORCE PROCEEDINGS

The marriage is not over until thirty-one days after a judge grants you a divorce order at the end of the process. Before you begin divorce proceedings, you may wish to consider whether marriage counselling could help you and your spouse. Once you have started formal divorce proceedings, you may stop the process at any time if you and your spouse wish to think about reconciling.

Who Can Apply For a Divorce in Canada?

You can apply for a divorce in Canada if:

- You were legally married in Canada or in any other country;
- You have been separated from your spouse for one year (unless you meet one of the other exceptional grounds of adultery or cruelty) and believe there is no chance you will get back together, or you have already left your spouse and do not intend to get back together; *and*
- Either or both of you have lived in a Canadian province or territory for at least one year immediately before applying for a divorce in that province or territory.

You may want to consider getting a legal opinion for religious marriages that may not meet the civil standard or if there was some defect that rendered your current marriage void.

What Is Zoom?

Zoom is a program that allows you to communicate electronically via audio, video, or both. It is similar to Skype. You can use your desktop computer, laptop, tablet, or smartphone to access Zoom. An internet connection, microphone, speakers, and camera are essential requirements.

You can have a free Zoom account or pay for a subscription and enhanced services and features. Zoom has the ability to host a number of people all at once and also offer breakout rooms for private meetings apart from the primary conference. Other features include screen sharing, the ability to record meetings, and various settings that make the program user-friendly. As with any communication over the internet or cell networks, there are privacy and security risks associated with Zoom calls and conferences. However, by exercising some common-sense precautions, these risks can be minimized.

In Ontario, all in-person divorce hearings were effectively cancelled. To appear in person a party would require the court's permission (or leave) in advance. The Court has recently pivoted back to a blend of in-person and hybrid remote hearings depending upon the step required in each case.* The Court appears to be reverting to in-person hearings and some of the initial efficiencies of digital files, remote hearings by conference calls, Skype, or Zoom may have been tempered by the desire for in-person court attendances and advocacy. Time will tell. (See "Scheduling of Family Matters in the Ontario Court of Justice" on page 147, and "Determining the Mode of Proceeding in the SCJ's Family Court" on page 156.)

So, while parents are sitting on their couches, they can simply log on to Zoom for a virtual hearing or "Zoom divorce." The efficiencies of this approach are endless, no longer needing to fight traffic, look for and pay for parking, wait for court security, *or* wait for your case to be heard.

The disadvantages can seem hidden, but they are real. Less in-person contact with counsel, your former spouse, and the judge creates less chance of negotiation and settlement. Victims of domestic violence may not have a voice or be pressured into an

unfair result. Many have difficulty adapting to new technologies or do not have a stable internet connection or suitable electronic device.

Why a Zoom Divorce?

MAKING THINGS EASIER: USING ZOOM TO RESOLVE YOUR FAMILY LAW NEEDS

Navigating a divorce can be confusing and unsettling at the best of times, much less during a pandemic. With Ontario's periodic stay-at-home orders and closed courthouses, you might think that getting a divorce is impossible.

Through the convenience of Zoom, our team at Russell Alexander Collaborative Family Lawyers are able to conduct divorce proceedings safely and efficiently. We will help you resolve your divorce **without** setting foot in a courtroom.

Family law matters are now handled virtually, which enables us to represent anyone within the **Province of Ontario**.

Ontario Courts Adapting to Lockdowns and Other Restrictions

The COVID-19 pandemic has required Ontario courts to adjust to physical distancing requirements by temporarily closing courthouses, and by conducting hearings remotely via Zoom. Documents can now be submitted for filing electronically and signatures can be obtained with DocuSign, one of many virtual signing programs with authentication mechanisms built in. The courts have been deferring many matters but have been prioritizing urgent matters, specifically in relation to child-protection matters and the best interests of the children.

Lawyers and Zoom Divorce (also good tips for litigants)

LOOK PROFESSIONAL

Counsel need to step up and lead by example in this new age of the Zoom divorce. For lawyers, a friendly reminder that you are pro-

viding a professional service, so look the part. Staff and colleagues also may take their cue from how you dress and act, so show some leadership. If you are representing yourself, you should also consider following these pointers.

Clients expect their lawyers to dress and act professionally. This can be difficult for some who are in lockdown and not regularly attending an office setting or going to court. Getting "dressed" for work is also helpful for getting into the right mindset in making the mental shift from home to work – like putting on your gowns before a contested motion or trial.

For many, getting dressed helps them make the mental shift from home to work, so even at home consider maintaining this step in your routine. Don't go halfway. That's right, wear pants when attending to client matters or court hearings. We have all heard of stories of reporters and other professionals who thought it was a good idea to go pantless. Don't do it. It will reflect poorly on your reputation if you are caught, and worse on the profession.

Dress it up. Perhaps take a lint brush to your blazer or top if you have pets in your home, and don't forget to accessorize: cufflinks, watch, ties (I think are a must for men), and pocket squares – why not!

RESTING BOREDOM FACE

Resting boredom face (RBF) is also referred by some as "resting bitch face." *The New York Times* started the pop-culture term and internet meme "resting bitch face." There is lots of controversy regarding the gender focus of the word "bitch" as being directed at women, so we can also refer to this as "resting boredom face." Studies show that we make judgements based on facial cues, associating happy faces as being more trustworthy. You should be mindful of ensuring a "neutral alert" face rather than the alternative. Here are some simple tips to avoid RBF:

- Mouth: Try to look at ease with no tension.
- Brow: Tension in the brow can make one look annoyed and angry. This may be alleviated by lifting your eyebrows slightly.

Remember your audience: Stoic facial expressions from your listeners may be off-putting, but try to make eye contact and do not always expect physical or verbal cues from your audience.

The Zoom Divorce Hearing

BE PREPARED AND ARRIVE EARLY

Run a mock Zoom conference with your client, or have a clerk do this, prior to the scheduled court hearing. Turn on the video, test your audio, position yourself in relation to the camera (ideally eye level to the camera), and get acquainted with the rooms: waiting room, main room, and breakout rooms.

Find out the court's preferred format for documents and ensure your court documents meet the size limits and are filed on time. Be mindful of the practice directions issued by the court regarding page limits and filing requirements. If you have a case that requires an interpreter, let the court know because setting it up requires advance preparation.

Take advantage of Zoom's breakout rooms feature to consult with clients and check in with court staff.

Remember, patience is the new currency of the pandemic. It may take time to access materials online while also appearing online. Ensure your documents are easy to find.

PLAN FOR BUMPS IN THE ROAD

Consider having a hardcopy of your essential documents (briefs, memos, draft orders) ready in case you experience a network failure. One tip is to also have homemade signs ready to avoid interruptions by people speaking over each other and to communicate possible problems, such as an unstable internet connection, or "faster," "slower," "louder," "you are muted," "your video is off."

LET YOUR TEAM OR FAMILY KNOW THAT YOU ARE ONLINE

If working remotely or from home, let your family know. That gives them a chance to access your work area (whatever part of the home

it is) to get from it whatever they might need. For example, if you are in the dining room, let your family know when you will be starting. They may want to pop into the kitchen to get a coffee or make lunch. Also let your team/family know when you are done so they can stop tiptoeing around the house.

Consider posting a sign on your front door asking couriers not to ring the doorbell or knock on the door and to leave any packages at the door to avoid unexpected interruptions. If you have a dog or other pets, consider exercising them or taking them for a walk prior to your court hearing. They will be a lot calmer and relaxed and less likely to interrupt you. It's also a good idea to get some air and exercise to help you clear your mind before starting a court conference.

HAVE A CLEAN AND TIDY SPACE

In the section "Look Professional" on page 22 above, we reviewed the importance of looking professional. This extends to your workspace when you conduct a Zoom divorce or online hearing. Clean the bookshelf or area behind you. Make sure other client files aren't visible. Avoid ceiling fans and any backlight, such as from a window or door. You can consider using a fake background, but they can be distracting. I prefer no fake background because they can look cheesy and unprofessional. However, they can be necessary if you are on the road or in an environment that will not present as professional. In this case, you can consider taking photos of your office, office desk, or boardroom and use them as alternative backgrounds when necessary.

HAVE A BACKUP PLAN

Your device might fail and/or your internet connection might be spotty. This can be a common problem when you are on the road or travelling. If you are required to travel at the same time as you are conducting a Zoom divorce hearing, avoid areas with a spotty internet connection. Plan where you will be when it is time to start your conference.

Always have an alternative backup device. If you are on a laptop, the battery might fail. Have an alternative power source. Consider using a smartphone or tablet as an alternative device should your primary connection fail. You could also consider setting up a mobile hotspot on your phone or tablet to provide a secure internet connection for your other devices. You may need to set up a hotspot to connect to your audio. Avoid using public Wi-Fi or unknown networks as they pose a significant risk of a data or security breach. Also encourage your client to have alternative systems in place.

Being prepared and ready to start early can save time and expense. There will be tech hiccups, both expected and unexpected, when it is time conduct your Zoom divorce. Anticipating bumps in the road and having a plan to deal with them in advance will help set the stage for success.

LIGHTS AND SOUND

Lighting goes a long way to looking successful. If you are in a room with natural light (door or window), try to face the light. Always avoid having the natural light directly behind you. Consider purchasing lighting for your Zoom hearings. Ring lights are popular. I use two LED lights on tripods and position them at 10 o'clock and 2 o'clock about 30 cm above head level. They are relatively inexpensive and can be delivered from Amazon or other online retailers usually within a few days. Consider using parchment paper over each light to provide a softer colour and help reduce squinting (and possible RBF).

Desktop computers are not always equipped with speakers or microphones. It is worthwhile to invest in some quality equipment. For a microphone I use the Blue Yeti (also easily available online) and would recommend pairing it with a pop filter. Keep the Yeti vertical; do not tilt it towards you as this will diminish the audio quality.

CAMERA

If you are using a desktop computer, you will likely need to get a webcam. For the reasons already mentioned, it would be worthwhile

to invest in a quality HD video cam. Depending on your setting, you can also get remote-control cameras and webcams with wide-angle lenses.

I use a MacBook Pro laptop with a decent quality video camera built in. Consider a laptop stand to raise your computer's camera to eye level (or some books will also do). I have a small sticky note with a smiley face and arrow pointing to the camera to remind me to look into the camera. It can be distracting when justice participants use multiple screens and spend the conference looking away from the camera.

ACTION

Aim for a quiet workspace when conducting a Zoom divorce. Zoom offers a feature that enables the muting of various types of background noise. Work at a stable workstation. Driving or walking around can be distracting. Consider whether your desk or table shakes when you lean or write on it. This can also pose a distraction.

I am not a fan of fake backgrounds but appreciate that we do not always have the perfect workspace to conduct a Zoom divorce hearing. See the Resources section on page 142 for the following sources for backgrounds:

- Pexels.com offers a vast collection of high-definition desktop wallpaper backgrounds. They are lush and enormous, and you can't take your eyes off of them.
- Studio Ghibli provides a collection of stills from their movies to use for free as Zoom backgrounds.
- Unsplash provides high-resolution free photographs, including office-like images.
- Zoom backgrounds of famous shows from Modsy. You can look as though you're working from Seinfeld's apartment or Monica's place in *Friends*.

Planning and preparing in advance of your Zoom divorce hearing will go a long way towards an effective hearing. There

will be bumps in the road and unexpected glitches, but planning, practice, patience, and common sense will help set the stage for a successful outcome.

Zoom Divorce Tips & Tricks

1. Be early.
2. Dress professionally.
3. Prepare for bumps in the road. Plan for tech failures and have alternative systems.
4. Sit up in your chair. Avoid slouching or leaning on the table in front of you.
5. Remember to breathe naturally. Proper breathing calms your nerves and helps you think better, and you look and feel more alert.
6. Always make eye contact; look into your camera.
7. Speak clearly and sound confident. Make sure that other participants can hear you. It is OK to pause and confirm if everyone can hear you clearly.
8. When you arrive for your Zoom hearing, address the court with a good morning or good afternoon. This will also confirm that your device has finished connecting. Then mute your microphone until it is your turn to address the court.
9. Tell your client to keep their device muted at all times unless specifically requested by counsel, court registrar, or presiding justice to address an issue. Have your client practise muting and unmuting the devices they plan to use (computer, and maybe smartphone backup) in advance as the buttons may be different on different screens.
10. Do not update your Zoom software shortly before the hearing. The update may take several minutes and cause you to be late.
11. You are not permitted to record court proceedings. If you need to record the proceeding or take a screenshot, you must first obtain the permission of the presiding judge.

Your lawyer, administrative staff, opposing counsel, or other party may be operating from another jurisdiction or part of the world since working remotely/virtually is the new norm. Ensure there is clarity with time zones, Zoom links to the proper courthouse or judge, the time of appearance is accurate, and monitor any changes to court dates/times as most appearances are pre-scheduled and can be changed at a moment's notice. Email communication is now more essential than ever for updates.

NOTE

*On March 17, 2022, Ontario Superior Court Chief Justice Morawetz (citing the importance of in-person interaction, advocacy, and participation) announced a return to in-person court hearings commencing April 19, 2022, for case conferences, long motions, settlement conferences, and trials – subject to the discretion of the presiding Judge (https://tinyurl.com/mr3ztkhz). Other hearings will be conducted via a hybrid or remotely. It appears that these factors superseded the benefits of efficiency and cost savings of remote hearings.

For some jurisdictions, it may take several months to schedule an initial case conference so it is likely that a vast majority of cases for the balance of 2022 will still be conducted remotely. Also, if there are further COVID variants that pose significant health risks, the court will likely quickly cancel in-person attendances and pivot to remote hearings.

CHAPTER 3

Zoom Divorce: The Good, the Bad, and the Ugly

The Good: The Benefits of Zoom Divorce

CONDUCTING A COURT HEARING FROM THE PRIVACY AND SAFETY OF YOUR OWN HOME

Zoom divorce has significant benefits as you can have your court hearing or conference from the safety, comfort, and convenience of your own home.

In pre-pandemic times, an ordinary court day would last several hours. You need to clean yourself up and get dressed, drive or commute to the courthouse and perhaps your lawyer's office in advance, deal with traffic and potential delays, and find and pay for parking. Once in the courthouse, you need to line up and get processed by court security – similar to what you might experience at an airport security line up – and then locate your courtroom and find where your matter falls on the court's docket. You may be the first one on the list at 9:30, or you might not get called until the afternoon, so arrange for lunch and health breaks.

You then wait in a room in the busy courthouse until your matter is called. You would then get a chance to see the judge for your

hearing, and you may be told to go to the courtroom hall or anti-room to negotiate further. Perhaps you'll learn where your matter falls on the court's docket. you would then receive further recommendations or a court order, and then you'd make your journey home. Your lawyer's clock is running during this whole process, and their bill can get expensive.

Now let's compare this experience to Zoom divorce. You log in to Zoom from your device at home. Your case will most likely start on time. You may spend thirty to forty minutes with the judge, twenty to thirty minutes to debrief with your lawyer, and then you are done for the day. Simple as that. Instead of paying your lawyer for six to seven hours of their time, your lawyer may only charge you an hour or two for the actual court hearing. Fast, convenient, and efficient.

ZOOM DIVORCE CAN BE LESS EXPENSIVE AND SAVE IN COSTS

As illustrated above, Zoom divorce results in significant savings regarding both time and fees. The court is moving to a paperless system whereby the systemic delay and expense of the old system are streamlined. We no longer need to produce large paper briefs and casebooks that need to be photocopied, served on your spouse and opposing parties, and filed with the court. This is also better for the environment.

Your lawyer's time is also significantly streamlined, resulting in thousands of dollars in potential savings for each court hearing.

Finally, the emotional stress and strain associated with an in-person hearing and potential disputes and conflicts with the court or your former spouse are greatly reduced.

The Bad: The Perils of Zoom Divorce

SOME PEOPLE ARE LEFT BEHIND

Unfortunately, with increased reliance on technology, many people are getting left behind. In rural and northern communities high-speed internet is not readily available. Not everyone can afford the latest technology, and their phones and computers are not compatible

with the requirements for Zoom divorce, including up-to-date software and functioning cameras, microphones, and speakers.

Gaining access to the justice system with court restrictions and closures has been very difficult for many. Some have to borrow devices from friends and family, or conduct the hearings from their lawyers' offices. Many, including the elderly, find the new technology and devices overwhelming and confusing.

DEEPFAKES AND FRAUD

You may have seen the fake TikTok video of Tom Cruise, or read about the cheerleader's mom who was making deepfake videos of her daughter's rivals. Deepfakes seem to be commonplace now. (See "TikTok video" in the Resources section on page 142.)

Unfortunately, with the rise of Zoom divorce, we are seeing an increase in tampered and altered evidence submitted to the family court. Deepfakes and frauds can take the form of altered audio, video, documents, and fake images of text messages. We need to be diligent to spot this behaviour and bring this conduct to the attention of the court.

Technologically, deepfakes are a few steps up from the concept of email "spoofing." Email spoofing involves creating an email message with a forged address for the sender, for example, making it seem as though the email originated from a particular person, when it did not. In whatever form, tech-based deception is getting harder and harder to spot, especially when it involves the use of advanced technology and software.

Case in point: Deepfakes and spoofing have even infiltrated the family-court system in the form of fake evidence proffered to a judge – usually by a spouse or parent in support of their position at trial or in a proceeding.

The potential for misuse and misrepresentation was illustrated in a recent custody battle, in a case called *Lenihar v. Shankar*. The court began its judgment in the case this way:

> Text messages, emails, and social media postings have become leading sources of evidence across a wide array

> of criminal, civil, and family disputes. Judges have before them the actual words and deeds of the parties, written or posted in the party's own hand. Or do they?
>
> In an era of "fake news," it should come as no surprise that from time to time courts will be presented with fake evidence. Accessible technologies have made it easier than ever to generate or alter phone calls, text messages, emails, social media accounts, photographs, and even experts' reports in a manner that disguises their origin and fakes, or "spoofs," their intended purpose.

On the fifth day of trial, the longstanding custody dispute took a sharp turn when the mother, who was a citizen of India but a permanent resident in Canada, tendered a series of what the court called "transparent and shocking forgeries" she created. These included an altered paternity test, a forged Sperm Donor Agreement, and a sham email exchange between the father and his counsel that alleged the planning of a criminal act to remove the mother from the litigation.

The mother's rampant deception prompted her current lawyer (who was the last in a series of eleven) to withdraw immediately; the mother advised the court she would be continuing as a self-represented litigant. However, only thirty hours later she hopped a plane to India and did not even stop to say goodbye to the daughter over whom she was seeking decision-making responsibility. The court also heard evidence that the parents' brief three-month courtship, as well as their volatile long-distance marriage, were peppered with confusing lies and controlling behaviour by the mother.

After untangling all the fake text messages and emails, doctored audio recordings, false testimony by imposter witnesses, and other discredited evidence tendered by the mother, the court readily granted custody to the father, a native resident of Oregon.

At the end of the judgment spanning over 250 paragraphs, the court offered the following prescient comments about the rise of digitally altered evidence of all types, and the court's own role in weeding out the forgeries:

As our court transitions to a fully digital platform, this trial was a stark reminder of the potential for the manipulation and misuse of electronic evidence.

The most common internet definition of a spoofed email is when the email address in the "From" field is not that of the sender. It is easy to spoof an email, and not always so easy to detect. For sophisticated senders, such as actors who are "phishing" for information of commercial value, the origins of a spoofed email may never be detected.

Spoofing originates from the idea of a hoax or a parody, and in the early days of the internet it was a legitimate tool for managing communications so that a user believed that an email came from one source, when it actually came from another.

Spoofing first arose as a term in family law (more commonly referred to in the U.S.A. as divorce law) to describe cell-phone users hiding their identity and/or location for nefarious purposes. As a result of advances in mobile apps, websites, forwarding services, and other technologies, callers are now able to change how their voice sounds to evade a blocked number or to pretend to be a person or institution with whom their target was familiar. Targets can be tricked into disclosing sensitive information, harassed, stalked, and frightened.

Any electronic medium can be spoofed: texts, emails, postings to social media, and even messaging through a reputable software program specifically designed to provide secure communications between sparring parents.

What stood out in this case was the purpose of the spoofed communications. Instead of tricking or scaring the target, electronic communications were spoofed to deliberately damage the other parent's credibility and to gain litigation advantage. In *R. v. C. B.*, the Ontario Court of Appeal foreshadowed the relevance of inauthentic electronic evidence. "[T]endered as bogus" is a critical catch that is not always apparent. A party's lament that

"it wasn't me" may appear credible at one stage of the proceeding but may no longer be credible at a later stage. An email or text that on first reading appears authentic might later be found to be inauthentic when examined within the evidence as a whole.

Fake electronic evidence has the potential to open up a whole new battleground in high-conflict family-law litigation, and it poses specific challenges for courts. Generally, email and social media protocols have no internal mechanism for authentication, and the low threshold in the *Evidence Act* that requires only some evidence: direct and/or circumstantial that the thing "is what it appears to be" can make determinations highly contextual.

In a digital landscape, spoofing is the new "catch-me-if-you-can" game of credibility.

I urge lawyers, family service providers, and institutions to be on guard, and to be part of a better way forward. Courts cannot do this work alone, and the work must be done well. High-conflict litigation not only damages children and diminishes parents, it also weakens society as a whole for generations to come.

As technology becomes more accessible, and as fake evidence gets easier to create, it may be tempting for family litigants to embark on a little digital wizardry of their own in a bid to bolster their case. For those who might be tempted, the decision in *Lenihan v. Shankar* serves as a stark warning: In a separate ruling, the court slapped the mother with an order requiring her to pay a whopping $438,000 in costs.

If a judge discovers you have tampered with evidence, the result to your credibility and possible success of your case will be devastating. In addition, you may face significant cost consequences and even criminal charges if you attempt to alter evidence or mislead the court.

DIGITAL SAFETY AND PRIVACY ISSUES

Privacy issues can easily be overlooked during Zoom divorce. We need to be mindful of privacy and privileged or confidential

solicitor-client communications. Technology used for Zoom divorce, such as cell phones, computers, tablets, smart devices, watches, ring/smart doorbells, Alexa/Google, TVs, and other smart appliances can create privacy gaps. These issues should be explored and addressed.

Steps should be taken to ensure the decorum and privacy of your Zoom divorce. No one else should be in the room during a court proceeding. If parties are living together, they should endeavour to use separate rooms or buildings. You may consider conducting the hearing from your car if necessary.

The Ontario Association of Collaborative Professionals (OACP) technology committee recently studied the issue of protecting privacy during digital conferences and created this useful checklist for addressing privacy concerns.

OACP's Digital Safety and Privacy Checklist

1. **Put a passcode on your device.**
   The easiest thing for you to do is to put a passcode on your phone/computer/tablet/etc. Having a passcode will make it harder for someone to pick up your device to scroll through, access your accounts, or install something malicious.

2. **Turn off location sharing.**
   Most devices have a GPS that can pinpoint your general or exact location. With this capability, many applications may collect and share your location information. However, many smartphones and devices give you the option of managing your location sharing under the "settings."

3. **Turn off Bluetooth when not in use.**
   Bluetooth allows your phone and devices to communicate with other devices, such as the hands-free option in your car or your printer. However, if accessed by someone else, they could misuse it to access your information or intercept your calls. Turn off the Bluetooth on your phone and turn it on only when you need to connect with another device. Many phones also allow users to set passcodes or additional security levels

on their Bluetooth as well. Use all available options to increase your privacy.

4. **Check your privacy and security settings.**
   Most smartphones have settings that will help you manage your privacy and safety. You can find these controls through the settings on your phone or through the settings of a specific app. These settings may allow you to limit an application's access to the data on your phone, including access to your location, pictures, contacts, notes, and so on.

   Read the privacy settings guides that many social-media sites now offer and adjust your privacy settings to meet your needs. Here are links to the privacy guides of a few of the major sites:

   - Facebook Privacy Basics: https://tinyurl.com/9ah7fenw
   - Twitter: Protecting Your Personal Information: https://tinyurl.com/2p8h4hdw
   - Snapchat Privacy Center: https://tinyurl.com/5n8u5rk5
   - Instagram Privacy Settings & Information: https://tinyurl.com/3s59phen

5. **Cameras and audio devices.**
   If you suspect that you're being monitored through cameras or audio recorders, it may be happening through hidden devices, gifts received from the abusive person, or even everyday devices like webcams, personal assistants (such as Google Home or Alexa), or security systems. If you're concerned about hidden cameras, you may consider trying a camera detector, though some will locate only wireless cameras, not wired cameras, or vice versa.

   Everyday devices or gifts may be able to be secured by changing account settings or passwords. Built-in web cameras can be covered up with a piece of removable tape (although this only addresses the camera, not the spyware on the computer).

   A device can be hidden in your belongings or vehicle. Check the trunk, under the hood, inside the bumper, and

seats. A mechanic or law-enforcement officer can also do a search.

Remember to consider making a safety plan and documenting evidence before removing devices or cutting off an abusive person's access.

Have a safety plan and document evidence before removing or cutting off access of any location tracking or recording devices as it may alert the abuser and increase the risk of safety.

6. **What online accounts are you automatically logged into?**
   One of the convenient features of having a smartphone is to quickly access email or social media accounts with just a tap of a finger. However, this also means that you are always connected to accounts that may contain sensitive information. Consider logging out of certain accounts if you can so that others can't access those accounts if they are using your phone.

7. **Review the apps you download.**
   Know the apps that are on your phone, and if you have an unfamiliar app, delete it. Apps are easy to download and easy to forget, but depending on the app, it could be accessing private information or it could be a monitoring program that someone surreptitiously installed.

8. **Put a password on your wireless carrier account to keep others from accessing your account.**
   If you're worried that someone might be contacting your wireless carrier to obtain information about you and your account, you can ask your wireless carrier to put additional security on your account, such as a password. Only someone with this password will be allowed to make changes to your account.

9. **Lock down your online phone account.**
   Keep in mind that even if someone doesn't have access to your phone, it might be possible for them to access your online

account. Online accounts can include your wireless carrier account, call logs, your email or social media accounts, your Google Play/Apple AppStore, or iCloud account. Update the passwords and security questions for those accounts to ensure someone else can't get access.

10. **Use virtual phone numbers (such as Google Voice) to keep your number private.**
    To further maximize your privacy, consider using a virtual number, such as Google Voice or a throwaway number, so you don't have to give out your actual phone number. A virtual phone number will also allow you to screen calls and make calls/send texts from the virtual number.

11. **Try not to store sensitive information on your phone.**
    Although it may be tempting to store information such as passwords, account numbers, or personal information on your phone, the less sensitive information you have, the less likely someone else can access it.

    You might even want to consider deleting sensitive text messages or voicemails so they're not stored on your phone. Clear the call display frequently on all phones and computers the partner might access, so s/he can't see who you have been calling or receiving calls from. Clear the browser history every time you use your computer.

12. **Use antivirus and antispyware software on your phone.**
    After years of warnings, we are fairly used to ensuring we have antispyware, antimalware, and antivirus programs on our computers. This software should also be used on our smartphones. Search for programs in the app stores and discuss them with your wireless provider. Some phones come with built-in software that you won't want to override.

13. **Take care when using safety apps.**
    There are many "personal safety apps" available for download that offer to increase the users' personal safety – immediately connecting them with 911 or select trusted individuals.

Several of these apps are designed and marketed specifically to survivors of violence. Before relying on any safety app in an emergency, be sure to test it out with friends and family to be sure that it works correctly for you. Your trusted friend may not receive your location with your emergency call or may not receive your call for help at all. Always know the quickest way to access 911 on your phone in case of an emergency. Many phones have a quick emergency call button that you can dial even without entering the phone's passcode.

14. **Put a passcode on your device.**
    The easiest thing for you to do is to put a passcode on your phone/computer/tablet/etc. Having a passcode will make it harder for someone to pick up your device to scroll through, access your accounts, or install something malicious.

Fewer Opportunities for Settlement

In a settlement conference ruling in *Ni v. Yan*, the judge emphasized the need for parties to come to such conferences fully prepared, including making all necessary financial and related disclosures well in advance of the scheduled date. Otherwise, the judge said, an informed decision on settlement simply cannot be made.

The spouses in *Ni v. Yan* had assets in Canada and China. Their outstanding issues involved the equalization of their net family property, as well as support. Collectively, their settlement conference briefs totaled 236 pages, and had twenty tabbed attachments. And yet, their materials were incomplete: Both spouses hadn't fully complied with the mandatory Family Law Rules applicable to settlement conference proceedings, and each accused the other of falling short of their disclosure obligations.

For example, the husband failed to comply with the mandatory rule requiring him to update his financial statements, while the wife failed to provide an updated net family property statement no less than thirty days before the settlement conference. Neither had estimated their trial time, as the rules require.

In response to the parties' spate of shortcomings and omissions on disclosure, the judge remarked:

> Family law litigants are entitled to one settlement conference unless otherwise permitted by the case management judge. They are expected to come to that conference fully compliant with all the Family Law Rules. A settlement conference should not be the forum to dispute and adjudicate upon disclosure issues where there are numerous items in dispute, the relevance and proportionality of which can only be determined by a motion. To hold a settlement conference otherwise is a complete waste of the court's valuable time and the parties' resources. Either parties come to a settlement conference prepared to discuss settlement confident that they have as much relevant information as obtainable to assist them or they come unprepared.

The judge then concluded the parties in this case were "clearly unprepared," and pointed out that their non-compliance with the rules was evidence of that. To this, the judge added:

> It is inconceivable that a party who raises serious disclosure shortcomings can make an informed settlement decision or that a lawyer can competently give settlement advice to such a client. A settlement conference is not a disclosure dartboard.

The result of such fundamental unpreparedness was the squandering of precious court resources, the judge said. Borrowing from the often-cited older decision in *Greco-Wang v. Wang*, which included the reproach that "[m]embers of the public who are users of civil courts are not entitled to unlimited access to trial judges," the judge in *Ni v. Yan* then added:

> Too often serial settlement conference events are permitted in circumstances where there are continuing complaints about inadequate or refused disclosure impacting a party's ability to make an informed settlement decision. That practice must end.

After outlining the factual details of the particular settlement conference in the case, the judge concluded:

> The parties are entitled to one settlement conference unless otherwise ordered. Either they comply with their disclosure obligations, bring a disclosure motion if they are dissatisfied with the other's disclosure, and comply with the Family Law Rules or their day in court will not happen anytime in the near future. A settlement conference can serve many purposes. Serialized mediation is not one of them.

With Zoom divorce, there is no opportunity for in-person face-to-face negotiations. With the exception of Zoom breakout rooms, there is less chance for the presiding judge to go into the hall and work out specific issues then report back to the court. In short, the opportunities for traditional settlement conventions can get lost in the digital world. With Zoom, once the conference ends, people go back to their daily lives and less effort is devoted towards resolution.

In pre-pandemic times, it would not be uncommon for lawyers and their clients to stay at the courthouse and negotiate into the night until most or all of the issues were resolved. Perhaps this is simply another bump in the road in the court's pivot to digital proceedings. Time will tell.

The Ugly

INTIMIDATION AND DOMESTIC VIOLENCE

With people stuck living together because of finances, the hot housing market, or COVID-19 lockdowns and other safety protocols, we are unfortunately seeing a rise in intimidation and an inability for some litigants to access services and resources that would ordinarily help level the playing field.

Unfortunately, we are also seeing a rise in domestic violence. Screening and risk assessments for domestic violence need to be

completed. We know intimate partner violence can become very serious and we must enhance safety protocols. Zoom divorce may heighten risks since court security are not present. A recently circulated video showing a defendant getting caught and arrested in the complainant's home while she was testifying against him at his criminal trial highlights the need for concern about witness safety during digital hearings. (See the Resources section on page 142.)

Screening and safety protocols for victims of domestic violence while going through a Zoom divorce need to be enhanced to understand just how serious this problem can get. For instance, there is a video that shows a defendant getting caught and arrested in the complainant's home while she was testifying against him at his criminal trial. (See the Resources section on page 142.)

Separation is a time of heightened risk for family violence. This violence is not always just physical; it often involves multiple forms of abuse, including sexual, psychological, technological, economic, coercive, and even litigation abuse.

What the Statistics Are Telling Us

(See "Canadian Domestic Homicide Prevention Initiative" in the Resources section on page 142 for the full report.)

- From 2010–2019 in Canada, there were 815 domestic homicide victims.
- 1 in 11 were children aged 17 and younger (9%).
- 79% of the adult victims are women.
- 86% of domestic homicide perpetrators are men.
- 54% of domestic homicides were identified as belonging to one or more of the four vulnerable populations: Indigenous, immigrant/refugee, rural/remote/northern populations, and children killed in the context of domestic violence.
- 7 provinces have Domestic Violence (DV) Death Review Committees through the Office of the Chief Coroner or Medical Examiner.

- Women are significantly more likely to live in fear, suffer repeat and serious violence, suffer injuries, seek medical attention, and be killed compared to men.
- Women are more likely to be sexually assaulted or choked by their spouse.
- Women's level of fear for their safety was 7.6 times the rate expressed by male victims.
- Police reports across Canada show women to be victims in 80% of domestic violence cases.
- In Canada, between the years 2010 and 2019, there were 815 domestic homicides with women representing 79% of all victims. One in eleven victims of domestic homicide were children.

Family violence also has a significant impact on children. This violence can be fatal to the adults and the children.

With Zoom divorce, screening and assessing risk of family violence can get overlooked. We need to be aware of this sometimes ugly side of Zoom divorce, ensure proper screening protocols are in place and followed, and set up a safety plan and resources for people at risk of domestic violence.

The Law Society of Ontario (LSO)'s *A Primer on Managing the Family Violence File* is a helpful resource to learn more about family violence.

CHAPTER 4

Zoom Trials (and Tribulations)

Zoom Divorce May Double the Length of Trials

Divorce trials can last between two and ten days, and sometimes even longer depending on the issues and costs per client can exceed $5,000 a day, plus disbursements and fees for experts. Cases are subject to a trial management conference that is designed to identify issues and streamline the process. For instance, witness lists and documents are exchanged in advance of the trial, and legal issues and filing deadlines are specified by the court.

A good rule of thumb is that a Zoom divorce trial will take at least double the time an in-person pandemic trial would take. This additional time requirement is the result of several factors. Reviewing documents at trial can always be arduous, especially when counsel is unprepared, or the documents are not readily available. CaseLines and other online digital filing systems are still relatively new and may slow trials down when not used effectively.

Trials often move at the pace of the slowest participant and if there are connection issues or someone is experiencing hardware or software issues, this too can cause delay and increase the time required to conduct a proper trial. Keep in mind that there are several participants required for a trial: the Judge; both litigants; usually two or more counsel; the court registrar; witnesses; and

possibly other stakeholders, including children's counsel (or the Office of the Children's Lawyer [OCL]), child protection counsel of the Children's Aid Society (CAS), and sometimes additional parties and counsel who have been added to the proceedings.

Finally, we need to be mindful of authenticity and issues of deepfakes when conducting trials electronically. If this becomes a live issue and there is an allegation of fraud or forgery, this could result in several outcomes: The trial may be delayed to investigate the issues more closely, admissibility of the evidence may become a legal issue for argument, the weight (if any) the court should assign to the evidence would need to be assessed, and credibility issues would need to be argued and assessed.

Any or all of these possibilities could significantly add to the trial time required to complete a Zoom divorce, along with the corresponding legal expense.

Issues of Credibility

Credibility involves the court's assessment of the evidence and the witness's trustworthiness and reliability. For in-person trials, this involves the witness testifying in a witness box approximately five to twelve feet away from the judge, while he or she observes the proceeding and usually takes notes. A long-standing objection to online trials was the issue of credibility as it was thought that you needed to look the witness in the eye, in person, to assess whether he or she was being honest with the court. With in-person hearings via Zoom, the opportunity to assess a person's credibility by assessing their body language and other indicia can be lost. The argument accordingly goes that this could result in incorrect outcomes and injustice.

However, the opposite appears to be true. It is the judge's role in divorce trials to assess credibility. Judges have been reporting that Zoom trials make the assessment of credibility easier because it allows for the close-up video view of a witness's face and mannerisms.

CHAPTER 5

CaseLines

What Is CaseLines?

CaseLines is a cloud-based, document-sharing platform for civil, family, and criminal proceedings. CaseLines allows the electronic presentation of documents to the judge and parties on a court date, whether it is proceeding in person or virtually. A digital court file is created, similar to the hard copy that was filed at the court, and it can be easily accessed electronically.

This modern way of administering justice allows courts to operate remotely, enabling court services to move online. There are many benefits to CaseLines, including, but not limited to, the following:

- User-friendly
- Materials can be uploaded in multiple formats
- Easily organized
- Materials can be uploaded at any time
- Private notes can be made, and parts of documents can be highlighted
- Search feature for all uploaded documents
- Parties or counsel may navigate and direct the opposing side to view specific sections

Court materials will still be required to be served and filed with the court office in accordance with the applicable Family Law Rules and Notices to the Profession. Once your materials have been filed, parties will then upload these to CaseLines for review by the judge.

Do You Need a CaseLines Account?

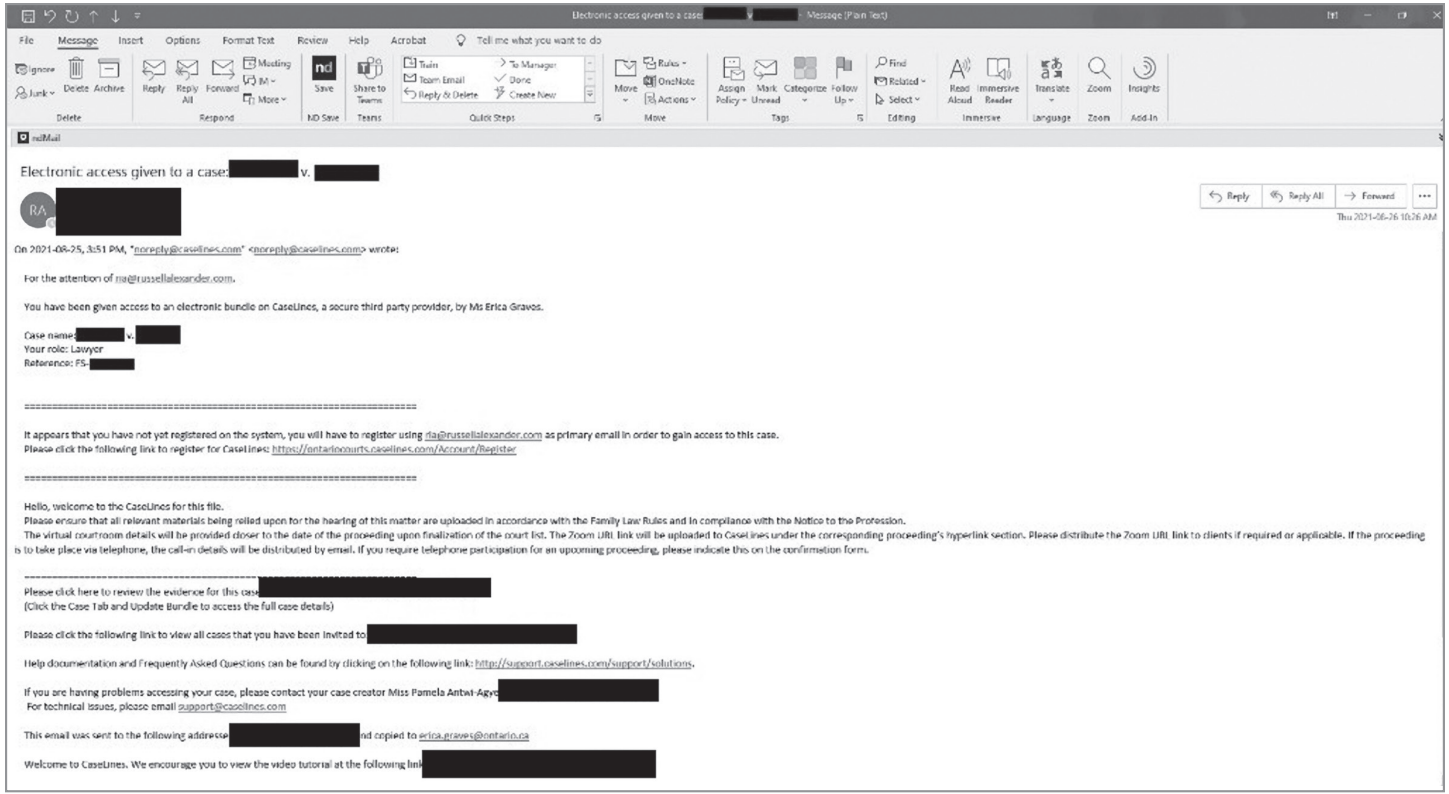
If your case has been selected for the CaseLines, you will receive an email invitation from CaseLines to upload your materials one to two weeks before your court event. The email will include a link to your case within the system. You must register for CaseLines prior to having access to your case online. Below is a snapshot of an email invitation received if your matter has been selected for CaseLines.

Only those invited can see what is uploaded; however, a party to a case may invite another party to the case. Lawyers may want to provide access to other people, such as their law clerk, legal assistant, or articling student for the purpose of assisting in uploading their documents to CaseLines.

The Nuts and Bolts of CaseLines

HOW TO FILE A DOCUMENT

CaseLines is not a substitute for the need to serve and file court documents. Parties must file their documents first through the Justice Services online filing portal or by email. You must first ensure that your documents are named in accordance with the Notice to the Profession. Document names must indicate the document type, type of party submitting the document, name of the party submitting the document, and the date on which the document was created or signed, in the format of DD-MM-YYYY. Opposite is a snapshot that shows the Standard document-naming protocol that can be found in the Notice to the Profession, May 13, 2020, which includes the amendment regarding naming protocol, effective January 11, 2021.



Electronic access given to a case [redacted] v. [redacted] - Message (Plain Text)

File Message Insert Options Format Text Review Help Acrobat Tell me what you want to do

Ignore Junk Delete Archive — Delete
Reply Reply All Forward Meeting IM More — Respond
Save — MD Save
Share to Teams — Teams
Team Team Email Reply & Delete To Manager Done Create New — Quick Steps
Move Rules OneNote Actions — Move
Assign Policy Mark Unread Categorize Follow Up — Tags
Find Related Select — Editing
Read Aloud Immersive Reader — Immersive
Translate — Language
Zoom — Zoom
Insights — Add-in

ndMail

Electronic access given to a case [redacted] v. [redacted]

RA [redacted]

Reply Reply All Forward ...

Thu 2021-08-26 10:26 AM

On 2021-08-25, 3:51 PM, "noreply@caselines.com" <noreply@caselines.com> wrote:

For the attention of ria@russellalexander.com.

You have been given access to an electronic bundle on CaseLines, a secure third party provider, by Ms Erica Graves.

Case name: [redacted] v. [redacted]
Your role: Lawyer
Reference: FS-[redacted]

==========

It appears that you have not yet registered on the system, you will have to register using ria@russellalexander.com as primary email in order to gain access to this case.
Please click the following link to register for CaseLines: https://ontariocourts.caselines.com/Account/Register

==========

Hello, welcome to the CaseLines for this file.
Please ensure that all relevant materials being relied upon for the hearing of this matter are uploaded in accordance with the Family Law Rules and in compliance with the Notice to the Profession.
The virtual courtroom details will be provided closer to the date of the proceeding upon finalization of the court list. The Zoom URL link will be uploaded to CaseLines under the corresponding proceeding's hyperlink section. Please distribute the Zoom URL link to clients if required or applicable. If the proceeding is to take place via telephone, the call-in details will be distributed by email. If you require telephone participation for an upcoming proceeding, please indicate this on the confirmation form.

Please click here to review the evidence for this case [redacted]
(Click the Case Tab and Update Bundle to access the full case details)

Please click the following link to view all cases that you have been invited to [redacted]

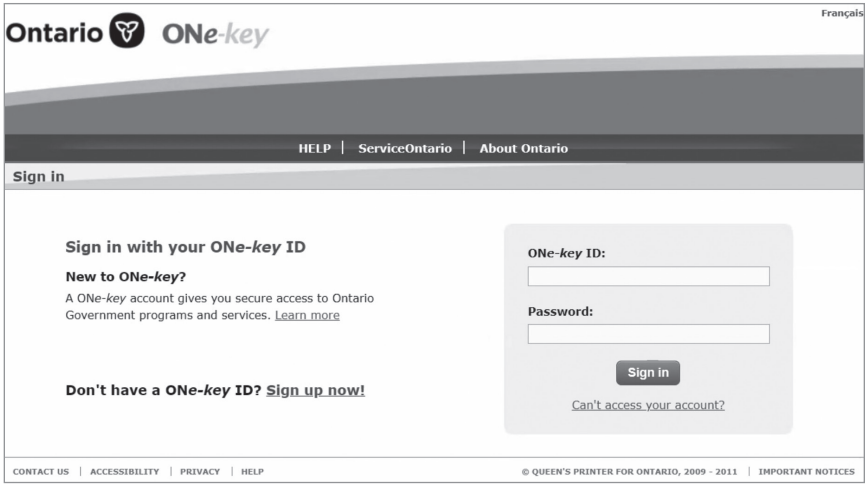
Help documentation and Frequently Asked Questions can be found by clicking on the following link: http://support.caselines.com/support/solutions.

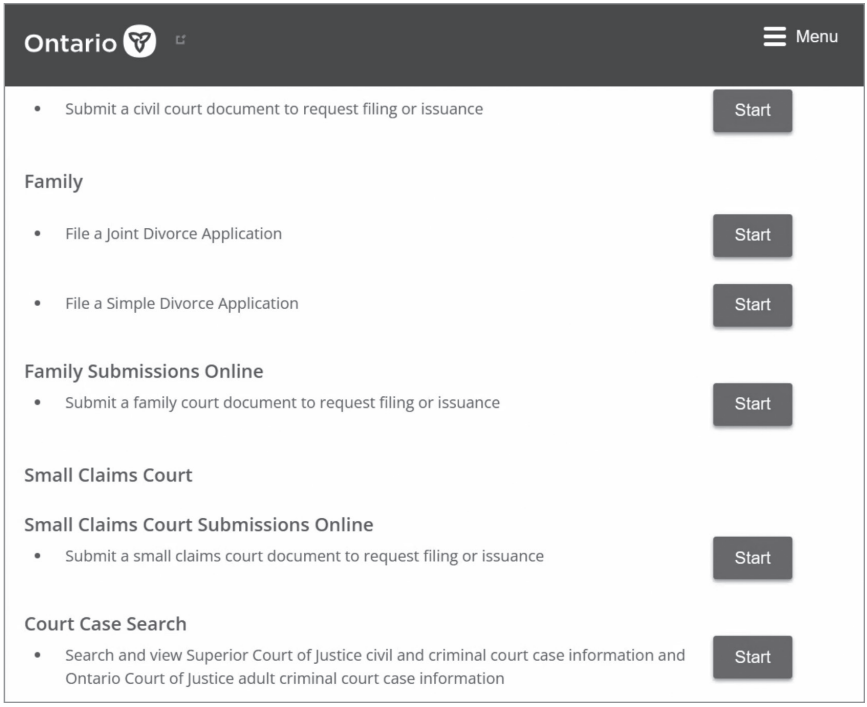
If you are having problems accessing your case, please contact your case creator Miss Pamela Antwi-Agyei [redacted]
For technical issues, please email support@caselines.com

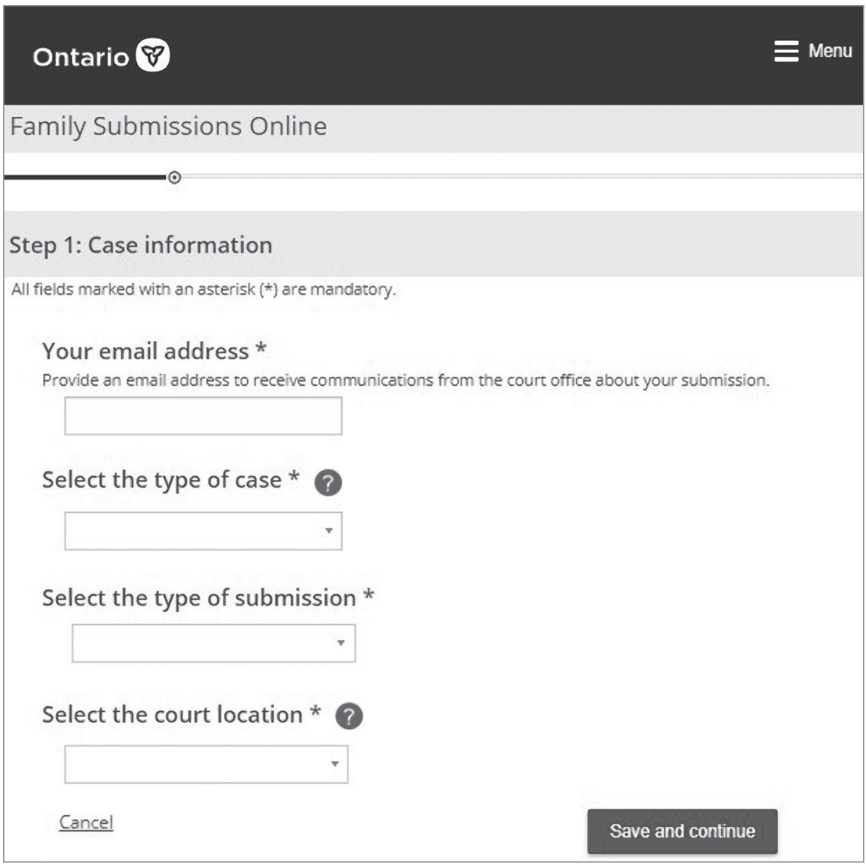
This email was sent to the following address [redacted] and copied to erica.graves@ontario.ca

Welcome to CaseLines. We encourage you to view the video tutorial at the following link [redacted]

If you have a filing deadline for documents that are more than five days away, you will need to use the submissions portal online. Below and opposite are snapshots showcasing the Login page for the online filing portal as well as the submissions pages.



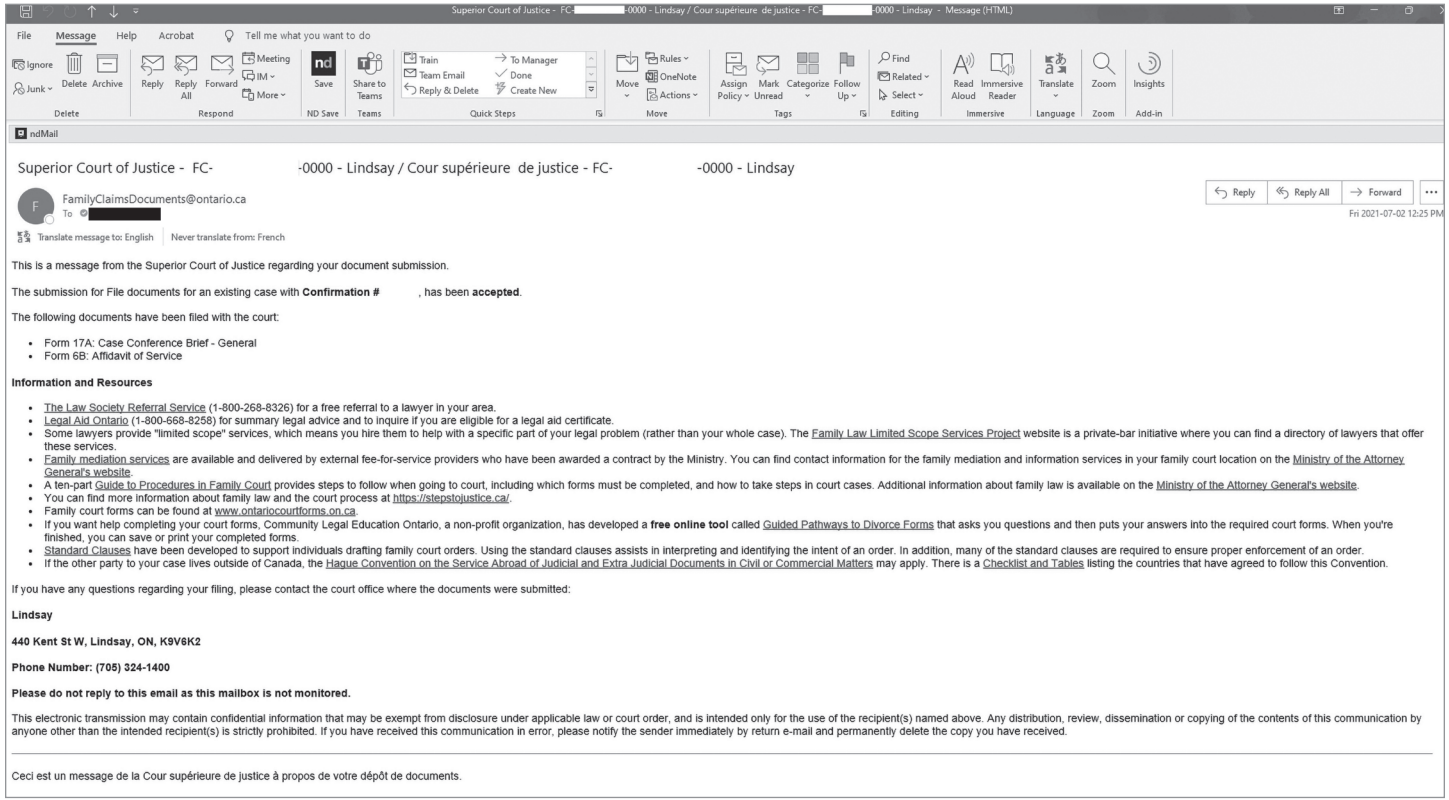




Documents with a filing deadline of five days or less can be filed by e-mailing the document to the court. The court will respond to your email to indicate if your materials have been received and filed; however, if your materials have been submitted via the portal, you will receive an email from the court indicating your materials have been accepted and filed. On page 54 is a snapshot to showcase an email received from the court confirming materials have been filed.

Once your documents have been accepted you can then proceed to upload your documents through CaseLines. On page 55 is a snapshot showcasing where you submit your materials for upload through CaseLines.

When a party or counsel uploads documents prior to the court date, you will receive an email that notifies you that a change has



Superior Court of Justice - FC-[redacted]-0000 - Lindsay / Cour supérieure de justice - FC-[redacted]-0000 - Lindsay - Message (HTML)

File Message Help Acrobat Tell me what you want to do

Ignore Junk Delete Archive Reply Reply All Forward Meeting IM More Save Share to Teams Train Team Email Reply & Delete To Manager Done Create New Move Rules OneNote Actions Assign Policy Mark Unread Categorize Follow Up Find Related Select Read Aloud Immersive Reader Translate Zoom Insights

Delete Respond ND Save Teams Quick Steps Move Tags Editing Immersive Language Zoom Add-in

ndMail

Superior Court of Justice - FC- -0000 - Lindsay / Cour supérieure de justice - FC- -0000 - Lindsay

Reply Reply All Forward

F FamilyClaimsDocuments@ontario.ca
To [redacted]

Fri 2021-07-02 12:25 PM

Translate message to: English | Never translate from: French

This is a message from the Superior Court of Justice regarding your document submission.

The submission for File documents for an existing case with **Confirmation #** , has been **accepted**.

The following documents have been filed with the court:

- Form 17A: Case Conference Brief - General
- Form 6B: Affidavit of Service

Information and Resources

- The Law Society Referral Service (1-800-268-8326) for a free referral to a lawyer in your area.
- Legal Aid Ontario (1-800-668-8258) for summary legal advice and to inquire if you are eligible for a legal aid certificate.
- Some lawyers provide "limited scope" services, which means you hire them to help with a specific part of your legal problem (rather than your whole case). The Family Law Limited Scope Services Project website is a private-bar initiative where you can find a directory of lawyers that offer these services.
- Family mediation services are available and delivered by external fee-for-service providers who have been awarded a contract by the Ministry. You can find contact information for the family mediation and information services in your family court location on the Ministry of the Attorney General's website.
- A ten-part Guide to Procedures in Family Court provides steps to follow when going to court, including which forms must be completed, and how to take steps in court cases. Additional information about family law is available on the Ministry of the Attorney General's website.
- You can find more information about family law and the court process at https://stepstojustice.ca/.
- Family court forms can be found at www.ontariocourtforms.on.ca.
- If you want help completing your court forms, Community Legal Education Ontario, a non-profit organization, has developed a **free online tool** called Guided Pathways to Divorce Forms that asks you questions and then puts your answers into the required court forms. When you're finished, you can save or print your completed forms.
- Standard Clauses have been developed to support individuals drafting family court orders. Using the standard clauses assists in interpreting and identifying the intent of an order. In addition, many of the standard clauses are required to ensure proper enforcement of an order.
- If the other party to your case lives outside of Canada, the Hague Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters may apply. There is a Checklist and Tables listing the countries that have agreed to follow this Convention.

If you have any questions regarding your filing, please contact the court office where the documents were submitted:

Lindsay

440 Kent St W, Lindsay, ON, K9V6K2

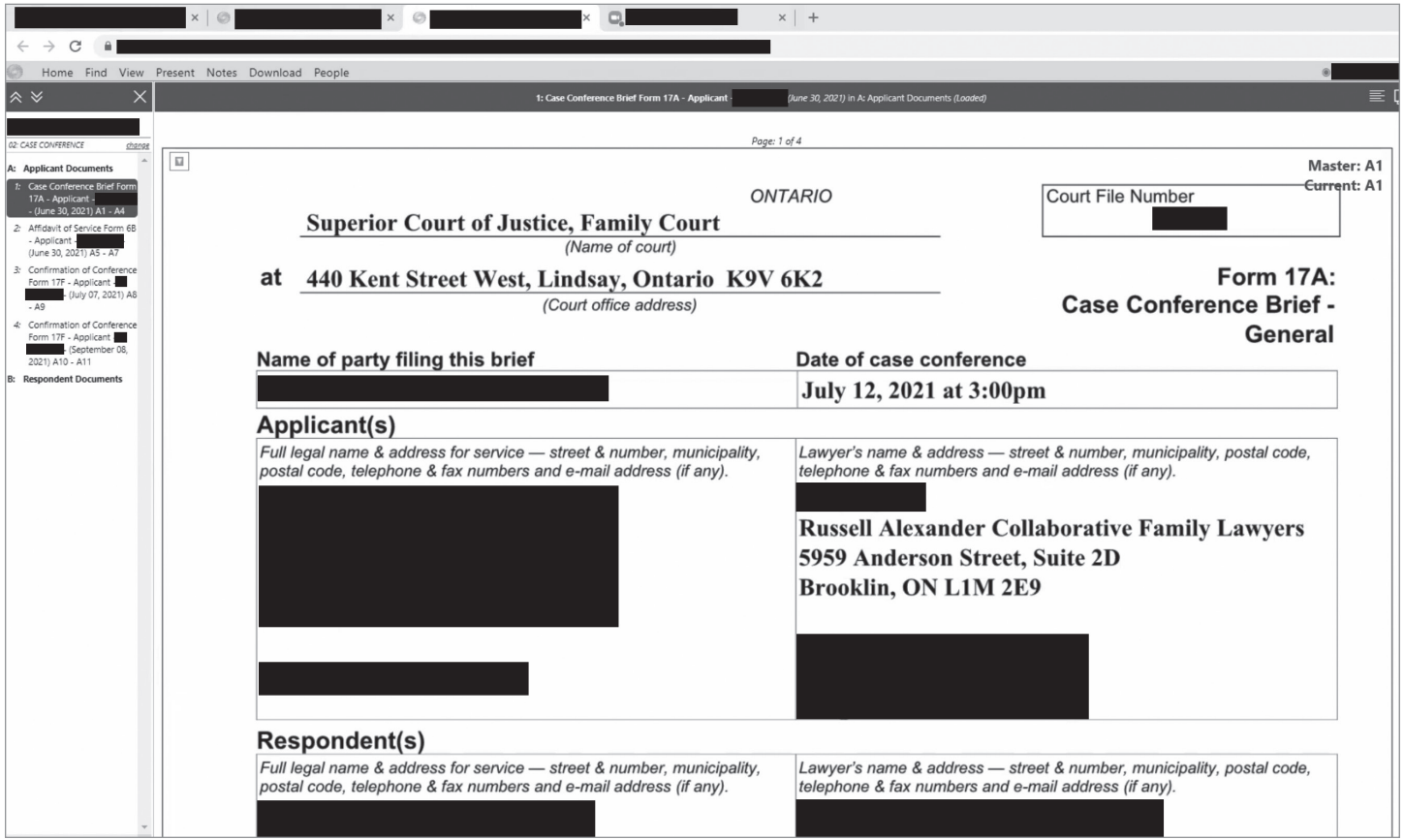
Phone Number: (705) 324-1400

Please do not reply to this email as this mailbox is not monitored.

This electronic transmission may contain confidential information that may be exempt from disclosure under applicable law or court order, and is intended only for the use of the recipient(s) named above. Any distribution, review, dissemination or copying of the contents of this communication by anyone other than the intended recipient(s) is strictly prohibited. If you have received this communication in error, please notify the sender immediately by return e-mail and permanently delete the copy you have received.

Ceci est un message de la Cour supérieure de justice à propos de votre dépôt de documents.

been made to CaseLines. You can view the uploaded documents through CaseLines via the "Review" tab, which takes you to a separate screen. Notes and highlights can be made while you are reviewing the uploaded documents through CaseLines, which will be detailed later on. On page 56 is a snapshot showcasing the confirmation of your changes.



Home Find View Present Notes Download People

1: Case Conference Brief Form 17A - Applicant [redacted] (June 30, 2021) in A: Applicant Documents (Loaded)

02: CASE CONFERENCE change

A: Applicant Documents

1: Case Conference Brief Form 17A - Applicant - [redacted] - (June 30, 2021) A1 - A4

2: Affidavit of Service Form 6B - Applicant - [redacted] (June 30, 2021) A5 - A7

3: Confirmation of Conference Form 17F - Applicant - [redacted] - (July 07, 2021) A8 - A9

4: Confirmation of Conference Form 17F - Applicant - [redacted] - (September 08, 2021) A10 - A11

B: Respondent Documents

Page: 1 of 4

Master: A1
Current: A1

ONTARIO

Court File Number [redacted]

Superior Court of Justice, Family Court
(Name of court)

at 440 Kent Street West, Lindsay, Ontario K9V 6K2
(Court office address)

Form 17A: Case Conference Brief - General

Name of party filing this brief	Date of case conference
[redacted]	July 12, 2021 at 3:00pm

Applicant(s)

Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).	*Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).*
[redacted]	[redacted] Russell Alexander Collaborative Family Lawyers 5959 Anderson Street, Suite 2D Brooklin, ON L1M 2E9 [redacted]

Respondent(s)

Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).	*Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).*
[redacted]	[redacted]

Review Tab

You must first locate your case by selecting the "View Case List" button. To view documents, you select the case name and select the "Review Evidence" button to the right of your case name. The left-hand column of the review tab displays available documents within the section.

PREPARING YOUR DOCUMENTS

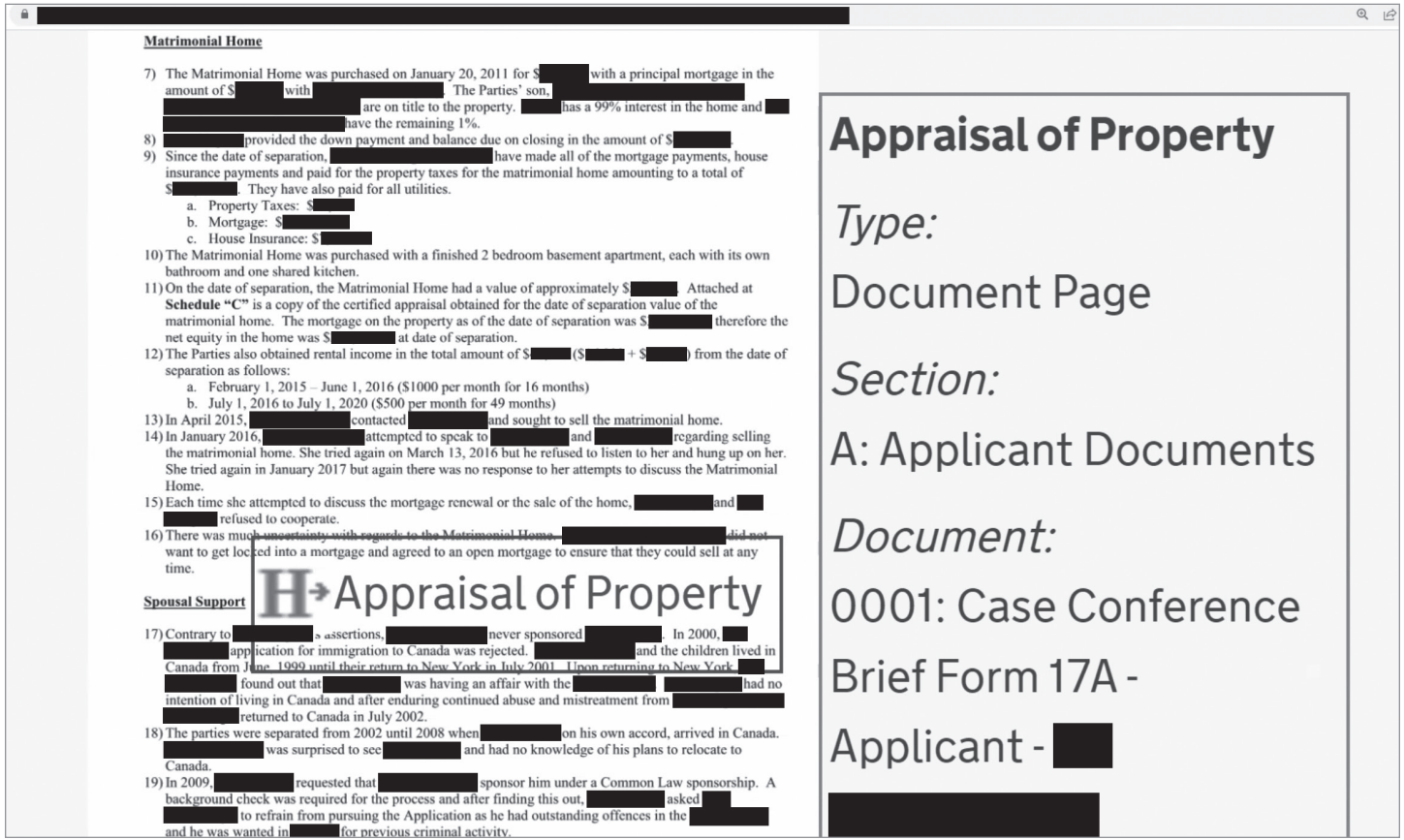
Hyperlinks

Hyperlinks that have been included within a document will still be available after the document has been uploaded to CaseLines. Parties are encouraged to use hyperlinks, particularly with lengthy documents. If you want to hyperlink two separate documents, you can do so using the CaseLines hyperlink feature, which will require you to select the "Index" tab in the case file, find the document you wish to hyperlink, and select "View." While in the view screen, select the hyperlink button to add where needed. On page 58 is a snapshot showing an appraisal of real property that was hyperlinked to a case conference brief.

Notes

CaseLines has a feature for making notes that can be used in preparing a case, or you can make notes live in court. The CaseLine notes can be used in a variety of ways, such as notes about the entire case, or general comments that you may want to share with others.

To create a CaseLine note, first navigate to the review page of your case, select the notes tab, and add a CaseLine note. You may type your note in the text field, and at this time you may select a privacy setting, which includes (1) Private Note, which can be seen only by the user who created the note; (2) a Share Group Note, which can be seen only by the person who created it and members of their share group; and (3) a Widely Shared Note, which can be seen by everyone who has access to the case. On page 59 is a snapshot showing a sample note created through CaseLines.



Matrimonial Home

7) The Matrimonial Home was purchased on January 20, 2011 for $[redacted] with a principal mortgage in the amount of $[redacted] with [redacted]. The Parties' son, [redacted] are on title to the property. [redacted] has a 99% interest in the home and [redacted] have the remaining 1%.
8) [redacted] provided the down payment and balance due on closing in the amount of $[redacted].
9) Since the date of separation, [redacted] have made all of the mortgage payments, house insurance payments and paid for the property taxes for the matrimonial home amounting to a total of $[redacted]. They have also paid for all utilities.
   a. Property Taxes: $[redacted]
   b. Mortgage: $[redacted]
   c. House Insurance: $[redacted]
10) The Matrimonial Home was purchased with a finished 2 bedroom basement apartment, each with its own bathroom and one shared kitchen.
11) On the date of separation, the Matrimonial Home had a value of approximately $[redacted]. Attached at **Schedule "C"** is a copy of the certified appraisal obtained for the date of separation value of the matrimonial home. The mortgage on the property as of the date of separation was $[redacted] therefore the net equity in the home was $[redacted] at date of separation.
12) The Parties also obtained rental income in the total amount of $[redacted] ($[redacted] + $[redacted]) from the date of separation as follows:
   a. February 1, 2015 – June 1, 2016 ($1000 per month for 16 months)
   b. July 1, 2016 to July 1, 2020 ($500 per month for 49 months)
13) In April 2015, [redacted] contacted [redacted] and sought to sell the matrimonial home.
14) In January 2016, [redacted] attempted to speak to [redacted] and [redacted] regarding selling the matrimonial home. She tried again on March 13, 2016 but he refused to listen to her and hung up on her. She tried again in January 2017 but again there was no response to her attempts to discuss the Matrimonial Home.
15) Each time she attempted to discuss the mortgage renewal or the sale of the home, [redacted] and [redacted] refused to cooperate.
16) There was much uncertainty with regards to the Matrimonial Home. [redacted] did not want to get locked into a mortgage and agreed to an open mortgage to ensure that they could sell at any time.

Spousal Support

17) Contrary to [redacted]'s assertions, [redacted] never sponsored [redacted]. In 2000, [redacted] application for immigration to Canada was rejected. [redacted] and the children lived in Canada from June, 1999 until their return to New York in July 2001. Upon returning to New York, [redacted] found out that [redacted] was having an affair with the [redacted] had no intention of living in Canada and after enduring continued abuse and mistreatment from [redacted] returned to Canada in July 2002.
18) The parties were separated from 2002 until 2008 when [redacted] on his own accord, arrived in Canada. [redacted] was surprised to see [redacted] and had no knowledge of his plans to relocate to Canada.
19) In 2009, [redacted] requested that [redacted] sponsor him under a Common Law sponsorship. A background check was required for the process and after finding this out, [redacted] asked [redacted] to refrain from pursuing the Application as he had outstanding offences in the [redacted] and he was wanted in [redacted] for previous criminal activity.

Appraisal of Property

Appraisal of Property

Type:

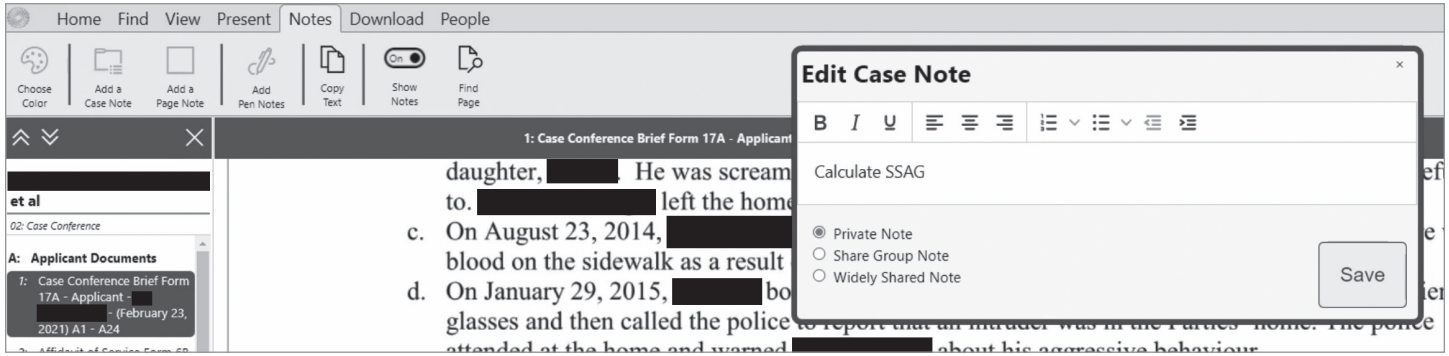
Document Page

Section:

A: Applicant Documents

Document:

0001: Case Conference Brief Form 17A - Applicant - [redacted]


Home
Find
View
Present
Notes
Download
People
Choose Color
Add a Case Note
Add a Page Note
Add Pen Notes
Copy Text
Show Notes
Find Page
Edit Case Note
Calculate SSAG
Private Note
Share Group Note
Widely Shared Note
Save
et al
02: Case Conference
A: Applicant Documents
1: Case Conference Brief Form 17A - Applicant - (February 23, 2021) A1 - A24
daughter,
to.
left the home
c. On August 23, 2014,
blood on the sidewalk as a result
d. On January 29, 2015,
glasses and then called the police
about his aggressive behaviour

Highlighting

CaseLines also has a user-friendly interface that allows users to highlight documents that can be done through the notes function. First, find the page where you would like to make your page note, which can be found using the index or the "Find Page" button, and select the "Choose Colour" button to pick your note colour. You will then need to select the "Add a Page Note" button followed by "Highlight Text" so that you may select the area of the page you want to highlight, and the text you highlight will automatically be copied into this field. Opposite is a snapshot showing a document that has been highlighted through CaseLines.

WHEN TO FILE A DOCUMENT

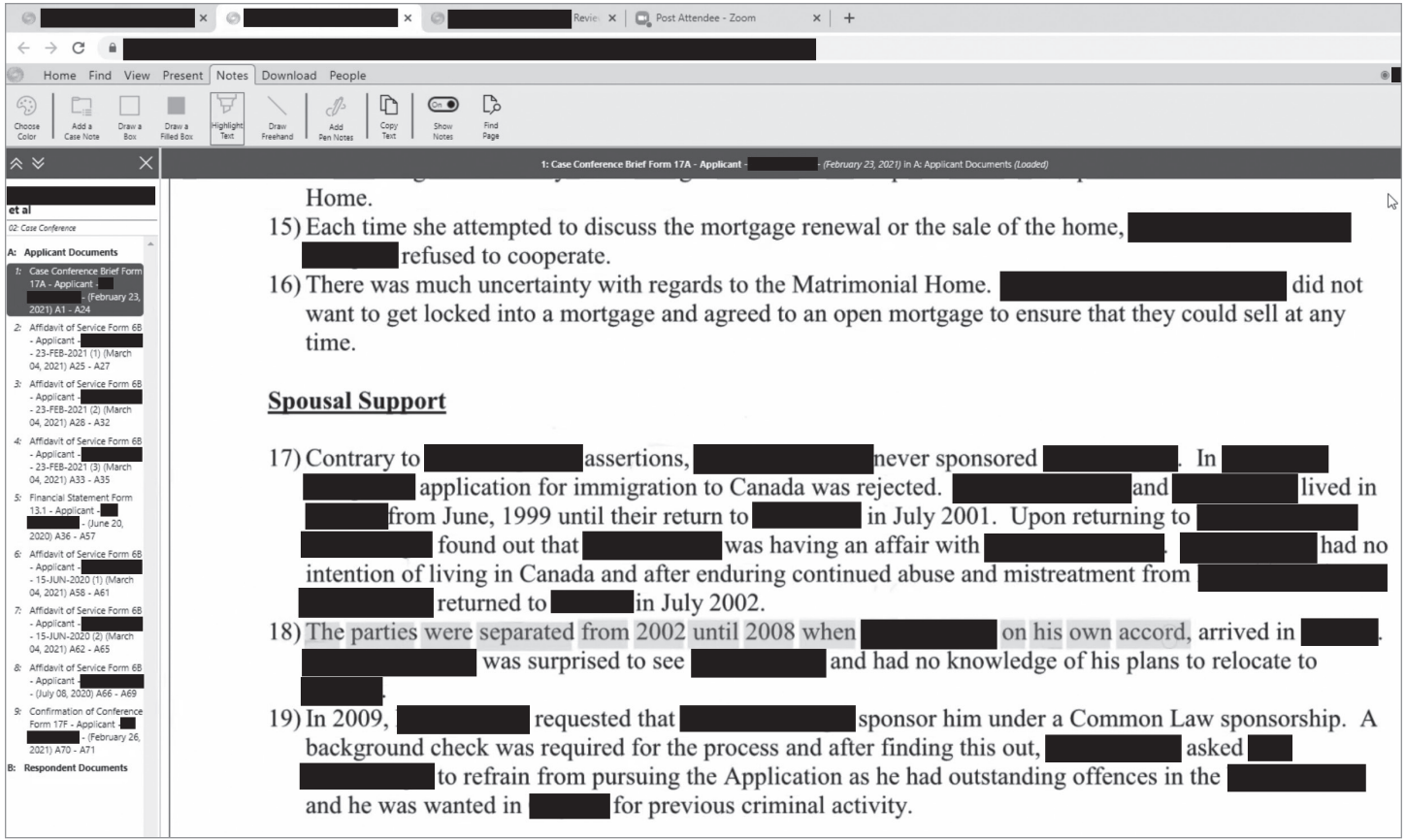
After receiving a CaseLines invitation from the court, you may upload your documents into CaseLines. The party or their counsel are responsible for uploading documents in CaseLines prior to the court date. After accessing your case in CaseLines, you will see a list of event bundles in your case.

Before each event, staff will label them and provide you with access to the bundle for the event, which could include "Case Conference" or "Regular Motion." You must ensure that your documents are uploaded into the correct event bundle to ensure it is easy for the judge to review the documents before the upcoming event.

Prior to the court date you will need to login to CaseLines to access the Zoom details for the upcoming appearance. This can be found through the case home page, which provides you with the Zoom link and details.

Is There a Limit to What You Can File?

There are currently no filing limits for CaseLines; however, there are page limits set out in the Family Law Rules, Practice Directions, and Notices to the Profession. When uploading a document to CaseLines, you must ensure each document is under 500 pages in length to avoid issues with documents freezing. If a document is


Post Attendee - Zoom
Home Find View Present Notes Download People
Choose Color
Add a Case Note
Draw a Box
Draw a Filled Box
Highlight Text
Draw Freehand
Add Pen Notes
Copy Text
Show Notes
Find Page
1: Case Conference Brief Form 17A - Applicant - [redacted] - (February 23, 2021) in A: Applicant Documents (Loaded)
[redacted] et al
02: Case Conference
A: Applicant Documents
1: Case Conference Brief Form 17A - Applicant - [redacted] - (February 23, 2021) A1 - A24
2: Affidavit of Service Form 6B - Applicant - [redacted] - 23-FEB-2021 (1) (March 04, 2021) A25 - A27
3: Affidavit of Service Form 6B - Applicant - [redacted] - 23-FEB-2021 (2) (March 04, 2021) A28 - A32
4: Affidavit of Service Form 6B - Applicant - [redacted] - 23-FEB-2021 (3) (March 04, 2021) A33 - A35
5: Financial Statement Form 13.1 - Applicant - [redacted] - (June 20, 2020) A36 - A57
6: Affidavit of Service Form 6B - Applicant - [redacted] - 15-JUN-2020 (1) (March 04, 2021) A58 - A61
7: Affidavit of Service Form 6B - Applicant - [redacted] - 15-JUN-2020 (2) (March 04, 2021) A62 - A65
8: Affidavit of Service Form 6B - Applicant - [redacted] - (July 08, 2020) A66 - A69
9: Confirmation of Conference Form 17F - Applicant - [redacted] - (February 26, 2021) A70 - A71
B: Respondent Documents
Home.
15) Each time she attempted to discuss the mortgage renewal or the sale of the home, [redacted] refused to cooperate.
16) There was much uncertainty with regards to the Matrimonial Home. [redacted] did not want to get locked into a mortgage and agreed to an open mortgage to ensure that they could sell at any time.
Spousal Support
17) Contrary to [redacted] assertions, [redacted] never sponsored [redacted]. In [redacted] application for immigration to Canada was rejected. [redacted] and [redacted] lived in [redacted] from June, 1999 until their return to [redacted] in July 2001. Upon returning to [redacted] found out that [redacted] was having an affair with [redacted]. [redacted] had no intention of living in Canada and after enduring continued abuse and mistreatment from [redacted] returned to [redacted] in July 2002.
18) The parties were separated from 2002 until 2008 when [redacted] on his own accord, arrived in [redacted]. [redacted] was surprised to see [redacted] and had no knowledge of his plans to relocate to [redacted].
19) In 2009, [redacted] requested that [redacted] sponsor him under a Common Law sponsorship. A background check was required for the process and after finding this out, [redacted] asked [redacted] to refrain from pursuing the Application as he had outstanding offences in the [redacted] and he was wanted in [redacted] for previous criminal activity.

longer than 500 pages, it should be broken down into different volumes to ensure it is under the maximum number of pages.

Proof of Service: Filing

Court documents must continue to be filed with the court before they are uploaded into CaseLines in accordance with the applicable rules of procedure and Notices to the Profession.

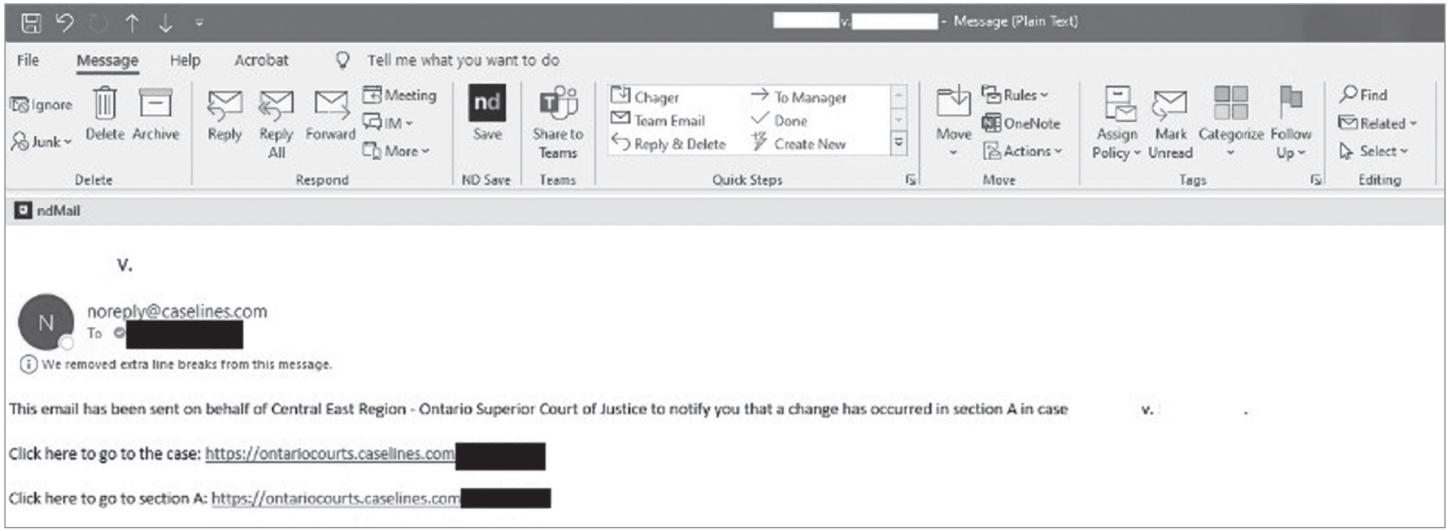
Parties are also required to upload to CaseLines court documents that have been filed with the court at least five days in advance of the hearing, or at the same time as any filing deadlines that are fewer than five days, unless directed otherwise by regional notice. All parties will receive notice of documents being uploaded. It is imperative to keep the confirmation of filing as well as the confirmation of CaseLines upload to prevent any issues with the court should they notify you that materials were not submitted as you will have proof that all documents were filed. Opposite is a snapshot showcasing the email received from CaseLines once you have uploaded your documents to CaseLines.

Administrative Misadventure

In a matter where a party, whether self-represented or represented by their counsel, is not following the applicable rules of procedure and Notices to the Profession, there is a chance that their documents will not be read. The judge may also choose an alternative, including not hearing the party's case, adjourning the matter, or sanctioning the party with a costs order or other punishment. It is imperative for all parties to ensure that they are following the correct rules and procedures implemented by the court.

What Happens to the Documents When the Case is Over?

After the court date, the endorsement is made available through CaseLines and you will receive an email notification that Section G has been updated once it has been uploaded by the court.


[redacted] v. [redacted] - Message (Plain Text)
File
Message
Help
Acrobat
Tell me what you want to do
Ignore
Junk
Delete
Archive
Reply
Reply All
Forward
Meeting
IM
More
Save
Share to Teams
Chager
Team Email
Reply & Delete
To Manager
Done
Create New
Move
Rules
OneNote
Actions
Assign Policy
Mark Unread
Categorize
Follow Up
Find
Related
Select
Delete
Respond
ND Save
Teams
Quick Steps
Move
Tags
Editing
ndMail
V.
N
noreply@caselines.com
To [redacted]
We removed extra line breaks from this message.
This email has been sent on behalf of Central East Region - Ontario Superior Court of Justice to notify you that a change has occurred in section A in case v. .
Click here to go to the case: https://ontariocourts.caselines.com[redacted]
Click here to go to section A: https://ontariocourts.caselines.com[redacted]

Using CaseLines at Conferences, Motions, and Trials

During the court date you may refer the judge to a specific page of a document that you have uploaded through CaseLines. You may provide the judge with the CaseLines-generated document and the page number (e.g., C15) to be typed into the "Find Page Number" field under the "Find" tab at the top of the screen, and all participants will be taken directly to the correct page. You may also direct the judge to a specific page of a document by opening the document in CaseLines, selecting "Find" at the top of the screen, and then selecting "Direct Others to Page." This will alert all other parties with a message that they can select to be taken to the same page.

The multiple features for making notes and highlights on your uploaded documents are easy to create, and will help you to keep track of a case and navigate to important pages more efficiently. CaseLines is beneficial both for court preparation and during the court proceeding itself. When preparing for a court date, counsel and judges can use the functions of private notes, highlights, and other annotations on documents that are viewable only to that person (or to any specific person with whom they wish to share). The notes made, and the documents that the notes are contained within, can be downloaded for offline use if necessary.

CHAPTER 6

The Relationship between Zoom Divorce and CaseLines

What Is the Relationship between Zoom Divorce and CaseLines?

- They go hand in hand
- It would be difficult to have remote court hearings without some form of digital filing; however, this does create another layer of steps and rules that litigants must follow
- Not everyone is tech savvy or likes change; at first it can be intimidating
- Benefits include reduced costs, better for the environment, more efficient hearings, and improved access to justice

To learn more, see the Resources section on pages 142 and 143.

Changes to the *Divorce Act*

The major legislative change in 2021 were Amendments to the *Divorce Act*. The amendments are wide-ranging and significantly change the legal landscape for divorcing couples, and they also affect Zoom divorces.

It's been in abeyance for almost a year – and more than twenty years in the making before that – but the long-awaited changes to the *Divorce Act* are finally in force.

Back on June 21, 2019, the Canadian government passed Bill C-78. It contains a suite of broad and ambitious changes to existing federal legislation affecting family law. The most notable changes to the *Divorce Act* modified provisions pertaining to parenting rights and obligations. They were slated to come into force last summer, but were deferred until now due to the COVID-19 pandemic. At long last, the revisions specific to the *Divorce Act* are officially in force as of March 1, 2021 (with others to follow in stages).

The Bill C-78 amendments are wide-reaching, but they have a unified theme: promoting the best interests of the child. Going forward, it's a theme that will permeate the child-related arrangements between separating and divorcing parents, not to mention the court's decision-making.

For example, the amendments implement ground-breaking changes to the *Divorce Act*'s nomenclature around parenting. It replaces the terms "custody" and "access" with more neutral terms like "decision-making responsibility" and "parenting time," respectively.

These changes are more than cosmetic: Courts will be able to impose tailored directions as to the care of a child while avoiding the former "winner/loser" approach that had been the subject of longstanding criticism for its combative and unproductive tenor. This means that the level of parental conflict should be reduced, which of course is better for the child as well.

Next, the amendments also give the family courts clearer guidance on the factors to be considered when making orders of various types. For instance, when a court is called upon to consider the best interests of the child as part of making an order allocating parenting time as between the divorced parents, it must now consider a detailed list of express factors, including:

- The nature and depth of the child's relationships with his or her parents, grandparents, and other important people in the child's life

- The child's upbringing, including linguistic, cultural, and spiritual heritage
- The views and preference of the child

The other changes and important revisions to the law are around topics such as:

- Mobility issues involving parents or children who relocate after a divorce
- Family violence, especially as it impacts a child's well-being
- Reducing poverty especially after divorce or separation, including measures to establish and enforce child support
- Making the family justice system more efficient and accessible to the participants

Collectively, these changes focus on a unified theme, which is in the best interests of children. Among the noteworthy elements of the revamp is to change the terminology and substantive aspects of the *Divorce Act* around parenting for separated and divorced parents.

But there are many other changes afoot.

MOBILITY

The *Divorce Act* changes address issues that might arise between parents when one of them plans to relocate with a child after divorce. The new law requires a parent in this position to give notice of his or her plans to move, and ensures that the other parent has key information about the details.

In situations where safety is an issue (e.g., the non-relocating parent is violent or abusive), the court is given the power to modify the notice requirements. Importantly, the legislative amendments also impose new guidelines that assist courts in deciding whether to allow the parent to even undertake the proposed move with the child, after considering the child's best interests in the circumstances. The legislation further prohibits parents being forced to disclose if they would move without their child should the court oppose the child's relocation.

FAMILY VIOLENCE

The recent changes to the *Divorce Act* have also filled an important gap in the law around family violence. New provisions clearly define that term to include any conduct that is violent, threatening, or part of a pattern of coercive and controlling behaviour. Behaviour that directly or indirectly exposes a child to such conduct is also included.

Importantly, the courts have been given a list of factors to help assess the scope and impact of the violence as a tool to help in the determination of what specific parenting arrangements will best serve the child's interests.

ACCESS TO JUSTICE

The *Divorce Act* has also been amended to facilitate access to justice, especially around bringing Canada closer to becoming a party to two key international family law conventions, namely:

- The 1996 Hague Convention on the Protection of Children, and
- The 2007 Hague Child Support Convention.

By making changes to the *Divorce Act* and other federal legislation that aids with the enforcement of court orders, Canada and its provinces and territories are one step closer to being able to ratify and become a party to the Convention, which will facilitate the resolution of certain family-law issues that arise when one or more of the parents or children live in another country.

Although they were a long time in the making, the changes to the *Divorce Act* solidify the law in key areas, and break new ground in others. Best of all, they put the focus on those who matter most in any divorce scenario: the children.

These changes could form an entire separate book. We discuss these changes in depth in our YouTube videos, Family Law Now podcasts, FamilyLLB blogs, and bi-weekly live events.

For information on changes to the *Divorce Act*, see the Resources section on page 143.

The Rule of Law or a Law of Rules?

MANAGING THE CHANGING LEGAL LANDSCAPE

The legal landscape for separating and divorcing families is ever-changing. It can be overwhelming to manage all the changes and ensure you're up to date. If you fail to follow the rules of the court or file the proper forms, your documents may be rejected and the court may not hear your matter. This often results in adjournments, delay, and further costs.

FAMILY LAW RULES

The starting point for Zoom divorce in Ontario is the Family Law Rules. The rules provide a comprehensive code for what forms to use, how to start an action, service of your documents, offers to settle, the different steps required in family-law actions such as administrative hearing, case conferences, settlement conferences, motion, default motions, trial management conferences, and trials.

The "primary objective" of the Family Law Rules is to deal with cases justly and to save time and expense. Failure to abide by the rules might be addressed with extensions of leave of the court. However, repeated failure to abide by the rules and court orders resulting in unnecessary delay will likely result in a costs order, having the case decided without your participation, or even having your case dismissed. Everyone who requests assistance from the family court is expected to know and follow the rules of the court.

SCJ PRACTICE DIRECTIONS AND EVER-CHANGING FORMS AND FILING REQUIREMENTS

Divorces in Ontario are adjudicated by the Superior Court of Justice (SCJ). This court regularly issues practice directions adjusting procedural rules such as page limits to the documents that are filed; special filing requirements; service of documents; when and what types of hearings are done electronically; and what hearings, subject to public safety protocols, are to be conducted in person or via a hybrid process.

Like the Family Law Rules, litigants are expected to know and follow the relevant practice directions by the SCJ when conducting their divorce proceedings. You can learn more about SCJ practice and access the various forms required by the Family Court in the Resources section on page 143.

CHAPTER 7

Zoom Divorce: Improving Access to Justice and Looking Forward

Advocacy for many can be one part sizzle and one part substance. The sizzle is where you add your own style and flare. Treat Zoom divorce like an in-person court hearing. Dress the part and look the role. This will inspire confidence and put you in the winning mindset for your hearing. Ensuring proper dress and decorum also enhances respect for the administration of justice.

Zoom divorce will be the new normal until at least 2023, and perhaps beyond. The pandemic has forced the justice system to pivot to digital with online Zoom hearings and digital filing of court forms. The silver linings in the move to digital are that the practice of law for family lawyers and the administration of justice are becoming more efficient and less expensive. Lawyers can conduct new client meetings the same day via Zoom. Court conferences that would often take several hours (commuting, parking, court security, waiting for your turn on a busy court docket, negotiating, debriefing clients, and a commute back to the office or home) have now been reduced for many cases to under one hour.

Public complaints about the delay and expense of the family justice systems were commonplace prior to the pandemic. We now have an opportunity to leverage these new efficiencies to expand and improve access to justice.

Zoom divorce will help fix the bottleneck and relieve an overburdened system. In addition, as the technology and connectivity improve, access to the justice system will be enhanced. There will continue to be expected and unexpected bumps in the road. CaseLines will evolve and likely become more user friendly, and we will need to be mindful of possible supply-chain issues regarding the hardware necessary for effective Zoom hearings, such as speakers, cameras, smartphones, and computers.

Most justice participants agree that Zoom divorce is here to stay, especially for administrative matters. The court will pivot back to in-person hearings or hybrid hearings for major steps in your case, such as case conferences, long motions, settlement conferences, and trials. (See the Superior Court of Justice's guidelines on page 73.) The court will not likely return to the paper-based system that existed pre-pandemic.

We have an opportunity to build a resilient justice system that improves efficiencies and will be more adaptable to future pandemics and other crises. Access to justice will be increased by making legal professionals available via Zoom and other electronic media to northern, rural, and remote communities where these services have traditionally not been readily available. We will also need to develop a plan to ensure people will not be left behind because of expense, disability, an inability to understand the technology, and/or affordability. This could include developing access to justice hubs in the community, perhaps at public libraries, within the court houses, or at the Superior Court of Justice's Family Law Information Centres (FLIC).

SUPERIOR COURT OF JUSTICE GUIDELINES TO DETERMINE MODE OF PROCEEDING WITH IN-PERSON HEARINGS

> On March 17, 2022, Ontario Superior Court Chief Justice Morawetz (citing the importance of in-person interaction, advocacy, and participation) announced a return to in-person court hearings commencing April 19, 2022 for case conferences, long motions, settlement conferences and trials – subject to the discretion of the presiding Judge (https://tinyurl.com/mr3ztkhz). Other hearings will be conducted via a hybrid or remotely. It appears that these factors superseded the benefits of efficiency and cost savings of remote hearings.

For some jurisdictions, it may take several months to schedule an initial case conference so it is likely that a vast majority of cases for the balance of 2022 will still be conducted remotely. Also, if there are further COVID variants that pose significant health risks, the court will likely quickly cancel in-person attendances and pivot to remote hearings.

CHAPTER 8

Pandemic Zoom Divorce Tips and Case Studies

COVID-19 Pandemic: Divorce Is on the Rise

The COVID-19 crisis has profoundly impacted many aspects of Canadian life: the economy, employment, health care, social norms, recreation, entertainment, and travel opportunities – the list is innumerable. But the most personal and day-to-day impact has been felt by individuals in their family dynamics and interpersonal relationships.

Government-imposed physical distancing mandates, self-isolation measures, stay-at-home orders, and repeated lockdowns have taken their toll. After nearly a year of these kinds of restrictive measures, it seems that marriages and common-law unions are buckling under the pressure.

Rocky relationships were likely the first to feel the effects, since existing cracks may have widened over the many months of the outbreak. New frontiers of marital discontent may have arisen from the sudden halt in normal routines and lifestyles. For example, those super-couples who were accustomed to spending twelve hours a day apart, each at their high-powered jobs, may find the adjustment to a relatively slower paced, dual work-from-home paradigm to be jarring and difficult.

Even the most solid relationship bond can start to fray when subjected to unexpected stressors resulting from COVID-19. These include constant togetherness, financial pressures caused by job losses, caring for vulnerable elderly parents, and new challenges that arise from managing distance learning for kids – to name a just a few.

So how have these varied relationship stresses reflected in the divorce statistics?

It may come as no surprise, but breakups and divorces appear to be on the rise around the world, as numerous articles in the global media attest.[2] It was reported in a news outlet in Sweden[3] that statistics show an upsurge in formal divorce applications. And even on a more informal basis, a major U.S. website that allows users to create do-it-yourself divorce agreements, based on customizable templates, has recently announced a 34% increase in sales.[4]

The news appears to be equally bleak in Canada. Although official statistics are not yet readily available, family law lawyers are anecdotally reporting a recent uptick in the number of clients who are approaching them for advice on divorce.[5]

Recent data regarding divorce rates in Canada may be misleading. Some statistics suggest divorce rates in 2020 were down 25% and were at the lowest levels since 1973. But this data does not reflect what many family lawyers are seeing day to day. In short, our numbers are way up – and data from other countries also suggest that divorce rates are rising. The official count may be off for several reasons, including:

---

[2] Maddy Savage, "Why the Pandemic Is Causing Spikes in Breakups and Divorces," December 6, 2020, BBC.com, accessed February 17, 2022. https://tinyurl.com/2p954z7c

[3] Keith Foster, "Sweden Sees a Rise in Divorce Applications During Pandemic," August 12, 2020, Radio Sweden, accessed February 17, 2022, https://tinyurl.com/bderxrsd.

[4] Mollie Moric, "US Divorce Rates Soar During COVID-19 Crisis," July 29, 2020, LegalTemplates, accessed February 17, 2022, https://tinyurl.com/2p9dr83s.

[5] Olivia Bowden, "Divorces Have Increased During the Coronavirus Pandemic and Lawyers Are Expecting More," July 20, 2020, Global News, accessed February 17, 2022, https://tinyurl.com/3vjpn8sb.

- Court closures means divorces filed are not being processed. There is a significant bottleneck.
- The pandemic has amplified stressors causing families to break down.
- Internal data shows that people seeking help from divorce lawyers has spiked significantly.
- Recent changes to the *Divorce Act* require couples to explore family dispute resolution before going to see a judge (which can delay matters by several months).
- The most common ground for divorce is "living separate and apart for a period of one year," but this has been proven difficult for many couples seeking to divorce during pandemic lockdowns and restrictions.

Our numbers are up 30% to 50% and many of our colleagues indicate that they are busier than ever helping couples separate.

That said, this does not mean that *actual* divorces will spike at the same rate; the process of filing for and obtaining a divorce in Canada has changed during the pandemic as well. During a significant part of the past year since the beginning of the outbreak, the family courts have remained closed for all-but-urgent matters, and there have been corresponding reductions and delays and a growing backlog in court administrative processes, even for non-contentious matters. This will have a sharp impact on the speed at which disgruntled formal couples can actually sever their financial and emotional ties to each other.

COVID-19: Avoiding Divorce by Managing "Staying at Home" with Your Partner

As we have recently examined, extensive time with your spouse can cause damage to your relationship and result in separation or divorce.[6] COVID-19, also known as "novel Coronavirus," has moved

[6] Russell Alexander, "'Too Much Time Together': Divorce Applications in China Spike Since Coronavirus Outbreak," 2020, FamilyLLB, accessed February 17, 2022, https://tinyurl.com/5aw98c2e.

from a faint glimmer to dominating our daily lives and relationships with others. Whether you are mandated to "self-isolate" because of travel, or whether you are following the government's directives to "socially distance one's self," these extraordinary circumstances can be challenging to your relationships with your spouse, children, and extended family.

We recently reached out to Allyson Gardner, MSW, RSW and to Karen Guthrie-Douse, MSW, RSW to provide us with their advice, tips, and suggestions to help you and your partner manage the physical and emotional challenges that we face in these uncertain times.

TIPS FOR COUPLES IN QUARANTINE

- **Self-reflection:** It is important to be able to explore and identify our individual thoughts and feelings. How are you feeling about the uncertainty and unprecedented changes in your work and home life? What are your own fears and worries? Monitor your reactions to them and seek out support as necessary.
- **Communication:** Communication with one's partner is always key to a well-functioning relationship. Be open to expressing your own thoughts and feelings and actively listening to your partner's thoughts and feelings. Be mindful to not minimize your partner's expressions and offer support and encouragement.
- **Maintain Routine and Structure:** In uncertain times, routine and structure help people feel safe and secure. As much as possible, stay in your normal routines regarding eating, sleeping, exercising, and working. Some of these may have changed, such as working at home rather than going into an office environment. Spend time with your partner doing routine things such as preparing meals, doing laundry, and maintaining your home. While your local gym may be closed, partners can modify their exercise routine by getting outside and going for a walk together, or working out in your home together.

- **Balance Couple Time with Individual Time:** Given that you may be spending more time together than normal, it is important to strike a balance between being together and having alone time. Carve out private places that you can decompress alone if you need to. Don't misconstrue your partner's decision to spend some alone time or to engage in solo activities as ignoring you. For example, their decision to read a book may be their way of finding a healthy distraction from endless news coverage.
- **Normalize Stress Reactions:** Understand that everyone has different reactions to stress, and this may result in heightened emotional responses. One's patience may wear thin at times, but try to not beat yourself up about it. Be aware that your partner may be prone to anger, sadness, or crying in these unsettling times. Explore strategies to be open to one another's feelings and avoid blame. Be especially sensitive if your partner has pre-existing mental health issues such as anxiety or depression, and check in with them as to how they feel they are managing.
- **Promote Resiliency and Positivity:** You and your partner have likely faced other challenges together throughout your relationship, and it may help to reflect on how you have previously handled them as a couple and moved forward in a productive manner. Understand that the current environment is a temporary situation, and "this too shall pass."

Things Couples Can Do When Social Distancing

Following is a list of ideas of things to do that may assist couples in managing these uncertain times and staying at home:

- Listen to an upbeat podcast
- Watch TV sitcoms that lighten the mood, such as *I Love Lucy, Seinfeld,* or *Friends*
- Access faith-based resources online
- Watch museum tours and concerts online

- Watch educational videos about something you've always wanted to learn about
- Avoid obsessively watching COVID updates
- Watch classic Disney movies
- Prepare a meal together or surprise your partner by preparing one of their favourite meals
- Bake something that you enjoyed from your childhood
- Go for a walk or hike
- Tune up your bikes and go for a ride
- Take a drive to somewhere in the community that you've wanted to explore
- Play card or board games or do a puzzle together
- Work out together in your basement or backyard
- Practise yoga or meditation

Professional Support Is Available

Remember, you are not alone in this; you can seek out support from your partner. If you feel you need professional assistance, please reach out to your *local family professional* or your local mental-health centre. (See the Resources section on page 143.)

Listen to our podcast with Allyson and Karen on this subject at Family Law Now. (See the Resources section on page 143.)

Allyson Gardner, MSW, RSW is a clinical social worker specializing in working with separated, divorced, and high-conflict families. Her goal is to provide child-centred services, reduce conflict between parents, and improve the overall well-being of children and families. (See the Resources section on page 143.)

Karen Guthrie-Douse, MSW, RSW is a Collaboratively Trained Registered Social Worker in practice specializing in custody and parenting-time issues, separation and divorce, and parenting and blended family issues with years of clinical work at a children's mental health centre in Toronto. Karen has been a clinical panel member of the Office of the Children's Lawyer since 2004. She

provides Section 30 assessments, Voice of the Child reports, parent coaching, counselling, parenting plans, and consultation to families and professionals. (See the Resources section on page 143.)

Five Things to Know Before Getting a Divorce in Ontario During the Pandemic

1. **Get your technology in order.**
   The new normal for most lawyers and the court are virtual hearings and settlement conferences. This means you need to learn and become familiar with Zoom and other related technologies. You will also need a reliable internet connection. There are Zoom tips, best practices, and protocols you should review in advance of any hearing, and the court still requires decorum, respect, and professionalism.

2. **Getting your matter before a Judge will not be easy.**
   The Courts are still implementing new technologies for online filing and remote, or virtual, court attendances. There are new rules, forms, and deadlines that need to be followed. In addition, the court is still dealing with a significant backlog of cases that were cancelled in the spring of 2020 when we went into lockdown and isolation.

3. **There are many ways you can settle the terms of your divorce outside of the court systems.**
   Alternative dispute resolution professionals, mediators, arbitrators, and collaborative practice lawyers continue to settle cases. One family recently settled the terms of their divorce in under seven days. Once you negotiate your agreement, the terms of your settlement can be filed with the court at a later date if necessary.

4. **Patience is the new currency of the pandemic.**
   You will need to be patient with your former spouse, your children, and the professionals you engage to help you through the divorce process. Sometimes technology just doesn't work, and remote court hearings or settlement meetings need to be rescheduled. Home schooling, spouses working from home, and everyone

out of their daily routines (sleep, exercise, diet to name a few) create added pressure and stressors. Patience will go a long way to easing some of these pressures and will help alleviate some of the stress of divorce.

5. **Be practical.**
   Try to accommodate your former spouse and the ever-changing needs of the children, schooling, work environments, and your family. Taking a practical approach and putting your children's interest first will often result in an acceptable result to whatever issues you may face. Having control over the outcome will also be more satisfying. Leaving decisions about your income, property, custody, and care of your children to a third-party stranger (such as a judge, who had never met your children and probably never will, or an arbitrator) may result in an outcome that seems unfair and not suitable for your family. Taking a practical approach to your divorce will help you control and shape the outcome.

Family Court Says: "The Pandemic Is Over Only for Those Who Did Not Survive It"

Family Law rulings are always a customized undertaking: Courts must apply the established law to the specific facts of each family's situation, especially when dealing with the rights of children, or with custody/parenting-time arrangements that impact them. The courts must always keep the best interests of those children at the forefront of its decision-making process.

In response to COVID-19 concerns, the family-law courts across the country have been asked to make difficult decisions about how and where a child should receive his or her education. This has raised unique challenges along the way, including the need to balance the benefits and risks of in-person versus online learning.

As some of those cases have shown, there is no universal answer appropriate for all children in Ontario, or even for all children in a particular region or municipality. Each court ruling must be arrived at on a case-by-case basis, and it is difficult to arrive at generalizations.

But in a recent ruling called *Zinati v. Spence*, the Ontario court nonetheless proffered these thoughts on the key considerations that should go into any determinations around schooling during these exceptional times:

> In my view, and having regard to available jurisprudence on the evolving issue [of the COVID-19 pandemic], determinations about whether children should attend in-person learning or online learning should be guided by the following factors:
>
> 1. It is not the role of a court tasked with making determinations of education plans for individual families or children to determine whether, writ large, the government return to school plans are safe or effective. The government has access to public health and educational expertise that is not available to the court. The court is not in a position, especially without expert evidence, to second-guess the government's decision-making. The situation and the science around the pandemic are constantly evolving. Government and public health authorities are responding as new information is discovered. The court should proceed on the basis that the government's plan is reasonable in the circumstances for most people, and that it will be modified as circumstances require, or as new information becomes known.
> 2. When determining what educational plan is in a child's best interest, it is not realistic to expect or require a guarantee of safety for children who return to school during a pandemic. There is no guarantee of safety for children who learn from home during a pandemic either. No one alive today is immune from at least some risk as a result of the pandemic. The pandemic is only over for those who did not survive it.
> 3. When deciding what educational plan is appropriate for a child, the court must ask the familiar question – what is in the best interest of this child? Relevant factors to consider

in determining the education plan in the best interests of the child include, but are not limited to:

i. The risk of exposure to COVID-19 that the child will face if she or he is in school, or is not in school;

ii. Whether the child, or a member of the child's family, is at increased risk from COVID-19 as a result of health conditions or other risk factors;

iii. The risk the child faces to their mental health, social development, academic development or psychological well-being from learning online:

1. Any proposed or planned measures to alleviate any of the risks noted above;
2. The child's wishes, if they can be reasonably ascertained; and
3. The ability of the parent or parents with whom the child will be residing during school days to support online learning, including competing demands of the parent or parents' work, or caregiving responsibilities, or other demands.

The decision had several other interesting substantive aspects from a legal perspective, and we cover these at FamilyLLB.com.

Adultery, COVID-19, and Grounds for Divorce

There is a common misconception in Canada that when there is adultery, then a divorce is granted automatically. This is neither true nor false. In Canada, the only ground for divorce is a "breakdown of the marriage."

The law says marriage breakdown has occurred if –

- you and your spouse have lived separate and apart for one year with the idea that your marriage is over; or
- your spouse has committed adultery and you have not forgiven your spouse; or

- your spouse has been physically or mentally cruel to you, making it unbearable to continue living together. Cruelty may include acts of physical violence and those causing severe mental anguish.

This essentially means that if there has been adultery in the relationship, then the party who did *not* commit the act can apply for a divorce based on this ground. The party who *did* commit the adultery cannot rely on their own actions as a ground for the divorce.

THE IMPACT OF COVID ON ADULTERY

We recently discussed the affect that the pandemic has had on adultery and how it has made it more difficult for cheaters to do so and easier for the other spouse to find out.[7] For example, government lockdown measures have limited the ability to meet clandestinely, whereas in countries like South Korea some people can track their spouse through the COVID alert apps.

However, the effect of these notices has been to inadvertently betray the whereabouts of spouses who are not where they are supposed to be, or are not where they claim to be. Although no names or addresses are given in these government alerts, South Koreans are finding a way to "connect the dots" to identify individuals, and to correctly draw the conclusion that they are having an affair.

Here are few other common questions and answers with respect to this ground for divorce:

Q ***Does it matter how long the affair was going on?***

A No. If it can be proven that adultery has been committed by one of the spouses, the other spouse can ask for a divorce regardless of the length of time the affair was going on. However, it should be noted that the adultery must have occurred before the petition for a divorce is brought.

[7] Russell Alexander, "Pandemic, Social Distancing, and Adultery," 2020, Family LLB, accessed February 17, 2022, https://tinyurl.com/ycyzfzt5.

Q ***What if the extramarital sex occurred only a single time? What if the spouse is remorseful?***

A One single act of adultery is a sufficient basis on which to bring a divorce action. Technically, as long as the adultery was committed by one of the spouses, the other spouse has legal grounds under the *Divorce Act* to proceed with a petition. It is a personal decision whether or not the spouse actually wants to do so in light of prospects of forgiveness and reconciliation.

Q ***Do you need clear proof of an affair? Is suspecting one enough?***

A There is no prerequisite that there be photographic or physical evidence of the affair to prove adultery. However, the mere suspicion of adultery is not enough, nor is evidence that the other spouse had the opportunity to cheat. Instead, a court must be satisfied on a "preponderance" of credible evidence that adultery has taken place. This can take place by inference, where the facts and circumstances lead to the reasonable conclusion that adultery has in fact occurred.

That being said, it is the spouse who wants to bring the divorce action who must bring forward the convincing evidence that adultery actually took place. There is nothing unusual about the type of evidence required; however, the evidence will be considered sufficient if the adulterous spouse admits to the affair or if the third party with whom the spouse committed adultery with gives evidence attesting to the affair.

Q ***What if the spouse had an affair with someone of the same sex? Does that count?***

A Yes. Like the definition of "spouse," the concept of adultery has been expanded by the courts to encompass same-sex relationships.

Q ***What about emotional affairs? Does cheating over the phone/internet count?***

A In order to qualify as "adultery," there must be a physical sexual relationship between one of the spouses and a third party to the marriage. Phone sex or other forms of sexually charged activity conducted "from a distance," do not generally qualify as "adultery" within the *Divorce Act*. Although these cases are often quite interesting and unfortunate, their circumstances do not form the basis for many clients' divorce claims.

The court's aim is to focus on resolution rather than fault and blame, and for the most part, blame does not improve or diminish one's property rights or entitlement to share family property in Ontario. The practical reality is that an application for divorce based on cruelty or adultery may take a few years before a determination is even made or if the matter requires a full hearing. If this is the case, the party seeking the divorce could also rely on the fact that he or she has lived separately and apart for one year and use this as the basis for the divorce claim.

For the most part, the concept of adultery is precisely what most people think it would be and is quite straightforward. However, from a Canadian legal standpoint, there are some finer points that are worth mentioning.

1. Adultery may occur if intimate sexual activity outside of marriage may represent a violation of the marital bond and be devastating to the spouse and marital bond, regardless of the specific nature of the sexual act performed.
2. One single act of sexual intercourse can amount to "adultery" for the purpose of divorce in Canada.
3. Adultery can occur with a same-sex partner.
4. An affidavit admitting to adultery with an unnamed party is sufficient evidence for the *Divorce Act*.

In some circumstances, adultery can be condoned. For example, if a spouse takes back an adulterous/cheating spouse out of love or

desire to make the marriage work, then they may not be able to ask for a divorce based on the earlier adultery. In this scenario, the innocent spouse may be considered to have condoned the adultery for divorce purposes.

How the Current and Future Potential Variants Could Throw a Curveball to Divorced Families and Affect the Family Justice System

New variants of the coronavirus continue to emerge with significant impact on families and courtrooms. Here's what you need to know:

CORONAVIRUS AND DIVORCED FAMILIES

The pandemic has exacerbated many of the problems that divorced parents already faced in coming to agreement on child care, custody, alimony and visitation, not to mention potentially life-or-death decisions on health care.

While most parents were able to muddle through the first year of the pandemic, the changes to parenting arrangements were largely considered temporary, and families had started to return to normal as the vaccine was rolled out.

With new emerging variants of the coronavirus, many families are again facing difficult questions.

For those with travel plans, there are a number of tough questions. Should they still go on vacation? Can they travel internationally safely? Will there be quarantine requirements when they return? Could this affect the return to school?

For other families, returning to school reopens old debates. Should they send their kids back to in-person schooling? If they learn remotely again, who will watch them during the day? How does this affect shared custody? What will school officials do this time?

There are also the questions of reducing risk. How can blended families maintain a social bubble? How can a parent respond when another parent fails to follow social safety protocols – or outright refuses?

Child and spousal support obligations will likely need to be revised and revisited resulting in further potential disagreements and disputes.

Separated families have lived through these cycles of conflict over the last two years of the pandemic but with new variants and outbreaks potentially on the way, we may need to revisit these questions.

CORONAVIRUS AND THE JUSTICE SYSTEM

While some families are returning to normal, the family justice system is not, in Ontario and throughout Canada, with most courtrooms still avoiding in-person hearings before a judge.

That's not necessarily a bad thing. The court system continues to pivot from paper to digital with online filing of court documents and virtual hearings using digital platforms, which have improved access to the justice system and cut legal costs.

With a so-called "Zoom divorce," you can have your court hearing from the comfort of your home on your laptop, tablet, or desktop computer. No more commuting to court, fighting traffic, or dealing with parking logistics. No more lining up at court security checkpoints, trying to find your court room, or waiting in crowded hallways for you case to begin and then having to make your way back home again.

The case law precedents established over the last two years of the pandemic will provide important guidance to the profession as many of the problems that will result from another outbreak have already been addressed; such as: denying or withholding access, social bubbles and social distancing, in-class vs remote learning for children; exclusive possession of the matrimonial home, and support variation requests to name a few.

LAWYERS STAND READY

Outbreaks of COVID variants will once again cause fear, stress, and uncertainty and provide fodder for parents predisposed to fight.

Parents will try to change custodial arrangements, parenting times, decision making, and other issues that affect their child. Many

will do this out of fear and the need to protect their children. Others, unfortunately, will try to take advantage of the crisis out of spite, retribution, or a desire to correct some perceived wrong from the relationship break down or current arrangements.

Thankfully, lawyers and other family professionals such as counsellors and social workers have pivoted to digital and are ready to continue to help families.

Our continuing COVID jurisprudence will provide guidance to the profession and separating families through the repeating cycle of crisis that results from further outbreaks.

The pandemic will continue to throw lawyers and the justice system curve balls, but with patience, experience, and perseverance, this too shall pass.

Ontario Family Courts are Opening Their Doors Again ... Plus CaseLines!

The Ontario Family Court system is getting back to business – and is starting to open up to litigants, their lawyers, witnesses, and other key participants for in-person attendances once again.

In various announcements issued by the Ontario Superior Court of Justice – which hears matters pertaining to divorce and the division of marital property – there's been official confirmation that the courtroom doors are starting to open again for certain in-person hearings. A Notice to the Profession advised that as of November 29, 2021, court attendances for specified types of proceedings (including Family trials and long motions, and appearances for settlement conferences) can now take place in-person, unless the court orders otherwise.

According to that update, alternative arrangements for "hybrid" appearances involving some combination of in-person and teleconference appearances can still be explored. They can be requested by a lawyer, litigant, or witness if he or she is still not comfortable attending in-person at the courthouse. (However, any discomfort around such in-person attendance, and options for hybrid or teleconference appearances, should ideally be discussed in advance of the scheduled hearing or event.)

This news about the Superior Courts' re-opening echoed an announcement[8] by the Ontario Court of Justice (which can hear child protection, adoption, custody, parenting time, child support, and spousal support matters). Those courts are gearing up for their own increased level of in-person hearings as well, as is the Ontario Court of Appeal, which issued detailed "Practice Directions" around an orderly transition back.[9]

With that said, this does not mean that there has been a full-scale, overnight resumption of regular operations to the pre-pandemic style. Until the COVID-19 virus and its variants are fully under control, for the foreseeable future there will still be a need to take advantage of technology-based access points like Zoom teleconferencing and online filings. This is confirmed in that current notice from the Ontario Court of Justice, for example, which states that "the Court will continue to use remote proceedings, in-person appearances or a combination of remote and in-person appearances."

That might actually be good news, because the pandemic-prompted reliance on technology actually has many pluses, and there has been a continued focus on more efficient ways of doing things. Indeed, the entire Ontario Family Courts justice system has found a "silver lining," since the pandemic lockdowns forced it to move away from an arguably archaic all-paper-based system, towards a modern online document-filing model.

The aforementioned online filing system will get even better soon, since it's being augmented with the rollout of a province-wide pilot project that sees the Ontario Superior Court of Justice installing "CaseLines," a cloud-based, electronic document storage-and-sharing platform.

For certain judge-selected cases/matters, CaseLines allows the participants (meaning the parties, their lawyers, and the courts) to access each other's materials before and during a court hearing. It's

[8] Ontario Court of Justice, "COVID-19: Scheduling of Family Matters in the Ontario Court of Justice (January 4, 2022)," accessed February 22, 2022, https://tinyurl.com/jd59f8ss.

[9] Ontario Court of Appeal, "Practice Directions and Notices Regarding COVID-19," accessed February 22, 2022, https://tinyurl.com/4k6jntyr.

not the same as filing documents with the court; what it does is allow already-filed documents and court-related materials to be shared by those involved *via* the cloud.

The Ontario Court of Justice is also scheduled to get on-board with CaseLines soon; the gradual rollout schedule saw the first installation going live on December 13, 2021, in one Toronto court location, with additional Family Courts being added in the early part of 2022.

It looks like the Family Courts would like to get back to normal – and probably even better than normal.

Father Barred from Matrimonial Home for Disobeying COVID-19 Protocol

A case recently in front of the Ottawa Superior Court had a separated couple practising a "nesting" parenting arrangement that had the parents alternate their living in the home and access. When COVID-19 began to spread, the parties suspended the current arrangement and both began living in the matrimonial home. Eventually, the mother sought an urgent order seeking exclusive possession of the home based on the father's lack of adherence to COVID-19 health protocol.

The details of the case state that two of the children and the mother had underlying health conditions and were advised by their doctor to self-isolate as much as possible. The mother's concerns about the father's actions began to escalate when he took several trips outside of the house and did not disclose his whereabouts. In the case, the father indicated he had mostly been with his girlfriend and stressed that they both adhered to COVID-19 protocols.

In its ruling, Justice Doyle found the actions of the father warranted the request for exclusive possession of the home on behalf of the mother, in addition to all communication with the children to be conducted virtually. The court stressed that this ruling was a temporary solution to the difficult situation that COVID-19 had brought upon them.

The decision in this case departed from that of other rulings in cases such as *Ribeiro v. Wright* that did not deem the matter urgent

despite the concerns that one party had that the other parent was not following COVID-19 protocol.[10] The disparity between the two rulings can be related to the parent's (lack of) co-operation with each other. In the case at hand, the father had either failed to respond to the mother's inquiries and at times provided misleading information with respect to his whereabouts and efforts to remain sanitary.

On Hearsay and Text Messages

The warning by the Ontario court in a recent case was straightforward: Family litigants need to be wary when *including text messages and emails in their affidavit evidence*.

In *Chrisjohn v. Hillier* the parents were in a custody battle over their three-year-old child. The father, who was the primary residential parent, brought an urgent motion to have the child returned to him. The mother had been withholding the child from him, even though she was only entitled to restricted parenting time under a prior court order. She accused the father of having a substance-abuse problem, and justified keeping the child because, based on her observations at a recent parenting time exchange, she had concluded he was drunk or at least had been drinking when he took over caring for the child.

The father denied this, and in his affidavit materials filed for the motion, swore that he had not been drinking that day. His own mother, with whom he lived, also attested to the same.

According to the mother's affidavit, she had called the police that night, and they had apparently confirmed "it was clear" that he was "intoxicated" after attending at his home.

The problem with these assertions was that under the Canadian law of evidence, this was actually "hearsay" evidence. With narrow exceptions, the mother's affidavit evidence should have stuck to what *she* actually saw or understood that day, not *her view* of what the police thought or said.

[10]Russell Alexander, "COVID-19: First Emergency Child Access Case Decision from the SCJ," 2020, FamilyLLB, accessed February 17, 2022, https://tinyurl.com/mubm6rj2.

This is in keeping with Rule 14(19) of the Family Law Rules, which expressly provides that an affidavit may only contain "information that the person learned from someone else," if the information source is identified by name, and that the person signing it believes the information is true.

Faced with the mother's impermissible affidavit, the court used the opportunity to lament what it called the "unfortunate trend of inadmissible hearsay evidence being included in affidavits." It noted that as long as thirty years ago in another Ontario case called *Re LiSanti v. LiSanti* the court had struck out an exhibit to the wife's affidavit that was not in the proper format and consisted of a lengthy prose statement that was clearly pejorative to the husband, and consisted of hearsay. The court in that older case wrote:

> There has been a disturbing tendency in recent months to attempt to incorporate, in motion material, renditions of statements allegedly made by parties or other sources without their inclusion in an affidavit. The rules, however, require evidence on a motion to be by way of affidavit. The basis of that requirement is obvious. Without the possibility of testing an allegation through cross-examination, there is an incentive to swell the evidence freely with unsupported statements by persons not clearly identified and, therefore, safe from inquisition. That is the situation with this exhibit.

The court in the more recent *Chrisjohn v. Hillier* ruling built upon those admonitions, and observed that the same sort of thing was going on in the present case, but with the exacerbating factor that the hearsay could include both text messages and emails. The court said:

> In the present case, the mother appends as an exhibit some text messages from the father's girlfriend that the mother submits show that the father had been drinking on the occasion in question.
>
> The mother makes allegations about the father's alleged history of substance abuse. As evidence of same,

> the mother attaches, as an exhibit, a copy of an electronic message from the mother of one of the father's other children, alleging drinking and substance use by the father.
>
> A difference, between today and the days of LiSanti, is the use of electronic communication as a tool of injecting inadmissible hearsay evidence into an evidentiary record.
>
> The lesson from LiSanti has withstood the test of time and remains the law today. Litigants should remain vigilant in ensuring that motion material is restricted to admissible evidence. The temptation to append as exhibits to affidavits text messages, or email strings from third parties, who do not swear to their truth, must be avoided.
>
> The mother's aforesaid exhibits are inadmissible.

For family litigants of all types, the court's suggestion to be vigilant in avoiding inadmissible hearsay is a good one.

Thumbs Down: Four Men Face Criminal Charges for Posting Court Footage on Instagram

Recently we discussed a little-known fact around legal decorum: the Ontario Courts have strict policies and prohibitions around the use of electronic devices in the courtroom. These cover a wide array of potential uses, not to mention innumerable forms of technology, including computers, personal electronic and digital devices, and smartphones of all types. They are formalized in a set of practice directions issued to the public by the court itself.

Under those strictures, any person who attends in the courtroom – be it a civil litigant, a criminal accused, witness, lawyer, or merely an observer – can find themselves in legal trouble if they have used an electronic device in a manner that: (1) is inconsistent with the stated prohibitions, (2) is found unacceptable by the presiding judge, or (3) is in breach of one of the judge's orders.

A breach of the practice directions can prompt one of several reactions: On the milder end, the person can simply be ordered by

the judge to turn off the device, or leave it outside the courtroom. On the more severe end, the person might find themselves being cited and prosecuted for civil contempt, or charged with various offences.

It seems that four Toronto men have recently learned all of this the hard way. As was reported in a legal news media source,[11] the Toronto police charged them with several criminal offences after they were caught recording and making Instagram posts of some images and audio taken during an Ontario court hearing earlier that year.

The posts included pictures of a particular witness in mid-testimony during a virtual preliminary hearing. The men were apparently trying to intimidate the witness away from giving further testimony in related proceedings. The four men were charged under the *Criminal Code* with obstructing justice, intimidating a witness, and failing to comply with a publication ban that had been imposed pursuant to the *Criminal Code*.

The situation sends a clear message that this kind of snap-happy social-media activity can be subject to harsh criminal sanctions. Respect for courtroom solemnity, decorum, and evidentiary safeguards must remain, even while the COVID-19 pandemic has prompted the conversion of most in-person hearings into remote ones that rely heavily on easy-share technology like Zoom.

True, the "open court" principle is a fundamental tenet of the Canadian justice system, but this doesn't mean that members of the public have unfettered access to what goes on in a court hearing. Nor do they have free reign to disseminate images or audio, particularly if the integrity of the system might be jeopardized as a result.

On Secret Audio Recordings in Family Law, Judge Says: "Hands (or Phones) Off"

This is an era where cell phones and GPS devices are everywhere, and where conversations can be recorded with the touch of a finger.

[11] Annabel Oromoni, "Toronto Police Charge Four Men with Obstruction of Justice for Recording and Posting Court Hearing, November 22, 2021, *Law Times*, accessed February 17, 2022, https://tinyurl.com/2rkj4685.

For parents who are embroiled in a parenting-time battle, it may be tempting to secretly record each other's conversations, or to track each other's whereabouts, and then try to use the gathered information as evidence to bolster their case in court.

In a recent decision that involved the separated parents of a four-year-old girl, an Ontario judge set out a comprehensive summary of the law around surreptitious recordings, essentially emphasizing that they are "strongly discouraged."

The judge described the back-story:

> In their materials and during the course of argument, each party asked me to listen to surreptitious recordings that they made of the other and/or the child. Yet, without irony, each party complained about the other having made their own secret recordings. The father says that he once found a GPS tracing device that the mother had placed in his car. Shortly after he announced his desire to finally separate from the mother, he found another such device in his gym bag. The mother does not dispute those claims.

The judge then used the opportunity to expound on the Ontario law on this topic, writing:

> **SURREPTITIOUS RECORDINGS**
>
> We live in a world of such technological advances that every utterance and gesture is increasingly open to digital capture, whether at a street corner or in a private conversation in one's home. Privacy experts and advocates are increasingly concerned about the deleterious effects of the unrestrained monitoring of our utterances and behaviour. On the internet, it is said that anything captured can never be forgotten. Provincial and federal legislation has been passed to try to find a reasonable meeting point between the right to information and the rights of privacy, security and free expression. It would be fair to say that the present legislative balance is continually subject to review.

The judge added that under the evidentiary rules in family law, courts remain reluctant to allow surreptitious recordings made by spouses of each other and their children. The judge quoted from a long-established case-law precedent, which said:

> Surreptitious recording of telephone calls by litigants in family law matters should be strongly discouraged. There is already enough conflict and mistrust in family law cases, without the parties' worrying about whether the other is secretly taping them. In a constructive family law case, the professionals and the courts work with the family to rebuild trust so that the parties can learn to act together in the best interests of the child. Condoning the secret taping of the other would be destructive to this process.

However, the rule is not absolute; a court still retains discretion to allow or exclude secret recordings in family law, depending on whether their probative value outweighs the strong policy factors that favour their exclusion. The court must recognize the "general repugnance which the law holds towards these kinds of recordings" but must also consider what the recordings disclose, all while having regard to the child's best interests.

With that legal framework in place, the judge also observed:

> In the years since [the earlier cases were] first decided … the attempt to admit secretly made recordings by one parent of another and/or the child/ren has surged from a trickle to a gusher. I find that I am regularly provided with secret recordings that one party has made of the other, which the recording party asks me to then consider in order to prove the instability or perfidy of the other. Most of the times, the recording is an edited or selectively recorded version of a highly contentious argument between the parties.
>
> It is dangerous to the state of family law and more importantly, to the parties and children governed by it, to treat their dealings as if they were living under the Stasi in East Germany. Not everything is public and not every

> utterance or gesture needs to be recorded. To the contrary, routinely allowing our courts to reward a party's attempt to secretly spy on the other by admitting the fruits of that conduct into evidence contributes to the corrosiveness of matrimonial litigation.
>
> That approach must be discouraged.
>
> The only way that judges can effectively discourage such conduct is to refrain from rewarding it.

The judge added that courts must presume that "the prejudicial effect of those secret recordings far outweighs their probative value to our system of family law and the best interests of the children affected by it." The presumption might be rebutted by evidence of "serious misconduct by a parent, significant risk to a child's safety or security, or a threat to another interest central to the need to do justice between the parties and children."

The judge concluded: Short of such evidence, courts must say "hands (or phones) off" the recording feature of parents' smartphones when they seek to secretly record each other and their children.

Hearing Locations: During a Pandemic, What Is Considered "Substantially More Convenient"?

In light of the ongoing COVID-19 pandemic, when Zoom trials and court hearings are the norm, how should courts determine, geographically, which family court jurisdiction is most appropriate for adjudicating a legal dispute between spouses?

By way of background: The Ontario family justice system has a set of procedural edicts, contained in the Family Law Rules, that govern various aspects of the legal process. For example, the Rules state that a spouse or parent who wants to commence a legal proceeding against the other should generally do so in the jurisdiction where either of them resides. If the case deals with the custody of or access to a child, then the proceeding should usually be commenced in the municipality where the child ordinarily resides.

Even in "normal" times, that choice may not be the most convenient or practical in absolutely all scenarios. Newly separated

spouses may now live in different cities, for example, or their flexibility around court attendances might be impacted by the fact that there are children and parenting obligations in the mix.

The *Rules* accommodate this by allowing the choice of location to be challenged in some circumstances. This is known as a Motion to Transfer, and it requires that the requesting party meet certain tests. If he or she is successful, the court can order that the existing legal proceedings are to be transferred to a court in another more appropriate city or region.

One of the key thresholds for this is that it is shown to be "substantially more convenient" to make the geographical transfer requested. In a pair of recent Ontario rulings, the court demonstrated a willingness to view that test through the lens of the COVID-19 pandemic, and in light of all the necessary adjustments to the hearing processes that have been prompted by it.

In *Berta v. Berta*, the spouses had two separate-but-intertwined actions marching in tandem through the family courts in different cities: One in Hamilton where the husband lived, and one in Milton where *neither* of them lived. (The husband had commenced some of his litigation in Milton, apparently for strategic reasons.) The wife, who lived in South Bruce Peninsula, asked the court to order that the Milton matters be transferred back to Hamilton.

In entertaining that request, the court reflected on the comments in another recent case, *Browes v. Stevens*. There, the matter was started by the mother in Welland, even though the father lived in Toronto with their children. Both claimed that they could not afford to travel to court in the city inhabited by the other, and the father asked to have the entire matter switched to where he was located. In declining to grant that order, the court in *Browes* considered the "substantially more convenient" test in light of some of the procedural adjustments wrought specifically by the COVID-19 pandemic, stating:

> The court no longer requires parties to travel to motions or necessarily to trials. A trial in open court on this matter is not likely.
>
> The court in *Berta* drew from this earlier observation in *Browes*, agreeing that COVID-19 had rendered

geographic challenges to be of less concern now than in the past. The litigation would likely proceed remotely, but should nonetheless be centralized to one of the two cities – in this case, Hamilton as the wife requested. The court explained:

> The COVID pandemic has forced the court system to discover that with the advent of video technologies, geographic distance isn't nearly as relevant as it used to be.
>
> 1. The [husband] is correct that the [wife] could quite easily participate in a hearing in Hamilton by Zoom.
> 2. But the [husband] could just as easily participate in a hearing in Milton by Zoom.
> 3. This motion isn't about whether a stand-alone motion should be heard in one city or another.
> 4. The issue is whether a [second] motion to change would be more conveniently and appropriately heard at the same time and in the same location as a closely related [first] motion to change which has been ongoing in another city since 2017.
> 5. Should the multiple aspects of spousal support be argued once in one city – or twice in two cities?

The court ultimately chose the former; i.e., "once in one city," and made the order to transfer accordingly.

Court Says Divorce Trial Is a "Highlight Reel of How Not to Behave as a Parent"

In a recent Ontario divorce case called *Misiuda v. Misiuda*, the court was blunt in its criticism of both parents, but had particularly harsh words for the father, concluding he had "weaponized" his three children in his custody battle with their mother. As the court put it:

> [The father] was obsessed with the 50-50 shared parenting regime from the outset. His conduct in furtherance of

> that goal was deplorable and not in the best interests of the children. It is clear that his children have been damaged as a result of his conduct, despite the fact that the two eldest now live primarily with him.

The parents had numerous custody and support-related issues still in dispute since their 2015 separation. The most dramatic and compelling parts of their shared history related to the father's vow to the mother that if he did not get the equal shared custody he wanted, he would be relentless in trying to turn the children against her, "between now and the [expletive] time they get married." And as the court noted:

> In hindsight, this was not a threat. This was [the father] laying out the blueprint of his path to victory. Six years later, his plan has been executed. No one is victorious, certainly not the children.

Indeed, in the words of a Child Advocacy and Assessment Program report, the father "demonstrated little understanding of the impact of his behaviours on the children." Nor was his single-minded pursuit tempered by the fact that the marital separation was prompted when it was revealed he was having an affair with the mother's best friend.

In the six years since that separation, there had been numerous dramatic confrontations and altercations between the parents, with police being called repeatedly. Often, the children were present or even actively involved in those disputes, usually at the father's instigation. The court found that the father had repeatedly used the children as messengers, discussed adult matters with them, and acted like they were "pawns to be used to achieve his goals."

While the court certainly did not absolve the mother for her role, it said her misconduct paled "in comparison, by orders of magnitude to the inexcusable behaviour" of the father. His testimony also lacked credibility, and the court found he had "carefully constructed a scenario whereby he was innocent in the eyes of the children for the separation," while actively maligning the mother in front of them.

In deciding on a parenting order that gave primary consideration to the children's physical, emotional, and psychological safety, the court said:

> [The father's] conduct from the date of separation forward, and particularly in the early days of the separation, shows that he has little regard at all for his children regarding these primary considerations. This trial has been a highlight reel of how not to behave as a parent.

In the end, the father's open plotting and vindictive misbehaviour was all for nothing: The court concluded that under the *Divorce Act* factors, there was no justification to award decision-making responsibility to him, nor any reason to deny decision-making responsibility to the mother, whose parenting plan was in the children's best interests. The court also set a strict visitation schedule, and ordered that neither parent was to speak negatively to the children about the other.

When Can a Mistrial Be Called?

In the face of the pandemic, the embrace of the "Zoom trial" has allowed the Canadian justice system to keep operating. Innovations in technology, together with procedural adjustments to accommodate for physical distancing, have all made it possible for judges, lawyers, court staff, litigants, and witnesses to participate in court hearings from the comfort of their own homes.

But this necessary adaption has also given rise to new challenges. The need to preserve the integrity of a remotely held trial includes ensuring that the evidence of witnesses is free from influence by others. Otherwise, in the right circumstances, the spectre of a mistrial could be raised.

This was the issue in a child protection case called *CAS v. J.J., C.M. and Six Nations of the Grand River*. The mother was being cross-examined during a Zoom call that included the judge, lawyers, and court staff. During a brief court recess, the mother forgot to mute her microphone. The judge and other participants could

briefly hear what she later claimed was merely a playback of a "voice clip" recording from her cell phone that she had opened during the court break.

However, the clip included an unidentified male voice saying the words "how much longer will you be?" This gave rise to speculation that the mother was lying, and was not actually alone in the room during her Zoom cross-examination. This could leave her open to being influenced in her testimony by someone off-camera. More troubling was another part of the clearly-audible clip – also broadcast into the virtual courtroom – which suggested the mother was possibly involved in selling drugs, which would essentially raise new child-protection concerns.

The purported "voice clip" was undoubtedly off-the-record, but the mother still requested that a mistrial be declared. She argued that she could no longer get a fair trial before that judge, that there were no curative measures available, and that there would be a miscarriage of justice if the hearing did proceed. She also claimed the judge and the court staff involved in her child-protection Zoom hearing had now become potential witnesses on what had transpired during the break.

This scenario gave rise to important issues about when a mistrial can be declared. The judge set out the governing principles, as follows:

- Mistrial orders are in the discretion of the trial judge;
- A mistrial may be declared where a judge hearing the matter is satisfied that, for any reason, there is a reasonable apprehension that either party will not have a fair trial if the current trial continues (and that a fair trial would be possible if it were to begin afresh before another judge);
- Mistrials should be ordered only in the clearest of cases, where there has been a "fatal wounding" of the trial process;
- Mistrials should be granted only as a last resort, where no other curative measure could salvage a just and fair trial; and
- Parties are entitled to fair trials, not perfect trials.

In view of these factors, the judge ultimately dismissed the mother's mistrial request. For one thing, her complaints about the judge and court staff potentially having to give evidence were unfounded. Under basic legal principles, the judge herself would never be a compellable witness in a trial. Moreover, it would be a rare scenario that court staff and court reporters would have to give evidence, even though they were technically compellable.

Next, there was no reasonable apprehension of bias. The judge was satisfied that she would be able to go forward and continue the trial while remaining unprejudiced and unaffected by the inadmissible statements heard during the court recess. After all, this was a routine part of any judge's job when ruling on the inadmissibility of evidence generally.

Finally, there were practical aspects to consider. The proceedings were already lengthy, and the overheard "voice clip" was not going to have an impact on the trial's outcome in all the circumstances. These included the fact that some of the substantive allegations against the mother in the child-protection case involved her alcohol abuse, not drug abuse or dealing drugs. The best interests of the child dictated that the hearing should go on.

These case studies provide a snapshot of the varied and important issues that litigants and the court encounter on an almost daily basis. We explore ongoing pandemic tips and case studies weekly at familyllb.com.

CHAPTER 9

Bonus Chapter: Updated Divorce Questions During a Pandemic

When we released our Amazon's best-selling book *Everything You Always Wanted to Know about Divorce* in 2020, our clients were asking us new questions about divorce during a pandemic. We were able to include a special chapter dedicated to how to divorce during a pandemic. We are now over two years into the pandemic, and we thought it would be helpful to reproduce and update the questions we continue to get about divorcing during a pandemic.

Is professional support available even when everyone is isolating?

Yes. Remember, you are not alone in this situation, and you can seek out support from your partner. If you feel you need professional assistance, please reach out to your local family professional or your local mental-health centre.

Going to Court

The courts occasionally suspended regular operations in 2020 and were hearing limited matters by way of electronic materials. There

were some initial important decisions that have been rendered dealing with the issue of parenting time. During unprecedented times, family-law lawyers and parents are navigating a world of uncertainty. As the pandemic continued, the courts gradually pivoted to digital and have increased its caseloads.

GUIDING PRINCIPLES

Judges are encouraging parents to use good judgement and cooperation in navigating sensitive parenting-time issues arising out of a pandemic.

There are a few guiding principles that are emerging from the cases being heard.

1. *Time for cooperation not litigation*
    - Families need more cooperation and less litigation.
    - Courts are encouraging parents to work together to show flexibility, creativity, and common sense to promote the physical and emotional well-being of the children.
    - Courts are urging parents to find ways to maintain important parental relationships.
    - Parents are motivated to attempt some simple problem-solving before they turn to the courts for assistance. Courts will be looking to see if parents have made good efforts to communicate, show mutual respect, and come up with their own solutions.
2. *Status quo should be maintained (with modification if necessary)*
    - Courts are continuing to enforce the idea that it is in the children's best interests to maintain the status quo. This should not be unilaterally altered by one parent. It is important for both parents to work together to find solutions to parenting-time issues arising between them.
    - In most situations, there should be a presumption that existing parenting arrangements and schedules should continue, subject to modifications to ensure that pandemic precautions are adhered to.

- Parents should practise and have common sense to responsibly adhere to existing court orders.
- In some cases, a parent may have to forego scheduled time with a child; for example, if a parent is under personal restrictions such as self-isolation for fourteen days due to travel or exposure to illness.
- In some cases, personal risk factors through employment or associations may require controls with respect to direct contact with a child.
- Courts are discouraging couples from creating their own remedies. The court cannot be seen to condone behaviour that disregards court orders for individuals' personal solutions. Without citizens obeying existing court orders, the whole justice system would be turned on its head.
- There may be risk factors related to the health or other circumstances of a child or other members of a household that may necessitate adjustments to the current schedule.
- No matter how difficult the challenge, or what modifications or restrictions may be appropriate, parents must find ways to maintain important parental relationships in a safe way.

3. *Parents are encouraged to take all precautionary measures to keep children safe*
    - There will be zero tolerance for any parent who recklessly exposes a child to any pandemic risk.
    - Parents must do whatever they can to ensure that neither of them nor the child(ren) become sick resulting from a pandemic.
    - Parents should continue to obey court orders made with respect to parenting time. The court is encouraging "responsible adherence to existing court orders," which means being practical and having some basic common sense. Physical-distancing measures must be respected.

Every precautionary measure recommended by governments and health authorities in Ontario and Canada must be taken by both parties. Neither party shall do anything that will expose himself/herself to an increased risk of contracting a virus.

4. *Courts' materials need to be concise and provide details*
    - A party bringing an urgent matter to court needs to provide details as to why the situation is urgent.
    - Family-law litigants and their lawyers must continue to take all reasonable steps to attempt resolution of the matter.
    - If a parent wishes to limit the contact between a parent and a child during a crisis, they will be required to provide:
        - specific evidence or examples of behaviours or plans by the other parent that are inconsistent with pandemic protocols;
        - the parent responding to such an urgent motion will be required to provide specific and absolute reassurance that pandemic safety measures will be meticulously adhered to, including social distancing (use of disinfectant, compliance with public safety directives, etc.);
        - both parents will be required to provide very specific and realistic time-sharing proposals that fully address all pandemic considerations – in a child-focused manner; and
        - judges will likely take judicial notice of the fact that social distancing is now becoming both commonplace and accepted, given the number of public facilities that have been closed. This is a very good time for both decision making and in-person parenting time with their child(ren) at home.

ARE THE COURTS BACK TO NORMAL OPERATIONS?

No and yes.

During periods of lockdowns, regular operations of the Superior Court of Justice are restricted as a result of the serious health risks posed by the COVID-19 pandemic. At this time, only the most urgent matters can be heard. During periods of emergency, only urgent family-law events as determined by the presiding justice, or events that are required to be heard by statute will be heard during this emergency period, including:

1. requests for urgent relief relating to the safety of a child or parent (e.g., a restraining order, other restrictions on contact between the parties or a party and a child, or exclusive possession of the home);
2. urgent issues that must be determined relating to the well-being of a child, including essential medical decisions or issues relating to the wrongful removal or retention of a child;
3. dire issues regarding the parties' financial circumstances, including, for example, the need for a non-depletion order; and
4. in a child-protection case, all urgent or statutorily mandated events, including the initial hearing after a child has been brought to a place of safety, and any other urgent motions or hearings.

The determination of urgency is intended to be simple and expeditious, recognizing the summary nature of the determination.

Importantly, any determination of potential urgency or lack of urgency is wholly without prejudice (will not affect substantive legal rights) to either party on the ultimate hearing of the motion.

Even if a case is considered "urgent" for court triage purposes, on review of the facts of your circumstances the judge presiding on the hearing still needs to make a finding of "urgency" or "hardship" to skip a regular family-law court procedure to have a conference before a formal motion hearing. This is a separate legal analysis. "Urgency or hardship" usually refers to abduction, threats of harm, dire financial circumstances, *and* considers whether the moving

party provides evidence that they have made inquiries about the availability of case conference dates, and that they have made efforts to settle the matter outside the court process.

During the pandemic, the court has defined what constitutes "urgency" at the present time:

1. The concern must be immediate; that is, one that cannot await resolution at a later date.
2. The concern must be serious in the sense that it significantly affects the health or safety or economic well-being of the parties and/or their children.
3. The concern must be a definite and material one, rather than a speculative one. It must relate to something tangible (a spouse or child's health, welfare, or dire financial circumstances) rather than theoretical.
4. It must be one that has been clearly particularized in evidence and examples that describe the manner in which the concern reaches the level of urgency.

Currently, only urgent and limited-issue case conferences are being scheduled, so the general requirement to make efforts to settle the matter outside the court process before proceeding to court assumes greater importance.

DECISION AND IN-PERSON PARENTING TIME

I'm very concerned with disease spreading to or through my children's going back and forth between me and their other parent. Can I stop parenting time until this is over?

Parents are understandably confused and worried about what to do. Similarly, this is uncharted territory for our court system. We all have to work together to show flexibility, creativity, and common sense to promote both the physical and emotional well-being of children.

No one, at the time of this publication, knows how long this crisis is going to last. In many respects we are going to have to put our lives "on hold" until it is resolved. But children's lives – and vitally

important family relationships – cannot be placed "on hold" indefinitely without risking serious emotional harm and upset. A blanket policy that children should never leave their primary residence – even to visit their other parent – is inconsistent with a comprehensive analysis of the best interests of the child. In troubling and disorienting times, children need the love, guidance, and emotional support of *both* parents.

In most situations there should be a presumption that existing parenting arrangements and schedules should continue, subject to whatever modifications may be necessary to ensure that all pandemic precautions are adhered to, including strict social distancing.

In *Le v. Norris*,[28] the court ruled that the reasons the applicant had for not obeying an existing court order were not reasonable, albeit understandable considering the pandemic. The court concluded that the parties should make every effort possible to adhere to any existing court orders in light of the circumstances.

In *Grossman v. Kline*, the mother brought a motion suspending the father's parenting time, or alternatively, an order that the father adhere to strict COVID-19 protocols, as the mother is considered an "at-risk" individual. The court deemed the motion was urgent, not in relation to COVID-19 but rather based on the judge's concerns about the parents' actions and its effect on the child. However, upon hearing the motion, it was dismissed (*Grossman v. Kline*, 2020 ONSC 2714).

What if we don't have any formal agreement or court order?

Even if there is no formal arrangement, it is in the children's best interests to maintain a status quo arrangement where the safety of a child or parent is not at risk, and shield the children from the impact of family litigation.

In *Eden v. Eden*,[29] the Applicant was seeking to vary the parties' order to allow the children to have their parenting time with them in their home due to concerns that the respondent was not following proper Health Canada safety protocols. While the respondent admitted to some of the allegations made by the applicant, the court did not deem this matter urgent and rather advised the parties to

"set aside their conflict and act in accordance with the best interests of their children."

In the case of *Cossu v. Simkins*, the child was placed into the care of the maternal aunt. The child's mother made no attempt to arrange parenting time with the child for six months. Parties were not able to come to an agreement and the mother brought a motion seeking an urgent case conference prior to the first appearance date. The motion was denied and counsel for the parties were encouraged to speak and "try harder to find a resolution." (*Cossu v. Simkins*, 2020 ONSC 2801).

I have shared parenting and can watch the children because I can work from home (or, am not working). The other party can have video/phone time. Doesn't that change anything?

A proposal that a child remain with one parent for an indefinite period with only FaceTime or other electronic access to the other parent is not in the child's best interest. It disrupts the status quo, and it signals to the child that the parent may not be capable of caring for the child and keeping the child safe.

My former spouse has other children from another relationship who go between homes too. I am concerned about a pandemic illness spreading through all this family mixing?

In blended family situations, parents will need assurance that pandemic precautions are being maintained in relation to each person who spends any amount of time in a household, including children of former relationships. Each family will have its own unique issues and complications. There are no easy answers.

But no matter how difficult the challenge, for the sake of the child we must find ways to maintain important parental relationships – and above all, we have to find ways to do it safely.

My child's other parent is pestering me about my "adherence" to pandemic safety protocols. This is yet another example of their controlling behaviour. What should I do?

Answer the questions asked factually and without your editorial about the motive behind the question.

If the matter goes to court, the court will be looking to see if parents have made *good-faith efforts to communicate*, to show mutual respect, and to come up with creative and realistic proposals that demonstrate both parental insight and pandemic awareness.

Good parents will be expected to comply with the guidelines and to reasonably and *transparently* demonstrate to the other parent, regardless of their personal interests or the position taken in their parenting dispute, that they are guideline-compliant.

To date, the cases where actual restrictions were made due directly to pandemic guideline adherence have dealt with lack of communication, leaving the court to infer the worst until better evidence has been presented.

My children are now refusing to come to my house. The other parent is not encouraging them – and even may be alienating them from me. Will the court hear my matter?

Generally, these types of claims are not considered "urgent" unless the circumstances raise concerns about the immediate physical and emotional well-being of the child. There have been cases that the court has and has not heard, depending on whether they reach a specific threshold, each based on particular circumstances. In *Derkach v. Soldatova*,[30] a motion was brought by the applicant that the respondent was not facilitating the applicant's parenting time with the children (aged six and twelve). The children did not wish to go. The motion was not deemed urgent and the matter was set for a case conference in June 2020.

In *Brazeau v. Lejambe*, the father brought an urgent motion compelling the mother to cooperate with court-ordered parenting time, and he further requested an order for police enforcement and make-up parenting time. The mother advised that the children don't want to attend the father's home and that the father's home was unsafe. Orders were granted to reinstate the father's parenting time; however, the Police Enforcement Order was not granted (*Brazeau v. Lejambe*, 2020 ONSC 3117).

So what type of pandemic-related risk will be considered worth changing a parenting schedule?

In some cases, custodial or parents with parenting time may have to forego their time with a child, if the parent is subject to some *specific personal restriction* (for example, under self-isolation for a fourteen-day period as a result of recent travel, personal illness, or exposure to illness).

And sadly, in some cases a parent's lifestyle or behaviour in the face of a pandemic (for example, failing to comply with social distancing or failing to take reasonable health precautions) may raise sufficient concerns about parental judgement that direct parent-child contact must be reconsidered. There will be zero tolerance for any parent who recklessly exposes a child (or members of the child's household) to any pandemic risk.

In *Chrisjohn v. Hillier*,[31] the applicant brought an emergency motion to the court seeking police assistance due to the respondent withholding parenting time to the child out of fear of the applicant's apparent lack of social-distancing measures. The court found the respondent's conduct in contravention to the existing order and therefore constituted the matter as urgent.

In the case of *A.T. v. V.S.*, the mother refused to allow the father in-person parenting time with the child beginning on May 8, 2020, after she learned that the father was gathering in large crowds to challenge the government and public health measures taken around the COVID-19 pandemic. The mother brought an urgent motion to the court, asking for interim decision making on the basis that the father was rejecting the seriousness of the pandemic. The court granted the mother's order on a temporary basis, ordering that the child primarily reside with her and granted her sole interim decision-making authority for the children regarding health, medical care, schooling, and extra-curricular activities (*A.T. v. V.S.*, 2020 ONSC 4198).

And in *Children's Aid Society of the Region of Halton v. T.B*, a motion was brought by the mother to temporarily suspend the father's in-person parenting time because of concerns the father was not practising proper social-distancing methods. She advised

that she and the children were exhibiting symptoms of COVID-19 and needed to self-quarantine. The motion was deemed to be urgent and the father's in-person parenting time was suspended on a temporary-without-prejudice basis (*Children's Aid Society of the Region of Halton v. T.B*, 2020 ONCJ 166).

Parenting-Time Exchanges

I am concerned about pandemic spreading during exchange times for our child. What can I do?

Transitional arrangements at exchange times may create their own issues. At every stage, the social-distancing imperative must be safeguarded. This *may* result in changes to transportation, exchange locations, or any terms of supervision.

The other parent is using public transportation for parenting time. Can I stop parenting time?

Possibly. Absent a risk of harm, both parties have a duty to responsibly adhere to the existing arrangements. "Responsible Adherence" means being practical and having some basic common sense. Physical-distancing measures must be respected. The parties must do whatever they can to ensure that neither of them nor the child(ren) contracts illness from a pandemic. Every precautionary measure recommended by the Federal and Provincial governments and health authorities in Ontario and Canada must be taken by both parties and, with their help, by the child. Neither party shall do anything that will expose himself/herself or the child to an increased risk of contracting the virus.

Therefore, allegations that a parent or their household may not be in compliance with accepted pandemic safety measures, including methods of using public transit, needs to be addressed between the parents as to whether there are any actual risks to the child as a result.

Supervised Parenting Time

I have supervised parenting time. Will that continue during a pandemic?

If you are using a supervised parenting time service, you should check with their current policies.

Assuming a supervisor or alternate can reasonably be agreed to, there is no reason why these visits can't take place in an open setting, such as a park (parks are open although some playground facilities may be closed). Obviously, there are going to be practical issues that arise in making the parenting time arrangements successful from the child's perspective. If it's raining, either a sheltered location should be found (which may be more difficult during a pandemic) or perhaps the visit will have to be rescheduled for a time or adjacent day when the weather is more favourable. These are common-sense details that people acting in good faith should easily be able to resolve without taxpayers funding a judge's involvement.

In *Simcoe Muskoka CYFS v. JG*,[32] due to the mother's actions, the child was placed into the temporary care of the Child, Youth and Family Services Coalition and parenting time was scheduled at their discretion.

In light of the pandemic, in-person parenting time would commence once the coalition deemed it to be safe to do so. The mother was granted virtual parenting time three times per week and the ability to send text messages to the child daily for up to thirty minutes.

However, in *Children's Aid Society of Toronto v. T.F.*,[33] the society brought a motion seeking to make the mother's parenting time subject to its discretion and advised that their intention was to suspend all further in-person access until further notice. This motion was dismissed as the society failed to provide evidence that the mother was exhibiting behaviour that was inconsistent with the government pandemic protocols.

In *Skuce v. Skuce*, enforcement of supervised parenting time per the Minutes of Settlement was deemed urgent (*Skuce v. Skuce*, 2020

ONSC 1881) and in *Tessier v. Rick*, suspension of all in-person access because of COVID-19 was also deemed urgent (*Tessier v. Rick*, 2020 ONSC 1886).

Overholding Parenting Time

What if the other parent is not willing to return our child as set out in an existing court order (over holding)?

In general, court decisions arising from a pandemic have not tolerated any unilateral self-help remedies, either on withholding or over holding parenting time. In *Jackman v. Doyle*,[34] the father attempted to change the primary residence by withholding the children. The mother brought an emergency motion and an order was granted requiring the immediate return of the children to their mother. If necessary, the police were directed to enforce the order and deliver the children to the mother.

In the 2021 case of *I.L. v. C.R.,* following the mother's month-long Christmas vacation in Newfoundland with the parties' teenage children, the mother refused to return, stating that it was safer for the children's mental and emotional health to remain in Newfoundland rather than return to Ontario since in-person schools were closed, and they were forced to study remotely anyway. The father sought to have the children return home to Ontario immediately. The court adjourned the matter until February 12, 2021, when in-class learning in Ontario was scheduled to potentially resume (*I.L. v. C.R.*, 2021 ONSC 590).

And in the case of *J.W. v. C.H.*, a motion was brought by the applicant after the respondent refused to return the child. The applicant was given leave to bring her motion to require the respondent to comply with the agreement and return the child (*J.W. v. C.H.*, 2020 BCPC 52).

Withholding Parenting Time from Parents of Essential Services

My child's other parent works in healthcare and has an increased risk of contracting illness during a pandemic. Doesn't that matter?

In some cases, a parent's personal risk factors (through employment or associations, for example) may require controls with respect to their direct contact with a child.

However, if the parent is a healthcare professional, they and their employer would be well aware of the protocols to prevent transmission of infection. Presumably, the parent would take all necessary precautions to keep their child safe while in their care.

In *Elsaesser v. Rammeloo*,[35] the mother brought an urgent motion when the father refused to return the children to her as she was a nurse at a local hospital. The court deemed this matter to be urgent and it was heard on an expedited basis.

Again, trying to keep a child from their parent without a specific personal restriction signals to the child that the parent may not be capable of caring for the child and keeping the child safe.

In the case of *Blythe v. Blythe*, the parents had an existing temporary parenting order in place giving the father parenting time with the two children on a specified schedule. The mother was concerned for the children's health and safety as the father was an essential worker. In addition, the mother and children lived with the mother's elderly parents. The court reduced the father's parenting time to daytime visits for limited periods of time in an outdoor setting (*Blythe v. Blythe*, 2020 ONSC 2871).

Withholding Parenting Time

The other parent is now not allowing me to see our children, making all kinds of excuses, including the pandemic. What do I do?

If you have an established parenting schedule either by court order, agreement, or even a long-standing status quo, and the sole basis of withholding parenting time relates to your exposing the child to

significant risk due to not complying with existing recommended or imposed pandemic safety measures, then, before running to court, try these solutions.

1. Double-check the current safety recommendations provided by reliable local sources.
2. If the circumstances permit, communicate with the other parent. Consider that you will get further by framing the issue as "problem solving" rather than blaming or accusing the other party. They may simply be overreacting or need assurances.
3. If there is communication, see if a compromise or assurance will resolve the matter.
4. During the COVID-19 pandemic a rule was put into place on April 6, 2020, to allow that if parties arrive at an agreement, it can be filed with the court on a consent basis to be turned into a court order.

If you have not had consistent parenting time to date, or have not meaningfully pursued parenting time before a pandemic, a court may find that the request is not "urgent" – either from the court urgency screening perspective or the "urgency and hardship" requirement to skip the regular family law court procedure – to have a conference before a formal motion hearing. In *Reitzel v. Reitzel*,[36] after the parties had been separated for six months, the father brought an urgent motion seeking terms of parenting time with his children. There was no prior order in place and the father was previously exercising parenting time on an ad hoc basis. The court dismissed the father's motion as they determined that the matter was not of urgency.

In the case of *Chin v. Omeally*, the parties had joint custody of the child with the father having regular in-person parenting time on alternate weekends and mid-week visits. The mother suspended the father's parenting time in light of the COVID-19 pandemic. The father brought a motion seeking to reinstate his regular parenting time. The motion was deemed urgent (*Chin v. Omeally*, 2020 ONSC 2029).

In the case of *Bartolini v. Hill*, the mother brought a motion seeking to reinstate her parenting time with the child upon the paternal grandmother's withholding in-person parenting time since March break due to COVID-19. The order was granted to reinstate parenting time (*Bartolini v. Hill*, 2020 ONSC 2657).

I've read all of the above. I believe withholding parenting time is in my child(ren)'s best interest but I am not convinced my former partner will be reasonable or even communicate with me or a lawyer. What can I do?

Any reasonable steps, in the circumstances, to attempt to resolve the matter with the other side outside of court should be taken and documented.

If a parent has a concern that a pandemic creates an urgent issue in relation to a parenting arrangement, they may initiate an emergency motion, but they should not presume that the existence of a crisis will automatically result in a suspension of in-person parenting time. They should not even presume that raising pandemic considerations will necessarily result in an urgent hearing.

The courts are dealing with pandemic parenting issues on a case-by-case basis. The court will consider and require the following when making an urgent order during the pandemic:

- the parent initiating an urgent motion on this topic will be required to provide specific evidence or examples of behaviour or plans by the other parent that are inconsistent with pandemic protocols;
- the parent responding to such an urgent motion will be required to provide specific and absolute reassurance that pandemic safety measures will be meticulously adhered to, including social distancing, use of disinfectants, compliance with public safety directives, etc.;
- both parents will be required to provide very specific and realistic time-sharing proposals that fully address all pandemic considerations, in a child-focused manner; and

- Judges will likely take judicial notice of the fact that social distancing is both commonplace and accepted, given the number of public facilities that close during these crises. This is a very good time for both custodial and access parents to spend time with their child at home.

Judges won't need convincing that a pandemic is extremely serious, and that meaningful precautions are required to protect children and families. Propose realistic solutions. Make good-faith efforts to communicate, show mutual respect, and come up with creative and realistic proposals that demonstrate both parental insight and pandemic awareness.

What other parenting claims is the court likely not willing to deal with during a public crisis?

Each circumstance stands on its own merits, but the courts have noted that the following parenting claims are not considered "urgent" during a crisis:

- to remove various social-media accounts under the child's name;
- to cease posting photos of the child that he or she considers inappropriate;
- make-up parenting time;
- police enforcement of parenting time, where no other enforcement tactics have yet to be tried;
- dispensing with the other parent's consent to travel; and
- return of the child to another country that is currently safe.

In *Murphy v. Connolly*, the mother brought an urgent motion permitting her to move with the child an hour away from her current place of residence. The mother brought the motion without notice to the father. The motion was deemed not urgent and the mother was advised to serve the father with her materials and schedule a case conference (*Murphy v. Connolly*, 2020 ONSC 3047).

In *Onuoha v. Onuoha*, the father sought to return to Nigeria with his two daughters. They were brought to Ontario by the mother in

October 2019. The father says he did not consent to the mother bringing the children to Ontario. The court found the matter not urgent at the time as the children were currently residing in Canada with the other parent and stressed that this was not the time to move the children to another jurisdiction in light of the travel advisory guidelines (*Onuoha v. Onuoha*, 2020 ONSC 1815).

In the case of *Johansson v. Janssen*, the mother took the children to Germany to renew her Canadian visitor visa but a return date was unclear. The father brought an urgent motion requiring the mother to return the children to B.C. once international restrictions related to COVID-19 were lifted. The mother claimed B.C. did not have jurisdiction as the father was living in Sweden and the mother was in Germany. The motion was deemed not urgent as returning the children to B.C. would have no immediate practical consequences (*Johansson v. Janssen*, 2020 BCSC 469).

The court in *Hamad v. Al-Rewashdy* severed the divorce from the corollary relief, and granted the divorce. As a result of the divorce, the parties' home, which was solely owned by the wife, ceased to be a matrimonial home. When the former husband learned that the home was listed for sale, he brought a motion for certificate of pending litigation. The motion was deemed not urgent (*Hamad v. Al-Rewashdy*, 2020 ONSC 2093).

Changing Residency

I'm concerned that my child's other parent will move or abduct our child. Will the court be willing to hear my matter?

A parent should not think that they can use the cover of a crisis to make a substantial one-sided change to a child's residence. Courts have and will address this conduct. In *Amirzada v. Alemy*,[37] a mother brought a motion seeking an order permitting her to take the parties' two-year-old child to Vancouver for the duration of the pandemic. The father was not in agreement with the move. This was deemed urgent and the move was not deemed to be in the child's best interest.

Travel

I'd like to go on vacation and bring the children, but the other parent won't let me. Will the court be willing to let us travel?

In making a decision related to travel, the court will examine what is in the best interest of the child. The mother in the case of *Semkiw v. Sutherland* brought an urgent motion seeking an order permitting her to travel to Texas with the children, citing that she wished to spend her residential summertime with the children in Texas. The court ruled that it was not in the children's best interests to partake in non-essential travel to Texas during the pandemic to be with their mother, since it would recklessly expose them to the risk of infection (*Semkiw v. Sutherland*, 2020 ONSC 4088).

In the case of *Yohannes v. Boni*, the father lives in France and has an order for extended visitation and accommodation rights. He sought to have the parties' daughter fly to France to visit him. The mother brought an urgent motion seeking a temporary without-prejudice order requiring the father to exercise his parenting time in Toronto, Ontario, so long as Canada has an advisory against all non-essential international travel. The court ruled that it was not in the child's best interests to permit her to travel to France to visit her father (*Yohannes v. Boni*, 2020 ONSC 4756).

Decision Making

VACCINES:

What happens if we can't come to an agreement on whether to vaccinate the children?

In the case of *B.C.J.B. v. E.-R.R.R.*, the court was asked to make a ruling on whether the father should be granted decision-making authority in connection with his child's vaccinations, over the objections of the mother who had sole custody of the child in accordance with a prior parenting agreement. The child had never received any of the vaccines that other children in Ontario routinely received, and the father wanted him to be vaccinated now against COVID-19.

The court granted an order providing the father with decision-making authority about the child's health, only as it related to administering existing publicly funded vaccinations. As the COVID-19 vaccine did not exist at the time, the judge referred this matter, if it were still an issue when the vaccine was made available to the trial judge. (*B.C.J.B. v. E.-R.R.R.*, 2020 ONCJ 438)

In the case of *Chmiliar v. Chmiliar*, the court ordered that vaccinations be given to the ten-year-old child over the objections of one of the parents, but was not ordered for the thirteen-year-old one, who was considered to be a "mature minor" who was capable of making her own medical decisions (*Chmiliar v. Chmiliar*, 2001 ABQB 525).

Finally, in the case of *Tarkowski v. Lemieux*, the parties were in court related to sole decision-making of their six-year-old daughter. The issue of vaccinations arose. The court noted that the mother had an erratic and unreliable approach to the issue of vaccinating, and held controversial and unproven beliefs. In the end, the court granted sole decision-making to the mother nonetheless, but gave the father specific decision-making authority over the vaccination decision. In this case, the court expressly included the future decision on whether to administer any available COVID-19 vaccine as part of the father's mandate (*Tarkowski v. Lemieux*, 2020 ONCJ 280).

In-person School

I believe it is in the children's best interest to go back to in-person school, will the court agree with me?

In the case of *Zinati v. Spence*, the father sought to have the child remain in at-home learning and the mother sought to have the child return to in-class learning at school upon their reopening. The court determined that it was in the child's best interests to return to in-class learning when the school reopened in September 2020. The court granted an order requiring the child to be enrolled in in-class learning for the 2020–2021 school year (*Zinati v. Spence*, 2020 ONSC 5321).

In *McGrath v. McGrath*, the mother sought an order among many other things, for a change in school enrolment due to her recent move.

The father sought an order requiring the children to remain enrolled in in-class learning at the school they were currently enrolled at. The court found that the mother's evidence for a change in school district was insufficient and ordered that the children continue to attend school where they were presently enrolled until further order or written agreement (*McGrath v. McGrath*, 2020 ONSC 5676).

The case of *Chase v. Chase* involved a motion brought by the mother for sole decision-making ability for educational decisions with respect to the child. In particular, the mother sought an order that the child shall attend school, in person, commencing at the beginning of the school year. The father opposed the motion and sought an order that the child attend virtual at-home learning. The court ordered that the child shall attend in-class learning commencing the beginning of the school year (*Chase v. Chase*, 2020 ONSC 5083 (CanLII)).

Online School

I believe it is in the children's best interest to enroll in virtual/online school, will the court agree with me?

The court heard a motion brought by the mother in the case of *Joachim v. Joachim* for sole decision-making ability for educational decisions with respect to the child. In particular, the mother sought an order that the child shall attend school, virtually at home, commencing at the beginning of the school year. The father opposed the motion and sought an order that the child attend in-class learning. The court ordered that the child shall attend virtual classes at home for the 2020 fall semester (*Joachim v. Joachim*, 2020 ONSC 5355 [CanLII]).

SUPPORT AND PROPERTY ISSUES

The impact of a pandemic can affect all Canadians financially. Millions of Canadians have applied for unemployment benefits and many others have experienced a dramatic decline in the value of their savings and business interests as well as their overall incomes.

Changes to an individual's financial circumstances will undoubtedly impact an individual's support obligation, their entitlement to support, and the division of property.

Under the federal *Divorce Act*, an existing child-support obligation may be varied in the event of a "change of circumstances" since the making of the child-support order. Similarly, a spousal-support order may be changed in the event a "change in the condition, means, needs, or other circumstances of either former spouse has occurred since the making of the spousal support order." A loss of employment due to a pandemic ought to be a sufficient change in circumstances that will give rise to the variation of an existing support obligation.

Support payors ought to address the issue of support as soon as a change in their income is known. In so doing, support payors will need to show that their loss of income is unintentional and beyond their control.

Further, support payors ought to take steps to mitigate their loss of income by seeking alternative employment and taking advantage of the various benefits that may be available to them, such as the Canada Emergency Response Benefit (CERB), Employment Insurance (EI), and other government programs.

Another family-law issue arising from a pandemic is the impact of a decline in the value of assets following separation. In Ontario, married spouses share the increase in their net worth from the date of marriage to the date of separation. With some exceptions, the spouse who accumulated more during the marriage owes the other spouse one-half of the difference between them. This is referred to as an "equalization payment."

But what happens if an equalized asset declines in value after separation but before the property issues are resolved between the separated spouses? For a jointly owned asset, the answer is simple: both parties participate in the decline. For a solely owned asset, however, the answer is not as simple. In order for the non-owner spouse to have exposure to post-separation fluctuations in market conditions, recourse must be had to legislative provisions that permit an unequal division of property. For example, section 5(6) of

Ontario's *Family Law Act* permits unequal division of property in exceptional circumstances.

The threshold for unequal division of property is very high. According to the Court of Appeal for Ontario, to "cross the threshold, an equal division of net family properties in the circumstances must shock the conscience of the court."

Individuals experiencing a decline in their financial circumstances in the pandemic would be wise to quickly understand and address the impact of such a change on their family-law matters. Former spouses should keep the following in mind: (1) taking steps quickly to address support issues is important, and (2) caution must be exercised in structuring a property settlement at this time given the uncertain market conditions and the extent to which those conditions may cause the value of an asset to decline even further.

In the case of *Serra v. Serra*, the husband owned a textile business that was very profitable on the parties' separation date. But by the time the trial arrived, the value of his shares in the company had suffered a very steep (and very likely permanent) drop, due entirely to market forces. The Appeal Court affirmed that in the face of this kind of market-driven negative change in the value of one spouse's assets between separation and trial, it would be unconscionable to apply the equalization process in the usual way (*Serra v. Serra*, 2009 ONCA 105).

Property

Can a parent be kicked out of the home for not following pandemic safety protocols?

Yes. In *Guerin v. Guerin*,[38] the court found the actions of a father warranted the request for exclusive possession of the home on behalf of the mother, in addition to all communication with the children to be conducted virtually. The court stressed that this ruling was a temporary solution to the difficult situation that the pandemic has brought upon us.

Can a party still be kicked out of the home for other reasons during the pandemic?

In the case of *Abesteh v. Eagle*, a motion was brought by the husband seeking exclusive possession and a restraining order against his wife. The husband alleged that the wife was an alcoholic who was intoxicated daily and verbally abusive to himself and their younger child. The motion was deemed urgent (*Abesteh v. Eagle*, 2020 ONSC 2086).

The court held in *Theis v. Theis* that the release of matrimonial home funds held in trust was not deemed urgent (*Theis v. Theis*, 2020 ONSC 2001).

Child and/or Spousal Support

If I suffer a loss of or reduction in my income, what can I do about existing spousal obligations?

With the current economic uncertainty – even with the government's efforts to bridge the gap – it is not a question of if, but a question of when changes in income will be considered urgent with respect to spousal support obligations.

Existing orders and agreements may, or may not, provide for an automatic adjustment to spousal support. A starting point is to consider the basis of the spousal support. Is it voluntary, court ordered, or part of a domestic contract or separation agreement?

It is also important to consider the specific terms of the spousal-support agreement. Is the support time limited, indefinite, or subject to review or variation? Is the support compensatory, given the roles played and the nature of the relationship? Does the agreement or court order deal with the concept of a material change and list specific examples?

The concept of "material change in circumstance" has a specific purpose and meaning with respect to spousal support obligations.

Some will argue that variations to support should be considered given the economic impact of a pandemic. Each case will be fact driven and may generate different results.

Current trends and court decisions regarding support during a pandemic indicate that applications or motions seeking to change support obligations are not considered urgent. The court has indicated such variations may be made retroactively at a later date.

If economies worsen, and non-essential businesses remain closed for extended periods, there will be an increasing demand for courts to address the escalating crisis and the quagmire spousal support payors face during times of crises. We should also be mindful of support recipients who also experience the financial challenges resulting from a pandemic. As a pandemic continues, there are no winners or losers as support payors and support recipients will both be unhappy.

COURT-RELATED PROCESSES

What am I supposed to do with my concerns?

There are significant challenges for parents in knowing what is best for their children during a pandemic or times of global crisis. The "goal posts" seem to move daily, and what is deemed "safe" today may not be deemed "safe" tomorrow. Parents and the courts are aware that recommendations by senior public health officials shift in response to the evolution of a pandemic in Canada. We simply do not know. It is no wonder that this is a difficult time for parents to make decisions.

These types of circumstances demand the best of parents and require them to work together, no matter their differences, to craft the safest options for children while ensuring that children derive the benefit of the love, nurturance, and guidance of both of them. Of course, the overriding requirement for parents is to keep the health, well-being, and best interests of their children at the forefront of their decision-making.

The disruption of our lives produces anxiety for everyone. It is even more confusing for children who may have a difficult time understanding. In scary times, children need all of the adults in their lives to behave in a cooperative, responsible, and mature manner. Vulnerable children need reassurance that everything is going to be okay. It's up to the adults to provide that reassurance. Families need more cooperation and less litigation.

Why are the divorce courts not fully open?

Regrettably, the answer is very short. It's virtually all about paper.

All court actions, applications, and other types of legal proceedings and documents start with hard-copy forms, mandated by the Ontario Family Law Rules. These can be obtained from the court offices, and electronic versions can be downloaded from the court's Family Law Forms website. However, once completed, court forms must be printed and filed in hard copy at the court office, with only a few minor exceptions (namely those forms that are specifically allowed to be filed electronically through the Family Claims online portal, as prescribed under the Family Law Rules).

This means that family courts are subject to a daily deluge of litigants' and lawyers' paper filings. Every application, answer/reply, set of motion materials, conference brief, conference confirmation, and trial record or continuing record must be filed with the court in paper format. The same goes for supporting documentation, such as each spouse's financial statements, which can be voluminous. And – to make the paper trail even worse – each spouse must be personally served with their own, separate hard copy of whatever the other spouse has filed with the court. The spouse who is doing the serving must then file an Affidavit of Service (also on paper) with the court as well, attesting to the fact that the other spouse received the documents.

For safety and technology reasons, the court cannot function fully and effectively during a pandemic because it is fundamentally a paper-based system that is obviously somewhat archaic, cumbersome, and woefully oblivious to the environmental cost of this needless waste of paper.

If I need to go the court route, how do I have my documents formally signed when I can't meet anyone in person?

Currently, there may be two answers to this question.

1. The Law Society of Ontario has relaxed the commissioning of sworn affidavits and financial statements as not requiring the lawyer or paralegal carrying out commissioning functions in the physical presence of the person seeking that service.

Rather, video conferencing can be used as an alternative means of commissioning, with certain conditions.

2. The Superior Court of Justice and Ontario Court of Justice have advised that where it is not possible to email a sworn affidavit, affidavits may be delivered unsworn, but the affiant must be able to participate in any telephone or video-conference hearing to swear or affirm the affidavit.

How do I file papers with the court?

Directions for court filings depend on which court you would be seeking orders from or responding to claims. For current directions at the Ontario Superior Court of Justice, please check for the current protocols on our pandemic landing page at www.russellalexander.com.

What should the court be doing differently so people can access the justice system?

There are some initial steps that Ontario Family Courts should take, both short and long term, towards installing a paperless document-filing and document-service system in courts across the province.

1. Switching the default vantage point to create a "new normal." Currently, the hard-copy-based mode of serving and filing documents is the so-called norm, and electronic filing is viewed as more of a "novelty" or a "special" scenario. This script must be immediately flipped. Paperless service and filing of documents must become the accepted default and filing of hard-copy documents must become the (rare) exception.
2. Pivot to an entirely paperless system. There are many non-Ontario jurisdictions that already have paperless document service and filing systems in place. In many cases, these court systems have been in place for more than a decade and are a fertile source of information on what does/does not work. Ontario courts should plumb these sources for information on how best to proceed with its own paperless justice initiative.

3. Impose limits on paperless filing only when absolutely necessary. Nobody expects to fully and permanently eliminate hard copies from the Ontario justice system altogether, or all at once. There will be exceptions and limits on what can be filed electronically. However, these exceptions should be scrutinized to ensure that – from an administratively or privacy standpoint – they truly cannot be avoided.
4. Eventually, evolve to digital court rooms. Many of the in-person hearings that arise or are currently required as part of a typical family-law matter could easily be conducted remotely instead. These include case conferences, first appearances, motions to change, etc.
5. Limit in-person hearings to only trials, and to determinations involving credibility assessments. Courts should not require in-person attendance in a physical court room except where findings relating to credibility are required, or where *viva voce* testimony is essential. Some judges have commented that conducting Zoom or other video conferences during a pandemic has made credibility findings easier because they have a close-up video of the witness's face as opposed to the traditional method of being ten or fifteen feet from the witness in a physical court room.

How is the court handling the backlog of cases, what happens if my matter is headed for trial?

In the case of *Taylor v. Boon*, following the father's death and estate litigation with the mother, the paternal grandmother and aunt sought in-person parenting time with the parties' nine-year-old daughter. This was a triable issue; however, the court identified that the matter would not be able to be resolved at trial until at least 2022 due to the backlog of cases arising from the pandemic. Under the circumstances, the court advised that the only realistic way to address the disagreements between the parties would be to manage the case through motions rather than waiting for trial (*Taylor v. Boon*, 2020 ONSC 5521).

What happens if I am ordered to pay costs, but I am already suffering financially because of the pandemic?

The husband in the case of *Levin v. Levin* sought an appeal to reduce the amount of costs he was ordered to pay relying on the negative impact that the COVID-19 pandemic had on his self-employment income. The Ontario Court of Appeal permitted a reduction of $1,585.00 in light of the appeal being heard in writing and not requiring an in-person attendance (*Levin v. Levin*, 2020 ONCA 675).

ALTERNATIVE TO GOING TO COURT

Can I still have a settlement meeting or collaborative practice meeting during a pandemic?

Yes. Although courts reduce hours, provide limited ability to file materials, and currently deal only with emergency matters; people have other, and many would argue, better options, to settle their family-law matters and resolve their separations.

Remote settlement meetings and collaborative practice (CP) is perfectly suited to help many families during a pandemic. It ensures social distancing and helps protect the health and safety of the teams, staff, and clients. CP professionals have a proven formula and framework to address clients' goals and interests. With many lawyers and CP professionals experiencing a changing workload, reduced emails, and few (or even no) in-person meetings, we are finding schedules are opening up.

Remote CP meetings can be very flexible and adaptable regarding timing and scheduling. The CP teams we work with have been "all-in" and we have been able to continue to serve our clients in a timely, effective, and professional manner. As the pandemic subsides and the legal profession returns to normal, remote CP meetings may continue to be the new normal. Perhaps a hybrid model will evolve, but it would certainly be beneficial to replace the old-school CP professionals' phone calls with video conferencing. This serves to promote connectedness and teamwork, which is what collaborative practice is all about.

Are there efficient ways to settle my matter?

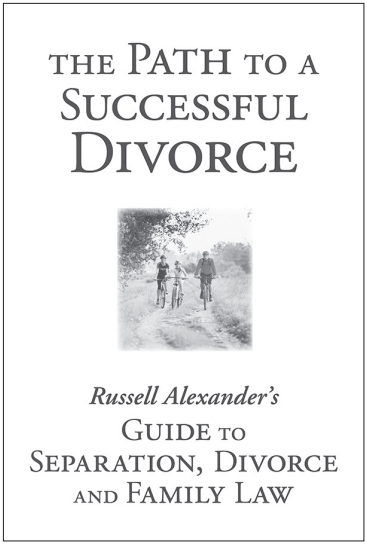
Yes. CP professionals have developed divorce H.E.L.P. (High Efficiency Legal Process). H.E.L.P. offers you a team of highly experienced and collaborative professionals who will provide you with the support, guidance, and options to resolve your questions and enable you to build the best winning conditions for your next chapter. The framework of H.E.L.P can include:

- A client-centred, multi-disciplinary team offering legal, financial, and family counselling expertise
- A collegial, not adversarial, planning mindset focused on helping both spouses identify and achieve their most important goals and interests
- Robust, fact-based financials that create understandable financial options that preserve precious family wealth and work in the real world
- Experienced parenting coordinators offering insights that support and strengthen key relationships
- A process roadmap setting out each step, who is accountable, the effort required, and an estimate of cost to achieve settlement
- A clear plan setting out high mutual expectations of the team and clients
- The road to resolution will place bumps in the way – that's normal
- Resolving all of the issues your family needs to tackle is a journey – H.E.L.P.'s goal is to create sustainable (and wise) agreements between spouses

Who are the right clients for Divorce H.E.L.P.?

H.E.L.P. is not for every family. Families that are in deep conflict or parties that view the separation process as a means to exact revenge or war by another means aren't good candidates for H.E.L.P. Our target clients are people like you who share a deep commitment to achieve this level of efficiency; couples who want to manage the pace, level of effort, and costs of the separation process.

Books and Other Publications from Russell Alexander



1. The Path to a Successful Divorce

In our 2017 best-selling book *The Path to a Successful Divorce: Russell Alexander's Guide to Separation, Divorce and Family Law* we examine how to Get a Good Start on a Good Ending, including:

- How do I go about finding a good divorce lawyer?
- What can I expect to happen in Family Law Court?
- How do we divide all our stuff?
- Do I have to go to court to get a divorce?
- With a separation agreement, I don't need to get a divorce, right?
- Are there other options?

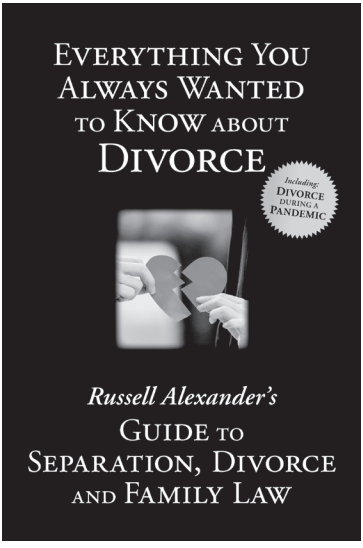
These are just a smattering of the questions that we are hearing every day – and these are the fairly easy questions to answer.

While the breakdown of a marriage is never an easy or happy time, the process can go smoothly or it can be a roller coaster.

On top of all the emotional turmoil, it is time-consuming, costly, and very confusing.

We provide helpful lists and tips and insightful articles to assist you in answering some of the questions above. This book will help you to work with your lawyer in a more effective and cost-efficient manner.

Having an accomplished and experienced lawyer on your side will go a long way to help you negotiate the system, ensure that you've covered all the bases, and head you off on a fulfilling new direction.



2. Everything You Always Wanted to Know About Divorce

In our second book, also an Amazon Best Seller, *Everything You Always Wanted to Know About Divorce: Russell Alexander's Guide to Separation, Divorce and Family Law* we take a deeper dive into the common questions clients were asking us every day. This book was released at the beginning of the pandemic and we were able to include a special chapter on how to divorce during a pandemic. Some of the question we explore included:

- Answering all your questions – even the ones you're afraid to ask!

- What will this process cost me? What exactly is a retainer anyway?
- How do I find a lawyer? Will they keep my secrets?
- Can we avoid going to court?
- What do all these terms mean: motion, order, applicant, financial disclosure, valuation date?
- How long will all this take to settle?
- Is there a difference between mediation, arbitration, and collaborative divorce?
- When do I go to court?
- When do I sign an agreement?
- How many steps are there in this process?

You'll find the answers to these questions – and more – in *Everything You Always Wanted to Know About Divorce*.

Also included were Q&A lists, real-life cases, and commentary. This book aims to give Ontario readers a simple-to-understand resource for answering their family-law questions.

Resources

CHAPTER 1: THE JUSTICE SYSTEM'S SLOW PIVOT TO DIGITAL

Ontario Family Law: https://tinyurl.com/bj567kbb

Ontario Family Law Rules Forms: https://tinyurl.com/2p8dj94z

Slaw article: Towards Cyberjustice Retrospective Part 1: Who Controls Court Data?: https://tinyurl.com/yt9vtpdj

Slaw article: Towards Cyberjustice Retrospective Part 2: A Tale of Cyberjustice: https://tinyurl.com/4hp3da2z

Slaw article: Towards Cyberjustice Retrospective Part 3: Another Way to Resolve Legal Disputes: https://tinyurl.com/ycymbh68

Slaw article: Towards Cyberjustice Retrospective Part 4: A Look Inside the Courthouse: https://tinyurl.com/2h7p35d7

Slaw article: Towards Cyberjustice Retrospective Part 5: What the Future Holds: https://tinyurl.com/fz9wezvm

Cyberjustice Laboratory: https://www.cyberjustice.ca/en

Cyberjustice Laboratory: Rethinking Processual Law: Towards Cyberjustice: https://tinyurl.com/yc3x97u7

Government of Ontario, "File civil case documents online": https://tinyurl.com/3jbmuw9m

Government of Ontario, "File family court documents online": https://tinyurl.com/yx723tw5

Supreme Court of Canada, "March 2020: Filing of all documents by email": https://tinyurl.com/yd3cprr5

Superior Court of Justice CaseLines Hearings: Tips for Counsel and Self-represented Parties: https://tinyurl.com/2axn3bjm

Ontario Court of Appeal, "About the Court": https://www.ontariocourts.ca/coa/

Colorado Judicial Branch: https://www.courts.state.co.us/

Colorado Judicial Branch: COVID-19 Important Announcements: https://tinyurl.com/fkuda5az

Superior Court of Justice: Notice to the Profession, the Public and the Media Regarding Civil and Family Proceedings: https://tinyurl.com/4smarpmz

CHAPTER 2: THE ADVENT OF ZOOM DIVORCE

Free high-definition stock photos for Zoom backgrounds: pexels.com

Free stills from movies for Zoom backgrounds: https://tinyurl.com/2esah9u4

Premium Zoom backgrounds: https://unsplash.com/s/photos/zoom-backgrounds

Premium Zoom backgrounds from iStock, sample office background (though distracting as the clock doesn't move): https://tinyurl.com/4cre2833

Backgrounds from famous shows: https://tinyurl.com/2p8v5j23

CHAPTER 3: ZOOM DIVORCE: THE GOOD, THE BAD, AND THE UGLY

TikTok video of Tom Cruise: https://tinyurl.com/25nz7wd6

Cheerleader's mom accused of making "deepfake" videos of daughter's rivals: https://tinyurl.com/a4j9d89h

CTV News: Zoom Hearing Abruptly Ends When Court Realizes Suspect Is in Same Home as Victim of Alleged Assault: https://tinyurl.com/2p9ry4t6

Canadian Domestic Homicide Prevention Initiative: http://www.cdhpi.ca/

CHAPTER 6: THE RELATIONSHIP BETWEEN ZOOM DIVORCE AND CASELINES

Register for CaseLines: https://ontariocourts.caselines.com/Account/Register

Supplementary Notice to the Profession and Litigants in Civil and Family Matters regarding the CaseLines Pilot, E-Filing, and Fee Payment: https://tinyurl.com/mwpwn5xsConsolidated Notice to the Profession, Litigants, Accused Persons, Public and the Media: https://tinyurl.com/3eks2xye

Important CaseLines Reminder: https://tinyurl.com/4ywxnj4bCaseLines Information Session on Vimeo: https://vimeo.com/536398473

Family Law Forms: https://familyllb.com/family-law-forms/

Frequently Asked Questions about Thomson Reuters CaseLines: https://tinyurl.com/2p8ncrnxOntario Family Court Forms: http://ontariocourtforms.on.ca/en/

Court Fee Waiver Forms: https://tinyurl.com/4vasfyjp

Information on Changes to the *Divorce Act*:

Bill C-78, Divorce Act Amendments, The Canadian Bar Association: https://tinyurl.com/2p856was

"Family Law Now": Podcast on the *Divorce Act* Changes:

Episode 41: Divorce Act Changes – Part 1: Objectives & New Duties https://tinyurl.com/bdfuarcj

Episode 42: Divorce Act Changes – Part 2A: Best Interests of the Child https://tinyurl.com/ydzy8tbu

Episode 43: Divorce Act Changes – Part 2B: Best Interest of the Child (cont'd) https://tinyurl.com/yckzukuw

Episode 44: Divorce Act Changes – Part 3A: Mobility and Jurisdiction https://tinyurl.com/tf9fyct8

Episode 45: Divorce Act Changes – Part 3B: Mobility and Jurisdiction (cont'd) https://tinyurl.com/y9pkyp8h

Episode 46: Divorce Act Changes – Part 4: Variation, Rescission, Suspension https://tinyurl.com/3nx2uyhu

CHAPTER 8: PANDEMIC ZOOM DIVORCE TIPS AND CASE STUDIES

List of locations of family professionals in Ontario: Russell Alexander Collaborative Family Lawyers, http://www.russellalexander.com/locations/

Russell Alexanders' "Family Law Now" podcasts: https://familyllb.com/podcast/

Allyson Gardner, MSW, RSW, Social Work Professional, https://www.allysongardner.com/

Karen Guthrie-Douse, Registered Social Worker, https://tinyurl.com/57jefvrs

Additional Resources

Learning More about Zoom Divorce and Staying Current

COVID-19 and Divorce Information Centre

Our COVID-19 and Divorce Information Centre where the team at Russell Alexander Collaborative Family Lawyers is working hard to create a useful resource to help anyone trying to navigate a divorce or family law dispute in Ontario, Canada, during the pandemic:

https://www.russellalexander.com/team/

COVID-19 and Divorce Resources

Explore our collection of COVID-19 and divorce resources:

How COVID-19 Impacts Our Service:
https://www.russellalexander.com/covid-19/#service

Family Law Now COVID-19 Podcasts:
https://www.russellalexander.com/covid-19/#podcasts

FamilyLLB COVID-19 Blog Posts:
https://www.russellalexander.com/covid-19/#blog

FamilyLLB COVID-19 Videos:
https://www.russellalexander.com/covid-19/#videos

Recent Family Law Decisions:
https://www.russellalexander.com/covid-19/#decisions

Other Helpful COVID-19 Links:
https://www.russellalexander.com/covid-19/#links

FamilyLLB

FamilyLLB is our award-winning legal blog that has thousands of articles and commentary on legal cases and current issues in family law. We provide resources and legal commentary weekly on a diverse range of legal topics, including: FAQs, affairs, adultery and spousal spying, child support, spousal support, collaborative practice, court cases, family violence and abuse, property divisions and sharing the matrimonial home, and child parenting and contact orders.

You will also find these helpful resources at FamilyLLB:

- Links to our YouTube channel, https://www.youtube.com/user/familylawlawyers
- Ontario family court forms, https://familyllb.com/family-law-forms/
- our Divorce Information Centre, and https://tinyurl.com/3wm8zzfk
- a link to our award-winning podcast "Family Law Now" https://familyllb.com/podcast/

Podcasts

We cover many aspects of Zoom divorce and separating during a pandemic in our award-winning podcast "Family Law Now": https://familyllb.com/podcast/

Live Events

Our podcasting evolved in 2021 to free weekly live one-hour events each Wednesday, where we discuss current changes in family law, Zoom divorce, and how the pandemic is affecting families across the country. The live events also include Q & A, where you can submit your questions. You can learn more and register here: https://www.russellalexander.com/webinars/

Upcoming Live Events/Webinars:

https://www.russellalexander.com/webinars/

Russell Alexander's e-Books on Divorce

We regularly produce free e-books on different aspects of divorcing during the pandemic. You can order yours for free and learn more here: https://tinyurl.com/5cw257uw

Download a free copy of our e-books:

"Child Access and Custody During the Pandemic": https://tinyurl.com/3hjnpam6

"Divorce and the Coronavirus Pandemic": https://tinyurl.com/2h8z7vfr

Government Websites

To learn more about changes to the *Divorce Act*, "Bill C-78, *Divorce Act* Amendments," visit:
https://tinyurl.com/2p8u2k7r

To learn more about the Superior Court of Justice, decorum, and virtual hearings, see "8. Standard document naming protocol" at:
https://tinyurl.com/vtpxn22s

Virtual Hearings:

"Zoom User Guide for Remote Hearings in the Ontario Court of Justice (August 2020)":
https://tinyurl.com/2p9d6cvw

"Virtual Hearing Room: JVN WebRTC Manual":
https://tinyurl.com/5n76jxj7

Russell Alexander's Free Divorce Checklist

As we have indicated, Zoom divorce can be a complicated and complex process. We have prepared a free divorce checklist to help you navigate the divorce process. To learn more, visit
https://tinyurl.com/44hkhsfj

SCHEDULING OF FAMILY MATTERS IN THE ONTARIO COURT OF JUSTICE

**This Notice replaces previously announced notices.*

March 18, 2022

1. INTRODUCTION:

This Notice sets out how family law proceedings in the Ontario Court of Justice are scheduled and conducted as of April 4, 2022, and until further notice.

The Ontario Court of Justice has provided meaningful access to justice during the COVID-19 pandemic while making the health and safety of all court users a top priority. In doing so, the Court has relied on, and benefited from, the expert advice of the Office of the Chief Medical Officer of Health.

Recently, the Office of the Chief Medical Officer of Health has announced the easing of public health measures, including the easing of capacity limits in our courthouses. The easing of public health measures will mean increased capacity for courts to return to in person proceedings.

As of April 4, 2022, family matters will be heard in-person, by virtual technology (video or telephone) or a combination of in-person and virtual technology, as per the chart below:

FAMILY LAW ACT, CHILDREN'S LAW REFORM ACT AND OTHER DOMESTIC FAMILY PROCEEDINGS:

Hearings:	Mode of Appearance:
First Appearance Court/First Court Date	Virtual
Initial Case Conference	In-person, unless otherwise directed by the judge

Hearings:	Mode of Appearance:
Continuing Case Conference	In-person, unless otherwise directed by the judge
Settlement Conference	In-person, unless otherwise directed by the judge
Trial Management Conference	Virtual
Combined Conferences	In-person, unless otherwise directed by the judge
Motions	Virtual, unless otherwise directed by the judge
Trial Audit/Assignment Court	Virtual
Trials	In-person with discretion for witnesses to appear virtually (hybrid), unless otherwise directed by the judge

FAMILY RESPONSIBILITY OFFICE (FRO), INTERJURISDICTIONAL SUPPORT ORDERS ACT (ISOA) AND HAGUE AND NON-HAGUE JURISDICTIONAL PROCEEDINGS:

Hearings:	Mode of Appearance:
FRO Default Hearings (first appearances or To Be Spoken To appearances)	Virtual
FRO Default Hearings where temporary or final orders being sought (if seeking imprisonment)	In-person, unless otherwise directed by the judge for interim appearances
FRO Motion for a Warrant of Committal	In-person, unless otherwise directed by the judge for interim appearances
FRO Refraining Orders	Virtual
ISOA Motion to Set Aside the Registration of an Order	In-person
Oral Hearings on ISOA applications	Virtual
Hague and Non-Hague Jurisdictional Proceedings	In-person, unless otherwise directed by the judge

CYFSA (INCLUDING ADOPTION) PROCEEDINGS

Appearance:	Mode of Appearance:
First Hearing, if child has been brought to a place of safety	In-person, unless otherwise directed by the judge
First Appearance on a Protection Application if child has not been brought to a place of safety /Status Review Application	In-person, unless otherwise directed by the judge
Case Conference	In-person, unless otherwise directed by the judge
Settlement Conference	In-person, unless otherwise directed by the judge
Trial Management Conference	Virtual
Combined Conferences	In-person, unless otherwise directed by the judge
Motions (including Place of Safety hearing)	In-person, unless otherwise directed by the judge
Trial Audit/Assignment Court	Virtual
Trials	In-person with discretion for witnesses to appear virtually (hybrid), unless otherwise directed by the judge
Adoptions	In-person, if parties seek an appearance

All family appearances scheduled prior to April 4, 2022, will remain as they are scheduled, until a judge directs otherwise. For example, if a case conference has been previously scheduled as a virtual appearance, it will remain a virtual appearance after April 4, 2022, despite the chart above.

It remains important that everyone attending courthouses comply with the public health and safety protections that remain in place. For information about the health and safety measures at Ontario's provincial courthouses (family and criminal matters), please see COVID-19: Going to Court.

If you are unsure whether your case is being held in-person, by video or telephone or a combination of in person and remote, please contact your lawyer or, if you do not have a lawyer, contact the courthouse where your case is being heard.

All participants should review the Court's remote proceeding guidelines prior to attending any virtual court proceeding.

2. FAMILY COURT LOCATIONS:

All base locations of the Ontario Court of Justice and some satellite locations are hearing family law matters under the court's jurisdiction. Please continue to check the Ministry of the Attorney General's website for information: COVID-19: Reopening courtrooms.

3. SCHEDULING OF FAMILY MATTERS IN THE ONTARIO COURT OF JUSTICE:

I. FAMILY LAW RULES

The times prescribed in the Family Law Rules to take any step in a family law proceeding continue to be enforced. If you do not take the steps needed in your case, your case may go ahead without you.

4. WITNESSES:

If you are a witness and have any questions or concerns about your summons or about an upcoming court date, please contact the person listed on the summons or on the correspondence you received with your summons. If there is no contact information on your summons, contact the courthouse by email: Courthouse email addresses or by telephone: Court Addresses and Phone Numbers

5. FILING:

Please see below for the Naming Protocol of Documents when submitted electronically.

Documents may be submitted in three ways:

1) electronically using the Family Submissions Online;
2) electronically using email to the appropriate courthouse; or
3) in-person at the courthouse.

Family Submissions Online:

The Family Submissions Online portal provides a simple method to electronically submit court documents, at every step in a case, in any new or existing family proceeding in the Ontario Court of Justice. Note, however, that there are limitations to documents that may be filed at this time. Please check www.ontario.ca/familyclaims to ensure that your documents may be filed using the portal.

If the court clerk accepts the document for filing or issuance, they are considered filed as per the date indicated on the document.

Counsel and parties must keep any document that was originally signed, certified or commissioned in paper format until the court finally disposes of the matter or if a notice of appeal is not served in the case, the time for serving the notice has expired.

When a document has been filed electronically, it is not necessary to file a paper copy.

Email Filing:

If you cannot file a document using Family Submissions Online, documents and requests may be emailed to the appropriate courthouse.

Email filing requirements continue to include the following:

1. The list of email addresses for each court may be found here: Courthouse email addresses
2. In order to ensure your request is received and processed by the appropriate court office, the **subject line** should include the following information:
    1. LEVEL OF COURT (OCJ)
    2. TYPE OF MATTER (Family, CYFSA)
    3. FILE NUMBER (Indicate NEW if no court file number exists)
    4. TYPE OF DOCUMENT (Motion, Application, Case Conference, Settlement Conference, Trial Management Conference, Combined Conference, Trial Record, Focused Hearing, Other Request)
5. The **body of the email** should include the following information if applicable:
    i. court file number (if it is an existing file)
    ii. short title of proceeding
    iii. list of documents attached (note: attachments cannot exceed 35MB)
    iv. type of request
    v. confirmation of service, setting out when and how any other party was served.
    vi. name, role (i.e. legal representative, party, etc.,) and contact information of person submitting the request (email and phone number)

When a document has been filed electronically, it is not necessary to file a paper copy.

In-person Filing:

If you are unable to file documents in a family court matter by the Family Submissions Online portal or by email, contact your local courthouse to determine the other options that are available or attend your local courthouse. Note that entry into the courthouse will be controlled and court counters are only open between 9 a.m. to 11:00 a.m. and 2:00 p.m. to 4:00 p.m. Contact information for all courts in Ontario is available on the Ministry of the Attorney General website: https://www.attorneygeneral.jus.gov.on.ca/english/courts/Court_Addresses/

Important Information Regarding Electronic Filing

Naming Protocol for Documents:

NOTE: The Naming Protocol below replaces previous Naming Protocols.

When documents are submitted to the court in electronic format, the document name must indicate the following information in the following order:

1. Document type, including the form number (For example, Application, Form 8),
2. Type of party submitting the document (For example, Applicant, Respondent or Third Party)
3. Name of the party submitting the document, including initials if the name is not unique to the case (For example: P. Smith and B. Smith – initials must be used if the parties share a last name; Smith and Thomas – initials are not required if the parties do not share a last name), and
4. Date on which the document was created or signed, in the format DD-MMM-YYYY (For example: 12-JAN-2021).

Below are sample document names:

Application Form 8 – Applicant – P. Smith – 12-JAN-2021
Notice of Motion Form 14 – Respondent – J. Brown – 21-DEC-2021
Affidavit General Form 14A – OCL – 01-JUL-2021

Document names shall not include firm-specific naming conventions or court file numbers.

Abbreviations may only be used as follows:

APP for Applicant
RESP for Respondent
O for Other

For institutional litigants:

CAS for Children's Aid Societies
FRO for Family Responsibility Office
OCL for Office of the Children's Lawyer

CaseLines:

As of December 13, 2021, in Toronto, the Ontario Court of Justice began to use CaseLines. For more information on the CaseLines document sharing platform, please see: Contact Us (caselines.com) This platform will be rolled out regionally across the province. For more information, please see the OCJ's CaseLines Notice to the Profession: https://www.ontariocourts.ca/ocj/caselines/

Sworn Documents:

Parties are no longer permitted to file unsworn documents.

Litigants and counsel may file affidavits that have been virtually/remotely commissioned, as permitted by O.Reg. 431/20: Administering Oath or Declaration Remotely, under the *Commissioners for Taking Affidavits Act*.

Signed Documents:

The Ontario Court of Justice will continue to accept electronically signed documents where a signature is required. An electronic signature consists of electronic information that identifies the signatory and the date and place of signing.

Other Important Information Regarding Filing:

As per previous Notices regarding the Scheduling of Family Matters in the Ontario Court of Justice, the following expectations continue to be in place:

Parties shall not assume that the judge hearing a matter will have access to the entire court file.

By submitting documents by Family Submissions Online or email to the court, the party/legal representative agrees to accept email communication from the court with respect to the proceeding.

The materials should also include any relevant prior orders or endorsements that were issued.

These instructions are subject to direction from a judicial official.

6. PRE-COURT DISCUSSIONS:

As per previous Notices regarding the *Scheduling of Family Matters in the Ontario Court of Justice*, the following expectations continue to be in place:

Parties should make reasonable efforts to communicate prior to a hearing to attempt to resolve the issues. If a contested hearing is necessary, parties should determine the issues that remain in dispute. The parties should make efforts to narrow the issues as much as possible and discuss the nature of any evidence to be heard and how it will be presented.

7. LEGAL RESOURCES

Legal Aid Ontario

If you do not have a lawyer and you have family law case before the Ontario Court of Justice and/or a scheduled family hearing, contact Legal Aid Ontario at **18006688258** to inquire about assistance.

Law Society of Ontario (LSO) Referral Service

The Law Society of Ontario's Referral Service will give you the name of a lawyer within or near your community, who will provide a free consultation of up to 30 minutes to help you determine your rights and options. You can start the online process of obtaining a lawyer referral at http://www.findlegalhelp.ca/, 24 hours per day.

A Guide for Self-represented Family Litigants

The Ontario Court of Justice has prepared a guide for self-represented family litigants. You may find it here: Guide for Self-represented Family Litigants during COVID-19

Law Society of Ontario's (LSO) Pilot Project for Articling and LPP/PPD student appearances in OCJ Family Matters

To help facilitate the delivery of affordable family law services, starting on January 17, 2022, articling and LPP/PPD students may appear on certain events in a family law case without needing advance permission from the Court as required by Family Law Rule 4(1)(c). The list of these attendances will be available shortly on the Law Society of Ontario's website: https://lso.ca/home. Students who are authorized to appear on these attendances as part of this pilot must be prepared with full instructions for matters that are expected to be addressed and appropriately supervised by a lawyer in their firm. Moreover, the supervising lawyer with knowledge of the matter must be available on-call to assist with the matter at the request of the presiding judge. More details about the requirements of this pilot will also be available shortly on the LSO's website.

Pro Bono Students Canada Family Justice Centre:

Pro Bono Students Canada will be hosting virtual legal clinics for Ontarians dealing with family law issues who are unable to afford a lawyer, but do not necessarily meet the threshold to qualify for legal aid services. At the virtual clinics, private bar family law lawyers will supervise law students in the delivery of unbundled legal services to self-represented litigants in Ontario. For more information, please see: https://www.probonostudents.ca/family-justice-centre

8. MEDIATION

The Ministry of the Attorney General provides mediation services. You may wish to contact the mediation services for information about resources that are available in your location. You can find them here: Ministry of the Attorney General – Mediators by Court Location

DETERMINING THE MODE OF PROCEEDING IN THE SCJ'S FAMILY COURT

Effective April 19th, 2022.

Mode of Appearance:	Definition:
Virtual	Proceedings using a platform like Zoom video or audioconference or by teleconference.
Hybrid	Proceedings in which some justice participants are appearing physically in the courtroom and others are participating virtually.
In Person	All parties, counsel and the judge are physically in the courtroom.
Videoconference or audioconference	Connecting into a proceeding using a platform like Zoom through video and audio or audio only.
Teleconference	Connecting into a proceeding via a telephone number to a landline.

Hearings:	Mode of Appearance:
First Appearance Court/ First Court Date	**Virtually** – unless the Court specifies a different method of attendance. In deciding whether these attendances will be conducted other than virtually, the Court will take into account the availability of duty counsel and on-site mediation services.
Early or Urgent Case Conferences	**Videoconference** – unless the Court specifies a different method of attendance.
Urgent Motions	**Videoconference** – unless the Court specifies a different method of attendance when the event is scheduled. A party who takes the position that the urgent motion should be heard in person should include in their motion materials the reasons why the motion should not be heard by videoconference.
Case Conference (with a settlement focus)	**In person** – unless a different method of attendance is approved by the Court in advance.
Settlement Conference (with a settlement focus)	**In person** – unless a different method of attendance is approved by the Court in advance.

Hearings:	Mode of Appearance:
Trial Management Conference (with a settlement focus)	**In person** – unless a different method of attendance is approved by the Court in advance.
Trial Scheduling Conferences (with a focus on preparation for trial)	**Videoconference** – unless, at a prior conference, the Court has specified a different method of attendance.
Motions for procedural relief and on consent	**In writing** – more complex procedural motions will be conducted by **videoconference**, unless the Court specifies that an in-person attendance is required.
Substantive regular/ short motions	**Videoconference** – outside of Toronto and Windsor, where regular motions in family cases are heard on mixed civil and family lists, substantive motions of less than an hour will be held by **videoconference**. In Unified Family Court locations, Toronto and Windsor, **regional Notices will direct the mode of appearance** for these events. All motions for contempt will be held **in person**.
Long motions	**In person** – unless the Court has agreed to a virtual attendance in advance, which will be decided at the case conference.
Trials	**In person** – unless all parties consent to a virtual trial and the Court approves. The Court may consider the option of a **hybrid** proceeding and whether a witness may be permitted to testify virtually by videoconference. Requests for virtual or hybrid trials will be addressed with the completion of the Trial Scheduling Endorsement Form prior to the scheduling of the trial.
FRO Lists and Refraining Motions:	**In person** – all FRO matters will be heard in person unless the Court directs a different method of attendance. Refraining motions that are not held on regular FRO sittings at Unified Family Court locations, including those held in generalist locations, will be held by **videoconference** unless the Court directs a different method of attendance.

Child Protection Hearings:	Mode of Appearance:
First hearing where child has been brought to a place of safety (5-day hearings)	**Virtually** – unless the Court decides that an in-person hearing is required. Taking into account any concerns regarding: (i) parental participation in virtual hearings or (ii) Legal Aid support for these events
Child protection lists or TBST Appearances	**Videoconference** – unless the Court decides that an in-person hearing is required. Taking into account any concerns regarding: (i) parental participation in virtual hearings or (ii) Legal Aid support for these events.
Settlement Conferences and Trial Management Conferences	**In person** – unless a different method of attendance is approved by the Court in advance.
Trial Scheduling Conferences	**Videoconference** – unless, at a prior conference, the Court has specified a different method of attendance.
Motions for procedural relief and on consent	**In writing** – more complex procedural motions will be conducted by **videoconference**, unless the Court specifies that an in-person attendance is required.
Substantive Regular/Short Motions	**Regional Notices will direct the mode of appearance** for these attendances.
Long Motions, including Summary Judgment Motions and Temporary Care and Custody Hearings	**In person** – unless the Court has agreed to a virtual attendance in advance, which requests should be raised at a prior court attendance.
Trials	**In person** – unless all parties consent to a virtual trial and the Court approves. The Court may consider the option of a **hybrid** proceeding and whether a witness may be permitted to testify virtually by videoconference. Requests for virtual or hybrid trials will be addressed with the completion of the Trial Scheduling Endorsement Form prior to the scheduling of the trial.

Index

E

F

G

S

T