

NOTICE

MANITOBA COURT OF QUEEN'S BENCH

RE: CIVIL PRE-TRIAL AND CASE MANAGEMENT CONFERENCES

APRIL 7, 2020

Effective immediately, despite the continuing and obviously fluid COVID-19 crisis, the Manitoba Court of Queen's Bench will now be resuming a level of judicial service in the realm of pre-trial and case management conferences for civil actions. The service in this connection will now be greater than what had been previously announced. The judicial service in this area will be undertaken remotely by teleconference. It should be noted that these judicial services represent an amendment from the previous direction contained in the Notice of April 2, 2020.

The full list of continuing services offered by the Court of Queen's Bench in the areas of criminal, family and child protection proceedings are identified in that April 2, 2020 Notice. That same Notice also addresses the specific services and options offered during the summer term by the Court of Queen's Bench for civil trials that have been adjourned from March, April and May 2020.

WHAT IS EXPECTED FROM COUNSEL AND WHAT CAN BE EXPECTED FROM THE COURT

Put simply, the Court will be providing civil pre-trial and case management conferences for new and ongoing matters. In the context of those conferences and with the consent of the assigned pre-trial or case management judge, the Court will also make available the possibility of a Judicially Assisted Dispute Resolution (JADR) which, if and when utilized, will also be conducted remotely by teleconference.

In the current and extraordinary circumstances of the COVID-19 situation, between now and November 30, 2020, parties will be limited to no more than **two** such conferences per proceeding, inclusive of a possible JADR (in those cases where the parties seek that option).

Accompanying the above limitation of no more than two pre-trial or case management conferences for the period in question, will be a connected and corresponding expectation of a high level of preparation, rigour and collaboration in counsel's approach to these conferences. The identified and requisite preparation will include discussion between counsel **prior to** appearing before the presiding judge for the purposes of narrowing and focussing the issues so as to maximize the use of the limited time available at the scheduled appearance. Counsel must be clear what it is that the presiding judge is being asked to do and what the presiding judge is being asked to focus upon. Where submissions are being made to a presiding judge in the context of a contested matter (for example, a summary judgment motion), counsel must, now more than ever, be focussed and succinct in their submissions.

REQUIREMENTS AND LIMITATIONS

The identified pre-trial, case management and JADR conferences will be subject to the following requirements and limitations:

- The Court will accept scheduling for new pre-trial and case management conferences on the understanding that the matter has reached a point where judicial intervention is legitimately required. For example, for pre-trial conferences, at a minimum, examinations for discovery must be completed and reasonable settlement discussions will have been attempted prior to the scheduling of the pre-trial conference. Where counsel propose to bring a motion for summary judgment, these minimum requirements are not required.
- In keeping with one of the defining cornerstones of the Court's model in respect of civil proceedings in Manitoba, it will continue to be a requirement that at the first/new pre-trial conference, a trial date will be

set. Exceptionally, during the identified period until November 30, 2020, it should be expected that trial dates will be set well outside of the Court's usual scheduling parameters (12 – 18 months). Indeed, it should be expected that trial dates will likely be set some two-and-a-half to three (2½ - 3) years into the future.

- To repeat what was earlier stipulated, between now and November 30, 2020, for any new or ongoing pre-trial or case management conference, **there will be a maximum of two (2) such conferences** per proceeding. As discussed below, a conference may be used to address typical pre-trial issues so as to ready a matter for trial, and/or to discuss, prepare and adjudicate any motions, and/or achieve possible resolution by way of enhanced settlement discussions or through what will also be (as with the pre-trials and case management conferences) a remotely conducted JADR.
- The appearances for these conferences will generally be set in two-hour blocks throughout the day, with the possibility of setting a longer period for the second appearance as the circumstances may dictate (for example, to hear a summary judgment motion of some complexity or for a JADR).
- Effective immediately, the assigned judge to what will be the new or ongoing pre-trial or case management conference, will not necessarily be the judge who previously presided as the pre-trial or case management judge. However, this newly assigned judge will remain seized for at least the second appearance.
- For the purpose of the first pre-trial or case management conference, counsel must file a pre-trial or case management brief which, in addition to the content required by the Court of Queen's Bench Rules, also includes:
 - Copies of the pleadings;

- Copies of all existing pre-trial conference or case management conference memoranda prepared by judges who previously presided;
- An answer to the question, “What specifically do you want the presiding judge to do and focus upon at this first conference?”
- As is the current practice:
 - Where no trial or summary judgment motion date has been set, it must be set at the pre-trial conference;
 - Where a motion is contemplated, counsel must raise the nature of the motion with the presiding judge prior to bringing the motion. This may include a discussion about how the motion will proceed including the possibility of proceeding on the basis of only written submissions;
 - It is open to counsel to also raise with the presiding judge the possibility of proceeding with a JADR or neutral evaluation.
- Apart from those matters that may come before the Court as emergency matters (as addressed in the April 2, 2020 Notice) and those hearings to be addressed in the summer term, the only other civil matters that the Court will potentially entertain in this period are certain Applications for judicial review. Following the required request to the Chief Justice or Associate Chief Justice, those Applications may be addressed by the Court where, for reasons of complexity etc. (and/or a circumstance uniquely associated with the COVID-19 virus) they qualify for case management.

ADDITIONAL PARAMETERS

- It is to be presumed that any matter will not be on the record, unless directed otherwise by the presiding judge.

- While self-represented litigants may be part of this initiative, it will remain within the discretion of the presiding judge to determine whether in any given case, the process is suitable for the involvement of a self-represented litigant and, if so, the manner in which the matter will proceed (for example, on the record).
- To obtain a date for a pre-trial or case conference, counsel are to contact Sharon Phillips by email: Sharon.Phillips@gov.mb.ca for available dates and times.
- Counsel will obviously not be able to select the judge who will be presiding nor given the context in which JADRs will now proceed, can the Court receive or entertain counsel's requested list of judges where a JADR is sought.
- Even in those cases where there has already been a previous pre-trial or case conference, the judge who previously presided will not likely be the judge who is assigned. Once a date and time have been agreed upon, counsel are to advise Ms Phillips accordingly. Ms Phillips will confirm the email address for the assigned judge.
- Counsel must provide their written materials to the assigned judge by email in a PDF format at least three (3) clear business days in advance of the scheduled appearance with an undertaking to file this material with the Registry as soon as reasonably possible.
- All matters will proceed by way of teleconference or video conference and the participating counsel will be responsible for providing conference call services, including dial-in numbers and access codes by email to the presiding judge at least three (3) clear business days in advance of the scheduled appearance. At that same time, it is also required that counsel provide to the presiding judge the completed *Agreement on Hearing Via Teleconference or Video Conference* form (copy attached) respecting the nature, details and rules of the engagement for the teleconference/video conference.

- Until further notice, the “one-judge” model is suspended, such that it will not necessarily be the judge who presides at the pre-trial or case management conference who will then be the trial judge.
- Following all pre-trial and/or case management conferences, counsel will be responsible for preparing draft memoranda detailing the discussions that took place, the timelines agreed upon, and any other directives issued by the Court. Plaintiff (or applicant) counsel will be responsible for drafting the memorandum, circulating to opposing counsel for consent as to form, and submitting the signed document to the Court for review by the presiding judge. It is open to the presiding judge to revise the memorandum and/or supplement the memorandum, including, with reasons for any decision that may have been made in the forum that was the case management or pre-trial conference.

THE FOREGOING IS SUBJECT TO CHANGE. ANY CHANGES WILL BE ANNOUNCED ON THE COURT’S WEBSITE.

ISSUED BY:

“Original signed by Chief Justice Glenn D. Joyal”

**The Honourable Chief Justice
Glenn D. Joyal**

DATE: April 7, 2020

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

BETWEEN:

Insert Name of Plaintiff/Applicant,

Plaintiff/Applicant,

- and -

Insert Name of Defendant/Respondent,

Defendant/Respondent.

AGREEMENT ON HEARING VIA TELECONFERENCE OR VIDEO CONFERENCE

1. It is agreed that the terms of the Court of Queen's Bench Notice regarding Civil Pre-Trial and Case Management Conferences dated April 7, 2020 will govern.
2. The **[Pre-Trial Conference, Case Management Conference, Motion or Judicially Assisted Dispute Resolution (JADR)]** initiated by the **[Insert Moving Party]** shall proceed on **[Insert Time and Date of Hearing]** by way of **[Teleconference or Video Conference]**. **[A Motion or JADR may only be scheduled after a first pre-trial or case management conference has been held and the presiding judge has directed at the first pre-trial or case management conference that the Motion or JADR may proceed].**
3. The instructions to join the **[Teleconference or Video Conference]** are as follows: **[Provide detailed instructions including: (For a Teleconference) the**

dial-in number and conference ID number or password; (For a Video Conference) the application to be used, along with a hyperlink or other instructions to join.]

4. **[It is to be presumed that the matter will not be on the record]** The parties agree that the **[Teleconference or Video Conference]** **[shall not be or shall be]** recorded. **[If there is to be a recording made – details shall be inserted as to how the recording will be made, and how it will be made available for distribution to each party and the Court].**

5. The parties agree that the following documents will be relied upon at the **[Pre-Trial Conference, Case Management Conference, Motion or JADR]**. **[For the purpose of the first Pre-Trial or Case Management Conference, counsel must file a Pre-Trial or Case Management brief, which shall include the pleadings and all existing Pre-Trial or Case Management Conference memoranda prepared by judges who presided previously on the matter]**. This list, for the purposes of any adjudication and/or decision, shall be seen as the basis or foundation for that decision and in that sense, constitute the “record”:

(a) [Insert List of Documents and indicate whether they have been filed with the Court Registry.]

6. The parties agree that all documents listed in paragraph 5 herein will be provided by email (in PDF format) to the assigned judge at least three (3) clear business days prior to the scheduled appearance.

7. Should any document(s) listed in paragraph 5 herein not be filed on the Court Registry, counsel agree and undertake to file the original documents on the Court Registry as soon as possible.

8. The parties estimate that they will require **[Insert Time required]** for the hearing of their submissions.

[Insert Date]

AGREED TO BY COUNSEL FOR THE PARTIES:

[Insert Firm Name]

Per: _____

[Insert Name of Plaintiff/Applicant Counsel]

[Insert Firm Name]

Per: _____

[Insert Name of Defendant/Respondent Counsel]