

PROCEDURAL GUIDE TO OTTAWA CASES UNDER
Child and Family Services Act
As of April, 2016

1. First Appearances, Apprehensions and Consent Orders

- A judge will sit in court each morning, Monday to Thursday inclusive, starting at 11 o'clock, to deal with first appearances, apprehensions and consent orders. A Judge will also be assigned on Friday morning to deal with apprehensions which must come to court on a Friday.
- All such matters, other than first appearances on status review applications, are to be made returnable for 10:30 a.m. Mon-Thurs so that counsel, self-represented parties and duty counsel have an opportunity to meet to discuss the case before court opens at 11:00 a.m.
- The order of proceeding at 11 a.m. will be as follows:
 1. Cases stood down from the 9:30 a.m. list
 2. Apprehensions
 3. 11:00 a.m. cases in order as per a sign in list which will be available outside the courtroom
- All child protection cases are governed by the timetable under R.33 of the *Family Law Rules* (FLRs).
- If a care and custody date is requested, it will not be scheduled beyond day 35 from the start of the case, if possible. Filing dates for Answer and motion materials are to be specified in compliance with the rules, i.e. Answers within 30 days of service of the application, motion materials not later than four days before the event.
- If services are complete, counsel retained and no care and custody date is requested, a date for a settlement conference may be set not later than day 80.
- If need be, i.e. to complete service, retain counsel or determine a party's position, the next step is a second appearance before the Registrar in about two weeks. At this appearance, it is expected that a date for a care and custody hearing or for a settlement conference would be scheduled.
If appropriate, appoint a Children's Lawyer.

Note: If the case is ready to proceed to a final order on consent on this day, this can be done.

Note: The Judge who is sitting in CFSA Monday to Thursday will commence court in an adjacent courtroom at 10 o'clock and will be hearing conferences until 11 o'clock when he or she will move into the courtroom occupied by the Registrar to assume the above described duties.

2. Registrar's Matters

- The Registrar will deal with scheduling matters each morning, Monday to Thursday inclusive, commencing at 9:30 a.m.
- The Registrar will deal with first appearances on Status Reviews, on subsequent “to be spoken to” appearances, and cases that were, the previous day, scheduled before a Judge, but were struck for failure to meet the confirmation or filing requirements.
- The Registrar shall:
 - If service is not complete by the second appearance, put the case over to a date before a Judge not later than two weeks hence to deal with service issues by motion.
 - If requested, set a care and custody date as close to day 35 as possible.
 - Filing dates for Answers (within 30 days of service) and motion materials (by four days before the event) are to be specified in compliance with the Rules.
 - In all other cases, a settlement conference is to be scheduled within 80 days of the start of the case.
- In addition, the Registrar shall deal with matters that have been struck as follows:
 - If no Answer has been filed, and the 30 days to file are up, the case goes to a Judge for a default finding.
 - If an Answer has been filed, a settlement conference must be scheduled on or before the 80 day mark.
 - Requests to restore a motion date must be denied until the overdue material is complete. The parties may agree to schedule another date before the Registrar to return with the material and schedule a date for the motion. By then, the timetable will likely need to be extended to permit this to go ahead and the responding party will have to request that at the outset of the return of the by now late care and custody hearing.

3. Confirmation of Care and Custody Hearings and Motions

- All parties must confirm the care and custody hearing or motion by 2 p.m., two days in advance of the scheduled date.
- **If no one files a confirmation form, the case is automatically struck and must be spoken to by all parties at the Registrar's court the morning after the scheduled return date.**
- **If no responding party has filed motion materials as required by the Rules, and no confirmation form has been filed, the case is automatically struck and must be spoken to by all parties at the Registrar's court the morning after the scheduled return date.**
- In cases where one but not all parties confirm or one but not all Respondents file responding materials, the case remains on the Judge's list and the Judge will decide what to do.
- If counsel is waiving the right to file evidence on the motion and say so in the confirmation form, then the matter will not be struck.
- Children's Aid Society shall always confirm and shall state whether they have been served on time and, if so, by whom.

4. Fridays

- Each Friday, a Judge will be assigned to the court schedule to hear apprehensions at 10 AM.

5. Confirmation Forms

- Confirmation forms of both parties should be filed by 2:00 p.m. two days before motions, conferences and care and custody hearings. The form should be completed with sufficient detail to enable the Judge to know what is in issue and what to read. The practice of simply referring to "all issues" and "all material" is discouraged. Motions that have not been confirmed by any party will be struck.

6. Case Management

- The *Family Law Rules* contemplate a system of case flow management which is sufficient to ensure the orderly progress of most cases through the court.

- Some cases require more intensive judicial involvement. Counsel or a Judge may identify a particular case as one requiring more intensive judicial management. These cases may be seized for management by a particular Judge, or may be directed by a Judge to the Trial Coordinator for assignment for judicial management.
- In considering whether a CFSA case should be judicially managed, factors to be taken into account may include:
 - Legislative framework, i.e., crown wardship applications for children less than six years old and society wardship applications for children less than one year old.
 - Special needs children
 - Cases involving mental health issues
 - Cases involving multiple parents, siblings
 - Long trials
- Some Judges will seize themselves after a settlement conference for any future settlement conferences on that case.

7. Scheduling of Dates Not Scheduled in Court

- A Children's Aid Society representative may call the CAS desk to change dates previously set, if on consent or for early status review application dates.
- If responding parties wish to set dates on consent other than those set in court, they are to attend the Family Counter.

8. Settlement Conferences, Trial Management Conferences and Motions

- Settlement conferences and trial management conferences will be scheduled at 10:00 a.m. and 2:00 p.m. Mon-Thurs.
- Argued motions will be scheduled at 2:00 p.m. Mon-Thurs.
- **It is essential in setting dates, that counsel provide accurate time estimates.**
- Factums from all parties are required for motions of an hour or more.

9. Assignment Court

Assignment courts will be held twice per year to call forward aging cases where trial dates have not yet been assigned.

- Trial dates will usually be assigned at the Assignment Court unless the case has settled or is already on a trial list.
- A notice of Assignment Court is posted at the Family Law Counter and counsel on individual cases are notified in writing or by email.
- It is mandatory for all parties to file briefs for the Assignment Court as required in the notice.

10. Trials

- If not resolved, trial dates will usually be scheduled at the completion of the settlement conference or shortly thereafter to allow the parties an additional period of time to attempt to finalize a settlement.
- A trial management conference will be set by the presiding Judge when setting trial dates. The trial management conference is to take place approximately 35-45 days prior to the trial. Trial management conference briefs are required by all parties.
- Parties are expected to present their case at trial in a time efficient manner, including the appropriate use of affidavits, records and reports. These issues will be canvassed at the trial management conference.
- The practice of the court is to continue to sit from day to day, until a trial is complete. Counsel and litigants are expected to be available in order to facilitate the orderly and timely completion of trials. In order to achieve this objective, **it is essential that counsel provide accurate time estimates.**
- Trial records are required in accordance with Rule 23 of the *Family Law Rules* for all matters proceeding to trial.

11. Adjournments

- After a settlement conference, trial management conference or trial date has been set, adjournments must be sought, in advance, from the local administrative justice for child protection.
- Initially, a letter setting out the grounds for the requested adjournment and whether it is on consent or opposed, should be delivered to the trial coordinator and copied to the opposing

counsel or litigant. If further steps or material are required, the court office will contact the parties. The general policy is to discourage unnecessary adjournments.