



COVID-19: Scheduling Guidelines in the Supreme Court (Family Division)

Thursday, March 26, 2020

Until further notice, the Supreme Court, including the Family Division, has adopted an essential services model. That means only urgent or essential matters are proceeding in court, and those will primarily be dealt with by telephone and video.

All currently scheduled matters, unless deemed urgent, are being adjourned. They will not be rescheduled at this time. The scheduling office will confirm this with all counsel and self-represented parties.

Going forward, only urgent matters will be scheduled. Urgent matters in the Supreme Court (Family Division) include:

- 5-day and 30-day hearings under the *Children and Family Services Act*
- Applications under Section 29 of the *Children and Family Services Act* (“locate and detain” applications)
- New applications under the *Adult Protection Act*
- Applications under the *Children and Family Services Act* and *Adult Protection Act* that are nearing court-ordered or statutory deadlines
- Child abduction cases
- Secure treatment applications under the *Children and Family Services Act*
- Issues related to domestic violence that are not suitable for criminal proceedings in the Provincial Court or the Justice of the Peace Centre (under the *Domestic Violence Intervention Act*) or the involvement of child protection authorities
- Matters deemed to be emergencies by a judge or court officer

If you believe a matter is an emergency, you must outline the circumstances in writing via a letter to the Court. The letter should not be more than two pages in length. Letters should be submitted to the Court via fax or email. A list of email addresses and fax numbers for the Supreme Court (Family Division) is available at the bottom of this notice.

Your letter must also be provided to the other party, who will have two days to respond to it. During the ongoing situation with the COVID-19 pandemic, there will be no opportunity for oral arguments on whether a matter is an emergency.

A judge or a court officer will review your letter, and any response to it, to determine if it is an emergency. A telephone conference will be scheduled, if appropriate.

To date, the following types of issues have been deemed not to be an emergency:

- Unilateral interruptions of court-ordered parenting arrangements
- Disagreements as to a child's activities while in the care of another parent
- Interruptions in the payment of child or spousal support
- Property issues flowing from a marriage or common law relationship
- Suspension and enforcement of child and spousal support

Counsel are asked to consider alternatives to attending court in person. In some cases, telephone appearances may permit resolution.

Consent orders, faxed or submitted electronically by email to the Court, will be processed as quickly as possible. Please keep in mind that the courthouses are working with significantly reduced staff, so there may be some delays.

Conciliation services are being provided for new applications, such as those relating to child support.

Contact Information for the Supreme Court (Family Division)

Amherst

Email: AMHFC@courts.ns.ca

Fax: 902-667-1108

Phone: 902-667-2256

Antigonish

Email: AntigonishFamilyCourt@courts.ns.ca

Fax: 902-863-7479

Phone: 902-863-3676

Halifax

Email: scfamilyhfx@courts.ns.ca

Fax: 902-424-0562

Phone: 902-424-3990

Port Hawkesbury

Email: porthawkesburyfamily@courts.ns.ca

Fax: 902-625-4271 or 902-424-4084

Phone: 902-625-2665

Sydney

Email: sydneyfamilydivision@courts.ns.ca

Fax: 902-563-2224

Phone: 902-563-2200

Truro

Email: truofamilycourt@courts.ns.ca

Fax: 902-896-4333

Phone: 902-893-5840

Yarmouth/Shelburne/Digby

Email: yarmouthfamilycourt@courts.ns.ca

Fax: 902-742-0678

Phone: 902-742-0550

-30-

Media Contact:

Jennifer Stairs
Communications Director
Nova Scotia Judiciary
902-221-5257
stairsjl@courts.ns.ca



COVID-19: Filing Guidelines in the Supreme Court (Family Division)

Friday, March 27, 2020

Until further notice, the Supreme Court, including the Family Division, has adopted an essential services model. That means only urgent or essential matters are proceeding in court, and those will primarily be dealt with by telephone and video.

With that in mind, effective March 30, 2020, counsel and self-represented individuals should not file documents unless they are related to an urgent or emergency family law matter, as outlined in the [March 26, 2020, Scheduling Guidelines](#). For example, applications for uncontested divorces will not be accepted at this time. Consent orders will be accepted.

This is a change from current practice and necessary because, like many sectors, the judicial system is operating with significantly reduced staff. The staff available are focused on processing documents related to the urgent and essential matters that are proceeding

Documents related to matters not proceeding in the immediate future should be held until the court has resumed normal operations, as they will not be processed at this time. This decision will be reviewed on Thursday, April 9.

Due to the risk of COVID-19, unless a judge directs otherwise, the court will no longer accept paper copies of documents at courthouses. All filings must be made electronically by email or fax. A list of email addresses and fax numbers for the family courts are included at the end of this notice.

Phone numbers are also provided for inquiries as to whether a paper document will be accepted by the Court. **Generally, for the Court to accept a paper document, it must be demonstrated that a requirement to file only by fax or email will deny an individual access to the court.**

Please be assured the Court is considering new and innovative ways it may enable parties to continue managing important family law issues that do not meet the threshold of being urgent or an emergency.

The Court will provide ongoing guidance to the Bar and the public as to what matters the Supreme Court (Family Division) will consider urgent or an emergency, how the pleadings and related documents may be filed, and how the Court will schedule matters.

Contact Information for the Supreme Court (Family Division)

Amherst

Email: AMHFC@courts.ns.ca

Fax: 902-667-1108

Phone: 902-667-2256

Antigonish

Email: AntigonishFamilyCourt@courts.ns.ca

Fax: 902-863-7479

Phone: 902-863-3676

Halifax

Email: scfamilyhfx@courts.ns.ca

Fax: 902-424-0562

Phone: 902-424-3990

Port Hawkesbury

Email: porthawkesburyfamily@courts.ns.ca

Fax: 902-625-4271 or 902-424-4084

Phone: 902-625-2665

Sydney

Email: sydneyfamilydivision@courts.ns.ca

Fax: 902-563-2224

Phone: 902-563-2200

Truro

Email: truropfamilycourt@courts.ns.ca

Fax: 902-896-4333

Phone: 902-893-5840

Yarmouth/Shelburne/Digby

Email: yarmouthfamilycourt@courts.ns.ca

Fax: 902-742-0678

Phone: 902-742-0550



**NOTICE # 3 – FAMILY DIVISION MATTERS IN THE COUNTIES OF ANTIGONISH,
COLCHESTER, CUMBERLAND, YARMOUTH, SHELBURNE AND DIGBY**

Friday, March 27, 2020

The Nova Scotia Supreme Court (Family Division) has been conferred jurisdiction over all family law matters in the Nova Scotia Courts. The Supreme Court (Family Division) is assuming that responsibility incrementally. This memorandum is directed to family law lawyers practicing in the Counties of Antigonish, Colchester, Cumberland, Yarmouth, Shelburne and Digby.

Family law files currently being processed in the Supreme Court (General Division) will continue to be managed by that Division. It is anticipated that by the end of 2020, any of these files still active will be transferred to the Supreme Court (Family Division).

Files currently in the Family Court of Nova Scotia will be presided over by a Family Court judge or a Supreme Court (Family Division) justice. In both cases, the management of proceedings will now be subject to the administrative direction of the Supreme Court (Family Division).

Lawyers and members of the public will now have three options for filing family law matters in your County. A proceeding may be initiated under the Supreme Court (Family Division) Rule. This is new to your counties. You may also continue to file matters as provided by the Supreme Court (General Division) Rule, as has been the practice, or file as provided for under the Family Court Rule(s), as is currently the practice.

Right now, you do not need to make any changes to how you practice or the forms you and your staff complete. The Supreme Court (Family Division) will allow for a period of transition to the forms and processes used in the Family Division. This transition is expected to occur over 6-9 months. You will be given advance notice of the process changes and when they take effect.

The Supreme Court (Family Division) is contemplating a phased-in introduction, transitioning to one process for all family law matters before the end of 2020. Additional information sessions will be held locally to ensure your questions are answered and your input considered. Additional training sessions will also be held for court staff.

Regarding judicial assignments in your respective Counties, Antigonish and Pictou Counties will be principally served by Justice Cindy Murray and Judge Timothy Daley; Colchester County by Justice Raymond Morse; Cumberland County by Justice Robert Gregan; and the Yarmouth/Shelburne and Digby Counties will be principally served by Justice Michelle Christenson.

Finally, accompanying this memorandum are:

- 1) A notice advising counsel and the public of the Supreme Court (Family Division) scheduling policies (Notice #1);
- 2) Guidelines for electronic filing, as the Courts manage through the COVID-19 pandemic (Notice #2); and
- 3) Answers to Frequently Asked Questions (Notice #4).

Thank you for your ongoing assistance as we move forward with the merger of the Family Court and the Supreme Court (Family Division).

*Associate Chief Justice O'Neil
Nova Scotia Supreme Court (Family Division)
Notice#3-district-bar Mar-27-20*



NOTICE #4 – Q & A FOR THE BAR

Updated: Monday, April 20, 2020

Introduction

The most recent Q&A issued April 14.

When changes to information occur, an updated version of Notice #4 (this notice), a list of frequently asked questions and answers, will be available for distribution at noon of the next business day. Additions or revisions to existing answers made since the previous day will be underlined in the index, for ease of identification.

If you have questions or if you wish to receive this Q&A Notice directly by email, please email your request to scfamilyhfx@courts.ns.ca or fax it to 902-424-0395.

This Q&A document should be read in conjunction with other notices issued by the Supreme Court (Family Division) to date, including:

- (1) Notice #1 – Scheduling Guidelines – Urgent Matters, revised April 20
- (2) Notice #2 – Notice re: E-Filing
- (3) Notice #3 – Notice to District Lawyers (Antigonish, Pictou, Colchester and Cumberland)
(Notices #5-#9 inclusive are dated April 20)
- (4) Notice #5 – Additional Processes
- (5) Notice #6 – Request for Document Only Proceeding
- (6) Notice #7 – Request for a Non-Binding Judicial Recommendation
- (7) Notice #8 – Request for a Settlement Conference by Telephone
- (8) Notice #9 – CFSA/APA/Urgent Matters: Length of Affidavits and Hearings

This is a running list of frequently asked questions as we live through the COVID-19 Crisis.

Index

*Filing and Service Deadlines and e mail addresses - see # 1 revised April 1

*Uncontested Divorces, new Applications, Variation Applications - see # 2 revised March 30 and April 14

*Consent Orders - see # 3

- *Paper, Fax and Electronic Filing - see # 4
- *Contact Numbers for Court - see # 5
- *Definition of Urgent - see # 6
- *Appearing in Person - see # 7
- *Resumption of Regular Court Appearances – see # 8
- *Conciliation – see # 9
- *Adoptions – see # 10
- *Personal Service – see #11
- *Assessors – see # 12
- *Unsworn Affidavits – see # 13
- *Mail Service – see # 14
- *Pre-Ruling re: Urgent Matters – see # 15
- *Video and Teleconferencing – see # 16
- *Adjourning to a Date Certain? – see # 17
- *Filing Fees – see # 18
- *Parenting schedules interrupted- see # 19 added April 1
- *Revisions to notices-see #20 added April 20

Thank you for your ongoing assistance and cooperation.

*Associate Chief Justice O'Neil
Nova Scotia Supreme Court (Family Division)*

Q & A

1. All filing and service deadlines in the Rules of the Supreme Court or directed by a Judge or Court Officer of this Court are suspended, unless they have been issued by a Judge or a Court Officer after March 1, 2020 and pertain to urgent or emergency matters that are scheduled to return during this state of emergency in our Province.

Filing and service deadlines will be reinstated after the expiry of the provincial State of Emergency. The deadlines should be adjusted by you to reflect the new appearance/hearing date. New dates will be confirmed by Court Schedulers when they are known.

The calculation of the time for filing and/or service, or for doing anything under the Rules, will restart on the day following the end of the provincial State of Emergency, with that day being Day 1 of the period during which something must be filed or served as required by the Rules or as a result of a direction given by a Court Officer or a Judge.

2. The acceptance of New Applications, Variation Applications, Uncontested Divorces and Divorces by Agreement will be suspended, effective Monday, March 30, 2020, for two weeks, ending Friday, April 10, 2020. On Friday, April 10, 2020, a decision will be made as to whether this suspension should continue in whole or in part.

The Court will put forward customized process options this week to the Family Division – Bar Society Liaison Committees and other bar groups. The input of the bar is being solicited. Details of the revised processes will be communicated to the entire family bar on Monday, April 20, 2020.

Undefended Divorces:

Currently, Judges are continuing to review undefended divorce files, where files are complete. If a file is complete but there are deficiencies in the documents, Judges are notifying counsel and unrepresented parties.

Some courthouses, including Devonshire, are now issuing Divorce and Corollary Relief Orders and Divorce Certificates as a result of staff being able to do so from home.

The Court is continuing to work with the central registry in Ottawa to obtain clearance certificates so more recently received applications for an undefended divorce may be processed by court staff. New divorces cannot yet be processed at Devonshire. The Central Registry of Divorce Proceedings, situated in Ottawa, is operating with reduced staff.

3. Consent Orders filed by fax or email will continue to be processed in the normal fashion.
4. Filing by paper, fax and electronic means is governed by Notice #2, issued earlier.
5. Contact numbers for the Court are shown on Notices #1 and #2.
6. To assist your understanding of what the Court considers urgent, please review Notice #1.
7. For urgent matters and those deemed emergency in-person court appearances by counsel, parties and witnesses will only be permitted in highly exceptional circumstances. The decision as to whether highly exceptional circumstances exist will be made by the presiding Judge.

All parties are advised they must prepare to have their matters decided after each party has an opportunity to present direct and rebuttal affidavit evidence. The means for cross-examination will be determined by the presiding Judge to balance the need for access to justice, with the need to conduct the court proceedings in a manner consistent with the protocols imposed by the Nova Scotia Medical Officer of Health and the provincial State of Emergency. Affirmations and cross-examination by telephone or video should be assumed to be the process.

Parties are reminded Consent Variation Orders and Initial Consent Orders will continue to be processed by the court.

Parties are also reminded they may request (1) a Document Only Proceeding as outlined in Notice #6; (2) a Judicial Recommendation as outlined in Notice #7; or a Settlement Conference as outlined in Notice #8.

8. Regular court appearances are not expected to resume until after the end of May. It is anticipated that the resumption of regular court appearances will follow an incremental increase in the Court's capacity to process work. The timing of when the Court will return to the pre-pandemic operational levels and processes, will be impacted by decisions on how to most efficiently address demand existing at the end of the emergency period.

New court processes may need to be in place. Scheduling practices will need to be modified to ensure the maximum number of families have their issues addressed over a given period of time.

9. Conciliators are engaging in preliminary discussions with clients by telephone and from their homes. They are discussing issues with clients related to the subject file and attempting to assist parties in resolving their disagreements outside the Court.

10. Adoption matters will proceed. (revised April 15, 2020)
11. Personal service of documents is waived during the pandemic. However, confirmation that the 'other' party is aware of or has received the relevant document may be necessary for a party to obtain the relief requested. That decision will be made by the presiding Judge.
12. Assessors are advised that their deadlines for completion of reports are suspended. Assessors will be advised of new filing dates when the Court is in a position to do so.
13. Unsworn affidavits will be accepted for matters deemed urgent or an emergency. However, a presiding Judge may require further validation. If a hearing is contemplated, the affidavit will need to be sworn or affirmed at the commencement of the hearing.
14. Mail Service – The Court will mail Consent Orders to parties once they are issued. Please do not forward paper mail to the Court. Email communication is preferred.
15. A Pre-Ruling as to whether a matter is urgent or an emergency is provided for as described in Notice #1 – Scheduling. To lessen the cost and inconvenience to parties, which would result from filing an application asking for the urgent or emergency intervention of the Court, parties may summarize the circumstances relied upon to support that conclusion by writing a letter of less than two (2) pages and delivering it to the Court. Notice #2 explains how you may deliver documents to the Court.

If a matter meets the initial threshold, that is the Court is persuaded it may be an urgent matter, a party will be required to file an application with an affidavit and there will be an opportunity for a response. A final decision will be made as to whether a matter is urgent or an emergency. Then, if found to be urgent or an emergency, the matter will be scheduled before a Judge.
16. Teleconferencing and videoconferencing services are being studied with a view to determining how they may be more fully utilized by the Court, thereby permitting a wider number of people to have their legal issues addressed.
17. Existing matters will be adjourned without a day to return. A date to return will be given when there is confidence that the current health crisis has passed.
18. Clients will be invoiced when filing by fax or email. Some clients will qualify for a waiver of fees. In a small number of cases, payment by credit card or over the phone may be possible.

19. Notice #1 identified unilateral interruptions of a parenting schedule as non-urgent/emergency matters. This position reflected the then already growing demand on the Court to respond to decisions by parents to not comply with parenting orders because of concerns about COVID-19. The Court did not and does not have the capacity to adjudicate this issue in the current circumstances. It is open to a party, however, to make submissions that a particular parenting issue rises to the level of an emergency as provided for by Notice #1.

Should the Court eventually consider whether a parent acted reasonably all relevant factors will be considered, including the opinion of Dr. Robert Strang if admitted into the evidentiary record. The Court is not prejudging the issue.

20. Revisions to other Notices: five (5) new Notices are issued today, April 20. Please see the introduction to this notice.



NOTICE # 5 – ADDITIONAL PROCESSES FOR THE FAMILY DIVISION

Monday, April 20, 2020

Since March 23, 2020, the Supreme Court (Family Division) has operated under an essential services model, dealing with urgent and emergency matters using electronic and fax filings (as outlined in Notices #1 and #2).

Supreme Court (Family Division) operations continue to be guided by the protocols imposed by the provincial State of Emergency and public health advice, including the recommendation to operate with minimal staff and limit traffic to the courthouses.

Phase I – Supreme Court (Family Division) Response to COVID-19

The Court has successfully transitioned to dealing with most child protection, adult protection and urgent and emergency matters by teleconferencing. These matters are a significant part of the Court's caseload and will continue to be addressed in this way.

Phase 2 – Supreme Court (Family Division) Response to COVID-19

As a Court, we are now entering the second phase of case management and will expand our focus to vetting files adjourned as a result of the pandemic since March 23. The vetting process is designed to identify files, removed from the docket but which can now be addressed in a meaningful way by teleconferencing. This process will begin May 1, 2020. Video conferencing is not yet available. Priority will be given to rescheduling matters where all parties are represented by lawyers, given the efficiencies the involvement of lawyers is expected to achieve. Clearly, any reduction in the Court's backlog of files will facilitate the Court's return to full operation and will result in more timely access for individuals not represented by a lawyer.

The files first removed from the docket will be the first vetted by a judge, with the objective being to reschedule matters before the same judge. As implied by the term vetting, not all matters will be rescheduled at this time. For example, a trial is unlikely to be rescheduled right now, given that staff are not available to support a trial proceeding. Conferences and some settlement conferences are obvious matters that will be considered for teleconferencing.

Although a matter may not be rescheduled in its present format, it may benefit from one of the processes described in Notices # 6, 7 or 8, referenced below.

Phase 3 – Supreme Court (Family Division) Response to COVID-19

The Court is planning a third phase of case management. The focus will be on processing an additional range of 'new' matters, also by teleconferencing, beginning in late May, on a date yet to be determined. This phase is subject to the availability of Court staff to support this expansion of service.

Accompanying are descriptions of new processes and adaptations to existing ones:

Notice #6 – Document Only Hearing – Rule 1 & 59A

Notice #7 – Request for a Judicial Recommendation

Notice #8 – Request for a Non-Binding/Binding Settlement Conference

Notice #3 (dated March 23, 2020) outlined how urgent and emergency matters are placed before the court. Notices #6, 7 and 8 describe processes that will expand the range of matters to be considered by the court as described in the respective notices.

Counsel are reminded Consent Variation Orders and Initiating Consent Orders continue to be processed by the court.

Associate Chief Justice Lawrence I. O'Neil
Nova Scotia Supreme Court (Family Division)
April 20, 2020



**NOTICE # 6 – REQUEST FOR A DOCUMENT ONLY PROCEEDING UNDER
CIVIL PROCEDURE RULES 1, 27, 59.38 AND 59A**

Monday, April 20, 2020

Since March 23, 2020, the Supreme Court (Family Division) has operated under an essential services model, dealing with urgent and emergency matters using electronic and fax filings (as outlined in Notices #1 and #2).

Supreme Court (Family Division) operations continue to be guided by the protocols imposed by the provincial State of Emergency and public health advice, including the recommendation to operate with minimal staff and limit traffic to the courthouses.

The Court has successfully transitioned to dealing with most child protection, adult protection and urgent and emergency matters by teleconferencing. These matters are a significant part of the Court's caseload and will continue to be addressed in this way.

On or before June 1, 2020, judges in the Family Division will begin to deal with certain motions and applications based on a document only record. As explained in Notice #5, this process will be initially limited to parties represented by a lawyer.

Both parties must agree to have a matter decided as a Document Only Proceeding by writing a one-page letter, accompanied by a cover sheet (see Appendix 2). The letter must:

- explain why the Document Only Proceeding is suitable for the matter; and
- confirm that the parties have attempted to resolve the matter and explain how.

The Court asks that these requests not be filed until May 1, 2020.

A judge will decide whether the Document Only Proceeding is suitable for the matter and, if so, fix a date from which filing deadlines will be calculated (called the Proceeding Date), based on Civil Procedure Rule 23.11(1) – Hearings of ½ day or less (see Appendix 1). The judge will fix a Proceeding Date that is no less than 15 business days in the future.

The request for a Document Only Proceeding can be declined if the judge is satisfied the parties have not made sufficient efforts to resolve the matter. The Court's limited resources must be reserved for situations where they are deemed essential.

In Document Only Proceedings, evidence is presented by affidavits and submissions are made in writing. Parties must agree there will be no cross-examination, though parties may provide extracts from discovery transcripts or responses to interrogatories.

In Document Only Proceedings:

- all filings are by email (Notice #2)
- all documents are single-spaced in 12-point font
- initial affidavits from the applicant and respondent are limited to 6 pages
- the applicant's rebuttal affidavit is limited to 3 pages
- submissions are limited to 3 pages
- documentary exhibits are accepted only with the Court's leave

Each party must confirm the documents they have filed and received. A template for this is attached to this notice as Appendix 3.

Once the judge has decided the Document Only Proceeding is appropriate, he or she will fix a date from which filing deadlines will be calculated.

Judges will grant orders in Document Only Proceedings where the evidence supports a claim on a balance of probabilities. Some, or all, of the relief may be granted, or a claim may be dismissed. If the judge decides that an order for substantive relief or dismissal cannot be granted, the judge may nevertheless make a non-binding recommendation. Rulings will be made by endorsement.

Motions or applications that may be suitable for a Document Only Proceeding include, but are not limited to the following:

- initial requests for child or spousal support
- requests to terminate or suspend child support on the basis that a child is no longer dependent or has changed the child's place of primary care
- requests to suspend support where a payor's income has changed, for example, because of unemployment
- requests to terminate or suspend collection of support arrears
- preservation orders
- requests to suspend MEP enforcement of arrears
- motions to be removed as solicitor of record
- selected *Child and Family Services Act* matters

Motions and applications that are likely not suitable for Documentary Only Proceedings may include:

- calculation or cancellation of arrears of child and spousal support
- claims for retroactive support
- final disposition applications under the *Children and Family Services Act*

- non-urgent property claims
- contempt applications

Parties are reminded that Consent Variation Orders will be considered when accompanied by a cover letter from each party explaining the basis for the variation. Similarly, Consent Orders for 'new' files will be considered when accompanied by the standard filing documents and a letter from each party explaining the basis of consent to the order.

Parties are reminded that they may request (1) a Non-Binding Judicial Recommendation as outlined in Notice #7 or (2) a Settlement Conference by telephone as outlined in Notice #8.

Clearly, any reduction in the Court's backlog of files will facilitate the Court's return to full operation and will result in more timely access for persons not represented by a lawyer.

Associate Chief Justice Lawrence I. O'Neil
Nova Scotia Supreme Court (Family Division)
April 20, 2020

APPENDIX 1

Document	Filing Deadline (all days are calculated under CPR 94.02)
Notice of Designated Address Statement of Contact Information and Circumstances Waiver of Fees Application with proof of income attached (where fees are payable, an invoice will be issued) Notice of Application – or - Notice of Variation Application – or - Notice of Motion for Interim Relief Affidavit (6-page limit) Statement of Income Statement of Expenses Statement of Special or Extraordinary Expenses Parenting Statement Brief (3-page limit) Draft form of order Proof of notice to the respondent	Applicant files 10 days before the Proceeding Date
Notice of Designated Address Statement of Contact Information and Circumstances Waiver of Fees Application with proof of income attached (where fees are payable, an invoice will be issued) Response to Application – or – Response to Variation Application – or - Notice of Motion for Interim Relief Affidavit (6-page limit) Statement of Income Statement of Expenses Statement of Special or Extraordinary Expenses Parenting Statement Response affidavit Response brief (3-page limit) Proof of notice to the applicant	Respondent files 5 days before the Proceeding Date
Rebuttal affidavit	Applicant files 3 days before the Proceeding Date
Document record	Applicant and Respondent file 2 days before the Proceeding Date

APPENDIX 2

Cover Sheet

- This matter was first filed on _____.
- This matter was _____ or was not _____ adjourned.

Provide details if a scheduled Court appearance did not occur:

- Date? _____
- Nature of Adjourned Appearance? Conference _____ Settlement Conference _____ Trial _____ Other _____
- Were Filings Completed? Yes _____ No _____
Explain _____
- Have circumstances changed significantly since the matter was adjourned?
Yes _____ No _____
- Have the parties agreed on a statement of facts? Yes _____ No _____
- Have the parties agreed on a list of issues? Yes _____ No _____
- I have _____ or have not _____ presented a proposed statement of facts of not more than one (1) page to the other side.
- I have _____ or have not _____ proposed a list of issues to the other side.

Appendix 3

DOCUMENT RECORD OF: {insert name}					
Court file Number:					
Applicant		Lawyer		Designated Address	
Respondent		Lawyer		Designated Address	
Proceeding type	New	Interim	Final	Variation	Other (describe)

A. I have filed the following documents at the Court:

Document	Date filed	How filed: email/fax	Date provided to other party or parties

B. I have received the following documents from the other party or parties:

Document	Date received		

I certify information in this Document Record is true.

Name {signature}	
Name (please print)	
Date	

**Associate Chief Justice Lawrence I. O’Neil
Supreme Court of NS (Family Division)**



NOTICE #7 – REQUEST FOR A NON-BINDING JUDICIAL RECOMMENDATION

Update: Wednesday, April 29, 2020

A critical role for judges in the settlement conference process is to express an opinion as to the likely outcome, should a matter(s) in dispute go to trial. Those experienced in participation at settlement conferences know that a judicial opinion can and does frequently spur parties to reach agreement and to resolve their differences.

The settlement conference opinion often has a number of caveats, including that it is based on what is known by the judge at that point in time and the opinion does not benefit from a hearing and cross-examination, etc.

This memo describes a process that may assist in resolving points of disagreement on family law matters. It is a paper only process that both parties must request and agree to. It permits parties to ask for a non-binding judicial recommendation as to a temporary or lasting resolution to one or more family issues requiring resolution. A judge may deem it appropriate to convene a brief telephone or video conference; however, this should not be anticipated. A judge making a recommendation would not hear the matter, should a hearing be necessary.

Existing and New Proceedings

To request a non-binding judicial recommendation, all parties must be represented by a lawyer, they must have an open court file and they must complete the accompanying Request for a Non-Binding Judicial Recommendation (Appendix 1) and a file cover sheet (Appendix 2).

Effective April 29, 2020, the Supreme Court (Family Division) will accept a role in addressing parenting disputes. That role will not include a 'traditional' adversarial hearing, at this time. However, self-represented persons and lawyers may request a judicial recommendation concerning a parenting issue, a process explained in Notice #7.

The consent of the Respondent is not required to trigger the involvement of the Court when there is an allegation of an arbitrary interruption of a court-ordered parenting schedule. A conference with a conciliator or a judge will be scheduled in response to a request of this nature.

This process may be particularly attractive to parties who have already filed in advance of a conference that did not proceed, a settlement conference that did not proceed, or a trial that did not proceed as a result of the COVID-19 pandemic.

Parties are reminded that Consent Variation Orders will be considered when accompanied by a cover letter from each party explaining the basis for the variation. Similarly, Consent Orders for 'new' files will be considered when accompanied by the standard filing documents and a letter from each party explaining the basis of consent to the order.

Parties are also reminded that they may request (1) a Documents Only Proceeding as outlined in Notice #6 or a Settlement Conference as outlined in Notice #8.

Associate Chief Justice Lawrence I. O'Neil
Nova Scotia Supreme Court (Family Division)
Dated April 20, 2020 (revised April 29, 2020)

APPENDIX 1

Request for a Judicial Recommendation – Rules 1, 27, 59.38 and 59A

I certify to the following:

(1) I, _____ am counsel for _____ Applicant/Respondent in the matter of _____ v. _____, Court File No. _____.

Counsel for the Applicant/Respondent is _____ who may be contacted at _____.

(2) I have been engaged in good faith settlement discussions with _____, counsel for the Respondent/Applicant in this matter. Our most recent communication consisted of a telephone conversation on _____ during which we discussed the respective positions of our clients and possible resolution. As a result of that conversation, I discussed with my client on _____ a possible resolution of outstanding issues. Important issue(s) remain unresolved.

All counsel have agreed to request a non-binding judicial recommendation.

[No matter will be scheduled before a Judge for a Non-Binding Judicial Recommendation if direct settlement discussions did not occur by telephone within the two-week period preceding the request.]

(3) I advised my client that this process will not result in a ruling by a Judge but may result in a recommendation from a Judge as to how outstanding issue(s) could be resolved in whole or in part.

(4) I advised my client the process is a document only process and the Judge would not be speaking to any of the lawyers or the parties unless necessary.

(5) I advised my client the judicial recommendation would be by a Judge who would not conduct the hearing should the issue(s) in dispute proceed to a hearing. I have further advised my client only significant matters should be placed before the Court through this process.

(6) I have advised my client the written submission in this matter is limited to no more than six (6) pages that does the following:

1. Identifies the issues from that party's perspective.
2. Outlines the position the party takes on each issue.
3. Explains why the party takes the position.
4. States whether settlement proposals have been exchanged.
5. States whether there are areas of factual agreement that permit the matter proceeding in whole or in part on the basis of an agreed statement of facts.

6. States whether there is a disagreement as to the applicable law.
7. Identifies the witnesses.
8. Provides on a separate single page an outline of what he/she believes the other person's financial obligation is to him/her; on this sheet all calculations and basic arithmetic is to be shown which calculations will show what the other person's financial obligation is/was and what part of it was met. An equalization spreadsheet should be provided if property division is at issue.
9. On a separate single sheet, lists the property each owns separately and also lists property owned jointly with the other party.
10. States whether a party requires accommodation.
11. States whether either party is concerned about personal safety.
12. States whether there are outstanding criminal or civil/family orders or matters relevant to this proceeding, to the parties or to any children impacted by this proceeding.

(7) I have advised my client the Judge will base the Judicial Recommendation solely on the written submissions from each party and will not review all documents previously filed by each party in the proceeding.

(8) I have advised my client a one-page supplemental/rebuttal may be filed by each party.

(9) I have advised my client a Judge may feel it is not possible for a recommendation to be given based on the nature of the issues identified and the material filed.

(10) I will provide a copy of this certification to my client.

_____, 2020
Name - Signature Date

Name – Print Here

APPENDIX 2

Cover Sheet

Background

- This matter was first filed on _____.
- This matter was _____ or was not _____ adjourned.

Provide details if a scheduled Court appearance did not proceed:

- Date? _____
- Nature of Adjourned Appearance? Conference _____ Settlement Conference _____ Trial _____ Other _____
- Were Filings Completed? Yes _____ No _____
Explain _____
- Have circumstances changed significantly since the matter was adjourned? Yes _____ No _____.
- Have the parties agreed on a statement of facts? Yes _____ No _____
- Have the parties agreed on a list of issues? Yes _____ No _____
- I have _____ or have not _____ presented a proposed statement of facts of not more than one (1) page to the other side.
- I have _____ or have not _____ proposed a list of issues to the other side.



NOTICE #8 – REQUEST FOR A BINDING SETTLEMENT CONFERENCE BY TELEPHONE (OR VIDEO, IF IT BECOMES AVAILABLE)

Monday, April 20, 2020

A. Request for a Judicial Settlement Conference by Telephone (Rule 59.39)

This differs from the traditional settlement conference in that it is a settlement conference over the telephone. If video conferencing becomes available, it may also be requested.

In preparation for the settlement conference, each party is to file a written submission of no more than six (6) pages that does the following:

- 1) Identifies the issues from that party's perspective.
- 2) Outlines the position the party takes on each issue.
- 3) Explains why the party takes the position.
- 4) States whether settlement proposals have been exchanged.
- 5) States whether there are areas of factual agreement that permit the matter proceeding in whole or in part on the basis of an agreed statement of facts.
- 6) States whether there is a disagreement as to the applicable law.
- 7) Identifies the witnesses.
- 8) Provides on a separate single page an outline of what he/she believes the other person's financial obligation is to him/her; on this sheet all calculations and basic arithmetic is to be shown, which calculations will show what the other person's financial obligation is/was, and what part of it was met. An equalization spreadsheet should be provided if property division is at issue.
- 9) Provides on a separate single sheet of paper, a list of the property each owns separately and also a list of the property owned jointly with the other party.
- 10) States whether a party requires accommodation.
- 11) States whether either party is concerned about personal safety.
- 12) States whether there are outstanding criminal or civil/family orders or matters relevant to this proceeding, to the parties or to any children impacted by this proceeding.

All filings would be by email and be accompanied by a cover sheet (see Appendix 1). The Applicant would file two weeks in advance of the settlement conference and the Respondent would file one week in advance.

All parties must undertake not to record any of the conference and will be required to certify, in advance, who will be listening to the conference. The presiding judge will have additional conditions.

Providing for a secure caucusing option is always a challenge to be addressed.

B. Request for a Binding Judicial Settlement Conference

Again, it would be a Settlement Conference by telephone and subject to the same guidelines governing a Settlement Conference with the added feature, i.e. that a judge may issue a ruling to bind the parties. A standard list of conditions must be satisfied before a judge would agree to participate in a binding Settlement Conference. By way of example, please see the accompanying Appendix 2.

All filings would be by email.

Parties are reminded that Consent Variation Orders will be considered when they are accompanied by a cover letter from each party explaining the basis for the variation. Similarly, Consent Orders for 'new files will be considered when accompanied by the standard filing documents and a letter from each party explaining the basis of consent to the order.

Parties are also reminded that they may request (1) a Documents Only Proceeding as outlined in Notice #6 or (2) a Non-Binding Judicial Recommendation as outlined in Notice #7.

Associate Chief Justice Lawrence I. O'Neil
Nova Scotia Supreme Court (Family Division)
April 20, 2020

Appendix 1

Cover Sheet

- This matter was _____ or was not _____ adjourned.

Provide details if a scheduled Court appearance did not proceed:

- Date? _____
- Nature of Adjourned Appearance? Conference _____ Settlement Conference _____ Trial _____ Other _____
- Were Filings Completed? Yes _____ No _____
Explain _____
- Have circumstances changed significantly since the matter was adjourned?
Yes _____ No _____
- Have the parties agreed on a statement of facts? Yes _____ No _____
- Have the parties agreed on a list of issues? Yes _____ No _____
- I have _____ or have not _____ presented a proposed statement of facts of not more than one (1) page to the other side.
- I have _____ or have not _____ proposed a list of issues to the other side.

Appendix 2

Request for Binding Settlement Conference

NAME OF PROCEEDING: _____

REQUEST: _____

I, _____, have requested and consent to a binding settlement conference to resolve the outstanding issue(s) in the above proceeding.

I have chosen a binding settlement conference to resolve the outstanding issue(s) instead of a trial of the issue(s).

I agree to be bound by the decision of the settlement conference judge should it become necessary for the judge to decide any unresolved issue(s).

I understand that the settlement conference judge is not bound by the strict rules of evidence but, may receive and use any information submitted to the Court.

I understand that the settlement conference judge has full power and authority to rule on any questions of law and/or fact applying to the determination of the issues in the same manner as a judge at trial.

I understand that a decision of the settlement conference judge is enforceable in the same manner as any other Judgment of the Court.

I understand that having a binding settlement conference can eliminate any right of appeal following the binding settlement conference, as a record for appeal is not produced in the usual fashion: See Forrest v. Forrest, 2013 NSCA 15.

I understand that my participation in this binding settlement conference is strictly voluntary but once I agree to same, I cannot withdraw my consent to participate in same.

I have not been coerced or threatened in any way to agree to this binding settlement conference process and I have not been promised anything to get me to agree to this binding settlement conference process.

I understand that I can seek legal advice from a lawyer before consenting to this binding settlement conference process. I have not consulted with counsel.

I have no further questions to ask about the binding settlement conference process.

DATED: _____, 2020

Signature of Party Signature of Lawyer

Print Signature of Party Print Signature of Lawyer



**NOTICE # 9 – CHILD AND ADULT PROTECTION, URGENT AND EMERGENCY MATTERS, AFFIDAVIT EVIDENCE AND LENGTH OF HEARINGS
CIVIL PROCEDURE RULES 1, 27, 28, 59.38, 59A AND 60A**

Monday, April 20, 2020

Since March 23, 2020, the Supreme Court (Family Division) has operated under an essential services model, dealing with urgent and emergency matters using electronic and fax filings (as outlined in Notices #1 and #2).

Supreme Court (Family Division) operations continue to be guided by the protocols imposed by the provincial State of Emergency and public health advice, including the recommendation to operate with minimal staff and limit traffic to the courthouses.

The Court has successfully transitioned to dealing with most child protection, adult protection and urgent and emergency matters by teleconferencing. These matters are a significant part of the Court's caseload and will continue to be addressed in this way.

Rule 28 provides a presiding judge with wide discretion to limit evidence and the duration of hearings when a judge is called upon to hear matters deemed urgent or an emergency.

Unless a party makes a request in writing to vary the following, other parties have an opportunity to respond and a presiding judge gives different directions, the following will govern aspects of proceedings pursuant to the *Children and Family Services Act* (CFSA), and with necessary modifications, those proceedings pursuant to the *Adult Protection Act* (APA):

1. Each party must file a list of witnesses prior to a contested hearing and for each witness an affidavit containing the direct evidence of that witness must be filed. The filing deadline shall be determined by the presiding judge.
2. Direct evidence will be by affidavit. A witness who has not filed an affidavit will not be permitted to testify.
3. Effective immediately, no affidavit filed after May 1, 2020, may exceed twenty-five (25) pages. and on June 1, 2020, the limit on the length of affidavits will become twenty (20) pages. Subject to bullet 4 in this list, in both cases exclusive of exhibits.
4. Case recordings shall not be attached as exhibits to affidavits.

5. Unless otherwise ordered by the Court, each party will be provided time for cross-examination of other parties and their witnesses by telephone or video as outlined below:
 - A. Commencement of an Interim Hearing; cross examination will be permitted only with leave of the court R 60A(4)
Contested completion of the interim hearing: 2 hours for each party apportioned as decided by that party
 - B. Protection Hearing: 3 hours for each party, apportioned as decided by that party
 - C. Disposition Hearing: 3 hours for each party, apportioned as decided by that party
 - D. Review: 3 hours for each party, apportioned as decided by that party
 - E. Review: Permanent Care Hearing: determined on a case by case basis but will presumably be done with cross examination being in person and for a duration determined by the presiding Judge.

Attached as Appendix "A" is a backgrounder that forms part of this Notice.

Associate Chief Justice Lawrence I. O'Neil
Nova Scotia Supreme Court (Family Division)
April 20, 2020 – Revised April 28, 2020

Appendix “A” to Notice # 9

Backgrounder: Filing Limits

The CFSA five-day hearing stage is often viewed by counsel for the Applicant as requiring that it put all of its case forward at this first appearance. Evidence received at the five-day hearing is frequently the principle evidence relied upon throughout a proceeding. The five-day affidavit will often exceed 50 pages or more, with some affidavits approaching 100 pages and these may have extensive exhibits. The result is that documents prepared on short notice and filed for the five-day appearance often lack focus and have the effect of burdening the Court and Respondents with detailed descriptions of circumstances of limited relevance and significance. Often, much of the material in these cases could be presented in fewer pages.

Guidelines are necessary to assist all parties in the preparation of affidavits. Affidavits need to be more precise and to more clearly and concisely communicate the basis of a claim that a child is in need of protection. Given the lower threshold and relaxed evidentiary rules applicable during an interim hearing, particularly at the five-day stage, a limit on the number of pages for affidavits permits the amount of information required to accomplish that task. As stated, this is particularly so in light of the evidentiary rules at the interim hearing stage, which are commented upon in the following.

Affidavits of two or three times the appropriate length with extensive exhibits, filed on the eve of the five-day hearing are not uncommon. This current practice is contrary to the intention of the CFSA and our rules.

Evidence at the Five-Day Hearing

From time to time, it is important to re-read sections of the CFSA and the Civil Procedures to remind oneself of the policy choices made by the legislature and reflected in Sec. 39 of the CFSA and the Rules. Clearly, the overriding emphasis at the five-day appearance is on identifying risk to a child and protecting a child even at the cost of a very compromised ‘hearing’. The Rules require that this objective be met in a concise, focused and proportionate manner.

The burden of proof on the Applicant at the interim hearing stage is not as high as at later stages.

- The burden is to establish on reasonable and probable grounds that an identifiable risk exists. This is contrasted with the usual civil burden that conclusions must be based on evidence that support a finding on a balance of probabilities and it is well below the test in criminal matters, that of proof beyond a reasonable doubt.

- Not only is the threshold for a finding of risk lower at the five-day hearing, the rules of evidence are also significantly relaxed. For example (1) the Applicant need not comply with the expert's rule, that is it may offer an expert opinion without filing the expert report when the purpose of the expert opinion is to establish whether there are reasonable and probable grounds that an identifiable protection concern exists (Rule 60A.10(3)) and by way of further example it is observed that (2) Sec. 39(11) of the CFSA provides for the purpose of the interim hearing "the court may admit and act on evidence that the court considers credible and trustworthy in the circumstances."
- Given a Respondent is entitled to only 2 days notice of the proceeding (CFSA Sec. 39(2)) the result is most Respondents do not exercise their right to offer affidavit evidence at the five-day hearing. They are typically unable to prepare to do so.
- Rule 60A.10(4) provides that a judge may act solely on affidavit evidence at the five-day 'hearing' and oral evidence may only be presented with the permission of the judge. No right to offer oral evidence or to cross examine exists for Respondents, notwithstanding the issues that will be decided.
- If the Court can complete the interim hearing at the five-day appearance, it must make the reasonable and probable grounds finding or dismiss the application — CFSA Sec. 39(2). If the finding is made, Sec. 39(7) the need to find a substantial risk, which would justify removing a child from a parent, has no application at the five-day hearing.
- The Court's obligation at the five-day hearing and pursuant to the CFSA Sec. 39(3), when the hearing cannot be completed and the parties don't agree that a finding of reasonable and probable grounds exist to support a finding, is to adjourn the hearing but before doing so the Court must make an interim order that reasonable and probable grounds to support a finding exists. This finding will last until the interim hearing is completed — Rule 63A.10 (5).
- All parties are permitted to file additional material for consideration of the Court, prior to completion of the interim hearing, i.e. for the 30-day hearing. If a Respondent wishes to challenge the case of the Applicant, it will almost always happen at the 30-day hearing.

The five-day and the 30-day hearings, although often characterized as two separate hearings, are parts of the same hearing.

Although the CFSA does not say a five-day finding of reasonable and probable grounds can be changed at completion (see CFSA Sec. 39(4)), the effect of Rule 60A.10(5) is that the five-day order expires on the date of return for completion of the interim hearing.

COVID-19

The limit on the length of affidavits, exclusive of exhibits, applies to all affidavits including those filed at the five-day hearing. The limitation is designed to address the need for a more efficient court process during the COVID -19 pandemic, and beyond. This is a time of severe restrictions on the Court's ability to offer trials. Our proceedings are limited to urgent and emergency matters which include CFSA matters. The limitations identified are within the range of what is contemplated and will govern during this period and thereafter.

Concerns have been expressed and considered by the Court that limiting affidavits to 20 pages as per Notice #9 may be a challenge for parties, given the absence of limits previously. As a result, the page limit for affidavits during the month of May will be 25 pages and the 20-page limit will be effective June 1, 2020.

Judicature Act

The Supreme Court has enacted Rules pursuant to the authority conferred upon it by Sec. 46 of the *Judicature Act* which provides:

Rules of Court

46 The judges of the Court of Appeal or a majority of them may make rules of court in respect of the Court of Appeal and the judges of the Supreme Court or a majority of them may make rules of court in respect of the Supreme Court for carrying this Act into effect and, in particular,

- a) regulating the sittings of the Court and of the judges of the Court in chambers;
- b) regulating the pleading, practice and procedure in the Court and the rules of law which are to prevail in relation to remedies in proceedings therein;

- e) prescribing and regulating the proceedings under any enactment that confers jurisdiction upon the Court or a judge;

- (i) regulating the means by which particular facts may be proved and the mode in which evidence thereof may be given in any proceeding or on any application in connection with or at any stage of any proceeding;
- (j) generally for regulating any matter relating to the practice and procedure of the Court, or to the duties of the officers thereof, or to the costs of proceedings therein and every other matter deemed expedient for better attaining the ends of justice, advancing the remedies of suitors and carrying R.S., c. 240 judicature 29

Rule 1, 28 and 59A

Rule 1 provides the purpose of the Civil Procedure Rules, governing procedures in this court have as an object “the just, speedy, and inexpensive determination of every proceeding”.

Rule 28 empowers this court to customize processes when dealing with emergencies and informs the Court’s management of child protection files through the COVID-19 period and beyond.

Rule 59A.01 identifies the object of the Rule as the promotion of the “ proportional, just, timely, and cost -effective resolution of disputes”

Rule 59A.05 provides that at every appearance a judge may by direction or order *inter alia*

...

- (i) Manage the hearing, trial, or dispute resolution process by :
- (i) limiting the use of expert evidence
- (ii) limiting the number of witnesses
- (iii) limiting the number of affidavits
- (iv) limiting the number of paragraphs and pages in affidavits
- (v) specifying the issues to be addressed in affidavits
- (vi) setting page limits for written submissions.....

.....

Rule 59A.05 (k) provides a judge may give any direction and make any order that is appropriate to promote the proportional, just, fair, timely and cost-effective resolution of issues in dispute.

The foregoing Rules of our court are consistent with the judgment of the Supreme Court of Canada in *Hyrniak v Mauldin 2014 SCC 8*. Although that case focused on the Ontario summary judgment rule the court’s discussion of access to justice issues and the need for proportionality has application to this discussion.



COVID-19: NOTICE #10 – SAFE SERVICES MODEL IN THE FAMILY COURTS

Monday, June 15, 2020

Effective June 15, 2020, the Nova Scotia Supreme Court will start to move away from the modified essential services model that has been in place during much of the COVID-19 pandemic, and transition to a safe services model. As such, the following operational changes will take effect in the Supreme Court (Family Division) and the Family Court.

Delivery of Documents – Change to Notice #2

The Supreme Court (Family Division) will continue to accept delivery of documents by both email and paper, unless the presiding judge in a case orders otherwise. Counsel are reminded of the requirement to deliver all documents requiring the payment of filing fees in paper form, with the necessary filing fee.

The feasibility of continuing to accept documents by email will be reassessed at the end of the summer.

The Supreme Court (Family Division) does not have an electronic filing system. In many cases, authentication of filings by a variety of means, as determined by the presiding judge will be required. This may include a requirement to file original documents at a later date.

Filing Deadlines

As per the [June 4, 2020, notice](#), the suspension of filing deadlines is now lifted. Counsel and parties are expected to comply with the filing and service timelines prescribed by the Civil Procedure Rules or as required by a judge. This is a return to the status quo that preceded the COVID-19 State of Emergency.

Scheduling Guidelines – Change to Notice #1 – Urgent Matters

Under the safe services model, matters may be filed with the Court without the need to establish whether the matter is urgent or essential. The requirement for a two-page letter is no longer applicable. Counsel and parties should file in the traditional way as outlined in Rule 59. This is a return to the terms governing the scheduling of matters prior to the COVID-19 State of Emergency.

CFSA and APA Matters

Docket matters pursuant to the *Adult Protection Act*, the *Children and Family Services Act* and the Civil Procedure Rules will continue to be by telephone at the Devonshire Courthouse and most sites, unless otherwise ordered. This is made necessary by the physical limitations of the Devonshire Courthouse and at many other Family Division and Family Court sites.

Telephone/Video/Virtual Appearances to Continue

The Supreme Court (Family Division) in all locations will continue to direct that parties be heard over the telephone, by the use of video or other electronic means. This direction will change if a judge directs that in-person participation is appropriate and can be safely accommodated.

Hearings

A requirement for cross-examination may cause a judge to direct that a matter requires attendance of some or all the parties or witnesses to be present in court. The details of arrangements will be decided on a case-by-case basis, which will involve a judge working with the parties and Court Administration to confirm logistical needs and the Court's capability at the relevant site.

Revisions to Notices

(A) Notice #5 – Additional Processes

The Court will no longer give priority to matters where lawyers represent both parties, as previously outlined in Notice #5. Files with no lawyers involved will receive the same priority as those involving one or more lawyers. The Court is continuing to systematically rebook matters removed from the docket since the onset of the COVID-19 pandemic. To date, matters removed from the March and April dockets have been rebooked. This represents the rebooking of hundreds of matters at the Devonshire Courthouse.

Similarly, at district court sites, judges have worked with court staff to rebook matters removed from the docket. At some district sites, all matters removed from the docket have already been rebooked for June, July or August.

New matters are being processed at all Unified Family Court and Family Court locations, as permitted by the availability of safe facilities and sufficient staff.

(B) Notice #6 – Request for a Document Only Proceeding

This option for dispute resolution will continue to be available until further notice, subject to the following changes:

- (a) Notice #6 is amended to delete the step in the process that has a judge rule whether a matter is suitable for a document only process; and
- (b) Filings may be in paper or delivered by email, unless the presiding Judge rules otherwise. Please see #1 above.

(C) Notice #7 – Request for a Non-Binding Judicial Recommendation

This option for dispute resolution will continue to be available until further notice, subject to the following change: It is no longer necessary for one or both parties to be represented by a lawyer.

(D) Notice #8 – Request for a Binding or Non-Binding Judicial Settlement Conference

This option for dispute resolution will continue to be available by telephone and by video. Parties should ensure the opposing side has a phone number where they can be reached during breaks in the settlement conference process.

**Associate Chief Justice Lawrence I. O’Neil
Nova Scotia Supreme Court (Family Division)
Notice #10 – Processes Post June 15, 2020**



COVID-19: NOTICE #11 – ATLANTIC BUBBLE

Friday, Oct. 9, 2020

This Unified Family Court and provincial Family Court direction outlines the Court's policy regarding the Atlantic Bubble. The Atlantic Bubble consists of the four Atlantic provinces — Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador.

The Court anticipates requests by or on behalf of a party or witness who has recently been outside the Atlantic Bubble to be exempt from the requirement to self-quarantine.

[Notice #10](#) governing court processes post June 15, 2020, describes the current safe services model in the Unified Family Court and the provincial Family Court. Clause 5 and 6 of that notice provide:

5. Telephone/Video/Virtual Appearances to Continue

The Supreme Court (Family Division) in all locations will continue to direct that parties be heard over the telephone, by the use of video or other electronic means. This direction will change if a judge directs that in-person participation is appropriate and can be safely accommodated.

6. Hearings

A requirement for cross-examination may cause a judge to direct that a matter requires attendance of some or all the parties or witnesses to be present in court. The details of arrangements will be decided on a case-by-case basis, which will involve a judge working with the parties and Court Administration to confirm logistical needs and the Court's capability at the relevant site.

The foregoing directions of this court are now complemented by the following:

The Unified Family Court and the provincial Family Court adopt the relevant part of Clause 2 of the Public Health Order issued pursuant to Section 32 of the *Health Protection Act* 2004, c. 4, s. 1. Clause 2 provides in part as follows:

.....
1. *In this Order*

.....
(b) *“self-quarantine” means the requirement of any person who has been exposed or may have been exposed to COVID-19 during its period of communicability to restrict that person’s activities in order to prevent disease transmission during the incubation period for this disease.*

2. *Effective July 3, 2020, all persons residing in or present in the Province of Nova Scotia who:*

2.1 *have travelled outside the Atlantic Provinces or Canada; [must]*

.....

(a) *self-quarantine or self-isolate, for:*

(i) *the period commencing on the day of entry into Nova Scotia.*

.....

For greater certainty, this includes remaining in your residence or residence grounds and otherwise removing yourself from the presence of others in public while you may be infectious during the 14-day period, so that all precautions necessary to protect others are in place. Specifically, do not enter any buildings, public transportation, or other enclosed spaces (other than your residence) where other people are present.

.....

The Court may nevertheless grant exemptions to the foregoing requirement to self-quarantine:

2.6 *Notwithstanding section 2.1, individuals who are well and showing no symptoms of COVID-19 and are engaged in a legal proceeding in Nova Scotia, whether the accused, victim, witness or party in such proceeding, may enter Nova Scotia for participation in the legal proceeding if the person:*

(a) *self-isolates/self-quarantines for the period they are in Nova Scotia other than when they are in court; and*

(b) *complies with the physical distancing requirements of 2 metres (6 feet) while in Nova Scotia.....*

While the Unified Family Court and the provincial Family Court may exempt persons from the requirement to self-quarantine, the Unified Family Court and the provincial Family Court have chosen not to do so, absent compelling circumstances as determined by the presiding judge in consultation with the Associate Chief Justice of the Family Division of the Supreme Court.

Parties who know a proposed participant in a proceeding has been outside the Atlantic Bubble at any time in the two weeks preceding their attendance or participation in a proceeding must immediately advise the presiding judge. Similarly, if a party is living with someone who has been outside the Atlantic Bubble in the same two weeks the presiding judge must be immediately advised.

Recognizing that direct evidence of witnesses will always be in affidavit form, the Court will assist parties and witnesses in self-quarantine or who are self-isolating with accessing alternatives to in-person participation. Those alternatives will include testifying on cross-examination virtually, including by telephone. The Court will also hear from parties or witnesses requesting an adjournment of all or part of a proceeding given a requirement to self-quarantine or to self-isolate.

Counsel and parties are reminded that the Court continues to offer the options for dispute resolution outlined in [Notice #10](#). The Court is also now offering online dispute resolution. Arrangements for online dispute resolution can be made by contacting Natasha Matthews by email at natasha.matthews@novascotia.ca.

**Associate Chief Justice Lawrence I. O'Neil
Supreme Court of Nova Scotia (Family Division)**



COVID-19: NOTICE # 12 – SAFE SERVICES MODEL IN THE UNIFIED FAMILY COURT AND THE FAMILY COURT IS CONTINUED

Friday, April 23, 2021

This Notice #12 should be read with [Notice #10](#).

The following operational guidelines for the Unified Family Court and the provincial Family Court remain in effect, continuing with the safe services model.

Delivery of Documents – Change to Notice #2

The Supreme Court of Nova Scotia (Family Division) will continue to accept delivery of documents by both email and paper, unless on a case specific basis the presiding judge orders otherwise. However, lawyers are reminded of the need to deliver all documents requiring the payment of filing fees in paper form with the necessary filing fee.

The feasibility of continuing to accept delivery of documents by email will be reassessed on an ongoing basis.

The Supreme Court (Family Division) does not have an electronic filing system. In many cases, authentication of filings by a variety of means, as determined by the presiding judge, will be required.

Filing Deadlines

Parties are expected to comply with the filing and service timelines prescribed by the Civil Procedure Rules or as required by a judge. This was the status quo that preceded the COVID-19 pandemic and provincial State of Emergency.

Scheduling Guidelines – Change to Notice #1 – Urgent Matters

Parties should file in the traditional way as outlined in [Rule 59](#). This is a return to the terms governing the scheduling of matters prior to the COVID-19 pandemic and provincial State of Emergency.

Children & Family Services Act and Adult Protection Act Matters

Docket matters pursuant to the *Adult Protection Act*, the *Children and Family Services Act* and the Civil Procedure Rules will continue to be by telephone at the Devonshire Courthouse and most sites, unless otherwise ordered. This is made necessary by the physical limitations of the Devonshire Courthouse and at many other Family Division and Family Court sites.

Telephone/Video/Virtual Appearances to Continue

The Supreme Court (Family Division) and Family Court at all sites will continue to direct that parties be heard over the telephone, by the use of video or other electronic means. This direction will change if a judge directs that in-person participation is appropriate and can be accommodated.

Hearings

A requirement for cross-examination may cause a judge to direct that a matter requires in-person attendance for some or all of the parties or witnesses. The details of these arrangements will be decided on a case by case basis, involving a judge working with the parties and Court Administration to confirm logistical needs and the Court's capability at the relevant site.

**Associate Chief Justice Lawrence I. O'Neil
Supreme Court of Nova Scotia (Family Division)
Notice # 12 – Processes Post April 23, 2021**