



Sent via Email – pkryworuk@lernalers.ca
vicki@advocates.ca

February 7, 2023

Peter Kryworuk, President
Vicki White, Chief Executive Officer
The Advocates' Society

Dear Peter Kryworuk and Vicki White:

The [Ontario Superior Court of Justice's Guidelines to Determine the Mode of Proceeding in Civil, Family, Criminal and Small Claims Court](#) came into effect on April 19, 2022. In his message to the Bar announcing the Guidelines on March 17, 2022, Chief Justice Morawetz explained that the Guidelines are living documents and would be reviewed in the new year after the Bar and the Court had some time to work with them.

Accordingly, the Office of the Chief Justice of the Ontario Superior Court of Justice is seeking input on the Guidelines. The Guidelines set out the presumptive method of hearing for any given matter and were developed with consultation and input from the Bar, the Court's specialized working groups and the judiciary. Consideration of *all* justice participants' needs required a careful and thoughtful balance between the continued availability of both in-person and virtual attendances. The framework of those considerations are captured in the over-arching principles accompanying each set of the Guidelines and which inform the Court's application of them.

For your convenience, summary charts of the Court's Guidelines in Civil, Criminal and Family, with reference to any Regional variation, are attached.

If you are interested in providing input on the Court's Guidelines we would be pleased to receive your organization's input in writing from your executive (i.e. not individual responses from your membership) by April 3, 2023 to my attention at rosemarie.juginovic@ontario.ca

Yours sincerely,

Rosemarie Juginovic
Senior Criminal Counsel
Office of the Chief Justice
Ontario Superior Court of Justice

Ontario Superior Court Guidelines to Determine Mode of Proceeding in Civil

The Superior Court of Justice's Presumptive Guidelines Determining the Mode of proceeding in Civil were released April 19, 2022. See each Region's Notice for the date when the presumptions came into effect.

Change to Presumptive Mode of Hearing: Each Region implemented a protocol for requests to change the presumptive mode of proceeding which for all Regions, with the exception of Northeast & Northwest (both of which require greater flexibility), included underscoring that any party seeking to change the presumptive mode of hearing for an event should raise it with the Court at the earliest attendance or no later than when scheduling the event. And, the failure to raise this at the first available opportunity will result in the event proceeding in the presumptive mode of hearing. For further specific Regional details see each Region's Notice.

Over-arching principles:

Over-arching principles:

In applying the guidelines, the Court will take into account the following general principles :

(i) Discretion of the Court (ii) *Rule 1.08* (iii) Access to justice (iv) Self-represented litigant (v) In-person hearings important (vi) Hybrid options (vii) Impediments to a virtual hearing: see Notice to the Profession, Parties, Public and the Media for the full text of the over-arching principles but in summary it includes:

- Court retains **discretion** and will consider the following: issues in proceeding, expected length of hearing, evidentiary record, status of parties (e.g. self-rep) and access to technology (including virtual capacity at institutions and courthouses).
- **Rule 1.08:** *Rule 1.08 of the Rules of Civil Procedure* sets out the procedure for the moving party to specify the proposed method of attendance at a hearing or other step in a proceeding but parties ought to refer to these guidelines as the general expectations of the Court.
- **Access to justice:** Until such time as there is a means to provide access to technology to those who do not have it so that they can fully participate in a remote hearing, the Court will take this access issue into account when determining the appropriate mode of proceeding.
- **Self-represented litigants:** Issues such as the inability to obtain timely assistance from duty counsel and court staff, needing support to use technology or the inability to adequately address issues in writing may mean that in proceedings involving a self-represented litigant, Courts may favour an in-person mode of proceeding.
- **In-person hearings important:** The Court recognizes the importance of in-person interaction and hearings for more substantive attendances. For these matters, in-person advocacy and participation will remain an essential feature of our justice system.
- **Hybrid options:** Hybrid options will be considered where appropriate or necessary.

- **Impediments to a virtual hearing:** In addition to statutory, security or other impediments to having a remote hearing in certain matters, a party's or participant's personal circumstances (e.g. disabilities or caregiver responsibilities) may make remote hearings less suitable.

The following guidelines set out the Court's expectations for the default method of appearance for all civil events that will be applied across the province. However, the Court also recognizes that some Regions, in particular the Northwest, Northeast and those with circuiting judges, will require greater flexibility in hearing more cases virtually.

Note: Central West Region: ROTA Weekly Circuit in Guelph, Orangeville, Walkerton, and Owen Sound: All types of events scheduled during a "ROTA day" will be heard in person notwithstanding the presumptive mode of hearing in the Guidelines.

Presumptively VIRTUAL	Presumptively IN PERSON	Presumptively IN WRITING
<ul style="list-style-type: none"> • case conferences: Regional variation: (Northeast sites Sudbury, Sault St. Marie & North Bay: presumptively in person) • Pre-trial conferences involving trial management and scheduling issues only: Regional variation: (Northeast sites Sudbury, Sault St. Marie & North Bay: presumptively in person) • Pre-trial conferences: settlement and trial management conferences (involving settlement issues) *unless the Court directs that an in-person pre-trial conference is required) Regional variation: (Northeast sites Sudbury, Sault St. Marie & North Bay: presumptively in person) • Trial and motion scheduling court • Contested motions and applications (if party requests in person, the Court may so direct taking into account the positions of the parties; the complexity of the legal or factual issue; whether the outcome of the motion or application is legally or practically dispositive of a material issue in the case (e.g. summary judgement); whether viva voce evidence will be heard; and any other factor bearing on the administration of justice. 	<ul style="list-style-type: none"> • Examinations for discovery (unless both parties consent) • Mandatory mediations • Judge-alone trials (or hybrid) (unless both parties consent and the Court approves) • Jury trials • Appeals to the Divisional Court and applications for judicial review 	<ul style="list-style-type: none"> • Consent motions, without notice motions and unopposed motions • Costs motions • Motions for leave to appeal to the Divisional Court

Regional variation: Central West, East
Region & Northeast Presumptively In
person

- **Assessment hearings**

--

--

Ontario Superior Court Guidelines to Determine Mode of Proceeding in Family

The Superior Court of Justice's Presumptive Guidelines Determining the Mode of proceeding in Family were released April 19, 2022. See each Region's Notice for the date when the presumptions came into effect.

Change to Presumptive Mode of Hearing: Each Region implemented a protocol for requests to change the presumptive mode of proceeding which for all Regions, with the exception of Northeast & Northwest (both of which require greater flexibility), included underscoring that any party seeking to change the presumptive mode of hearing for an event should raise it with the Court at the earliest attendance or no later than when scheduling the event. And, the failure to raise this at the first available opportunity will result in the event proceeding in the presumptive mode of hearing. For further specific Regional details see each Region's Notice.

Over-arching principles:

In applying the guidelines, the Court will take into account the following general principles :

(i) Discretion of the Court (ii) Access to justice (iii) Self-represented litigant (iv) In-person hearings important (v) Hybrid options (vi) Impediments to a virtual hearing: see Notice to the Profession, Parties, Public and the Media for the full text of the over-arching principles but in summary it includes:

- Court retains **discretion** and will consider the following: issues in proceeding, expected length of hearing, evidentiary record, status of parties (e.g. self-rep) and access to technology (including virtual capacity at institutions and courthouses).
- **Access to justice:** Until such time as there is a means to provide access to technology to those who do not have it so that they can fully participate in a remote hearing, the Court will take this access issue into account when determining the appropriate mode of proceeding.
- **Self-represented litigants:** Issues such as the inability to obtain timely assistance from duty counsel and court staff, needing support to use technology or the inability to adequately address issues in writing may mean that in proceedings involving a self-represented litigant, Courts may favour an in-person mode of proceeding.
- **In-person hearings important:** The Court recognizes the importance of in-person interaction and hearings for more substantive attendances. For these matters, in-person advocacy and participation will remain an essential feature of our justice system.
- **Hybrid options:** Hybrid options will be considered where appropriate or necessary.
- **Impediments to a virtual hearing:** In addition to statutory, security or other impediments to having a remote hearing in certain matters, a party's or participant's personal circumstances (e.g. disabilities or caregiver responsibilities) may make remote hearings less suitable.

The following guidelines set out the Court’s expectations for the default method of appearance for all Family events that will be applied across the province. However, the Court also recognizes that some Regions, in particular the Northwest, Northeast and those with circuiting judges, will require greater flexibility in hearing more cases virtually.

Note: CentralWest Region: ROTA Weekly Circuit in Guelph, Orangeville, Walkerton, and Owen Sound: All types of events scheduled during a “ROTA day” will be heard in person notwithstanding the presumptive mode of hearing in the Guidelines.

Presumptively VIRTUAL	Presumptively IN PERSON	Presumptively IN WRITING
<i>Family</i>		
<ul style="list-style-type: none"> • First appearances (unless the Court specifies a different method of attendance taking into account the availability of duty counsel and on-site mediation services) • Early or urgent case conferences and triage courts • Urgent motions • Trial scheduling conferences, other trial management conferences (with focus on trial preparation) and assignment court attendances • Substantive regular/short motions (outside of UFC Locations, Toronto and Windsor)¹ 	<ul style="list-style-type: none"> • Case conferences, settlement conferences and trial management conferences (with a settlement focus) • Motions for Contempt • Long motions • Trials (unless all parties consent to a virtual trial and the Court approves. Hybrid proceeding may be considered) 	<ul style="list-style-type: none"> • Motions for procedural relief and motions on consent BUT more complex procedural motions will be conducted virtually, unless the Court specifies that an in-person attendance is required.
<i>Child Protection</i>		
<ul style="list-style-type: none"> • First hearing where child has been brought to a place of safety (5-day hearings) (unless the Court decides that an in-person hearing is required, taking into account any concerns regarding: (i) parental participation in virtual hearings or (ii) Legal Aid support for these events) • Child protection lists or TBST appearances (unless the Court decides that an in-person hearing is required, taking into account any concerns regarding: (i) parental participation in virtual hearings or (ii) Legal Aid support for these events) 	<ul style="list-style-type: none"> • Settlement conferences and trial management conferences (with a settlement focus) • Long motions • Trials (unless all parties consent to a virtual trial and the Court approves. Hybrid proceeding may be considered) 	<ul style="list-style-type: none"> • Motions on consent and motions for procedural relief only (including 14B motions) BUT more complex procedural motions will be conducted virtually, unless the Court specifies that an in-person attendance is required.

¹ Regional Notices will direct the mode of appearance for regular/short motions in Unified Family Court (UFC) locations, and in Toronto and Windsor : [Regional Notice Direction](#)

<ul style="list-style-type: none"> • Trial scheduling conferences, other trial management conferences (with a focus on trial preparation) and assignment court attendances • Substantive regular/short motions² 		
<i>FRO Lists and Refraining Motions</i>		
<ul style="list-style-type: none"> • Refraining motions (except those that are held on regular FRO sittings at Unified Family Court locations.) 	<ul style="list-style-type: none"> • All Family Responsibility Office matters 	
<i>Dispute Resolution Conferences</i>		
<ul style="list-style-type: none"> • Dispute Resolution Conferences 		

² Regional Notices will direct the mode of appearance for substantive/regular short motions: **Regional Notice Direction**

Ontario Superior Court Guidelines to Determine Mode of Proceeding in Criminal

The Superior Court of Justice's Presumptive Guidelines Determining the Mode of proceeding in Criminal were released April 19, 2022. See each Region's Notice for the date when the presumptions came into effect.

Change to Presumptive Mode of Hearing: Each Region implemented a protocol for requests to change the presumptive mode of proceeding which for all Regions, with the exception of Northeast & Northwest (both of which require greater flexibility), included underscoring that any party seeking to change the presumptive mode of hearing for an event should raise it with the Court at the earliest attendance or no later than when scheduling the event. And, the failure to raise this at the first available opportunity will result in the event proceeding in the presumptive mode of hearing. For further specific Regional details see each Region's Notice.

Over-arching principles:

In applying the guidelines, the Court will take into account the following general principles :

(i) Discretion of the Court (ii) Access to justice (iii) Self-represented litigant (iv) In-person hearings important (v) Hybrid options (vi) Impediments to a virtual hearing: see Notice to the Profession, Parties, Public and the Media for the full text of the over-arching principles but in summary it includes:

- Court retains **discretion** and will consider the following: issues in proceeding, expected length of hearing, evidentiary record, status of parties (e.g. self-rep) and access to technology (including virtual capacity at institutions and courthouses).
- **Access to justice:** Until such time as there is a means to provide access to technology to those who do not have it so that they can fully participate in a remote hearing, the Court will take this access issue into account when determining the appropriate mode of proceeding.
- **Self-represented litigants:** Issues such as the inability to obtain timely assistance from duty counsel and court staff, needing support to use technology or the inability to adequately address issues in writing may mean that in proceedings involving a self-represented litigant, Courts may favour an in-person mode of proceeding.
- **In-person hearings important:** The Court recognizes the importance of in-person interaction and hearings for more substantive attendances. For these matters, in-person advocacy and participation will remain an essential feature of our justice system.
- **Hybrid options:** Hybrid options will be considered where appropriate or necessary.
- **Impediments to a virtual hearing:** In addition to statutory, security or other impediments to having a remote hearing in certain matters, a party's or participant's personal circumstances (e.g. disabilities or caregiver responsibilities) may make remote hearings less suitable.

Presumptively VIRTUAL	Presumptively IN PERSON
<ul style="list-style-type: none"> • Assignment court (unless the Court specifies a different method of attendance taking into account 	<ul style="list-style-type: none"> • Pre-trial motions (unless both accused and Crown consent and Court approves) (may be hybrid)

whether the accused is self-represented (either in custody or out of custody) and any other factor bearing on the administration of justice, including any access to justice issues.

- **Bail hearings, Bail Reviews & 90-day Detention Reviews:** (subject to the discretion of the Court, taking into account: availability of a virtual suite from the custodial institution, whether the accused is self-represented, the position(s) of the parties and any other factor bearing on the administration of justice: **Regional variation:** Northwest: In person. Toronto: Bail Hearings & bail/Detention Reviews scheduled through the Trial Office in advance will be presumptively virtual. Bail Hearings and Bail Reviews set on 2 clear days' notice will be presumptively in person.
- **Judicial pre-trials** (unless the Court directs that an in-person judicial pre-trial is required in light of the accused being self-represented, there being multiple accused in a case, the complexity of trial issues, the length of the trial, or any other factor the Court decides warrants an in-person judicial pre-trial)
- **Assignment court appearances related to summary conviction appeals and special motions** (except for self-represented litigants)
- **Summary conviction appeals** (subject to discretion of Court taking into account: whether the accused is self-represented, the position(s) of the parties, and any other factor bearing on the administration of justice)

Regional variation: Northwest: pretrial applications/motions that do not involve calling evidence shall be presumptively virtual.

- **Judge-alone trials** (unless both accused and Crown consent and Court approves) (may be hybrid)
- **Jury trials** (may be hybrid)
- **Guilty pleas** (unless both accused and Crown consent and Court approves)
- **Sentencing hearings** (unless both accused and Crown consent and Court approves)