

NOTICE #6 TO THE BAR

Request for a Document Only Proceeding Under CPRs 1, 27, 59.38 and 59A

Since March 23, 2020, the 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).

The Family Division continues to be guided by the recommendations of the Department of Health and Wellness and the protocols imposed by the state of emergency: we are operating with minimal staff and limiting traffic to the courthouses.

The Family Division of the Supreme Court has successfully transitioned to dealing with most child protection, adult protection and urgent/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 1st, 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 1-page letter accompanied by a cover sheet (see appendix 2).

- explaining why the Document Only Proceeding is suitable for the matter
- confirming the parties have attempted to resolve the matter and how

The Court asks that requests not be filed until May 1st, 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 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 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 which 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's enforcement of arrears
- motions to be removed as solicitor of record
- Selected Child and Family Services Act matters

Motions and applications which are likely not suitable for Documentary Only Proceedings:

- 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 also 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 back log 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
Supreme Court of NS (Family Division)
Dated April 20th, 2020

Appendix 1

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

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)**