

PRACTICE DIRECTION

COURT OF QUEEN'S BENCH OF MANITOBA

RE: PROCEEDINGS UNDER *THE DOMESTIC VIOLENCE AND STALKING ACT* – APPLICATIONS TO SET ASIDE/VARY A PROTECTION ORDER (GENERAL AND FAMILY DIVISIONS)

WINNIPEG JUDICIAL CENTRE

EFFECTIVE IMMEDIATELY

Applications to set aside/vary protection orders under *The Domestic Violence and Stalking Act* will now be dealt with differently from the procedure that was described in the Practice Direction dated December 19, 2018 “Re: Comprehensive Amendments to Court of Queen’s Bench Rules (Family) Effective February 1, 2019” (page 29). That earlier-described procedure will no longer apply. Effective immediately, the following procedure will govern such applications in both the General and Family Divisions:

- All types of set aside/vary applications, whether stand-alone applications or ones that are filed concurrently or subsequently and included as part of a family court proceeding commenced by the filing of initiating pleadings (Petition, Petition for Divorce, Notice of Application to Vary, Notice of Motion to Vary, Notice of Application, or Statement of Claim) or those family proceedings already subject to case management, will be subject to the same procedure. The fact that the applicant and respondent may be or may have been in a conjugal relationship does not require that the protection order matter be adjudicated in the Family Division.
- Applications to set aside or vary a protection order granted by a Judicial Justice of the Peace will be set down on the Protection Order Hearing List. The purpose of the List is to sensibly and proportionately manage the disposition of set aside/vary applications.
- The List will continue to be held every second Wednesday at 2:00 p.m.

- The court requires a transcript of the protection hearing before the Judicial Justice of the Peace and affidavit materials to be filed prior to the first court appearance date on the List.
- An objective of the List is to attempt to resolve as many matters as possible on a consent basis or by adjudicating the matter on a summary basis (confirm, set aside or vary). Those matters that can be resolved will be brought to a timely resolution while contested matters will be managed so that the contested hearing will proceed as expeditiously as possible.
- Where matters cannot be resolved by consent or adjudication on the List, the matter will be pre-tried so as to ready it for a contested hearing. Efforts will be made to narrow the issues and discuss procedure so as to ensure that the adjudication is complete within the limited timeframe that is set for the contested hearing.
- Accordingly, when matters appear on the List, **it is required that counsel and the parties attend** and will be prepared to address resolution of the matter and to address contentious issues on a summary basis. If the matter cannot be resolved, those in attendance should be prepared to engage in a meaningful discussion as to how to narrow and streamline the issues for hearing and to address other pre-hearing issues, similar to the case conference and pre-trial process employed by the court with respect to other civil and family matters.
- Where a matter requires the setting of a contested hearing date, the Judge presiding over the List will set this hearing date. Hearing dates will generally be set within 30 to 60 days. Given the nature of the governing test for set aside/vary applications, considerations of proportionality and the comparatively more informal approach that should be taken in those hearings, contested hearings will be set for one-half day and in the most exceptional cases for a maximum of one day.
- With this approach, it is anticipated that those set aside/vary applications with related ***Divorce Act*** or ***Family Maintenance Act*** proceedings will have the necessary determinations of fact regarding the issue of family violence made in a timely manner for the purpose of the court addressing any ongoing or eventual custody, access, and property issues. However, to be clear, it is not a pre-requisite that any such set aside/vary applications be determined prior to a Triage Conference appearance, nor is the procedure outlined herein a limitation on a triage Judge setting a prioritized hearing of a set aside/vary application. In cases where the family proceeding is already subject to case management or has a

Triage Conference scheduled, the application will be adjourned to a case management conference date or to the scheduled Triage Conference.

- The Judge presiding over the List may make referrals to Victim Services for safety planning and counselling awaiting the hearing.
- It is to be understood that Judges of both the General Division and the Family Division may preside over the List and hear any set aside/vary applications, regardless of whether there are related ***Divorce Act*** or ***Family Maintenance Act*** proceedings.

Coming into effect

This Practice Direction comes into effect immediately.

ISSUED BY:

“Original signed by Chief Justice Joyal”

**The Honourable Chief Justice Glenn D. Joyal
Court of Queen’s Bench (Manitoba)**

DATE: February 13, 2020