

PRACTICE DIRECTION

COURT OF QUEEN'S BENCH OF MANITOBA (FAMILY DIVISION)

RE: FAMILY AND CHILD PROTECTION VIDEO CONFERENCE TRIALS AND THE CONTINUATION AND COMMENCEMENT OF OTHER REMOTE SERVICES

I. Commencement of Video Conference Family Division Trials

Pursuant to this Court's November 10, 2020 Notice, given the government's designation of Code Red (pursuant to the Province's pandemic response system), all "in-person" Family and Child Protection trials scheduled to proceed between November 16 and December 11, 2020, were adjourned to an administrative list. That designated Code Red status currently remains in effect.

Mindful of the Court of Queen's Bench's ongoing effort to balance (during the COVID-19 pandemic) the safety of all Court participants with its obvious responsibility to deliver the requisite judicial service in all areas of its varied jurisdiction, the use of technology has been and will be increasingly utilized by the Court.

The willingness to explore and use technology in an innovative way during such unprecedented and challenging times, may be the difference between providing and not providing a meaningful access to justice for as many Manitobans as possible. As can be noted from this Court's recent November 17, 2020 Notice respecting Criminal Trials: Accused's Remote Appearance by Video Conference, the institutional role of the Court of Queen's Bench (as an essential service), and its need to ensure the proper administration of justice, require nothing less than the operational flexibility that comes from at least considering the use of such video technology.

It is with the above in mind that this Practice Direction addresses the use of video conference trials for currently-scheduled Family and Child Protection trials. In addition to setting out the working presumptions, parameters, and the basic practice that will surround and govern such proceedings, this Practice Direction also includes the attached Appendix A which provides some direction and guidance which should be considered and, if necessary, raised with the presiding trial judge to ensure an orderly, rigorous, but at the same time flexible, approach to video trials.

Commencing **Monday, December 14, 2020**, where there are counsel representing all parties, all currently-scheduled Family and Child Protection trials already scheduled, are to be viewed as presumptively proceeding by video hearing.

In keeping with this Court's now well-established approach as outlined in previous Practice Directions and as stipulated in both the Family Case Flow and Child Protection Models, an adjournment of a Family or Child Protection trial will occur only in exceptional circumstances and will require, where the trial has not yet commenced, the approval of the Chief Justice or his designate.

Absent exceptional circumstances and/or a party establishing that the integrity and fairness of a trial cannot be preserved were the trial in question is to proceed by video, a scheduled Family or Child Protection trial will generally not be adjourned. Even if and where all parties are consenting to adjourn a trial, pursuant to this Court's previously-described oversight role, if the trial in question is one which would or should otherwise not be adjourned and if it can properly and fairly proceed by video, the matter will not be adjourned.

Any request to adjourn a trial must be made by letter received by the Chief Justice no later than the **Monday** of the week preceding the commencement of the trial. Counsel must describe in their correspondence the alleged exceptional circumstances justifying the adjournment or set out the facts which are relied upon in any contention that the integrity and fairness of a trial would not be preserved if the trial were to proceed by video conference.

In determining whether the integrity and fairness of the trial will be preserved by a trial by video conference, the Chief Justice or his designate will consider a number of factors and requirements. They will include:

1. Are the parties and their witnesses able to appear by video conference and is the Court able to accommodate their appearances?
2. Are all participants able to see and hear each other?
3. Are the parties able to see and hear the evidence that is being presented at trial?
4. Is each party able to reasonably communicate in private with his or her counsel throughout the trial?
5. Are there justified concerns about creating and preserving the Court record?

A trial will be adjourned and will not proceed virtually if the integrity and fairness of the trial cannot be preserved. While the necessary rigour will be attached to the threshold question as to whether or not a video trial can proceed in a fair and equitable way, it must not be forgotten that the practical limits of the system of justice at any given time and the lawful interests of others require a realistic recognition that, "[w]hat the law demands is not perfect justice, but fundamentally fair justice", *R. v. O'Connor*, [1995] 4 SCR 411 at para. 193.

Any trial that will proceed by video conference will do so during the already-scheduled trial time assigned for that matter.

The Court will host the video conference and initiate the recording of the proceedings.

Until further notice, in all cases where there will be *viva voce* testimony, including a trial, a summary judgment motion with *viva voce* evidence, an uncontested divorce proceeding or an ISO hearing, the *viva voce* evidence will be heard virtually.

As earlier noted, proceeding by video conference for Family and Child Protection trials is only available where **all** parties are represented by legal counsel.

Where **all** parties are not represented by legal counsel, any such currently-scheduled Family and Child Protection trials set to proceed between **Monday, December 14, 2020 and January 12, 2021**, will be adjourned to an administrative list on **January 14, 2021**, for rescheduling.

All other Family Division judicial services currently being offered remotely will continue as before, unchanged, with the exception of the Family Triage Screening List, which is not subject to the direction provided below.

II. Triage Screening List

Commencing **Tuesday, December 15, 2020**, the Triage Screening List, overseen by Ms. Angie Tkachuk, Supervisor, Family Division Coordination, will be conducted by telephone between 9:00 a.m. and 11:00 a.m. until further notice.

Counsel are directed to ensure that they are ready to proceed and that their documentation is in order and has been properly filed. Counsel will now be required to file their documents no later than by 4:00 p.m. on the Tuesday before the Triage Screening date.

Counsel will be expected to consult with each other prior to contacting Ms. Tkachuk by telephone.

Coming into effect

This Practice Direction comes into effect immediately.

ISSUED BY:

“Original signed by Chief Justice Glenn D. Joyal”

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

DATE: December 3, 2020

Appendix A

Direction and Guidance Respecting Electronic Invite, Exhibits and Witnesses in Family and Child Protection Video Conference Trials

A scheduled Family or Child Protection trial that is proceeding presumptively by video conference should take into account the following:

1. Electronic Invite
 - a. The Court will send a Microsoft Teams meeting invitation to both counsel. Counsel will be responsible for forwarding the invitation to their clients and any required witnesses.
 - b. A separate electronic invite will be provided to counsel for each day of the trial.
2. Exhibits
 - a. All proposed exhibits for direct and cross-examination should be forwarded to the court office by counsel and exchange with each other at least three business days in advance of the trial.
 - b. Any exhibits counsel wish to bring up on screen should be scanned by counsel.
3. Witnesses
 - a. Where witnesses are not appearing in the same location as counsel, witnesses should be easily reachable by telephone or email when it is time for them to testify. Witnesses should not log into the hearing until they receive direction by counsel to do so.
 - b. Witnesses should have a copy of any exhibits being put to them or counsel should scan the item or photo and share it on their screen.
 - c. Witnesses should be in a brightly-lit, quiet room with a laptop or device with sufficient Wi-Fi.
 - d. If witnesses wish to be sworn using a bible or eagle feather, they should have the item with them, otherwise they will be affirmed.

Best practices:

- All parties should have a laptop or device with reliable internal and/or external microphones and webcams enabled.
- All parties should be in a location that has an internet connection with sufficient bandwidth.
- Parties should be cautioned that they must speak one person at a time, should give a clear pause in speech between speakers and should not rustle papers or any objects near the microphone on their device.

- When not speaking, a party's microphone is to be muted.
- Counsel should identify themselves for the monitor on a regular basis.
- Counsel should have a means of private conversation (i.e., phone, etc. to communicate with their client if their client is not in the same location as them). They should mute their microphone and disable their webcam when speaking to their client.
- The clerk should always have a means of reaching counsel outside of the webinar (i.e., phone or email) in the event of technical difficulties or for any other reason that they need to be quickly contacted.