

# Consolidated Provincial Practice Direction

Effective July 1, 2014

This Practice Direction governs proceedings in the Ontario Superior Court of Justice, province-wide *unless stated otherwise*, effective July 1, 2014.

This Practice Direction *supersedes* all previous province-wide Practice Directions issued prior to July 1, 2014, which are hereby revoked.

Counsel and parties are advised to refer to the relevant Parts of the [Consolidated Practice Direction for Divisional Court Proceedings](#), as well as the applicable [region-specific Practice Directions](#) which are also available on the Superior Court of Justice website at: [www.ontariocourts.ca/scj](http://www.ontariocourts.ca/scj).

## Part I: Family Proceedings in the Superior Court of Justice

1. This Part applies to all Family Proceedings in the Superior Court of Justice in Ontario, *except where noted otherwise*. Counsel and parties are advised to refer to the relevant [region-specific Practice Directions](#) that supplement this Part.

### A. Dispute Resolution Officer Program

#### *Application*

2. Paragraphs 3 to 17 of this Practice Direction apply to *all* Dispute Resolution Officer (DRO) Programs in the Ontario Superior Court of Justice, including existing permanent programs, pilot projects, and any future programs.\*

\* As of July 1, 2014, DROs are available in the Central East Region at the Newmarket, Durham and Barrie judicial centres, the Central West Region at the Milton and Brampton judicial centres, in the Central South Region at the Hamilton judicial centre and in Toronto at 393 University Avenue.

#### *Role and Conduct of the DRO*

3. DRO lawyers hearing case conferences must be appointed by the Regional Senior Judge and the Senior Family Judge, pursuant to Rule 17(9) of the *Family Law Rules*.
4. DROs shall:
  - a. hear *all* first case conferences for motions to change under Rule 15 of the *Family Law Rules*; and
  - b. complete a "Screening Report" after the conclusion of each DRO Case Conference, which will be included as part of the court file.
5. DROs may:
  - a. hear first case conferences on matters other than motions to change *only* when referred to the DRO by a judge and when such matters are scheduled to DROs after all first case conferences on motions to change have received priority in scheduling;
  - b. attempt to identify, resolve or settle outstanding issues on a consent basis;
  - c. assist parties in organizing their issues and disclosure documents in order to make the case "judge-ready"; and/or

d. assist parties in obtaining a signed consent order from a judge, where the parties have consented in writing at the DRO Case Conference.

6. DROs shall not:

- a. write consents or draft orders on behalf of parties;
- b. make orders, on consent or otherwise; or
- c. award costs.

***Role and Conduct of Parties Appearing before a DRO***

7. Rule 17 of the *Family Law Rules* applies to case conferences including those heard by a DRO pursuant to Rule 17(9).

8. Parties attending a DRO Case Conference (DRC) must therefore comply with the document requirements under Rule 17 of the *Family Law Rules*, including advance filing of:

- a. a case conference brief, which on a motion to change should at minimum include:
  - a copy of the previous order that is the subject of the motion to change;
  - documentation supporting the “change in circumstance”;
  - a description of the change being sought;
- b. any relevant disclosure documents; and
- c. a Form 14C Confirmation Form, filed not later than 2 pm, two business days prior to the date scheduled for the DRC.

***Scheduling DRO Case Conferences (DRCs)***

9. Wherever possible, motions to change will receive priority over other matters when DRCs are scheduled.
10. Wherever possible, litigants will receive the most immediate, next available date/time, accommodation may be made for reasonable conflicts.
11. Wherever possible, in advance of a DRC Hearing Date, the DRO will be advised of confirmed parties, in order to prevent any potential conflicts of interest.

***DRO Screening Reports***

12. At minimum, DRO Screening Reports **shall** include the following information, although additions may be made locally:
  - a. Name of DRO;
  - b. Whether parties were represented or unrepresented;
  - c. Whether the matter was scheduled before the DRO was a case conference on a motion to change or a case conference on an issue other than a motion to change;
  - d. Indication of whether the DRC was (1) “fully settled”, (2) “partially settled”, (3) resulted in no resolution, (4) resulted in disclosure only, upon conclusion;
  - e. Identification of any issues resolved and/or agreed upon for consideration by a judge,

- f. Identification of any outstanding issues if only (1) “partially settled”, (2) only disclosure arranged, or (3) no resolution;
  - g. Timelines for matters that must be completed (ie/disclosure by certain dates) by the parties, if issues were not resolved during the DRC; and
  - h. Indication of whether or not the conduct of any party has frustrated the objectives of the DRC.
13. A judge presiding at a subsequent court event for the parties may rely on the DRO’s notations in the Screening Report, after hearing submissions on the issues, in determining if costs are appropriate.

***Next Steps after the DRC***

14. Wherever possible, on each DRC Hearing Date, at least one judge will be available to review any consent orders, minutes of settlement, or temporary orders arising out of the DRCs from the day’s list. Where these settlements are reached at the end of a DRC, all efforts will be made to ensure parties and counsel will receive a judicial response on the same day as their DRC.
15. Upon completion of a DRC, parties shall be permitted to schedule as a next step:
- a. a motion in front of a judge;
  - b. another case conference in front of a DRO if necessary;
  - c. a case conference in front of a judge; or
  - d. a settlement conference in front of a judge.

***Local Schedules & Procedures Regarding DRO Programs***

16. Parties attending DRCs in their respective court locations should also consult their local courthouse for any specific local procedures.
17. Local DRO Schedules in each relevant court location will be provided in the *DRO Schedule Annex*, available on the Superior Court’s website at: [www.ontariocourts.ca/scj/practice/practice-directions/dro/annex](http://www.ontariocourts.ca/scj/practice/practice-directions/dro/annex).

**B. Often Cited Family Law Cases**

18. Paragraphs 19 to 22 of this Practice Direction apply in all Regions *except* the East, Central East and North East Regions.
19. A *list of Often Cited Family Cases* for Family Matters containing cases frequently relied on is now supplied to each judge who sits on the Family Team. There will be additions to, and deletions from, the list from time to time. An up-to-date list is available on the Superior Court of Justice website at: [www.ontariocourts.ca/scj/practice/practice-directions/family-law-cases/list](http://www.ontariocourts.ca/scj/practice/practice-directions/family-law-cases/list).
20. The cases in question appear on this list under various headings or topics which are not in any way intended to provide legal advice.
21. Parties in family law proceedings in the Superior Court of Justice in the Central West, Central South, Northwest, Southwest, and Toronto Regions need no longer include authorities on this list in any book of authorities relied on.
22. However, extracts from those authorities which counsel intend to refer to the court shall be included in the factum or book of authorities.

### **C. Form 14B Motions**

23. Paragraphs 24 to 31 of this Practice Direction apply in all Regions *except* the Central East, East and Toronto Region.
24. The Superior Court's policy is to support timely case conferences in which parties are afforded sufficient judicial time to have a meaningful hearing. However, inadequate judicial resources present a scheduling challenge that makes consistent application of this policy across all judicial Regions difficult to achieve.
25. Consequently, in order to assist counsel and parties in making the best use of available conference time, the Superior Court will encourage greater use of Form 14B motions whenever it will make the case conference process more effective. Form 14B motions allow parties to address certain threshold issues prior to the case conference and are designed to streamline conferencing in Family Law proceedings. Such motions are limited to procedural, uncomplicated or unopposed matters that will promote the concept of fewer, but more meaningful, case conferences. In this respect, Form 14B motions procedures will be guided by paragraphs 26 to 31 below.
26. Sub-rules 14(4.2) and (10) of the *Family Law Rules* provide that motions are permissible before a case conference, if there is a situation of urgency or hardship, or if the request for relief is limited to "procedural, uncomplicated or unopposed matters". Relief is requested using Form 14B.
27. Before a case conference is held, lawyers and self-represented litigants are strongly encouraged to use Form 14B to obtain any orders that are *needed to make the case conference a more meaningful and productive process*.
28. Examples of appropriate orders include:
  - a. Orders of either a procedural or substantive nature that are on consent, or unopposed;
  - b. A request for the appointment of the Office of the Children's Lawyer;
  - c. Orders to add a party or obtain discovery from a third party;
  - d. Orders for production of documents, permission for oral questioning or other issues pertaining to discovery;
  - e. Enforcement of an order to provide information, produce a document or serve and file a financial statement or other document;
  - f. Any other procedural order or direction needed to promote a meaningful case conference;
  - g. "Uncomplicated" requests for substantive relief.
29. Requests for an order shall be considered "uncomplicated" only if:
  - a. Oral submissions can be made in five minutes or less for each side; and
  - b. Affidavit material in support of the request for relief is three pages or less in length.
30. Requests that are without notice, on consent or unopposed will be determined by a judge in chambers. All other requests will be determined in motions court or by conference telephone call. The Form 14B should specify the court location, date and time for the hearing unless a conference call had been arranged under Rule 14(8).

31. A copy of Form 14B is available at the courthouse and can also be downloaded from the government website at: [www.ontariocourtforms.on.ca](http://www.ontariocourtforms.on.ca).


## **Part II: Proceedings under the *Class Proceedings Act, 1992***

### **A. National Database of Class Proceedings**

32. The Canadian Judicial Council has endorsed the recommendation of the Uniform Law Conference of Canada for the creation of a Canadian Class Proceedings Database to facilitate the exchange of information about multi-jurisdictional class proceedings. The Canadian Bar Association has announced a pilot project to establish such a Database.
33. It is anticipated that similar procedures will be implemented across the country and that lawyers and members of the public will be able to search the Database to obtain information about class action proceedings that have been commenced in any jurisdiction in Canada.
34. Within 10 days of service or filing, whichever is earlier, a copy of any:
- a. originating process; or
  - b. Notice of Motion for certification (not including affidavits in support); or
  - c. amendments to the foregoing,

must be sent electronically by plaintiff's counsel to the National Class Action Database of the Canadian Bar Association at the following address:

National Class Action Database  
Canadian Bar Association  
E-mail: [classaction@cba.org](mailto:classaction@cba.org)  
Attention: Kerri Froc

35. A  [National Class Action Database Registration Form](#), available on the Superior Court of Justice Website, must be used when submitting documents to the National Class Action Database. Please be advised that PDF is the preferred format for documents; however, MS Word documents will also be accepted.

### **B. Provincial Class Proceeding Registry**

36. To promote the goals of the *Class Proceeding Act, 1992*, including judicial economy and access to the courts, each Regional Senior Judge has assigned one or more judges to coordinate all class proceedings in that Region as the "Class Proceedings Judge". To increase efficiency and provide a degree of consistency, in keeping with the case management approach ascribed to the court by the Act, the Class Proceedings Judge will preside over the majority of pre-trial class proceedings motions and certifications in that Region.
37. The purpose of the registry is to ensure that once a class is certified, other members of the same class do not attempt to certify a second proceeding.

#### ***Assigned Judges***

38. The Class Proceedings Judge(s), or other judge assigned by the Regional Senior Judge, will hear motions for certification under the *Class Proceedings Act, 1992* brought in that Region.

39. The names of assigned Class Proceedings Judges may be obtained from the Regional Managers in each Region:

Region	Telephone	Fax
Northwest	(807) 343-2727	(807) 343-2758
Northeast	(705) 564-7813	(705) 564-7902
East	(613) 239-1385	(613) 239-1007
Central East	(905) 853-4822	(905) 853-4826
Toronto	(416) 327-6104	(416) 325-2872
Central West	(905) 456-4838	(905) 456-4836
Central South	(905) 645-5323	(905) 645-5374
Southwest	(519) 660-2285	(519) 660-2294

***Originating Process and Court Documents***

40. The title or proceeding for every class proceeding shall state that it is a “Proceeding under the *Class Proceedings Act, 1992*.”
41. Every class proceeding shall have appended to the court file number the letter CP, indicating that it is a class proceeding.
42. A copy of the originating process of any proceeding commenced under the *Class Proceedings Act, 1992* must be filed with the Class Proceedings Registry at the Civil Intake Office, 393 University Avenue, Toronto, Ontario, M5G 1E6, in addition to the court office in the jurisdiction where the matter was commenced. The originating process may be sent to the Registry by registered mail, ordinary mail, facsimile (416) 327-6187, or it may be filed.
43. The solicitor of record for the party who commences the proceeding must complete a Certificate of Compliance, verifying that a copy of the originating process has been filed with the Registry. The Certificate of Compliance must be filed forthwith in the court office where the action was commenced.

***Procedure on Motions and other Hearings***

44. In accordance with the statutory scheme, the judge hearing the pre-trial motions will case manage the proceeding.

**Part III: Civil and Family Motions Procedure**

**A. Factums for Motions**

45. The following requirements apply within all judicial Regions of the Ontario Superior Court of Justice for motions in civil and family proceedings:\*
- a. Factums are required for long civil motions and encouraged for all other motions unless otherwise directed by a judge;

- b. Factums or Summaries of Argument under subrule 17(8) of the *Family Law Rules* are required for all long family motions unless otherwise directed by a case conference judge;
- c. No factum or Summary of Argument may exceed 20 pages, unless leave is granted; and,\*\*
- d. The times for service and filing of factums or Summaries of Argument shall be in accordance with the times for service and filing of other motions materials respectively under the *Rules of Civil Procedure* or the *Family Law Rules*, unless a region-specific Practice Direction states otherwise.

46. The following chart sets out the times for short and long motions for civil and family proceedings in each judicial Region:

REGIONS	SHORT MOTIONS	LONG MOTIONS
Central East: <i>Civil, Family</i>	Under 1 hour	Over 1 hour
Central South: <i>Civil, Family</i>	Under 1 hour	Over 1 hour
Central West: <i>Civil, Family</i>	Under 1 hour	Over 1 hour
East: <i>Civil, Family</i>	Under 1 hour	Over 1 hour***
Northeast: <i>Civil, Family</i>	Under 1 hour	Over 1 hour
Northwest: <i>Civil, Family</i>	Under 2 hours	Over 2 hours
Southwest: <i>Civil, Family</i>	Under 1/2 hour	Over 1/2 hour
Toronto: <i>Civil</i>	Under 2 hours	Over 2 hours

\* The *single exception* is family proceedings in the Toronto Region which are governed by the *Consolidated Practice Direction Concerning Family Cases in the Toronto Region*.

\*\* In the Toronto Region no factum may exceed 30 pages, unless leave is granted.

\*\*\* The East Region has an additional "lengthy" category for long family motions more than 2 hours.

## **B. Motions to Transfer a Civil Proceeding in the Central East, Central West, Central South and Toronto Regions under Rule 13.1.02 of the Rules of Civil Procedure**

- 47. Paragraphs 48 to 51 of this Practice Direction govern motions to transfer under rule 13.1.02 in the Central East, Central West, Central South and Toronto Regions.
- 48. A high volume of requests to transfer civil proceedings to another county, often in another Region, are being received in the Central East, Central West, Central South and Toronto Regions. Counsel frequently seek to transfer a case, on consent. While the transfer may be appropriate in the circumstances of the case, the onus rests with the moving party to satisfy the court that a transfer is desirable in the interest of justice, having regard to the factors listed in rule 13.1.02(2)(b). It is not sufficient to bring a transfer motion orally, on consent, or to file a consent for an order to transfer a case to another county under rule 13.1.02.
- 49. The moving party must file a Notice of Motion with a supporting affidavit, as required under rule 13.1.02(2). The moving party's affidavit must address the factors listed in rule 13.1.02(2)(b) and, as part of the relevant matters, must identify the current stage of the proceeding (i.e., whether further motions are anticipated in the proceeding, whether a pre-trial has occurred or is scheduled, and whether mediation has been held) and why the

proceeding was originally commenced in the originating county. The affidavit should also address the estimated length of trial, whether it is a jury trial, and the number of parties and counsel.

50. Counsel are *not* required to provide affidavit evidence about the availability of judges and court facilities in the other county to satisfy factor (viii) under rule 13.1.02(2). This factor shall be addressed by the Regional Senior Judge in the Region where the motion is brought, after consulting with the local administrative judge or Regional Senior Judge for the other county.
51. The Regional Senior Judge, or his or her designate, will hear all motions to transfer. To allow the Regional Senior Judge to promptly determine all such motions, they shall be brought in writing. Responding parties are *strongly encouraged* to file and rely exclusively on written submissions to allow the motion to be heard and fully determined in writing. If an oral hearing becomes necessary, the motion shall be heard by teleconference arranged through the Office of the Regional Senior Judge in the Region where the motion is brought. In addition to filing motion material pursuant to the Rules, all parties on a motion to transfer are encouraged to submit an electronic, scanned version of their motion materials, saved as a PDF file and submitted on a USB stick appropriately tagged or marked indicating the court file number. This will facilitate the ability of the Regional Senior Judge to efficiently dispose of these motions, without the delay inherent in physical file transfers.

#### **Part IV: Judicial Management of all Civil Proceedings not governed by Rule 77 of the Rules of Civil Procedure**

52. Counsel and parties are reminded that all civil proceedings in Ontario, not subject to case management under Rule 77, may be judicially managed under the present provisions of the *Rules of Civil Procedure*.
53. Rule 37.15 provides that if a proceeding involves complicated issues or if two or more proceedings involve similar issues, parties and/or counsel who seek an order under the rule may make a request in writing to the Regional Senior Judge of their respective judicial Region to have a judge appointed.
54. Pursuant to Rule 48.14, the court will supervise actions that are not set down for trial on a timely basis.
55. Status Notices (**Form 48C**) will be issued for actions that have not been placed on the trial list or terminated by any means within two years after the filing of a statement of defence, indicating that the proceeding will be dismissed for delay within 90 days, with costs, unless:
  - a. the action is set down for trial; or
  - b. the action has been terminated by any means; or
  - c. a status hearing judge orders otherwise.
56. Any party who receives the Status Notice may request a Status Hearing, at which the plaintiff must show cause why the action should not be dismissed for delay and the court will review the action and may consider the range of orders set out in Rule 48.14(8).

#### **Part V: General Practice Directions Applicable to all Proceedings**

##### **A. Gowning for Counsel**

57. Counsel are required to gown for all trials, motions and appeals before the presiding judge in the Ontario Superior Court of Justice.



58. Counsel are not required to gown for appearances before masters or judges and deputy judges of the Small Claims Court (a branch of the Superior Court of Justice).
59. Counsel are not required to gown before a Superior Court Judge of Ontario when appearing in Assignment Court, case conferences, settlement conferences, trial management conferences, trial scheduling courts, or pre-trials, **unless** a region-specific Practice Direction states otherwise.

## **B. Ensuring the Integrity of Scheduled Trials, Hearing and Appeals**

60. This section is intended to ensure that trials, hearings and appeals are scheduled on the basis of the chronological order in which lawyers make their commitments to appear in court. It has three important objectives:
- a. to ensure that the trial lists of the Superior Court of Justice and the Ontario Court of Justice are respected;
  - b. to reduce court delays, the waste of court resources and the unnecessary expense and inconvenience to the public brought about by adjournments; and
  - c. to assist parties in civil or criminal cases in having adequate representation by a lawyer acceptable to them.

### *Trial Dates*

61. Where a date for trial or for the hearing of a matter has been set by the Superior Court of Justice or the Ontario Court of Justice, the trial or hearing is expected to take place on that date.

### *Presumption of Commitment*

62. By agreeing to a trial or hearing date, a lawyer is presumed to have made a commitment to appear on that date and to be bound not to make any other commitments that would make the lawyer's appearance on that date impossible.

### *Duty to Inform of Previous Commitments*

63. When setting a date for trials, hearings or appeals in the Superior Court of Justice or the Ontario Court of Justice, every lawyer has a duty to disclose previous commitments to another court that may conflict with a proposed date for a trial, hearing or appeal.

### *Respect for Previous Commitments*

64. In setting dates for trials, hearings or appeals, the Superior Court of Justice and the Ontario Court of Justice, as much as possible, shall avoid setting dates that would make it impossible for lawyers to keep commitments already made in other courts.

## **C. Release of Digital Court Recordings**

65. This section outlines the policy on the release of digital court recordings. Members of the public, counsel, litigants, accused or the media may obtain copies of digital court recordings (hereinafter referred to as "digital recordings") made from Digital Recording Devices (DRDs) of matters heard in open court, in accordance with the requirements of this section. The copies of digital court recordings will include annotations.
66. The release of digital recordings will be at the court's discretion and the use of all digital recordings will be subject to any court order and any common law or statutory restriction on publication applicable to the particular proceeding.

67. Unless this section provides otherwise, all persons must execute an undertaking with the court to access the digital recordings. The undertaking prescribes the way in which the digital recording is to be used and the terms and conditions under which the digital recording is being provided. All digital recordings are subject to the prohibition set out in s. 136 of the *Courts of Justice Act*, which prohibits the broadcast, reproduction and dissemination of audio recordings. Any person who contravenes s. 136 is guilty of an offence and subject to a penalty, in accordance with s. 136(4) of the *Courts of Justice Act*.

**Application**

68. This section applies to the Superior Court of Justice in Ontario, but does not apply to the Small Claims Court.

**Definitions**

69. For the purposes of this section, “judge” means:

all judges, traditional masters, and case management masters of the Superior Court of Justice.

**Restrictions on Access to Digital Recordings from DRDs**

70. All copies or access to digital recordings are subject to any express order the presiding judge may make. The presiding judge may expand or restrict access to the digital recordings in any particular proceeding before him or her.

71. Unless a judge of the Superior Court of Justice orders otherwise, no digital recordings are available to anyone in the following proceedings:

- a. *in camera* proceedings or any portion of a proceeding that is heard *in camera*;
- b. private or closed hearings (e.g. pursuant to ss. 45 or 151 of the *Child and Family Services Act*);
- c. proceedings subject to a statutory, common law or court ordered restriction on the provision of transcripts or digital recordings of the proceeding (e.g., pre-trial conferences held in court with self-represented accused, pursuant to rule 28.05(4) of the *Criminal Proceedings Rules* of the Superior Court of Justice (Ontario), proceedings under the *Youth Criminal Justice Act*; and,
- d. case, settlement and trial management conferences pursuant to rule 17 of the *Family Law Rules*.

**Access to Digital Recordings from DRDs**

**Counsel of Record**

72. A counsel of record in a proceeding may obtain the digital recordings of that proceeding upon completion of the “**Undertaking of Counsel/Licensed Paralegal of Record**” and payment of the prescribed fee.

73. Persons attending on behalf of counsel of record may obtain the digital recording if he or she: (i) provides a signed undertaking from counsel of record; (ii) signs the authorization included in the “**Undertaking of Counsel/Licensed Paralegal of Record**”; and (iii) pays the prescribed fee.

**Litigant or Accused**

74. A litigant or accused in a proceeding may obtain the digital recordings of that proceeding upon completion of the “**Undertaking to the Court for Access to Digital Court Recordings**” and payment of the prescribed fee.

**The Media**

75. Members of the media, identified on the “**Joint Courts’ List of Designated Media for Access to Digital Court Recordings**” accessible on the Superior Court of Justice website: [www.ontariocourts.ca/en/media-list.htm](http://www.ontariocourts.ca/en/media-list.htm), may

obtain the digital recordings upon completion of the “**Undertaking to the Court for Access to Digital Court Recordings**” and payment of the prescribed fee.

76. Members of the media who are not identified on the “Joint Courts’ List of Designated Media for Access to Digital Court Recordings” may make an application for an order in accordance with this section authorizing him or her to obtain access to the digital recordings of the proceeding.

77. The applicant may obtain the digital recordings if he or she: (i) obtains a court order authorizing access, (ii) completes “**Undertaking to the Court for Access to Digital Court Recordings**”, and (iii) pays the prescribed fee.

**Members of the Public**

78. Members of the public may make an application for an order in accordance with this section authorizing him or her to obtain access to the digital recordings of the proceeding.

79. The applicant may obtain the digital recording if he or she: (i) obtains a court order authorizing access, (ii) completes the “**Undertaking to the Court for Access to Digital Court Recordings**”, and (iii) pays the prescribed fee.

**Presiding Judge, Regional Senior Judge (RSJ) or Local Administrative Judge (LAJ)**

80. Copies or access to digital recordings shall be provided, upon request, to the presiding judge for the proceeding in which the digital recording was prepared.

81. Copies or access to digital recordings shall be provided, upon request, to the RSJ or LAJ (or his or her designate), for administrative purposes, in the absence of the presiding judge. The presiding judge will be notified that access or copies of the digital recording were made available to the RSJ or LAJ (or his or her designate).

82. Where a judge wishes to access a digital recording from a proceeding in which another judge presided, the judge shall obtain the consent of the presiding judge to access the digital recording, subject to paragraph 83 (below).

83. Where a judge determines that he or she can deal more effectively and efficiently with a case by accessing a digital recording from a previous proceeding before another judge, in the same case or a related case, the judge can access the digital recording by obtaining permission from the presiding judge, the RSJ, the LAJ, or his or her designate, *unless it is in the interests of justice to dispense with such permission*. In that event, access to the digital recording shall be provided to the judge upon request. After access is provided, the judge who has obtained access shall notify the judge who presided at the earlier proceeding, if that judge was not notified when the issues arose.

**Court Services Division Staff and Transcriptionists**

84. Copies or access to digital recordings shall be provided upon request at no charge to the following:

- a. Court Services Division Staff who require access in the course of their employment responsibilities; and,
- b. Transcriptionists authorized by Regulation 158/03 under the *Evidence Act* who require access to transcribe court proceedings and who have signed an “Undertaking of Authorized Court Transcriptionist for Access to Audio Court Recordings”.

**Named Administrative Bodies or Organizations**

85. Representatives of the bodies or organizations authorized pursuant to a Memorandum of Understanding with the Ministry of Attorney General to have access to digital audio recordings may obtain digital court recordings of court proceedings related directly to the matters under consideration by these bodies or organizations, upon completion of an Undertaking approved by the court and prescribed by the Memorandum of Understanding.


#### *Hearing of the Application*


86. Applications regarding access to the digital recording for any ongoing proceeding will be heard by the judge who is seized of the proceeding.

87. Applications shall be brought in accordance with the procedural rules that govern the court proceeding.

88. Applications regarding access to the digital recording for any other type of proceeding or for a proceeding that has concluded will be heard by the judge who presided at the hearing.

89. Where the judge who presided at the hearing is not available to hear the application or where no particular judge is associated with the proceeding, the RSJ, LAJ (or his or her delegate) may hear the application. Applicants should be aware that, especially for proceedings that have concluded or proceedings adjourned for a lengthy period of time, it may not always be possible to schedule an application before the appropriate judge on short notice because a judge may have many ongoing obligations in other proceedings.

90. Undertaking of Counsel/Licensed Paralegal of Record to the Court for Access to Digital Court Recordings can be obtained as  Word or PDF documents on the Superior Court of Justice Website.

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## **D. Electronic Devices in the Courtroom**

92. This section outlines the protocol on how electronic devices may be used in courtrooms of the Ontario Superior Court of Justice by counsel, licensed paralegals, law students and law clerks assisting counsel, self-represented litigants, and media or journalists.

**Note:** This section does not apply to persons who require electronic devices (or services requiring the use of electronic devices) to accommodate a disability.

#### *Definitions*

93. Electronic Devices

For the purposes of this section, “electronic devices” include all forms of computers, personal electronic and digital devices, and mobile, cellular, and smart phones.

94. Publicly Accessible Live Communications

For the purposes of this section, “publicly accessible live communications” are defined as the act of using an electronic device to transmit information from the courtroom to a publicly accessible medium (e.g. via Twitter or live blogs).

95. Judge

For the purposes of this section, “judge” means:

- a. all judges, traditional masters, and case management masters of the Superior Court of Justice, and
- b. judges of the Small Claims Court and deputy judges.

***Prohibited Use of Electronic Devices by the Public***

96. Members of the public are ***not permitted*** to use electronic devices in the courtroom unless the presiding judge orders otherwise.

***Use of Electronic Devices in the Courtroom***

97. *Unless the presiding judge orders otherwise*, the use of electronic devices in silent mode and in a discreet and unobtrusive manner is *permitted* in the courtroom by:

- a. counsel;
- b. paralegals who are licensed by the Law Society of Upper Canada;
- c. law students and law clerks assisting counsel during the proceeding;
- d. self-represented parties; and,
- e. media or journalists

subject to the following restrictions:

- i. The electronic device cannot interfere with courtroom decorum or otherwise interfere with the proper administration of justice.
- ii. The electronic device cannot interfere with the court recording equipment or other technology in the courtroom.
- iii. The electronic device cannot be used to send publicly accessible live communications where to do so would breach a restriction on publication made in the proceeding.

**Note:** Anyone using an electronic device to transmit publicly accessible live communications from the courtroom has the responsibility to identify and comply with any publication bans, or other restrictions that have been imposed either by statute or by court order.

- iv. The electronic device cannot be used to take photographs or videos unless the judge has granted permission to do so, in accordance with s. 136 of the *Courts of Justice Act*.
- v. Only counsel, self-represented parties, the media and journalists are permitted to use electronic devices to make an audio recording of the proceeding and only for the purpose of note-taking. However, such audio recordings cannot be sent from the electronic device.
- vi. Talking on electronic devices is not permitted in the courtroom.

***Enforcement***

98. Anyone who uses an electronic device in a manner that is inconsistent with this section, any orders of the presiding judge or that the presiding judge determines to be unacceptable may be:

- a. subject to prosecution for breaches of s. 136 of the *Courts of Justice Act*, a citation and prosecution for contempt of court, or prosecution for other offences;
- b. ordered to turn off the device;
- c. ordered to leave the device outside the courtroom;
- d. ordered to leave the courtroom; and/or

e. ordered to abide by any other order the presiding judge may make.

## **E. Filing of Judicial Decisions from Electronic Databases and Citation of all Judicial Decisions**

### *Filing of Judicial Decisions from Electronic Databases*

99. Copies of judicial decisions obtained from approved electronic databases are acceptable for filing provided the report of the judicial decision contains paragraph numeration consistent with the numbering of the paragraphs in the decision as released by the court. "Approved electronic databases" are databases that are dedicated to the publication of judicial decisions (e.g. Quicklaw, CanLII, and Westlaw).
100. Counsel and parties should be aware that judicial decisions posted on electronic databases may be subject to correction or editing within a few days of the initial posting and, accordingly, parties should ensure that any decision obtained from an electronic database has not been subsequently amended.

### *Citation of all Judicial Decisions*

101. Parties citing decisions from electronic databases should provide the citations for any paper versions of the decision in addition to the citation of the electronic database.
102. Parties should provide the date that the copy of any decision was obtained from an electronic database, as part of the citation information.
103. For decisions of the Ontario Superior Court of Justice released on or after January 1, 2010, parties should provide the neutral citation number (e.g. 2010 ONSC 1) in addition to the other required citations.

Dated: April 11, 2014

Heather J. Smith

Chief Justice

Superior Court of Justice (Ontario)

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