

## FAMILY TOWN HALL MINUTES – OCTOBER 12, 2022

### 1. **Opening Remarks**

We would like to take a moment to express our gratitude to all of you for your ongoing contributions to the administration of family justice. The Court relies on your skills and expertise, and we appreciate everything that you do. We also appreciate the great toll that the pandemic has taken on all of you – both personally and professionally. We thank you for working with us through restrictions, technological challenges, Clerk shortages, long lead times, countless announcements and Notices to Profession and Public, and all of the challenges that the pandemic brought to all of us. There will still be some challenges as we move out of the pandemic, but we will navigate those as well. A big thank you to all of you!

We did receive some questions and comments through the [family.qb@albertacourts.ca](mailto:family.qb@albertacourts.ca) in advance, and you are encouraged to send questions and comments to that email address moving forward. At some point, it will be changed to family.kb, but for now, you can continue to use the current address.

During the pandemic, Chief Justice Moreau, ACJ Nielsen, and ACJ Rooke met periodically with the Family Bar to provide information and obtain feedback. In addition, Justice Kachur (Calgary Family Law Co-Chair) and Justice Yungwirth (Edmonton Family Law Co-Chair) met with a group of 33 representatives of the Family Bar from across the province during the Fall of 2021 and early 2022 to obtain feedback on our newer family initiatives and various family processes. A recurring point of feedback that we received was that the Court needs to do a better job in conveying to the Bar, our expectations from them for our various family processes.

### 2. **Justice Comments**

#### Disclosure

- The expectation is that from the outset of a file, you will first use reasonable efforts to obtain disclosure on a voluntary basis.
- You are encouraged to use an unfiled Notice to Disclose where required to facilitate that process – an action does not have to be commenced for you to serve a Notice to Disclose.
- Only after reasonable efforts have been made, should you enter Family Docket Court and seek a disclosure order.
- In FDC, consider whether you want the disclosure to be filed and exchanged or just exchanged.

## Family Docket Court

- The feedback that we have received is that generally, the Family Bar supports the concept of a Family Docket Court, as long as it remains remote – there are a few things that we wish to cover with you today.
- Approximately 40% of the matters we deal with in FDC are directed to an ADR process – this has not changed to much since we started FDC in May of 2020 – if you come to FDC and have not completed an ADR process, it is highly likely you will be sent away to do that first.
- We have recently updated the Notice to Attend Family Docket Court (NTA) document – that Announcement was posted on September 13, 2022. As of September 30, 2022, the previous form will no longer be accepted.
- The Court expects that you will have spoken to opposing Counsel about the matter in issue and that you have attempted an ADR process BEFORE (to mitigate harm to children) entering Family Docket Court.
- We ask that you consider entering Family Docket Court as a last resort and only when you need a specific court process because your efforts at resolving the specific issue have been unsuccessful – too many Counsel are filing a Notice to Attend FDC as soon as they open their file and every box is checked on the NTA.
- The Court expects that you will have defined the deep issue for which you need a court decision – not just “child support” but the deeper issue – e.g. income of the payor – or whether a parent stood in the place of a parent; not just “spousal support”, but, for example, entitlement to spousal support or insufficient efforts toward self-sufficiency, or imputing income. Many Counsel are not properly completing the portion of the Notice to Attend that asks you to briefly describe what is being sought and the issues that are preventing resolution. It is very helpful for the Justice if the deeper issues are identified there.
- It is not necessary for the Respondent to file a further Notice to Attend if they also wish to ask the Court to consider any claims for relief that they may have – this can be done while the Applicant’s Notice to Attend is being addressed.
- We ask that you limit adjournments in FDC – a spot on the FDC list should not be held as you undertake settlement discussions – do that before you enter Family Docket Court the first time.
- If Counsel have resolved a matter by consent before filing the NTA, it is not necessary to come to FDC – the Consent Order can be addressed in Family Chambers or by desk submission.
- Please don’t assume that if Counsel have agreed on a process, that the Court will also agree – sometimes we will agree and sometimes we won’t.
- You are reminded not to forget to complete pleadings (e.g. Statement of Claim) if you are referred to a court process such as chambers or special chambers – this is especially important where interim relief is being sought under the Divorce Act.

- Likewise if you are able to achieve a consent order after filing your Notice to Attend FDC, you will be expected to file a pleading – Claim or Statement of Claim concurrently with your filing of the Consent Order.

### Alternative Dispute Resolution

- S. 7.3 of the Divorce Act provides that to the extent that it is appropriate to do so, the parties to a proceeding shall try to resolve the matters that may be the subject of an order under this Act through a family dispute resolution process. Pursuant to s. 7.2 of the Divorce Act, the parties are required to protect any child of the marriage from conflict arising from the proceeding – this is being applied by the Court to all children.
- Therefore, the Court expects that you will have arranged for the parties to participate in an ADR process on the matters that you intend to bring before the Court, BEFORE entering Family Docket Court – the main purpose for this is to reduce the amount of conflict to which children are exposed.
- ADR does not include exchanging settlement proposals or discussions with opposing Counsel – it does include a 4-way meeting with Counsel or mediation – it may also include processes that are specific to a certain culture, such as a meeting with an elder in the Indigenous community or a spiritual leader in another community – consider all options for ADR and be prepared to explain them in the Notice to Attend Family Docket Court.
- We acknowledge that some cases are not suitable for an ADR process. Some, but not all, cases involving domestic violence may not be suitable. Some, but not all cases, where one of both parties have mental health issues or substance abuse issues may not be suitable for an ADR process. Please bring these to the Court's attention, if applicable, when addressing the ADR issue.
- An ADR process may be required more than once on the same file – there is an ongoing obligation to reduce the degree of conflict to which children are being exposed.

### Desk Applications

- The Notice to Disclose, Simple Desk, and Applications with Written Argument processes were implemented on May 8, 2020 during the pandemic but were not successful for several reasons. Based on the feedback received from the Bar, we are continuing only with Notice to Disclose Desk Applications and the other two will no longer be available.
- Moving forward, for Consent Orders, you have a choice of two processes – desk application or appearing in person at the beginning of the Family Chambers list to get your order signed. If you choose desk submission, you are encouraged to provide a brief letter or desk application form to give the court the background, the same way you would in chambers – especially if the Consent Order relates to

something like severance – your Order is less likely to be rejected if you do this. If you choose to attend in Family Chambers to get your Consent Order signed, you will still be required to submit it electronically for filing.

- Without Notice applications for service-related matters should all be going to the Applications Judges.
- Without Notice urgent applications must go to Urgent Matters Chambers – with the Urgent Request Form to be completed.
- You are discouraged from walking into Family Chambers with an urgent request for a without notice application.
- All Fiats must be heard in Family Chambers at the beginning of the list and the other party must be given notice of your intention to seek a Fiat.

### Urgent Matters Chambers

- Original Announcement posted January 22, 2022.
- Urgent Matters Chambers deals with EPO reviews, walk in protection orders and other without notice urgent matters, and pre-approved with notice applications.
- Announcement regarding changes for this term was posted August 26, 2022.
- All urgent matters must follow the urgent matters protocol – an Urgent Request form must be completed and the matter must be approved for Urgent Matters Chambers – all requests must include the application/claim (where the matter is on notice) and affidavit/statement on which you intend to rely so that a proper consideration of the urgency of the matter can be completed.
- If you are approved for Urgent Matters Chambers, you should receive an Urgent Decision Form that should be included with your materials when you submit them.
- For matters that do not relate to protection orders, walk-ins are discouraged if you have not complied with the Urgent Matters protocols.
- Please be reminded that a matter does not become urgent simply because it was not dealt with in a timely manner – we get many last-minute requests for court time when the matter could have been dealt with weeks or even months earlier on a non-urgent basis.
- If you are approved for an afternoon urgent chambers slot, it is not to be treated as a 1-hour special chambers application – both in terms of materials submitted and time taken. Deal with only the urgent issues for which you have been approved in a concise way.

### Chambers

- Fiats, Consent Orders and requests for adjournment will all be addressed in Family Chambers at the beginning of the list.

- The Court expects that Counsel will be prepared to make efficient submissions on the relief sought, and the important key facts to support that relief.
- Don't assume or expect that the Justice will have read all of your materials and prepare on that basis.
- To keep the matter within the required 20 minutes, the deal situation is for the Applicant to make submissions for about 7 to 8 minutes, with the Respondent doing the same. This would allow 2-3 minutes for a brief reply and then a decision.
- Where there is a counterclaim – which should have been well thought through before the Family Docket appearance – 2 chambers slots should be requested in Family Docket Court so that you have more time for both applications – if you just attempt to file a cross-application that was not directed in FDC, your application will probably be rejected.
- If you find that your file has required 2 contested processes (chambers or special chambers), you should consider making a litigation plan.
- Please be prepared to argue costs – we need your well thought out submissions to be able to decide costs fairly.

### Special Chambers

- The Court expects that you will follow Family Practice Note 2 in terms of timelines for filing, page limits and exhibit page limits.
- A reminder that if you intend to introduce evidence on a USB stick (again something that should have been well thought through before you appear in FDC) you need leave of the Court – generally, recordings involving children are not to be encouraged.
- Our stats show that about 45% of the special chambers applications we schedule in FDC are not proceeding – only about 10% are being settled, 10% are cancelled by the parties and about 20% are being cancelled by the Court – most often for non-compliance with the Rules. Our current lead times are about 6 months for a 1 hour special (with a few exceptions) and almost 8 months for a half day special. These lead times could be reduced significantly if special chambers dates were not given until the matter is ready for special chambers.
- If you are seeking a special chambers date, please ensure that an ADR process on the issues being brought to special chambers has been completed, carefully consider the deep issues that you need the Court to rule on, consider the evidence that will be relied on at the application to address those issues, consider if any cross-application will be brought, consider whether questioning is likely to be required – do all of these things before you request the special chambers date in FDC.
- This applies equally to those referrals to special chambers from another process such as regular family chambers, Urgent Matters Chambers, or an EICC.

- Another consideration for reducing lead times to special chambers applications is to divert some of those applications to a summary trial process, especially if you plan to seek a special chambers application with oral evidence – consider if a final determination is really what is required for the parties.

### Summary Trials

- The summary trial rules are under review (have been for some time).
- The Court generally supports the summary trial process where appropriate. We have been directing summary trials and we encourage them where appropriate.
- You are asked to consider a summary trial where either 1) you can consider all outstanding issues at the summary trial; or 2) the issues to be addressed at the summary trial will result in a resolution of the entire file.
- Due to the feedback we received from the Family Bar, we are aware that there is reluctance to use the summary trial process because the Rules allow the Justice not to make a decision. However, there are ways to reduce the likelihood of that occurring:
  - o First, make a proper assessment of whether the matter is suitable for a summary trial – with a rule 4.10 case conference if necessary – and design the process to address any concerns about material conflicts in the evidence (e.g. hybrid trial). Address agreed statements of facts, the type of evidence that will be introduced, experts, use of questioning transcripts, etc. There is flexibility to design the process in a way that best meets the needs of your file.
  - o Second, be prepared to address the possibility of a summary trial in FDC – advise the FDC Justice why you think your case is suitable for a summary trial; request a Rule 4.10 Case Conference for a suitability assessment and prepare a draft Summary trial order for review at the case conference – you could even prepared one before your FDC appearance.
  - o Third – try to build in a check-in closer to the summary trial for court oversight on whether the summary trial order is being followed and whether any new issues have arisen that affect suitability for a summary trial.
- Be cautious of litigating in slices – seeking 3 or 4 separate summary trials for final determinations on each issue. This approach is undesirable for families experiencing conflict and for Court resources.
- Don't confuse oral hearings with summary trials. Summary trial gives you a final result. An oral hearing is most often used for interlocutory relief where there are significant conflicts in the evidence on the material issues to be determined – these are at times used interchangeably and shouldn't be.

### Court Holiday Hours

- Last KB sitting day is December 16.
- Week of December 19 and December 29 and 30 will be EPO reviews and urgent matters. (This won't include holiday parenting time!)
- Deal with holiday parenting issues now please.

### Scheduling with Justices

- Use [Justice Seized Booking Request Form \(albertacourts.ca\)](https://albertacourts.ca/justice-seized-booking-request-form)
- Send to [JusticeSeized.QB.EDM@albertacourts.ca](mailto:JusticeSeized.QB.EDM@albertacourts.ca)
- Don't contact the Judicial Assistant for the Justice unless directed to do so by the Justice.

### Requests for Remote Hearings

- After province wide consultations with various heads of Bar Associations, the Law Society, Legal Aid, and other stakeholders, the Court of King's Bench Hearing Guidelines were posted on the website on June 29, 2022. This was effective September 6, 2022 on a pilot basis and is subject to review in January 2023.
- The Court's resources are insufficient to accommodate hybrid processes in all matters and so a request for a hearing to proceed in a way that is not the default hearing process defined in the Guidelines, must be approved in advance.
- The criteria include:
  - o inability of a participant to attend in person due to health issues or other personal circumstances;
  - o distance to the location of the hearing which makes in-person attendance impractical;
  - o a change in the nature of the proceeding such as to necessitate a departure from the scheduled mode of hearing;
  - o a change in representation of a party from self-represented to represented, or vice versa; and
  - o such other reason as approved by the Court.

### **Other**

Things we are working on:

### Family Process and Information Guide and Template Resolution Plan

- It is the intention of the Family Steering Committee to post to the website, a Family Process and Information Guide and a template Litigation Plan – which we will be referring to as a Resolution Plan.

- These documents have been prepared in draft and we hope to get them posted before the end of this term.

### Unified Family Court

- The Chief Justice and Associate Chief Justices remain very supportive. Discussions/collaborations are still being undertaken.

### Combined Judicial Conference Form

- We received feedback about the confusion related to the 3 different forms for Rule 4.10 Case Conferences, EICC's and PTC's. We have created one form with an initial section that applies to everything and "A,B,C" options depending on which process you are preparing for.
- We hope to have that completed soon and will post it to the Court's website under Family Forms

3. Family Clerks Comments – 5 min – Rani Verbonac, Director Court of King's Bench Administration North Operations and Pam Jonas,

#### **1. Edmonton's Average Filing Lead Times**

- Family Docket Court: 24 – 48 hours
- Family Chambers: 1 week
- Specials: 24-48 hours
- General Filing: Less than 1 week
- Divorce Packages: 4 weeks
- Statement of Claim for Divorce: 24 – 48 hours

Concerns have been raised from counsel on the varying lead times experienced across the province. Each site has variations in staffing complements and court sittings but where possible, Court Administration is utilizing resources across the province to address backlogs.

For any questions or concerns about a filing, please send an email to QB Filing and record 'ATTENTION SUPERVISOR' in the subject line as these requests are triaged daily. The expected response time is within 24 – 48 hours. Should counsel not receive a response within the expected time frame, they are welcome to reach out to the leadership team:

- [Pamela.Jonas@gov.ab.ca](mailto:Pamela.Jonas@gov.ab.ca)
- [Jolene.Pon@gov.ab.ca](mailto:Jolene.Pon@gov.ab.ca)
- [Rani.Verobnac@gov.ab.ca](mailto:Rani.Verobnac@gov.ab.ca)



## 2. Vacancies

Edmonton is currently experiencing some vacancies but taking steps to recruit to these positions as quickly as possible. Despite the vacancies, the team has been able to maintain filing lead times and meet other commitments.

With the number of new hires in Edmonton, we kindly ask for your patience as we focus on building our team's knowledge to provide you with excellent service.

With the introduction of Justice Digital applications such as Filing Digital Service for civil and surrogate, it has allowed Court Administration to work on any backlogs from across the province. The more members of the bar that use these services, the more likely Court Administration is able to maintain lead times.

## 3. Filing Digital Service

King's Bench Administration is currently developing the Family and Divorce Filing Digital Service for members of the bar. This application will accept Desk Divorce Applications with and without children for electronic filing. More information on this new service will be announced soon.

## 4. Backdating

As of November 1<sup>st</sup>, documents will be filed on the date processed by the Clerk. Court Administration has worked hard to reduce filing lead times across the province and are confident in our go-forward plan. Please use the Filing Digital Service, where available, and use the proper naming conventions when sending in materials to avoid any delays. Any document received by email on October 31<sup>st</sup> or earlier will be backdated regardless of when it is processed. Any document received November 1<sup>st</sup> or later will not be backdated.

During the town hall, it was communicated that Court Administration introduced backdating due to a pandemic response and never intended for backdating to be a permanent practice but stayed in place due to the lengthy filing delays.

Backdating documents is a complicated process for Court Administration and adds additional time to each submission. Clerks have to physically change the date on their computers to the date they want the electronic stamp to show.

When documents are filed through the Filing Digital Services, they are not backdated. This practice has created inconsistencies between our various filing methods so as of November 1<sup>st</sup> our filing practices will align, and submissions will be filed on the date reviewed by Court Administration.

Please ensure you follow the [Email Filing Procedures](#) for any *urgent or time sensitive submissions* to allow Court Administration to quickly locate and file your material to get it before the Courts. Time sensitive submissions may be submitted by following our Urgent Process.

PLEASE NOTE THAT FOLLOWING THE TOWN HALL MEETING, THE BACKDATING ANNOUNCEMENT WAS REVISED ON THE COURT'S WEBSITE ON OCTOBER 19, 2022.

PLEASE REFER TO THAT ANNOUNCEMENT FOR FURTHER INFORMATION ON THIS ISSUE.

## 5. Common Rejections

To avoid delays in filings, Court Administration wanted to share common rejection reasons:

- Submissions do not include an invoice
- Incorrect naming conventions of email subject lines and/or attachments
- Family Law Practice Note 2

### Family Law Practice Note 2 – Family Law Regular and Special Chambers

Court Administration sees the most common rejections related to Practice Note 2. To avoid filing delays, please review filing deadlines and affidavit/concise letter requirements before submitting your documents for filing to ensure you are complying with Practice Note 2. If you have an order altering your filing deadlines, a copy of the order *must be provided* at the time of filing to verify your documents are being filed on time. Other common rejections include:

- Your deadline for filing has passed – you must seek a FIAT upon reasonable notice to the other party (paragraph 56).
- Exhibits are not commissioned or Commissioner’s Information is missing on jurat and/or Exhibits.
- Leave is required to file 3rd Party Affidavit (paragraph 28)
- Affidavits exceed allowable page limits
- Exhibits not being bookmarked or tabbed

When counsel submit orders to be filed, please submit to [qbfilings.edmonton@just.gov.ab.ca](mailto:qbfilings.edmonton@just.gov.ab.ca).

For information on Email Filing Procedures, please visit:

<https://albertacourts.ca/qb/resources/announcements/new-email-filing-procedure>.

## 4. Divorce Clerks Comments – 5 min – Anna Peters

To reduce rejections related to Divorce submissions, please review these helpful tips:

1. Please ensure documents are titled per the Email Filing Procedures.
2. Previously filed documents are to be included with the divorce packages - this applies to all Divorce Packages:
  - Statement of Claim, OR Counterclaim (if Defendant is submitting Package) OR Joint Statement of Claim
  - Affidavit of Service (not required for Joint Divorce Package)
  - All other pleadings (Statement of Defence, Noting in Default, Demand for Notice, Counterclaim) (not required for Joint Divorce Package)
  - Any previously filed orders relating to service, severing of corollary relief or orders granted under rule 12.50
3. Request for Divorce

- The name of the person who served the Statement of Claim and the date of service must match with the Affidavit of Service. Common mistake – using the date when the Affidavit of Service was sworn instead of actual date of service.
4. Affidavit of Applicant
    - Please ensure sure the exhibit reference to the photo attached to the Affidavit of Service is correct – this is a common mistake due to the 2 references to Exhibit “A”
  5. As per Judicial direction, paragraph 12 of the Affidavit of Applicant should be answered (paragraph 9 of Joint Affidavit of Applicants). If there are no Criminal/Child Protection/Civil proceedings or orders between the parties, you should say so. Please refrain from the use of "not applicable" or "N/A". It also applies to paragraphs 8 (1) and 8(2) of the Statement of Claim for Divorce.
  6. Joint Statement of Claim must be signed by both parties and their Counsel.
  7. Divorce Judgment
  8. If the Affidavit of Applicant indicates that there is an amendment required to the style of cause, the Divorce Judgment should reflect that amendment in the style of cause and there should also be a term reflecting this change in the body of the Divorce Judgment.
  9. When submitting an amended Divorce Judgment, please underline the portion of the document that is being amended.
  10. If corrections are required after the Affidavit of Applicant has been filed, please submit a Supplemental Affidavit and not Amended Affidavit of Applicant.

Frequently Asked Questions

**Q:** Does the Statement of Plaintiff have to be signed when there are no children?

**A:** Yes. It must be signed by the Plaintiff where there are no children involved. The Statement of Plaintiff refers to sections 7.1 to 7.5 of the *Divorce Act*.

5. Court Coordinator Comments

**Special Chambers Coordinator: (Peggy Lewis)**

- Schedules all ½ day and 1 hour Family Specials and all Family PTC’s, 4.10 Family Case Conferences, EICC’s and Resolution Counsel Meetings out of FDC.
- Lead times:
  - Half Days: June 2023
  - 1 Hour Specials: 3 dates before March but otherwise March 2023
  - EICC’s: one December date but otherwise January
  - PTC’s: February 2023
  - 4.10 CC’s: December 2022
  - Resolution Counsel Meetings: January 2023

Issues/Concerns:

- Please don’t send materials for EICCs, PTCs, 4.10 CC and Resolution Counsel to the Special Chambers Coordinator (who is only responsible for booking).
- Orders varying deadlines should be submitted prior to the 1<sup>st</sup> filing deadline, with the Special Chambers Coordinator copied in the filing request. There are

numerous times that a matter has been struck for non-compliance with deadlines only to later find out about a consent order to vary.

- Changes in counsel should also be copied to the Special Chambers Coordinator when notice is submitted for filing. This would assist in knowing who is acting for whom.

**Case Conference Coordinator: (Stefanie Eschak)**

- Schedules all Family Hearings greater than half a day, and Family Court Appeals. Also deals with rescheduling and cancellation of Family PTC's, 4.10 Family Case Conferences and EICC's booked through FDC.
- Lead times: 1 day or more - still the odd date before end of December 2022 but otherwise January 2023.

Issues/Concerns:

- Requests to change from in person to remote – refer to announcement, June 29, 2022. Case Conference Coordinator cannot deal with these.
- If directed to a trial or Oral Hearing, parties need to complete the triage form and then wait to hear from the appropriate CC.
- Date inquiries: can give approximate availability such as Fall 2023 but will not give out specifics.
- Materials for EICC's, PTC's and 4.10 Case Conferences – limited documents should be attached to the Summary – some parties/Counsel are attaching a significant number of pages to the Summary.

6. Questions and Feedback - [family.qb@albertacourts.ca](mailto:family.qb@albertacourts.ca)

Additional questions may be submitted through the above noted email address.

Digital filing application requires payment prior to filing a document. Legal Aid certificate matters are being handled through e-filing at this time (not runners/in person).

Service of notice of some proceedings (e.g. summary trial for property) may still be required/a good idea when the opposing party is noted in default.