

April 3, 2023

The Honourable Geoffrey B. Morawetz
Office of the Chief Justice of
the Superior Court of Justice
Osgoode Hall
130 Queen St. West
Toronto ON M5H 2N5

Via email: rosemarie.juginovic@ontario.ca

Dear Chief Justice Morawetz,

RE: THE SUPERIOR COURT OF JUSTICE GUIDELINES TO DETERMINE THE MODE OF PROCEEDING IN CIVIL, FAMILY, CRIMINAL, AND SMALL CLAIMS COURT

I am writing to you on behalf of the Toronto Lawyers' Association ("TLA") in response to a request from the Office of the Chief Justice for input on the *Guidelines to Determine the Mode of Proceeding in Civil, Family, Criminal and Small Claims Court* (the "**Guidelines**").

The TLA represents the interests of more than 3,700 members who practice law in all disciplines across the Greater Toronto Area. Included among our members are many lawyers who practice regularly before the Superior Court of Justice, including the Family Court and Small Claims Court.

Further to Ms. Juginovic's letter dated February 7, 2023, we have provided below the TLA's response to the Office of the Chief Justice's request for input on the Guidelines.

Guidelines to Determine Mode of Proceeding in Civil Matters (including Small Claims)

The TLA has engaged its Advocacy Committee to consider the Guidelines to Determine the Mode of Proceeding in Civil matters, including Small Claims Court matters. The TLA agrees that the mode of proceeding in civil matters is most appropriately determined based on a presumption of in-person or virtual attendance, depending upon the type of proceeding and subject to the Court's discretion in the circumstances.

The TLA takes the view that the presumptions provided for by the Guidelines in their current form are appropriate. Specifically:

- (a) Matters of a generally procedural nature (i.e. case conferences, pre-trial conferences, and scheduling court) are to be conducted virtually, as are substantive motions of low complexity (i.e. consent, *ex parte*, and unopposed motions); and
- (b) The Court should continue to recognize the importance of in-person interaction and hearings for more substantive attendances, such as mediations, trials, and examinations for discovery.

The presumptions provide useful guidance and predictability for litigants, while at the same time providing for flexibility where in-person advocacy and participation is important, or where it may be important to make accommodations for the personal circumstances of a party or participant. Proportionality is at the heart of this consideration. The additional time and expense of providing an in-person forum for a proceeding will be necessary and/or warranted when it is proportionate to the nature of the dispute and the interests involved.

Guidelines to Determine Mode of Proceeding in Criminal Matters

The TLA has engaged its Criminal Law Committee to consider the Guidelines to Determine the Mode of Proceeding in Criminal matters. The TLA is of the view that the existing Guidelines are reasonable. The Guidelines strike an appropriate balance between the efficiency offered by virtual hearings and the formality of in-person hearings.

Guidelines to Determine Mode of Proceeding in Family Matters

The TLA has engaged its Family and Estates Committee to provide its views on the Guidelines to Determine the Mode of Proceeding in Family matters.

The TLA takes the view that the Guidelines are working well in the context of Toronto Estates Court matters. With respect to family law matters generally, TLA members who practice family law frequently appear in different courts throughout the Greater Toronto Area. Their main concern is that the practice directions for virtual hearings, both with respect to the types of hearing that proceed virtually and filing practices for virtual hearings, differ from court to court and are not reflected in the Family Law Rules.

To the greatest extent possible, lawyers would like to see uniformity in the application of the Guidelines throughout the province.

Thank you for considering these comments. Our Executive Committee would be pleased to discuss these comments at your convenience, should you find additional consultation beneficial.

Yours very truly,



Erin O'Donovan
President
Toronto Lawyers' Association