

## Tips for Court Conferences During Covid-19 (October 2020)

Justice Andrea Himel, Superior Court of Ontario, Family Branch (Newmarket)

1. ***Be Brief, Be Focused, Be Settlement-Oriented:*** The judge may not have access to the entire court file. Follow regional practice directions and consider the reader (6-pages double spaced, Times New Roman, 12 Font). Only include necessary and relevant attachments (such as offers to settle, financial statements, NFP comparative statements, support calculations). **Please file briefs well in advance of the conference.**
2. ***One computer/laptop/cell phone per participant (if possible):*** It is preferable for all parties to have video-enabled technology, both for credibility purposes and to ensure that everyone is in the same “boat”. It is difficult to interact with litigants when they are sharing a screen with their counsel, or their video is disabled/unavailable.
3. ***Clients Should Avoid Posturing:*** There is limited access to the courts in some areas. It is unhelpful to threaten to bring a motion or take a matter to trial, if such a process is unavailable for months. Covid-19 provides a welcome opportunity to persuade clients to be reasonable. Unreasonable and unrealistic positions may = costs and delay. Consider a realistic litigation path and other dispute resolution alternatives.
4. ***Propose a Parenting Plan that Emphasizes the Best Interests of the Children.*** Parenting plan clauses should reflect the upcoming changes to the *Divorce Act* and the *Children’s Law Reform Act*, which focus on the children’s physical, emotional and psychological safety, security and well-being. Factors to be accounted for in orders and agreements include: (1) The children’s needs, given their ages and stages of development; (2) The nature and strength of the children’s relationships with family and others; (3) The parents’ willingness to support the children’s relationship with the other parent; (5) The children’s views and preferences, giving due weight to their age and maturity; (6) The children’s upbringing and heritage, including indigenous upbringing and heritage; and (7) any family violence. **Educate clients to move away from “custody” and “access”.**
5. ***Detail the Parenting Time.*** Many clients benefit from a clear road map that sets out the following details: (1) The location, time, pick-ups and drop-offs for each party’s parenting time; and (2) Specific details respecting holidays, special days, school breaks, vacations and summer. Consider whether make-up time and the right of first refusal will benefit the children or create unnecessary conflict. Address concerns about family violence and/or safety to ensure that the children are safe and secure during each parent’s time. Assess whether one or more children need additional or different parent plan terms, particularly for children under four years old.
6. ***Consider Covid-19 Areas of Conflict:*** Parties may wish to develop plans in anticipation of the following: (1) a vaccine becomes available; (2) Christmas and other family

celebrations (location, number of attendees, risk); (3) changes to the parenting time schedule if schools move entirely on-line (providing parents with additional time since children are not at school?); (4) opting out of in-person school if cases continue to increase?; (5) extracurricular activities; (6) travel within and outside of Ontario; (7) social bubbles, social circles, playdates and babysitters; (8) taking children to public places (grocery stores, public transportation, libraries, pools); and, (9) parenting time that typically takes place in the community (often after-school time due to the distance between the homes), and the challenges that arise if there is nowhere to take them.

7. ***Use the Parties' Realistic 2020 Incomes:*** In the absence of evidence that the 2020 income is similar to 2019, expect to address the issue as to the current income that should be utilized for support purposes, and how/when to further adjust the support (higher or lower). Provide financial disclosure well in advance of the court conference.
8. ***Avoid Relocation Disputes:*** With the increasing restrictions on travel and the limited number of places to exercise community access, relocations should be delayed until the end of the pandemic, if possible. Moreover, at this time it is unclear how the new provisions respecting relocation will be interpreted by the courts. Therefore, we do not know: (1) What distance constitutes a relocation; (2) Which of the additional relocation factors will be most important, and the relative weight of each factor; (3) How the burden of proof on a parent intending to relocate will be interpreted (if the children spend substantially equal time in the care of each party), and what constitutes substantially equal time; and, (4) How the burden of proof on a parent who opposes the relocation will be interpreted (if the children spend the vast majority of the time with the other parent), and what constitutes the vast majority of time. Therefore, it is important to consider whether geographical limits (X km or Y minute drive from the children's school or home) are appropriate. Expect courts to consider the practical implications of a potential relocation given the Covid-19 limitations.
9. ***Consider Mediation at Various Stages.*** Promote the benefits of mediation early-on and throughout the litigation. Some litigants can mediate at an early stage, while others are not emotionally or otherwise prepared to do so. Many clients need their "day in court". The opportunity to mediate may be more appealing later on, particularly if it is difficult to access the court, after an evaluative court conference, or following the adjudication of certain interim issues. Litigants may need to be reminded of the highly subsidized on-site and off-site services.
10. ***Independent or Summary Legal Advice.*** The impact of Covid-19 is far-reaching and ever-changing. Non-represented parties should be directed to resources where they can receive free (Legal Aid Ontario) and affordable legal services. ASC Private Duty Counsel Project: <https://www.mediate393.ca/asctoronto-advice-and-settlement-counsel/> and the Limited Scope Services Project: <https://www.familylawlss.ca/>