

at 7755 Hurontario Street, Brampton, ON L6W 4T6  
(Court office address)

Endorsement

Date	
April 19, 2022	<p>Applicant(s): COUSINS, Charles Woodrow <input type="checkbox"/> Present</p> <p>Counsel: MOTA, Charles <input checked="" type="checkbox"/> Present <a href="mailto:charles@galbraithfamilylaw.com">charles@galbraithfamilylaw.com</a> <input type="checkbox"/> Duty Counsel</p>
[via Teleconference]	<p>Respondent(s): SILBOURNE, Lola <input type="checkbox"/> Present</p> <p>Counsel: MAMMON, Jeffrey B. <input checked="" type="checkbox"/> Present <a href="mailto:jmammon@gelmanlaw.ca">jmammon@gelmanlaw.ca</a> <input type="checkbox"/> Duty Counsel</p>
	<p><input type="checkbox"/> Order to go in accordance with minutes of settlement or consent filed.</p>
	<p>[1] This matter is scheduled for a Settlement Conference on April 25, 2022, at 2:30 pm.</p> <p>[2] The parties wrote to the court on April 12, 2022, seeking to have the Settlement Conference proceed virtually.</p> <p>[3] The Court's Presumptive Mode of Hearing Guidelines for the Superior Court of Justice Guidelines sets out that Settlement Conferences are to presumptively in-person. See: <a href="https://www.ontariocourts.ca/scj/guidelines-mode-of-proceedings/guidelines-criminal/">https://www.ontariocourts.ca/scj/guidelines-mode-of-proceedings/guidelines-criminal/</a></p> <p>[4] As a result of the request to change the presumptive mode of hearing, a telephone conference call was held this morning.</p>
	<p><u>General Comments</u></p> <p>[5] The court has limited resources, namely courtrooms, court staff and judicial resources, all of which are needed for all types of hearings, in person and virtual hearings.</p>

- [6] The court schedules these limited resources well into the future. In Brampton's case, at this time, we are scheduling these limited resources well into 2023.
- [7] While scheduling takes place many months before the hearings, there are always changes to scheduled hearings, such as adjournments, exceeding estimated times, all of which make scheduling more complex and difficult to juggle these resources to accommodate changes to the presumptive mode of hearings.
- [8] Counsel and parties require certainty when hearings are scheduled as they have their own scheduling issues.
- [9] One might say, what is the difference if hearings are scheduled in-person and/or virtually? Without getting into the rationale for the presumptive mode of hearings, some types of hearings are more effective in-person or where there is a final determination being made by the court. But there is a further difficulty. Having the same judge hear some matters in-person and some virtual hearings from the same daily list is simply not doable. There are not sufficient judges, courtrooms or court staff to have separate lists dependent on the mode of hearing. Hearing a mixed list is problematic for judges, staff, counsel and parties for many reasons including that time estimates for hearings are not always reliable and technology issues sometimes arise.
- [10] As we transition from pandemic modes of hearing to the Guideline presumptive modes of hearing, conflicts and rescheduling will be required. Where a change in the presumptive mode of hearing is necessary, the Court will and must do its utmost to accommodate changes to the modes of hearing.
- [11] Central West has established a method to deal with a request for a change to the presumptive mode of hearing by way of holding a weekly teleconference hearing upon the request of one of the parties to the proceeding.
- [12] Because of the resource limitations and scheduling issues described above, a party or the parties will have to demonstrate

a clear and compelling reason to change the presumptive mode of hearing.

[13] Some of the factors that will be relevant to the court's determination are the following:

- a) The prejudice to a party if the matter proceeds by the presumptive mode. To be clear, prejudice does not include inconvenience to a party or counsel, nor does it include a reasonable additional cost to proceed by the presumptive mode due to some travel;
- b) Why the different mode of hearing would be more effective in the circumstances of the case;
- c) The importance of the hearing to the proceeding;
- d) Demonstrable inability of or serious hardship to counsel or a party not to attend the hearing in the presumptive mode of hearing. This is not limited to Covid but can any demonstrable inability or serious hardship. The party will have to address why an adjournment to accommodate the demonstrable inability or serious hardship should not be granted; and
- e) Any other relevant matter which establishes the need for a change to the presumptive mode.

[14] In order to accommodate a change to the presumptive mode, the court has scheduled a limited number of dates where hearings of each type can be heard in a different mode than the presumptive mode of hearing. These dates will be limited. Accordingly, there may be a delay with hearings if the presumptive mode of hearing is changed.

#### This Case

[15] The parties consented to the matter being heard virtually. A consent of the parties will NOT, by itself, be sufficient grounds to change the presumptive mode of hearing.

[16] However, given certain circumstances and the short time before the scheduled hearing, I have agreed that the hearing should be rescheduled to May 10, 2022 at 10:00 am but that the matter proceed in the presumptive mode of hearing – in person.

A handwritten signature in blue ink, appearing to read "Leonard Ricchetti".

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Ricchetti RSJ.