



## Superior Court of Justice Southwest Region

### NOTICE TO THE PUBLIC AND THE PROFESSION

**DATE:** November 25, 2025

**RE:** Associate Judges – Civil and Family Motion Courts

- [1] I write to counsel and litigants in the Southwest Region in order to:
- a) Review recent associate judge appointments in the Southwest,
  - b) Discuss the jurisdiction of an associate judge, and
  - c) Provide direction concerning the practice of appearing before an associate judge in Civil and Family motion courts.

#### **Associate Judge Appointments in the Southwest Region**

- [2] Associate judges are appointed by the Ontario Government pursuant to s. 86.1 of the *Courts of Justice Act (CJA)* and have the jurisdiction conferred on them by the rules of the court.
- [3] There have been two recent appointments of associate judges in the Southwest Region.
- [4] Effective June 19, 2025, Associate Justice Sherry Kettle was appointed to the Superior Court of Justice and assigned to London.
- [5] Effective August 28, 2025, Associate Justice Kaitlyn D. McCabe was appointed to the Superior Court and assigned to Windsor.
- [6] Like the other judges in our Region, it is expected that, from time to time, both Associate Justice Kettle and Associate Justice McCabe will be assigned to preside in court centres throughout the Southwest Region.

## **Jurisdiction of Associate Judges – Civil**

- [7] Generally speaking, an associate judge has jurisdiction to hear any motion in a proceeding – and all of the same jurisdiction of a judge in respect of a motion – subject to certain designated exceptions.
- [8] Under subrule 37.02(2) of the *Rules of Civil Procedure*, an associate judge has the jurisdiction to hear any motion in a proceeding and has all the jurisdiction of a judge in respect of a motion, **except** a motion,
- a) where the power to grant the relief sought is conferred expressly on a judge by a statute or rule,
  - b) to set aside, vary, or amend an order of a judge,
  - c) to abridge or extend a time prescribed by an order that an associate judge could not have made,
  - d) for judgment on consent in favour of or against a party under disability,
  - e) relating to the liberty of the subject,
  - f) under ss. 4 or 5 of the Judicial Review Procedure Act, or
  - g) in an appeal.
- [9] Some examples of common motions and other Civil matters that are within (and not within) the jurisdiction of an associate judge are set out in the non-exhaustive list found at Appendix “A” attached to this Notice.

## **Jurisdiction of Associate Judges – Family**

- [10] Generally speaking, the starting point for determining the jurisdiction of an associate judge in respect of motions and other Family matters is Rule 42 of the *Family Law Rules*.
- [11] Rule 42 applies to cases in the Superior Court of Justice, including the Family Court of the Superior Court, that relate to matters under the *Divorce Act (DA)*, the *Family Law Act (FLA)*, the *Children’s Law Reform Act (CLRA)*, and the *Family Responsibility and Support Arrears Enforcement Act, 1996 (FRSAEA)*.
- [12] Rule 42(4)(a) makes it clear that an associate judge may exercise only the powers and carry out the duties and functions that are specified in Rule 42.
- [13] Under rule 42(12), an associate judge may conduct a case conference, settlement conference, or trial management conference under Rule 17.

- [14] Under rule 42(7), an associate judge may hear motions under Rule 14 relating to matters over which he or she has jurisdiction. For the purposes of motions under Rule 14, rule 42(8) specifies that an associate judge may make orders only in respect of certain specified situations. Counsel and litigants will want to closely review and be familiar with the provisions of rule 42(8).
- [15] Rule 42(5) is another provision that merits close scrutiny. Rule 42(5) expressly delineates situations where an associate judge has no jurisdiction. Rule 42(5) provides that an associate judge has no jurisdiction in respect of:
- a) a power, duty or function that is conferred exclusively on a judge of a superior court by law or expressly on a judge by an Act,
  - b) a case involving a special party or a child party,
  - c) the determination of a right or interest of a party in real property, or
  - d) the making of an order or hearing of a motion for an order,
    - i. to change, set aside, stay or confirm an order of a judge,
    - ii. to find a person in contempt of court,
    - iii. to restrain the liberty of a person, including an order for imprisonment, a warrant for arrest or a warrant of committal,
    - iv. to dismiss all or part of a party's case for a failure by the party to follow these rules or obey an order in the case or a related case, if the *Family Responsibility and Support Arrears Enforcement Act, 1996* applies to the party's case,
    - v. to split a divorce from other issues in a case under subrule 12 (6), or
    - vi. to grant summary judgment.
- [16] Some examples of common motions and other Family matters that are within (and not within) the jurisdiction of an associate judge are set out in the non-exhaustive list found at Appendix "B" attached to this Notice.

### **Appearing before an Associate Judge in Civil and Family Motion Courts**

- [17] This direction applies to all Civil and Family motions, including in writing or basket motions, short or regular motions, and long or special motions.
- [18] The onus for advising the court that any given motion or matter may be heard or should be heard by an associate judge (or a judge) rests squarely with counsel

and/or the litigants in the case. Trial Coordination staff bear no responsibility for making such determinations.

### Notice of Motion

- [19] On any motion or other matter brought in Civil or Family motion court, including any motion in writing or basket motion, the moving party shall clearly indicate directly in the notice of motion whether the motion is to be heard by a judge or an associate judge.
- [20] As such, for the purpose of completing the notice of motion in the Civil context (Form 37A), the moving party should pay close attention to the first line of the notice of motion form and complete it appropriately. If the motion in question is within the jurisdiction of and can be addressed by an associate judge, then the first recital in the notice of motion should read as follows:

#### NOTICE OF MOTION

The (identify moving party) will make a motion to **AN ASSOCIATE JUDGE** on ..... (day), ..... (date), at ..... (time), or as soon after that time as the motion can be heard.

- [21] Similarly, in the Family context, when completing the notice of motion (Form 14) (or the Motion Form 14B for a motion in writing), if the motion in question is within the jurisdiction of and can be addressed by an associate judge, then the moving party should indicate on the first page of the form that the motion is to be heard by an associate judge, perhaps in the field/following the place of hearing, as follows:

THE COURT WILL HEAR A MOTION on [date] at [time], or as soon as possible after that time, at [place of hearing] **before AN ASSOCIATE JUDGE.**

### Confirmation Form

- [22] Further, for any motion or other matter where delivery of a confirmation form is required under the rules, the moving party should clearly indicate in their confirmation form whether the motion is to be heard by a judge or an associate judge.
- [23] As such, for the purpose of completing the confirmation of motion in the Civil context (Form 37B), the moving party should indicate in Part A of the form (in the paragraph that lists the materials to be reviewed by the judge/court) whether the motion may be heard by an associate judge by checking off the appropriate box, as follows:

The presiding  judge  associate judge will be referred to the following materials:  
*(please be specific)*

[24] For the convenience of counsel and litigants, an adapted Form 37B (in MS Word format) is attached to this Notice.

[25] In the Family context, when completing the confirmation of motion form (Form 14C), the moving party should clearly indicate somewhere on the form that the motion is to be heard by an associate judge, perhaps in paragraph 7, as follows:

7. What specific orders are you seeking on this motion? (List the specific orders below)

a) **THIS MATTER MAY BE HEARD BY AN ASSOCIATE JUDGE.**

b)

c)

[26] **Failure to clearly indicate in the notice of motion *and* the confirmation form (in the case of an oral motion) that the motion is to be heard by an associate judge may result in the motion being struck from the hearing list or adjourned for hearing before an associate judge (or, in the case of a motion in writing, returned for re-filing) if the presiding judge determines that the relief requested on the motion is within the jurisdiction of an associate judge.**

[27] This Notice shall be read in conjunction with and supplements the *Consolidated Practice Direction for the Southwest Region* dated June 30, 2025, which is available at: [https://www.ontariocourts.ca/scj/practice\\_directions/consolidated-practice-direction-for-the-southwest-region-2/](https://www.ontariocourts.ca/scj/practice_directions/consolidated-practice-direction-for-the-southwest-region-2/)



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Regional Senior Justice J. Paul R. Howard  
Superior Court of Justice – Southwest Region

## **APPENDIX “A”**

Some examples of Civil motions and other matters ***within*** the jurisdiction of an associate judge include (but are not limited to):

- Motions to amend or strike pleadings (rule 25.11),
- Motions for refusals and/or undertakings (rule 34.15),
- Motions for interpleader order (not raising a genuine issue of fact or law) (rule 43.04(1) and (3)),
- Motions to dismiss for delay (rule 24.01),
- Motions to consolidate two or more proceedings pending in the court (rule 6.01(1)) (but where two or more proceedings are pending in two or more different courts, a motion to transfer an action from one court to another requiring that they be consolidated or tried together, or to require one to be stayed pending determination of the other, must be made to a judge (s. 107(1) and (4) *CJA*)),
- Motions to transfer a proceeding from one county to another within the region (rule 13.1.02(2)),
- Certificates of pending litigation (rule 42),
- Motions for the interim possession of personal property (s. 104 *CJA*, rule 44),
- Motions for security for costs (rule 56.01),
- Status hearings (rule 48.14(5)-(7)),
- Setting aside noting in default (rule 19.03),
- Pre-trial conferences (rule 50.02),
- Case conferences (except only a judge may make an order for interlocutory relief or convene a hearing – see rule 50.13(6)), and
- Conducting references (only a judge may direct a reference) (rule 54.03) in respect of the sale of properties and damages.

Some examples of Civil motions and other matters ***not within*** the jurisdiction of an associate judge include (but are not limited to):

- Applications (rule 38.02),
- Injunctions (rule 40),
- Appointment of a receiver (rule 41.02 and s. 101(1) *CJA*),
- Summary Judgment motions where the only genuine issue is a question of law (rule 20.04(4)), or where the ancillary powers to weigh evidence, evaluate credibility and draw inferences must be exercised (rule 20.04(2.1)), or a mini-trial must be ordered/conducted (rule 20.04(2.2)),
- Motions to determine a question of law raised by a pleading or to strike a pleading on the ground that it discloses no reasonable cause of action or defence (rule 21),
- Motions to determine a special case on a stated question of law (rule 22),
- Vexatious litigant orders (s. 140 *CJA*),
- Motions where a litigant is minor/under disability (noting in default, discontinuance, approval of settlements, payment out of court) (rules 37.02(2)(d), 7.07.1(1), 7.08(1) and (2), 7.09(1) and (2), 72.03(10)),
- Motions for judgment (rule 19.05) – however, an associate judge may deal with the motion if the registrar declined to sign default judgment and it is the type of claim listed in rule 19.04(1), i.e., a debt or liquidated demand for money,
- Motions to strike a jury notice on the ground that the action ought to be tried without a jury (rule 47.02(2)),
- Interpleader where the motion raises a genuine issue of fact or of law (rule 43.04(3)),
- Garnishment hearing where it raises a genuine issue of fact or of law (rule 60.08(16)),
- Contempt (rule 60.11),
- Motions to restore an action to the trial list if struck off the list by a judge (rule 48.11),
- Relying on the Superior Court's inherent jurisdiction, and
- Declaratory relief.

## **APPENDIX “B”**

Some examples of Family motions and other matters *within* the jurisdiction of an associate judge include (but are not limited to):

- Motions for an order dealing with a party’s failure to obey an order or follow rules (rules 1(8) and 1(8.1)),
- Motions to strike a document that may delay or is inflammatory (rule 1(8.2)),
- Motions under Rules 3 (time), 4 (representation), 5 (where a case starts and is to be heard), 6 (service of documents), 7 (parties), 9 (continuing record), 10 (answering a case), 11(amending an application, answer or reply), 12 (withdrawing, combining or splitting cases), 13 (financial disclosure), 18 (offers to settle), 19 (document disclosure), and 20 (questioning a witness and disclosure),
- Motions for costs relating to a step in the case that the associate judge dealt with (rule 24),
- Motions for an order relating to an order made by the associate judge (rule 25),
- Motions for an order to lengthen time, case management (rule 39(3)) or set aside an order to dismiss inactive case (rule 14.1),
- Motions to change a temporary order made by the associate judge,
- Motions for an order re blood, DNA tests under s. 17.2 *CLRA*,
- Motions for a temporary parenting order or contact order under the *CLRA* or *DA*,
- Motion for an order appointing a mediator under s. 31 *CLRA* or s. 3 *FLA* (mediation),
- Motions for a temporary order for or relating to child and/or spousal support under the following sections of the *FLA*:
  - s. 33 (support)
  - s. 34(1)(a) periodic payment of child support), (e) payment into court), (f) retroactive support), (g) payment to an agency, (h) prenatal birth and care payment
  - s. 34(5) (indexing support payments)
  - s. 37 (application for variation)
  - s. 42 (order for return by employer)

- s. 47 (stand over support until parenting order under *CLRA* is determined)
- Motions for a temporary order for support under s. 15.1 (child support) or s. 15.2 (spousal support) of the *DA*,
- Motions for a temporary order under s. 40 *FLA* (restraining depletion of property),
- Motions for a temporary order dealing with property other than real property,
- Motions for a support deduction order under s. 10 *FRSAEA*,
- Motions for an order limiting or suspending a support deduction order,
- Motions for an order under s. 8 *FRSAEA* (Director to cease enforcement, terminates a support obligation or orders repayment from a person who received support),
- Motions for an order under s. 89(3.1)) or s. 112 *CJA* (requesting the Children's Lawyer to act),
- Motions for an order that is necessary and incidental to the power to make a temporary order that is within the jurisdiction of the associate judge,
- Case conferences,
- Settlement conferences, and
- Trial management conferences.

Some examples of Family motions and other matters ***not within*** the jurisdiction of an associate judge include (but are not limited to):

- A power, duty, or function that is conferred exclusively on a judge of a Superior Court by law or expressly on a judge by an Act,
- Granting a divorce (s. 7 *DA*),
- Warrant for absconding payor under paternity agreement (s. 59(2) *FLA*),
- A case involving a special party or a child party,
- Order for the sale of a matrimonial home
- Order for exclusive possession of a matrimonial home

- The determination of a right or interest of a party in real property, or
- The making of an order or hearing of a motion for an order:
  - to change, set aside, stay or confirm an order of a judge,
  - to find a person in contempt of court,
  - to restrain the liberty of a person, including an order for imprisonment, a warrant for arrest or a warrant of committal
  - to dismiss all or part of a party's case for a failure by the party to follow the rules or obey an order in the case or a related case, if the *FRSAEA* applies to the party's case,
  - to split a divorce from other issues in a case, and
  - to grant summary judgment.