

# **Protocol for the Resumption of Civil Proceedings, Meaning Civil Trials, Summary Judgment Motions, Long Motions, and Applications in the Central East Region**

## **PART A: OVERVIEW**

- [1] This Protocol governs the hearing of civil (non-family) proceedings, meaning civil trials, summary judgment motions, long motions, and applications in the Central East Region (“the Region”). This Protocol is supplementary to the Protocol issued on July 27, 2020, which otherwise remains in full force and effect.
- [2] The November 2020 civil trial sittings are cancelled, due to the ongoing impact of COVID-19 on court operations in the Central East Region. The status of the May 2021 civil trial sittings is uncertain at this time.
- [3] The objective of this Protocol is to provide parties and counsel for parties (referred to compendiously in this Protocol as “party” or “parties”) with an alternative opportunity to have civil cases heard. This alternative is specific to the Region. It involves civil trials, summary judgment motions, long motions, and applications being placed on a running list of cases that the Court can call in for trial or hearing as courtrooms and judges become available in the Region.
- [4] Under this Protocol, commencing October 5, 2020, the Region will maintain two running lists. The first will be called **The Running Civil Trial List**. The second will be called **The Running Civil Long Motions List**.
- [5] This Protocol will remain in place until such time as the Region’s civil trial sittings may resume.

## **PART B: THE RUNNING CIVIL TRIAL LIST**

### **Eligibility of a Matter to Be Placed on The Running Civil Trial List**

- [6] Only cases that have been pre-tried and deemed ready for trial by a pre-trial judge will be eligible to be placed on The Running Civil Trial List. By implication, this will include all cases that were not reached in the November 2019 and May 2020 civil trial sittings. In addition, any case that has been pre-tried since March 15, 2020, and deemed ready for trial by the pre-trial judge will be eligible to be placed on The

Running Civil Trial List. There will be *no* requirement to attend in the CETSC (Central East Trial Scheduling Court).

**How Cases That Are Eligible Get Onto The Running Civil Trial List**

- [7] Cases that are eligible as specified in paragraph 6 can get onto the running list in one of two ways, either on consent of the parties or by order of a triage judge.
- [8] If all parties consent to be placed on the running list, a letter of request confirming that the case was on the November 2019 or May 2020 trial sittings list, or that it has been pre-tried since March 15, 2020, and by whom, together with the written consent of all parties (which can be in the form of an email message), shall be sent to [Stephen.Colomvakos@Ontario.ca](mailto:Stephen.Colomvakos@Ontario.ca) . The information will be forwarded to the triage judge. The triage judge will confirm that the case meets the definition of eligibility and the matter will then be placed on the running list.
- [9] In situations where all parties do not consent, the party seeking to be placed on the running list shall send a letter of request confirming that the case was on the November 2019 or May 2020 trial sittings list, or that it has been pre-tried since March 15, 2020, and by whom, to [Stephen.Colomvakos@Ontario.ca](mailto:Stephen.Colomvakos@Ontario.ca) together with a memorandum not to exceed two pages in length detailing the history of the case and the reasons why it should be placed on the running list. Any party who opposes being placed on the running list shall provide their position in a responding memorandum not to exceed two pages in length, sent to [Stephen.Colomvakos@Ontario.ca](mailto:Stephen.Colomvakos@Ontario.ca) no later than five days after receipt of the requesting party's email.
- [10] If no responding memorandum is received before the expiry of the five days, the triage judge will deal with the request as an unopposed request.
- [11] If a responding memorandum is received before the expiry of the five days, the triage judge will consider whether they can decide the request to be placed on the running list on the basis of the parties' memoranda, or whether there is a need to conduct a conference call with the parties.
- [12] The triage judge will advise the parties of the decision on the request to be placed on the running list, by email. In deciding whether to add a case to the running list, the triage judge may order that it not be called before a certain date, where a party has advised about issues concerning witness availability or other trial commitments of counsel.

### **Consequences of Being Placed on The Running Civil Trial List, and Adjournments**

- [13] Once a matter has been placed on The Running Civil Trial List either on consent of the parties or by order of the triage judge, the parties will be expected to be available to commence the trial when called, unless there is a settlement. Cases will be called in on a minimum of three days' notice prior to the trial commencement date.
- [14] Where there is an exceptional circumstance such that a party needs to seek an adjournment, the party must immediately send a request for adjournment to [Stephen.Colomvakos@Ontario.ca](mailto:Stephen.Colomvakos@Ontario.ca) . The request will be put before the triage judge who will make an initial determination whether the request can be dealt with in writing or whether a conference call is required. While the granting of an adjournment is always discretionary, the Court will apply an "exceptional circumstances test" to any request for adjournment.

### **Counsel with Multiple Cases on The Running Civil Trial List**

- [15] Counsel who have multiple cases on The Running Civil Trial List will NOT be expected to try those cases back to back. In other words, if a case proceeds to trial and counsel has other cases on the list, they will not be expected to start another trial immediately upon completion of the first. The Court will extend an interval of three weeks before another of counsel's cases is called in. This will allow counsel time to prepare the cases they have on the running list.

### **Status of The Running Civil Trial List**

- [16] The Court will attempt to provide updated copies of The Running Civil Trial List to the Local Bar Associations at regular intervals. It will be the responsibility of the parties to know where they are on the list. The parties are asked to avoid contacting the trial coordinators about where a particular case is on the running list. The trial coordinators are inundated with emails and phone calls and may be unable to respond promptly to queries about the running list.

### **In Person and Virtual Non-Jury Trials, and Documentary Evidence**

- [17] Parties should be prepared to conduct non-jury civil trials virtually, via Zoom. When a request is made to add a non-jury case to The Running Civil Trial List, each party should indicate in their two page memorandum any reason why the case must be heard in person rather than via Zoom. The triage judge will decide the issue on the basis of the parties' memoranda, unless the triage judge finds there is a need to conduct a conference call with the parties. In some cases, it

may be determined that a hybrid trial is appropriate, i.e. that some part of the trial will be heard via ZOOM, and some part by in person appearances in a courtroom.

- [18] Whether a non-jury case proceeds in person or via Zoom, all parties should consider and discuss among themselves in advance of the trial what documents the trial judge needs to render a fair decision. The parties should have all documents available in an electronic format that is user-friendly. At the end of the evidence, the parties will be expected to present their closing arguments with the assistance of written submissions that are hyperlinked to the relevant documents and case law.

**PART C: THE RUNNING CIVIL LONG MOTIONS LIST, FOR SUMMARY JUDGMENT MOTIONS, LONG MOTIONS (i.e. MOTIONS LONGER THAN ONE HOUR), AND APPLICATIONS**

- [19] Summary judgment motions, long motions, and applications are referred to in this Protocol compendiously as Long Motions.
- [20] Any Long Motions that were scheduled to be heard during the November 2019 and May 2020 civil trial sittings, any Long Motions that were scheduled and adjourned from mid-March 2020 onward due to the COVID-19 pandemic, and any new Long Motions that have not been scheduled are eligible to be added to The Running Civil Long Motions List.
- [21] The preceding paragraphs in this Protocol apply to The Running Civil Long Motions List, except as set out below.
- [22] Long Motions do not need to be pre-tried. The requirement that a matter be pre-tried does not apply to The Running Civil Long Motions List.
- [23] Where a Long Motion is urgent, the party should clearly explain the urgency in the letter of request. The triage judge will determine whether the Long Motion should be assigned an early fixed hearing date, or placed on the running list.
- [24] Counsel who have multiple Long Motions on The Running Civil Long Motions List will NOT be expected to appear on back to back Long Motions. Counsel who have multiple Long Motions will have a minimum of 10 days between appearances on matters on the running list.

**PART D: QUESTIONS SEEKING CLARIFICATION**

[25] Any question seeking clarification of the application of this Protocol should be addressed to [Stephen.Colomvakos@Ontario.ca](mailto:Stephen.Colomvakos@Ontario.ca) .

Dated September 15, 2020

A handwritten signature in cursive script, reading "Michelle Fuerst". The ink is dark and the signature is fluid.

Michelle Fuerst,  
Regional Senior Judge,  
Superior Court of Justice,  
Central East Region