
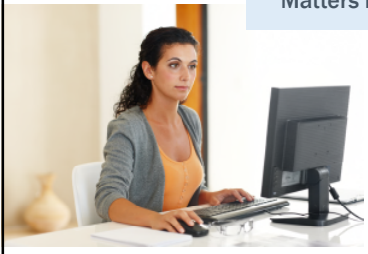


Spring 2020 Webinar Series



Legal Education Society of Alberta

Managing Civil Litigation Matters During COVID-19





May 12, 2020
12:00 PM – 1:00 PM

Co-Presenters: Andrew P. Wilson and Kaila Eadie
Jensen Shaw Solomon Duguid Hawkes LLP

LESA.org/webinars

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SPRING 2020: WEBINAR SERIES


Managing Civil Litigation Matters during COVID-19

Andrew Wilson, Partner, JSS Barristers
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Managing Litigation during COVID-19



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The COVID-19 pandemic has resulted in **TEMPORARY** changes to the *Alberta Rules of Court*, limitations deadlines, and other procedural requirements.


With some flexibility and creativity, lawyers can continue moving their matters forward.

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Managing Litigation during COVID-19



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This webinar will cover:

1. Procedure from Court & Ministerial decisions;
2. Tips and tricks for conducting questioning & making applications remotely; and
3. Alternatives to the normal litigation process

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Procedure from Court & Ministerial Decisions



Each level of Court in Alberta has implemented procedural changes arising from COVID-19

The Minister of Justice has also issued an Order suspending limitation dates

Additionally, the Court of QB issued three Master Orders affecting Court deadlines

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Queen's Bench: Filing



Master Order #3 issued April 21, 2020:

- All filing deadlines under the *Rules of Court* are suspended EXCEPT for those relating to COMMENCING PROCEEDINGS, including by originating application
- Originally until May 1, 2020; now extended to May 31, 2020
- <https://files.constantcontact.com/3744a7b8601/78bca1d4-f437-415e-963b-24c04525b329.pdf>

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Queen's Bench: Filing



Ministerial Order 27/2020: SUSPENDS LIMITATIONS retroactively from March 17, 2020, to June 1, 2020

- Could potentially affect limitations defences for years:
 - “...the limitation period or period of time resumes running on June 1, 2020 and the temporary suspension period shall not be counted.”
- Also suspends time within which a “step is required” in an action

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Queen's Bench: Filing



Lawyers are urged to use E-FILING, but Clerks are available to accept in-person filings

- E-filing information: <https://www.albertacourts.ca/qb/resources/announcements/email-filing-of-court-documents>
- Access to the Courthouse is limited: <https://www.albertacourts.ca/qb/resources/announcements/notice-to-the-public-and-legal-profession-restricted-access-to-courthouses>


Affidavits can also be commissioned remotely:

<https://albertacourts.ca/qb/resources/announcements/npp-remote-commissioning-of-affidavits>

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Queen's Bench: Hearings 


All civil matters scheduled between March 16, 2020 and May 31, 2020 have been ADJOURNED *sine die* pursuant to Master Order #3

The Court will only hear EMERGENCY and URGENT matter: Appendix D to Master Order #3.

Master Order #3:
https://www.albertacourts.ca/docs/default-source/qb/covid/amended-master-order-3---covid-19.pdf?sfvrsn=e7029d80_6

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Queen's Bench: Hearings 

Emergency civil matters may include

- orders relating to the pandemic;
- preservation orders; or
- injunctions where there is *prima facie* urgency;
- urgent orders in the nature of *habeas corpus, certiorari, mandamus* and prohibition.
- civil restraining orders;

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Queen's Bench: Hearings 

Urgent civil matters may include:

- urgent adult guardianship orders;
- Receivership/CCAA stay extensions;
- urgent surrogate orders;
- Anton Piller/ Mareva-type injunctions; and
- freezing orders

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Queen's Bench: Hearings 

Parties who believe their matter is urgent can submit a request online:

<https://www.albertacourts.ca/qb/court-operations-schedules/urgent>

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Queen's Bench: Dispute Resolution



March 17, 2020: Rule 4.16 amended

- Case management and case conference judges can now expressly order that parties attend dispute resolution

March 31, 2020: QB announcement re: access to the Court on contested applications to enforce arbitration awards

- applications shall be made in writing
- ADR resolutions in the current climate are important

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Queen's Bench: Dispute Resolution



Court Announcement:

https://albertacourts.ca/qb/resources/announcements/alternative-dispute-resolution-consent-orders-and-applications-to-enforce-arbitration-awards?utm_source=QB+Announcements&utm_medium=newsletter&utm_campaign=Announcement+from+the+Court+of+Queen%27s+Bench+of+Alberta

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Provincial Court: Filings



Provincial Court is only accepting filing of urgent or time sensitive documents:

- Civil Claims where the limitations period will EXPIRE IN 30 DAYS;
- Notices of Appeal;
- Dispute Notes/Counterclaims/Third Party Claims;
- Etc.

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Provincial Court: Filings



Effective April 1, 2020:

- A drop box has been set up for filing
- There is a **TURNAROUND TIME OF 6 BUSINESS DAYS** to complete filing
- Send your documents for filing **EARLY**

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Provincial Court: Hearings



All Provincial Court civil matters scheduled to be heard before May 22, 2020 are adjourned *sine die*

- Includes matters scheduled to be heard by phone

Matters scheduled to be heard after May 22, 2020 remain as scheduled “for the time being”

If a litigant feels their matter is urgent, they may contact the Clerks office to be referred to a Judge to make a determination

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Provincial Court: Resources



Provincial Court COVID-19 Civil Matters page:

<https://www.albertacourts.ca/pc/resources/covid/covid-19-civil-matters>

Provincial Court of Alberta Q & A:

https://www.albertacourts.ca/docs/default-source/pc/the-court-answers-questions-from-the-bar---cba-webinar.pdf?sfvrsn=23d29d80_2

Urgent filing:

<https://www.albertacourts.ca/pc/resources/covid/covid-19-civil-matters>

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Court of Appeal: Filing



If an appeal had not been set for hearing, then deadlines falling on or before May 4, 2020, are **EXTENDED BY TWO MONTHS**

Steps that fall after May 4 have **NOT** been extended

Steps related to appeals already set down for hearing are **NOT** extended

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Court of Appeal: Filing



Filing deadlines for commencement remain **UNCHANGED**

Electronic filing is encouraged but documents can be filed using a drop box

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Court of Appeal: Hearings



Appeals/applications before a panel are to be heard electronically

Appeals/applications before a single judge are to be heard by audio conference

Parties may consent to have an appeal or application heard on the paper record only

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Court of Appeal: Hearings



Parties may consent to adjourn any matter *sine die*

- BUT applications for permission to appeal **MUST** be heard within 6 MONTHS
- All other applications **MUST** be heard within 3 MONTHS
- Otherwise they are deemed **ABANDONED**

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Court of Appeal: Other Information



Appellate JDR suspended until July 2, 2020

The CA adopted the QB practice regarding remote commissioning of Affidavits:

https://www.albertacourts.ca/docs/default-source/ca/notice---remote-commissioning-of-affidavits---april-2-2020.pdf?svrsn=4ded8080_1

The CA Announcements page:

<https://www.albertacourts.ca/ca/publications/announcements/notice-to-public-and-profession---covid-19>

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Tribunals



Tribunals may interpret Ministerial Order 27/2020 in different ways

- It is the Alberta HR Commission's opinion the Order only affects limitations periods **EXPIRING between March 17 – June 1, 2020**
https://www.albertahumanrights.ab.ca/complaints/faqs/Pages/time_limit.aspx
- Other tribunals may read the Order differently so **err on the side of caution**

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Litigating Remotely: Tips and Tricks



“The show must go on”
Freddie Mercury

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Litigating Remotely: Tips and Tricks

“[T]hese are not ordinary circumstances and we have entered a period in which much that is around us is and is going to continue to be unsatisfactory. I think we must try our best to make this trial work. If it becomes unworkable then it can be adjourned, but we must at least try.”

Capic v Ford Motor Company of Australia Limited (Adjournment) [2020] FCA 486 at para 25

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Video-Conferencing 101: Appearance

- Use natural lighting, if possible;
- Avoid sitting with your back to a window;
- Facing a window will give you soft, people-pleasing light;

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Video-Conferencing 101: Appearance

- Wear solid-coloured clothing in warm tones;
- Avoid patterns and all-red, all-white, or all-black outfits;
- Scarves or neckties are your best opportunity to deliver a pop of color

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Video-Conferencing 101: Appearance

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- Ensure your computer camera is positioned at eye-level;



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Applications

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Court of Appeal holding video hearings:
[https://www.albertacourts.ca/docs/default-source/ca/reference-and-etiquette-guide-for-electronic-hearings-\(lawyers-litigants\)-website.pdf?sfvrsn=503d9d80_6](https://www.albertacourts.ca/docs/default-source/ca/reference-and-etiquette-guide-for-electronic-hearings-(lawyers-litigants)-website.pdf?sfvrsn=503d9d80_6)

Queen's Bench: "urgent" or "emergency" civil applications by telephone or Webex
<https://www.albertacourts.ca/qb/court-operations-schedules/urgent>

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Applications: Tips & Tricks

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Make sure the Court has all of the materials it needs:

- "In light of the suspension of Court due to Covid-19, I am currently working from home without ready access to the file."

Per Master Robertson, *ConocoPhillips Canada Operations Ltd v 1835651 Alberta Ltd*, 2020 ABQB 282

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Applications: Tips & Tricks

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Plan to deal with documents and exhibits in advance:

- Same rule as pre-COVID:** make life as easy for the Court or witness (as the case may be) as possible
- Consider your software
- Provide documents in advance if appropriate
- Ensure documents are hyperlink indexed and OCR searchable
- DO NOT "data-dump"

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Applications: Tips & Tricks



For video applications make sure you have the right software, and sufficient connection speed and bandwidth:

<https://www.howtogeek.com/663874/12-tips-for-video-conferencing-while-you-work-from-home/>

<https://www.speedtest.net/>

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Applications: Tips & Tricks



Video applications 101:

- Mute your mic when you aren't speaking
- Speak (even) more slowly than normal
- Identify yourself when you speak
- Don't "call in" from multiple devices
- If sharing your screen, turn off "pop up" notifications and close other windows
- Suggest "peripheral" parties attend only via audio

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Remote Questioning: Tips & Tricks



Calling evidence remotely:

- Prepare your witness for the "virtual" process
- Have a plan for exhibits and documents
- **Do not** coach your witness
- Coaching a witness led to reprimand from LSA
<https://documents.lawsociety.ab.ca/wp-content/uploads/2020/02/Adelowokan-Fikemi-HE20190139-Order-Public.pdf>

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Alternatives to the "Normal Course"



Interrogatories vs questioning?

(Virtual) Mediation?

(Virtual) Arbitration?


(Courts are allowing arbitration recognition applications to proceed)

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Conclusion



These are difficult times, and we must all adapt to better serve our clients

On the bright side, the Courts seem to be clear that once this is over, there is no going back to the “old ways”

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Your Presenters:




Andrew Wilson
Managing Partner

Kaila Eadie
Associate



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