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Introduction

This Special Edition is the fourth in our Special Edition series of the Rules Newsletter.

As we move towards a re-opening of Alberta’s economy, and an eventual increase to court services, we at Jensen Shawa Solomon Duguid Hawkes LLP continue to monitor the effects on civil litigation in Alberta.

We can provide Virtual Alternative Dispute Resolution to help move your matter forward. It is progressive, efficient and safe (<https://www.jssbarristers.ca/files/pdf/virtual-dispute-resolution.pdf>).

Alberta Court of Appeal

Notice: COVID-19 Electronic Hearings April 8, 2020

The Court of Appeal issued a [Notice to the Profession and Public](#) on April 8, 2020 which addressed some of the concerns arising from electronic Proceedings. This *Notice* stipulates that electronic hearings are open to participants, legal counsel, and members of the accredited media which represent the public interest. The Court of Appeal is currently working towards accommodating interested members of the public who wish to view the proceedings. Members of the accredited media must contact the appropriate Registry to request electronic access to the hearing.

The Court is now requiring all non-lawyer participants, including self-represented litigants, to sign an [undertaking](#) not to record the Proceedings in order to protect the Integrity of the process, and to protect the privacy interests of the participants.

Notice to the Profession: Court of Appeal Sitting Dates

On April 28, 2020 the Court of Appeal released a [Notice to the Profession](#) which sets out all Appeal sitting dates for the year 2021. In addition to setting out the location of each sitting date, the *Notice* stipulates that with the exception of sentencing Appeals, all hearings commence at 10:00 a.m. Parties should consult the [scheduling guide](#) with respect to any hearings in which they are involved.

Letter from Chief Justice Fraser to the CBA and Law Society of Alberta

On May 6, 2020 Chief Justice Fraser of the Alberta Court of Appeal addressed a [letter](#) to the Canadian Bar Association (**CBA**) and Law Society of Alberta (**LSA**) which highlights the challenges Alberta's Courts are facing due to the COVID-19 crisis, and outlines the measures which are being implemented in response.

It is noted in the letter that remote proceedings have presented new procedural, privacy, and policy issues. In response the Court of Appeal now requires Counsel to have their clients sign undertakings not to record the proceedings, and has published a [Reference and Etiquette Guide](#) to assist Counsel in remote proceedings.

The Court of Appeal continues to function at full capacity by hearing all proceedings remotely and accepting all correspondence as well as case and motions filings electronically. The Court is continually adjusting online hearings, including fine tuning the WebEx platform to allow for more connections from multiple locations.

The Court of Appeal Management System ("**CAMS**") is an electronic file management system implemented prior to the COVID-19 outbreak. The Court, through CAMS, will introduce an electronic filing system with a targeted release date of August 31, 2020.

Court of Queen's Bench

Master Order #4

The Court of Queen's Bench has extended the limitation of hearings to emergency and urgent matters to June 26, 2020, pursuant to [Master Order #4](#). Master Order #4 supplements (but does not replace) [Master Order #3](#).

Applications before a Master in Chambers - Without Notice

For applications that may be made [ex parte or without notice](#), an Applicant must submit:

- (i) Material in support of the Application (such as an Affidavit, Trustee's Report or other evidence); and
- (ii) Proposed form of the Order being sought.

If the Application is granted, the Court will file the Order, and the Applicant will be required to pay outstanding fees prior to the Order being returned to the Applicant, pursuant to a change in process [announced](#) May 22, 2020.

Applications before a Master in Chambers - With Notice

For applications [requiring notice](#) and where each party is represented by Counsel, the Applicant may submit the Application by desk application with written argument. All Counsel must consent and agree to proceed in this manner. To indicate all Counsel consent, a Consent Order must be submitted as well. If a Special Chambers Application had been scheduled between March 16, 2020 and June 26, 2020 which was adjourned by a Master Order, the Consent Order must indicate such.

For applications requiring notice, the Applicant must provide to the parties opposite:

- (i) Application;
- (ii) Material in support of the Application;
- (iii) Brief and Authorities; and
- (iv) Proposed Form of Order.

For applications requiring notice, the Respondent must provide to the parties opposite:

- (i) Responding Affidavit or other evidence pursuant to Rule 6.11;
- (ii) Copy of responding pleadings and any other pleadings being relied upon;

- (iii) Brief and Authorities; and
- (iv) Proposed Form of Order.

Once the above documents have been exchanged, the Applicant must provide a complete package to the Clerk, with the Consent Order. Briefs for simple applications are limited to 7 pages, whereas briefs for Special Chambers are limited to 20 pages.

Deadlines for the exchange and submission of documents are outlined in the [announcement](#). Responses will be returned by email, including the Order with brief reasons, or the decision denying the Application.

If the Application is granted, the Court will file the Order, and the Applicant will be required to pay outstanding fees prior to the Order being returned to the Applicant, pursuant to a change in process [announced](#) May 22, 2020.

Applications before a Justice in Chambers - Without Notice

For applications that may be made [ex parte or without notice](#), an Applicant must submit:

- (i) Material in support of the Application (such as an Affidavit, Trustee's Report or other evidence); and
- (ii) Proposed form of the Order being sought.

If the Application is granted, the Court will file the Order, and the Applicant will be required to pay outstanding fees prior to the Order being returned to the Applicant, pursuant to a change in process [announced](#) May 22, 2020.

Applications before a Justice in Chambers - With Notice

In cases where each party is represented by Counsel, and Counsel consent, [applications](#) may be submitted to the Court by desk application with written argument. Such applications include:

- Master Appeals;
- Appeals from the Provincial Court Civil Division;
- Estate matters, such as interim distributions, advice and directions;
- Minors' Property settlements or settlements involving persons under a Trusteeship Order; and
- Forfeitures (i.e. proceeds of crime).

The Court will not allow restraining orders, landlord-tenant stays/appeals or contempt applications to proceed by desk application at this time.

The same documents as required for Master in Chambers are required, including a [Consent Order](#). If the Application is granted, the Court will file the Order, and the Applicant will be required to pay outstanding fees prior to the Order being returned to the Applicant, pursuant to a change in process [announced](#) May 22, 2020.

Masters Chambers and Justice Chambers - Applications by WebEx

Starting June 3, 2020, Masters Chambers will be proceeding remotely via WebEx video and audio. This process will be available for parties who are unable to proceed by electronic desk application with consent of Counsel.

In Calgary and Edmonton, regular Masters Chambers will be hosted Tuesday through Friday at 10 a.m. Mondays will be reserved for the bankruptcy hearing list.

In Calgary and Edmonton, regular Civil Chambers (Justice) will be hosted every Court sitting day.

In order to secure a date, parties must check the [Operations & Schedules page](#). Once a date is selected, the Application and proposed form of Order should be submitted through [the electronic filing process](#).

Provincial Court of Alberta

Covid-19 Staged Resumption of Court Operations

On May 19, 2020 the Provincial Court released an updated version of Part 1 of the [Staged Resumption of Court Operations](#) (the “**Resumption Plan**”), which applies from May 25, 2020 to July 3, 2020. Courthouse access during this phase of the Resumption Plan continues to be restricted to only those parties who are necessary attendees to the Proceedings, including counsel, litigants, accused persons, witnesses, support workers, and members of the media. The number of attendees will be limited in accordance with Public Health Orders in effect at that time relating to the permissible size of gatherings. All public health guidelines, including social distancing protocols, must be complied with while attending the courthouse.

While all Circuit Court locations will remain closed during this phase of the Resumption Plan, the update outlines which Courthouses will be [open](#), albeit on a reduced basis. As the scheduling of Court time varies based on location, parties are directed to consult the updated [scheduling guide](#) or to email the relevant court location to make any necessary inquiries.

In-person appearances will not be permitted for civil matters at any Court location. Applications which can proceed by way of teleconference may be scheduled, with the usual filing and service of Notice of the Application and supporting documents continuing to apply. The Provincial Court will also be accepting Desk Applications at the drop boxes in Calgary, Edmonton, and other

regional Courthouses which are operating during Part 1 of the Resumption Plan. Only urgent matters will be accepted for filing at the counters, while all other matters may be filed at the drop boxes in Calgary, Edmonton or as directed by regional Courthouses.

Pretrial Conferences, Simplified Trials, and Binding Judicial Dispute Resolutions scheduled between May 25, 2020 and July 3, 2020 will proceed as scheduled via video or teleconference. Trials scheduled during Part 1 of the Resumption Plan will be referred to Case Management by a Judge to assess trial readiness, the possibility of settlement, as well as suitability of proceeding with a trial via video or teleconference. Matters which are deemed unsuitable for trial by video or teleconference will be adjourned. Parties will be contacted in advance of the trial date to schedule Case Management by video or teleconference.

All emergency matters will continue to be heard in accordance with the [protocols](#) currently in place, as addressed in our [Special Edition Newsletter #1](#).

Letter from Chief Justice Fraser to the CBA and Law Society of Alberta

With respect to the Provincial Court, Chief Justice Fraser's [letter](#) addresses the difficulties the Court has encountered in maintaining operations remotely, due to the high volume and diverse scope of matters this Court hears. Chief Justice Fraser also notes that the Provincial Court has successfully conducted a number of hearings using videoconferencing technology, and how this technology is being implemented in Courthouses across the Province to bolster the Court's ability to provide service. These measures are currently being rolled out with the assistance of the Government of Alberta's \$27 million-dollar investment into digital infrastructure within Courthouses.

Additionally, the Court is currently striving to reschedule and hear previously scheduled trials, which have been administratively adjourned over the course of the pandemic. Efforts at rescheduling will be buttressed as digital infrastructure becomes more widely accessible across the Province, therein increasing the volume of matters which can be heard.

Chief Justice Fraser's letter outlines the Provincial Court's ongoing plan to expand the scope of documents which will be accepted for filing in drop boxes, as well as implementing electronic filing measures to reduce the Court Clerks' potential exposure to COVID-19. The Court is also conducting an assessment on the feasibility of implementing a procedure for the remote swearing of Affidavits, as has been adopted by both the Court of Queen's Bench and the Court of Appeal.

The use of WebEx in courtrooms continues to be tested and rolled out across the Province, and phone lines are being upgraded in some regional Courthouses to enable to the use of teleconference proceedings. Finally, all levels of Court are currently in discussions on what a COVID-19 adapted Courtroom may look like, including the use of plexiglass dividers and other measures to ensure the health and safety of all attendees. Once details are finalized, the plan is to introduce these reconstructed Courtrooms across the Province.

Federal Court of Appeal

Notice to the Parties and Profession April 15, 2020

In this [Notice to the Parties and Profession](#) dated April 15, 2020 the Federal Court of Appeal issued guidelines on which matters could be exempted from the [March 19](#) and [April 2](#), 2020 *Notices*, which respectively created and extended a suspension period of all deadlines arising from Rules, Orders, and Directions of the Court. The particulars of the suspension period were explored in our Special Edition Rules Newsletters [#1](#), and [#2](#).

Matters which can now move ahead are selected based on the nature and complexity of the case, the extent to which the record is in, or can be converted to, electronic format, and the resource allocation challenges facing the Court's Registry.

Matters in which the Parties have completed all required procedural steps may be advanced (i) based on written materials, (ii) via teleconference or videoconference, or (iii) or by in-person attendance of the Parties, although the Court is not yet prepared to offer this option.

The Court will consider which of the above processes is the most appropriate based on the nature and complexity of the case, and any other relevant consideration that may have a bearing on the selected procedural mode. In choosing the method of adjudication, the assigned panel will have an overriding discretion to direct the Parties to prepare additional written submissions, attend for video or teleconference, or hold an in-person hearing (at a later date) to address any particular questions or issues.

When the Court determines that a matter should be moved forward based on written materials, the Court will issue an Order to that effect, and will permit the Parties to file five pages worth of supplementary written submissions over and above the already filed memoranda of fact and law. These submissions must be emailed with an informal covering letter to Information@fca-caf.ca within one week of the Order.

If Parties are dissatisfied with the Court's choice to adjudicate the matter based on written materials, they may voice this objection with supportive reasons in their supplementary written submissions. The Panel is free to dismiss the objection and decide the matter in writing, uphold the objection and direct the Parties to a hearing via video or teleconference, or to adjourn the matter until such a time when an in-person hearing is possible.

Where the Court makes a preliminary determination that the matter should be heard via video or teleconference, the Judicial Administrator will contact the Parties to canvass availability and, thereafter, the Court will issue an Order setting out a schedule for the hearing. Where Parties object to proceeding via video or teleconference, written reasons for that position may be filed with the Court in the same manner as discussed above. Once again, the Court may dismiss the objection and proceed with the remotely held hearing or may adjourn the matter for an in-person hearing.

Where all procedural steps have not been taken in a given matter, if appropriate, the Court may issue a direction to move the case forward and, in so doing, will notify the Parties as to the date after which the timelines suspended by the Courts' *Notices* to the Public and Profession will once again begin to run. After all procedural steps have been satisfied, the Court will decide as to the most appropriate medium of proceeding, as described above.

Lastly, if a matter is not selected by the Court to be moved forward during the suspension period, this April 15 *Notice* reiterates that Parties are permitted to request that their matter be adjudicated by video or teleconference, or must be heard on an emergency or urgent basis in accordance with any past Court updates, which are compiled [here](#), and have been discussed in versions #1 and #2 of our Special Edition Rules Newsletter. All such requests must be in the form of an email or informal letter sent to Information@fca-caf.ca.

Notice to the Parties and the Profession May 12, 2020

On May 12, 2020 the Federal Court of Appeal released another [Notice to the Parties and Profession](#), which extends the previously issued suspension period discussed above from May 15 to May 29, 2020. All prior *Notices* from the Court remain in force and effect, except to the extent which the suspension period has been extended, or other amendments are introduced by subsequent *Notices*.

This *Notice* also stipulates that the Federal Court of Appeal will be accepting Affidavits which were sworn, affirmed, or commissioned remotely during the suspension period. The Court will permit the filing and use of Affidavits crafted in accordance with guidelines disseminated by any Canadian Superior Court. As such, Parties may wish to refer to the [process](#) set out by the Alberta Court of Queen's Bench, and subsequently adopted by the Alberta Court of Appeal.

COVID-19 Suspension Period Extended to June 15, 2020

On May 28, 2020 the Federal Court of Appeal [announced](#) that the suspension period has been extended to June 15, 2020.

Federal Court

Practice Direction and Order (Covid-19) #2 April 29, 2020

As of April 29, 2020 the Federal Court issued [Practice Direction and Order \(Covid-19\) #2](#), ("**Practice Direction #2**" and "**Order #2**") which amended the previous *Practice Direction and Order* of April 4th. The Previous *Practice Direction and Order* remain in force, except where expressly amended in *Practice Direction #2 or Order #2*.

Practice Direction #2 extends the previously issued suspension period from May 15, 2020 up to and including May 29, 2020. Additionally, *Practice Direction #2* states that, subject to the exceptions therein, the Court will not hold any hearings until June 20, 2020.

Furthermore, deadlines for filing and the taking of procedural steps are extended by 14 days after the termination of the suspension period. Thus, if a party had three days prior to March 16th (the date on which the initial suspension period commenced) to take a step, the party will have those same three days plus an additional 14 days after May 29, 2020 to take that step. The deadline in this example would therefore become June 15, 2020. Deadlines for taking any subsequent steps would be similarly extended.

Order #2 also suspends any timelines running against parties from the following sources:

- Orders and Directions of the Court made prior to March 16, 2020;
- Timelines as set out in the *Federal Courts Rules*; or
- Arising from the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*;
- Subsection 18.1(2) of the *Federal Courts Act*;
- Subsection 72(2) of the *Immigration and Refugee Protection Act*; and
- Subsection 22.1(2) of the *Citizenship Act*.

Order #2 waives any fees payable on filing or issuance under Item 1 of Tariff A of the Federal Courts Rules, or under Rule 23 of the Federal Courts Citizenship and Refugee Protection Rules. Furthermore, *Order #2* decrees that the additional 14-day extension does not apply to the above listed items.

Pursuant to *Practice Direction #2*, subject to the exceptions outlined herein, all hearings scheduled to proceed between May 16, 2020 and June 28, 2020 are adjourned *sine die*, and all General Sittings scheduled for that period are cancelled. Parties are responsible for contacting the Court and requesting that their matter be placed on the General Sittings list after the suspension period lapses. Exceptions to the suspension period include the following:

Urgent or exceptional matters may still be heard, as per the criteria established by the [April 4, 2020 Practice Direction and Order](#). As outlined by that previous *Practice Direction and Order*, what constitutes urgent or exceptional is determined on a case-by-case basis, and the Court must receive all relevant documents to make an adjudication on whether the matter may be heard.

The Court will also continue to conduct Case Management and issue Orders and Directions where it is appropriate to do so. The 14-day extension described above does not apply to files that are case managed by the Court's prothonotaries. When the Court moves forward in this fashion:

- All required documents must be filed electronically, as set out in the April 4, 2020 [Practice Direction and Order](#), or as otherwise directed by the Case Management Judge;

- These documents must be made available to all Parties electronically; and
- Subject to the exercise of discretion by the Case Management Judge, any matters requiring resolution or adjudication shall be determined in writing, by telephone conference or by video conference.

The Court may also hear matters via telephone or video conference during the suspension period where a Party to the Proceeding makes a request to that effect. These requests will be assessed on a case-by-case basis, and subject to the following considerations:

- A joint schedule of the Parties' availability must be provided to the Court;
- All documents must be [filed electronically](#) and provided to the Parties in electronic format, including all documents previously filed in paper format, except where otherwise directed by the Court.

The Court has also retained discretion to move certain matters forward during the suspension period, and will be contacting the Parties to arrange scheduling, subject to the availability of all documentation to the Court and the Parties either in paper, or electronically. Matters falling into this category have been identified by the Court as being close, or ready, to proceed, and thus will be heard via telephone or video conference in order to ease the backlog which has accumulated as a result of the Covid-19 crisis. Thus, Parties should be aware that the suspension period is not absolute, and that their matter may be pushed ahead by the Court.

The Court is also continuing to adjudicate matters made in writing pursuant to *Rule 369*, Applications for Leave to apply for judicial review, and any other matters that the Court is requested to determine in writing. The Court is encouraging Parties to consent to proceed in writing with respect to any matter that would normally be determined in person, by teleconference or videoconference, by sending a request to the Registry using the Court's E-filing Portal. In such matters, all documents must be filed electronically and provided to the Parties in the same fashion as [described above](#).

Practice Direction #2 also advises that consent of all Parties is not a precondition to moving a matter forward pursuant to any of the above exceptions during the suspension period, except for request to proceed in writing with respect to

- (i) a matter that had previously been scheduled to be heard in person, by teleconference or by video conference, and
- (ii) a matter that had not previously been scheduled, but would ordinarily be adjudicated other than in writing.

For all other matters, when one or more of the parties does not consent to the matter advancing, the Court will consider whether, based on the circumstances, there is a true impediment to

proceeding by video conference or teleconference, before making a decision as to whether, when and how to proceed.

Proceedings will be rescheduled as per the process outlined in the [April 4, 2020 Practice Direction and Order](#), subject to the amended dates as outlined in *Practice Direction and Order #2*, as well as the Court's determination as to how the matter should be heard (via telephone or videoconference) and the Court's availability for that type of hearing. Parties will be given a minimum of two weeks' notice of their rescheduled hearing, except where the Parties consent to an earlier date, or the Court determines that the matter should be heard on an emergency or urgent basis.

All videoconference hearings will be conducted on Zoom, and the Court plans to release a document to members of the Bar, public, and media which outlines the Court's approach to such hearings, as well as the process for document sharing in the proceedings.

Finally, where a matter has been adjourned as a result of the suspension period, the Parties must provide to the Court's Judicial Administrator their dates of non-availability up to December 18, 2020 by no later than May 15, 2020. Such correspondence must be done by emailing FCT-AUDIENCES@FCT-CF.ca, except where the matter has been referred to Case Management in which case the email must be sent to the Case Management Judge.

Ministerial Order 27/2020

According to communications from the Law Society of Alberta, this Order will not be renewed, and therefore expired as of June 1, 2020.

DISCLAIMER: This publication is not legal advice, and should not be relied upon as legal advice. While we intend to provide generalized information that is accurate as at the date of publication, it is possible that the information contains errors or omissions. We disclaim any liability for errors or omissions. Actions taken, or not taken, in response to legal concerns should be guided by individualized legal advice provided within a solicitor client relationship. The creation of a solicitor client relationship can be discussed upon direct contact with a lawyer.