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Introduction

This Special Edition is the fifth in our Special Edition series of the Rules Newsletter. This edition will summarize the current state of affairs at each level of court, as well as highlight important announcements since our fourth Special Edition.

Note, if you are attending in-person at the Court of Appeal, Court of Queen’s Bench or Provincial Court of Alberta, you will now be required to wear a [face mask](#) to enter the buildings and in all public areas.

As Alberta moves towards a re-opening of the economy, and an eventual increase in 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.

Alberta Court of Appeal

The Court of Appeal continues to function at full capacity by hearing all proceedings remotely and accepting all correspondence, and 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.

[Notice: Resumption of Appellate Judicial Dispute Resolution](#)

The Court had previously suspended appellate judicial dispute resolution, but it is now proceeding through remote video conferencing. To schedule a JDR at the Court of Appeal, contact the [Case Management Officer](#).

At this time, bar call admission ceremonies at the Court of Appeal will continue to be conducted through remote video conferencing.

Court of Queen’s Bench

The Court of Queen’s Bench is providing more services. The filing deadline suspension enacted through Master Orders #1-4 expired as of June 26, 2020 and the Court has reverted to the timelines found in the *Rules of Court*. E-filing remains the preferred method to file documents, and the Court asks that you follow the [guidelines](#) and new [protocols](#) announced July 27, 2020 for filing documents electronically.

The guidelines remind parties, on filing by email, to follow the protocol. The protocol provides a naming convention for all documents sent for filing. Effective August 4, 2020, if the naming convention is not followed, documents will be returned unfiled. The guidelines emphasize that, for desk and Chambers applications, all documents relied upon, even if previously filed, should be included. Electronic documents must be well organized, easily accessible, have descriptive titles allowing them to be distinguished, must be searchable (OCR) PDFs not exceeding 100MB, without password protection. The Court encourages a format that allows cutting and pasting. Documents with attachments, such as Affidavits, Briefs and books of Authorities, should be bookmarked with proper bookmark descriptions. Where practicable, hyperlinks (to open source services) should be used for authorities, evidence and other documents. Pagination rules from the Rules of Court and Practice Notes apply to documents filed electronically.

The Court has cancelled the Emergency/Urgent Hearing request process, and matters will now be scheduled in regular chambers via remote video conferencing.

Ex parte, without notice applications can be made before a [Master](#) or [Justice](#) by desk application. The Applicant must submit the materials in support of the Application and the proposed form of Order in accordance with the email filing instructions (see [Master](#) or [Justice](#)). The Court’s decision on the Application will be returned by email, in the form of an endorsed Order, possibly with brief reasons, or an Endorsement requiring additional information, or reasons for denying the Application.

[Consent](#) orders from a Master or Justice can be obtained by email. The Consent Order should be submitted in an unlocked format (which allows electronic signatures by the Court). The email must conform with a naming convention (see [Consent](#) orders).

Where both parties are represented by counsel, with notice applications can be made before a [Master](#) or [Justice](#) by desk application with written argument. Counsel must agree to proceed by desk application with written argument, with the Court reserving the ability to order this process “in exceptional circumstances”. The agreement to proceed by desk application with written argument must be confirmed in the form of a Consent Order, and submitted to the Court in accordance with the Consent Order process (see above). Materials to be provided to the Court, on notice to parties opposite, are required (see [Master](#) or [Justice](#)). Once all filing deadlines have passed, the Applicant is responsible for providing all of the required materials to the Clerk (including the Court-approved Consent Order agreeing to the process), in accordance with the Court’s procedure, with a request that the desk application be submitted for determination by the Court. This process is subject to page limits on briefs, and timing triggered by the date that the Consent Order to proceed with a desk application with written argument is granted (or alternate dates can be set through the Consent Order). On considering the desk application with written argument, the Court may direct an oral hearing on some or all of the issues.

[Bar call admission ceremonies](#) continue to be held remotely, with the option of broadcasting on Webex to friends and family.

[Remote Half-day Civil Special Chambers](#)

The Court of Queen’s Bench is now scheduling half-day Civil Special Justice and Masters Chambers applications through Webex remote video conferencing. Request forms must be submitted in order to obtain a date, and the materials enumerated in the announcement must be provided to the Court and to party(ies) opposite.

[Binding Judicial Dispute Resolution](#)

Until September 4, 2020, the Court of Queen’s Bench is offering remote binding Judicial Dispute Resolutions (“JDR”) when all parties are represented by Counsel. To schedule a JDR, booking procedures are posted online [here](#) and parties must submit a [JDR Booking Request Form](#) (note, these online forms are usually not compatible with Google Chrome). Completed forms are sent to JDRBookingsEdmonton@albertacourts.ca to schedule Calgary and Edmonton binding JDRs. At this time, the Court is advising that there are no JDR bookings available in the Fall 2020 schedule.

[E-Searches Portal](#)

This portal was recently announced and allows Albertans to submit, for a fee, online search requests to obtain records from the Court of Queen’s Bench Civil and Bankruptcy divisions.

[Reviews and Assessments](#)

Reviews and assessments may now be scheduled to be heard by telephone.

[Fax Filing](#)

Effective September 1, 2020 the Court will no longer accept filing by fax as an authorized means to file. In-person or email filing are still acceptable.

Provincial Court of Alberta

The Provincial Court continues to pursue a staged resumption of services. The current stage allows for civil trials to continue as scheduled and new applications can now be booked. To the extent that Webex and other remote technologies can be used, the Provincial Court encourages it. Otherwise, in-person access to the courthouse will require attention to new safety procedures as described below.

[COVID-19 Staged Resumption of Court Operations Part 2](#)

From July 6, 2020 to September 4, 2020 the Provincial Court of Alberta is increasing in-person services for civil matters as part of the Staged Resumption of Court Operations Part 2. During this period, [Base Point locations](#) will be expanding in-person services, although Circuit Court locations will remain closed. Base Point locations are found in larger centres, and provide all common Court services, while Circuit Courts are found in smaller centres, and are only able to provide limited services.

As of July 6, 2020, there will no longer be any presumptive adjournments for Provincial Court civil matters and civil matters scheduled after July 6 will proceed.

Mediations are proceeding by telephone in Calgary and Edmonton as previously scheduled, and future mediations can be held by telephone, WebEx and Zoom.

All pretrial conferences which were adjourned pursuant to the [COVID-19 Master Order](#) have been rescheduled, and those which were scheduled after July 3, 2020 will be proceeding as scheduled. In Calgary and Edmonton, pretrial conferences may be conducted in-person, although the Provincial Court is encouraging parties to appear remotely. Any in-person pretrial conferences will be held in courtrooms in order to provide sufficient space to comply with social distancing protocols. Pretrial conferences in court locations other than Calgary and Edmonton will proceed by teleconference.

As of July 6, 2020, all trials will proceed in person across the province, with policies in place to ensure the health and safety of all parties as discussed below.

Civil applications in Calgary and Edmonton can be heard in person after July 6, 2020 with a staggered schedule in place to prevent an influx of attendees at 9:30 and 1:30 each day. However,

the Provincial Court is continuing to encourage conducting applications by WebEx or teleconference, and parties can contact the courthouse clerks through the usual channels to canvass availability and scheduling for WebEx applications. Civil applications outside of Calgary and Edmonton will continue to be heard by teleconference.

Urgent filing of documents will be accepted at the civil court counters in Base Point locations, while all non-urgent documents will be accepted for filing at the drop-boxes. The drop-boxes will continue to operate on a 6-day turnaround time.

[Provincial Court COVID-19 Safety Measures](#)

In conjunction with the expanded in-person services implemented by the Staged Resumption of Court Operations Part 2, the Provincial Court has also adopted new protocols to maintain the health and safety of employees and attendees.

Access to the Provincial Court will be restricted to necessary parties to a proceeding, including counsel, accused, witnesses, complainants and support person, members of the media, parties to actions, and support workers. The courthouse Sheriffs will be screening parties upon entry to ensure that their attendance is necessary.

As mentioned previously, those attending at the courthouse must wear a face mask or protective face covering, maintain a physical distance of 2 metres from others, and sanitize their hands upon entry to the courthouse and courtroom. Parties are instructed not to attend the courthouse if they have travelled outside of Canada in the previous 14 days, are experiencing any symptoms that may be related to COVID-19 or have been directed by a doctor or public health official to self-isolate.

Parties to a proceeding will be required to confirm to the presiding adjudicator at the commencement of each day in court that, to their knowledge, they are not experiencing any symptoms that could be COVID-19 related, nor have they been in contact with any person who has the virus.

If counsel become aware of any potential witnesses who are hesitant to attend the Courthouse to give evidence due to health concerns prior to a scheduled proceeding, an adjudicator may consider whether it could be appropriate to allow the witness to give evidence by other means, such as by affidavit or by telephone or videoconference.

Capacity in courtrooms and waiting areas will be limited to the number of persons who can use the available seating while maintaining 2 metres between themselves and others. Courtrooms have been rearranged and measures such as plexiglass barriers have been introduced to accord with all health and safety protocols.

While in the courtroom, counsel may confer with the presiding adjudicator as to how they may communicate with their client or opposing counsel in order to maintain a safe physical distance,

and means which would ordinarily not be acceptable in court, such as text messaging, may be permitted in the interests of safety.

The presiding Judge or Justice of the Peace will retain ultimate discretion as to whether face masks will be required during the proceedings and may request that a party remove their mask while giving evidence. Prior to giving evidence, a witness will swear an oath to tell the truth with raised hand or by affirmation to tell the truth, and no bible, or other sacred text/objects will be present during the oath or affirmation.

The Provincial Court has also implemented new procedures to ensure the safe handling of all documents including exhibits and books of authorities. Courtrooms will be equipped with a document/exhibit transfer table or tray where parties should place any documents before the clerk and Judge or Justice of the Peace enter the courtroom. If following this procedure is not possible, then counsel must place the document on the transfer table or tray and return to counsel's table prior to the clerk collecting the document and handing it to the intended recipient. Parties must sanitize their hands before and after handling any documents. As this process is somewhat cumbersome, the Provincial Court is asking that parties attempt to limit the number of physical documents required during proceedings, or to electronically provide documents to the Court prior to attendance.

The Provincial Court will not be providing water for parties to a proceeding, and thus counsel and witnesses are encouraged to bring their own water bottles. Disposable pens, gloves, and hand sanitizer will be made available in all courtrooms. More stringent cleaning measures, which will be undertaken on a nightly basis, have been adopted to maintain health and safety.

Federal Court of Appeal

[June 11, 2020 Notice to the Parties and to the Profession](#)

The Federal Court of Appeal has lifted the suspension period imposed by the [March 19, 2020 Notice to the Parties and to the Profession](#), and extended by subsequent Notices, with respect to certain files.

On June 22, 2020 the Court posted on its [website a list of the files](#) for which the suspension period has been lifted (the **"Selected Files"**), which will be updated each following Monday. The Selected Files list displays the date on which each file appeared on the list. The suspension period will be lifted with respect to each file on the Monday after it first appears on the list. Parties to a proceeding should monitor the list to find out when the suspension period is lifted from their file before timelines begin to run against them. The suspension period will continue to apply indefinitely to all files not appearing on the Selected Files list.

For the purposes of computing time, the Court will not count the Monday on which the suspension period is lifted. Where the Monday on which the suspension period is lifted is a holiday, as defined in the *Federal Courts Rules*, the suspension period will be lifted on the following Tuesday, and this day will not count against the matter for the computation of time.

Parties may also bring a motion pursuant to Rule 369 to apply to have their matter included on the Selected Files list, or to have their file removed from the list. The motion can be sent by informal letter to FCARegistry-CAFGreffe@cas-satj.gc.ca. In assessing the motion, the Court will consider:

- The age of the file;
- The health and regulatory situation existing in the region where the files are being prosecuted;
- The availability and capacity of Court staff;
- The urgency of the file; and
- Any other considerations under Rule 3;

Due to the ever-changing nature of the public health situation, the Federal Court of Appeal retains discretion to remove any matter from the Selected Files list. In the event that a file is deselected by a motion pursuant to Rule 369, or by the Court at its discretion, the suspension period will be restored as of the date of deselection.

With the exception of Appeal Books and application records, parties may file all documents by email to FCARegistry-CAFGreffe@cas-satj.gc.ca. Parties are exempted from filing paper copies, except for Appeal Books and application records, which must be filed in paper form in accordance with the applicable Rules. Parties wishing to file these documents only or partly in electronic format may bring a motion under Rule 369 by sending an informal letter to FCARegistry-CAFGreffe@cas-satj.gc.ca. Filing fees have been reinstated as of June 29, 2020.

Any questions regarding electronically filed materials must be addressed to the [registry](#) by telephone, or email at Information@fca-caf.gc.ca.

In Selected Files, the requirement to file proof of service is reinstated as of the selection date. For any past filings, where a proof of service was not filed, the party must do so within 30 days of the matter's appearance on the Selected Files list.

The Court will continue to hear proceedings remotely via teleconference, video conference, or in writing until such time as in-person appearances are permitted. Where a jurisdiction is permitting in-person hearings, the parties may submit their preference of proceeding remotely, or in-person in their Requisition for Hearing, or by emailing the judicial administrator if a Requisition has already been filed.

Federal Court

The Suspension Period for the Federal Court expired June 15, 2020 for the Western Canada jurisdiction. Timelines for the filing of documents or other procedural steps in this jurisdiction

were extended to June 30, 2020. Matters that had been scheduled during the Suspension Period are now being rescheduled. All applications for judicial review and all general sittings will be heard remotely through video conference.

With the expiry of the Suspension Period, the Federal Court is no longer automatically deeming affidavits sworn remotely and pursuant to the guidelines of Superior Courts as acceptable. Parties should return to in-person practices or seek direction from the court.

Parties should continue to use the [e-filing portal](#) to file documents as possible.

The consolidated Practice Direction can be found [here](#), and the most recent Order is available [here](#).

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