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Introduction

Our Rules Newsletter has been made openly and widely available for the last decade to inform interested readers about decisions affecting the Rules of Court. It principally provides briefings of cases. We have a cumulative version, by Rule, to provide easy access to the consideration of any given Rule (<https://www.jssbarristers.ca/pages/rules/rules-newsletter.cfm>). We have been pleased to share that information with the bench and bar, as part of what we view as our duty to assist the profession.

Alberta, along with the rest of the world, is now experiencing unanticipated events, and those are unfolding rapidly and massively in every aspect of life. The impact extends to the Rules and civil procedure. We are tracking those changes, as it is part of our core business. We have decided that we would share the information that we are tracking, and some of the things that we are doing to adapt to these changes, to further assist the profession. We are doing so through a series of Special Editions of the JSS Rules. We will continue the regular publication of the Rules Newsletter quarterly and to update the cumulative case briefs on our website. This temporary series of Special Editions is supplemental to our usual publishing.

Please reach out to us at Jensen Shawa Solomon Duguid Hawkes LLP for further information on how the COVID-19 pandemic will affect your litigation. 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>).

This Special Edition is mostly geared to the Courts in the Province of Alberta.

Access to Courthouses in Alberta

Effective March 30, 2020, access to all Provincial Court, Court of Queen's Bench and Court of Appeal courthouses in the Province of Alberta have been restricted until further notice.

Members of the general public will not be permitted to enter a courthouse unless they are specifically enumerated in the notice to the public (https://www.albertacourts.ca/docs/default-source/qb/npp/notice-to-the-profession-public---restricted-access---2020.pdf?sfvrsn=5d2e8080_5).

Even those enumerated will be refused entry if they have been advised to self-isolate by public health officials or their doctor, are self-isolating as a result of travel or contact with individuals with COVID-19 or are experiencing any COVID-19 related symptoms.

Court of Appeal of Alberta

Filing

The Court of Appeal has not suspended or modified most ordinary filing deadlines (<https://www.albertacourts.ca/ca/publications/announcements/notice---covid-19>), and the

Court's Case Management Office remains open in order to consider requests for extensions, *fiats*, and other administrative directions (<https://www.albertacourts.ca/ca/registry/cmo>).

Effective March 25, 2020, except where otherwise directed by a Case Management Officer or a Judge: (a) where an appeal has not yet been set for hearing, and (b) the deadline to order or commence the preparation of the appeal record and transcripts or the filing of appeal records, transcripts, factums, extracts of key evidence and book of authorities falls on or prior to May 4, 2020, then (c) that deadline is extended by 2 months (<https://www.albertacourts.ca/ca/publications/announcements/notice-to-public-and-profession---covid-19>). All other "time limits remain in effect and must be respected". Where an appeal has been set for hearing, and has not been adjourned, the deadlines to order or commence preparation of the appeal record and transcripts, or the filing of appeal records, transcripts, factums, extracts of key evidence and books of authorities remain in effect.

Filing deadlines for commencement documents at the Court of Appeal (e.g., Notice of Appeal and Applications for Permission to Appeal), and for applications, continue to apply (<https://www.albertacourts.ca/ca/publications/announcements/notice-to-public-and-profession---covid-19>).

Counsel and parties are encouraged to file documents by email or fax, and a filed copy of the document will be returned by fax or email. Filing logistics are provided: (<https://www.albertacourts.ca/ca/publications/announcements/notice-to-public-and-profession---covid-19>). Email filings are limited to documents up to 100MB. The subject line in any emails (and presumably faxes) should contain the appeal number and style of cause. Counsel and parties will be temporarily exempted from the filing of paper copies, but will have to do so at a later time to be determined by the Court. Where email or fax filing is "not possible", there is a document drop-off with distancing rules and contact information requirements (<https://www.albertacourts.ca/ca/publications/announcements/notice-to-public-and-profession---covid-19>).

Fees for filings in civil matters can be paid electronically at <https://eservices.alberta.ca/courtofappeal-filing-fees-civil.html>. The receipt must be sent to the Registry, failing which the document will not be filed (<https://www.albertacourts.ca/ca/publications/announcements/notice-to-public-and-profession---covid-19>).

As the current public health crisis unfolds, the Court of Appeal encourages parties to remain alert to future updates which may impact scheduled Court appearances, filing deadlines and procedures.

Appellate Judicial Dispute Resolution has been suspended until July 2, 2020, and parties may book Appellate JDR dates beginning then (<https://www.albertacourts.ca/ca/publications/announcements/notice-to-public-and-profession---covid-19>).

Any parties filing matters in the Court of Appeal are encouraged to provide the Court with their email address to ensure a reliable means of communication with the Court in the event that there are any scheduling changes.

All correspondence with the Court of Appeal must be made by email or fax, and should be emailed to the Registry, not the Case Management Officer (<https://www.albertacourts.ca/ca/publications/announcements/notice-to-public-and-profession---covid-19>).

In person bar admissions will not be conducted by the Court of Appeal prior to July 2, 2020. Bookings may be made on or after that date. Bar admissions may be done by phone prior to then with a public ceremony conducted later (<https://www.albertacourts.ca/ca/publications/announcements/notice-to-public-and-profession---covid-19>). (Respectful *kudos* to the Court of Appeal for this thoughtful gesture!)

Appearances

As of March 23, 2020, all duty matters heard by a single Judge will proceed by telephone, unless otherwise directed by a Judge or Case Management Officer. Participants are required to provide the Court with additional contact information. Personal attendance in Chambers will not be permitted without prior authorization from a Judge or Case Management Officer (<https://www.albertacourts.ca/ca/publications/announcements/notice---covid-19>).

Parties are permitted to consent to adjourn any matter *sine die*. Parties have been expressly reminded that under Rule 14.44(2) applications requesting permission to appeal must be heard within 6 months or they are deemed to be abandoned, and under Rule 14.52 all applications not heard within 3 months are deemed to be abandoned. Applications for a *Fiat* to extend a time limit may, at this time, be made to a Case Management Officer.

All proceedings before a three Judge panel will be conducted via videoconference or telephone (<https://www.albertacourts.ca/ca/publications/announcements/notice---covid-19>), unless otherwise directed by a Case Management Officer or Judge. Anyone who feels that an in-person hearing is necessary must contact the Case Management Office to justify why that is the case, as in person attendance is no longer permitted without prior written authorization. In the same manner as with single Judge hearings, parties in a three Judge panel are permitted to consent to adjourn any matter *sine die*, although doing so does not affect the running of deadlines under Rule 14.44(2) or 14.52 (<https://www.albertacourts.ca/ca/publications/announcements/notice-to-public-and-profession---covid-19>).

Parties may consent to having the Court of Appeal decide an appeal (Rule 14.32(2)) or application (Rule 14.51) on the paper record only, without oral argument (<https://www.albertacourts.ca/ca/publications/announcements/notice---covid-19>).

The Court of Appeal's "essential functions", as of March 23, 2020, may be seen at https://www.albertacourts.ca/docs/default-source/qb/all-courts-notice-to-the-profession---appendices.pdf?sfvrsn=86018180_1.

Court of Queen's Bench of Alberta

Filing

The Court of Queen's Bench has suspended all filing deadlines under the Alberta Rules of Court, with the exception of those Rules applicable to the commencement of proceedings, including originating applications (https://www.albertacourts.ca/docs/default-source/qb/covid_19_amended_master_order_2_english_french.pdf?sfvrsn=e5da8180_1). The suspension is until May 1, 2020. The effect of this in civil litigation is that any party can initiate a step that would normally require a time limited response, but the time for the response is suspended. For example, if a party serves a Statement of Claim, the Defendants need not file a Statement of Defence. They may do so, as filing is available, but the filing deadline is suspended. As such, default proceedings are not presently available as a result of a Statement of Defence not being filed. The suspension date may change. For now, lawyers will be well-advised to diarize May 1, 2020 as the expiry date of the partial filing deadline suspension. Whether the suspension will be lifted, and how (i.e., with a grace period), is not yet known.

Note that there has been no notice suspending deadlines under litigation plans or case specific Court Orders. The suspension only applies to filing deadlines under the Rules.

Lawyers are urged to make use of expanded access to email and fax filing in order to better manage traffic at courthouse counters. Email contact information and the procedural requirements for email and fax filing are available (<https://www.albertacourts.ca/qb/resources/announcements/email-filing-of-court-documents>). The Court requests that the subject line of each email be in the following format: "[AREA OF COURT] CONSENT ORDER (IN CAPS) - File Number - Location". Documents will be stamped on the date received, although processing may be delayed. Regular filing fees will apply. The \$1 per page fee for fax or email filings (but not the regular fees for Statements of Claim, Statements of Defence, etc.) has been capped at \$20 until May 1, 2020. Lawyers, court runners and litigants attending at courthouses to file documents in person are directed to make use of the drop boxes or the other alternative forms of filing that have been made available.

The Clerk's offices remain open to accept filings, but access to the courthouse is limited to those who must be present (<https://www.albertacourts.ca/qb/resources/announcements/notice-to-the-public-and-legal-profession-restricted-access-to-courthouses>). The Courts have asked that members of the public not visit courthouses (<https://www.albertacourts.ca/qb/resources/announcements/courts-responses-to-covid-19-pandemic>).

Consent Orders may be signed by counsel and submitted to the Court (either for Justices or Masters) by email. The Court requests that the subject line of each email be in the same format as above: “[AREA OF COURT] CONSENT ORDER (IN CAPS) - File Number - Location”. The email addresses for each jurisdiction’s clerks’ office can be found here: https://albertacourts.ca/qb/resources/announcements/processing-of-master-justice-consent-orders-by-email?utm_source=QB+Announcements&utm_medium=newsletter&utm_campaign=Announcement+from+the+Court+of+Queen%27s+Bench+of+Alberta

Appearances

Effective March 16, 2020, until May 1, 2020, the Court of Queen’s Bench will be hearing Emergency or Urgent Matters only. The Court will make no new bookings in any matters that are not an emergency or urgent (<https://www.albertacourts.ca/qb/resources/announcements/covid-19-extension-of-suspension-of-sittings>). We are expecting an update from the Court of Queen’s Bench on or before April 29, 2020.

All Justice and Masters Chambers matters that were scheduled for hearing between March 16, 2020 and May 1, 2020, including Special Chambers hearings, are adjourned *sine die*. All civil trials that were scheduled for hearing between March 16, 2020 and May 1, 2020, and had not commenced by March 15, 2020, are adjourned *sine die*. All civil trials that were in process by March 15, 2020 must be rescheduled in consultation with the trial judge. All judicial dispute resolutions, pre-trial conferences, case management bookings and meetings, and Review Officer hearings that were scheduled for hearing between March 16, 2020 and May 1, 2020, are canceled and must be rescheduled. (https://www.albertacourts.ca/docs/default-source/qb/covid_19_amended_master_order_2_english_french.pdf?sfvrsn=e5da8180_1). The Court has been sending out notices of cancellation on at least some cases that were scheduled for hearing, but all cases are governed by Amended Master Order #2 (https://www.albertacourts.ca/docs/default-source/qb/covid_19_amended_master_order_2_english_french.pdf?sfvrsn=e5da8180_1).

Emergency Matters are described as “those in which serious consequences to persons or harm to property may arise if the hearing does not proceed, or if there is a risk of loss of jurisdiction or expiration of an existing protection or restraining order.” Such matters include:

- Orders relating to the pandemic, including quarantine orders;
- Injunctions, where there is *prima facie* urgency, including refusal of treatment or end of life matters;
- Civil Restraining Orders;
- Preservation Orders; and
- Urgent Orders in the nature of habeas corpus, certiorari, mandamus and prohibition.

Urgent Matters are described as “those that do not rise to the level of the first priority, but must nevertheless be addressed in a timely way in the context of a reduction in Court services” and include:

- Urgent Adult Guardianship and Trusteeship Orders;
- Receivership/CCAA stay extensions;
- Urgent Surrogate Orders;
- Anton Piller or Mareva-type injunctions; and
- Freezing Orders.

If you believe your matter is an emergency or urgent, the Court of Queen’s Bench has asked parties or counsel to contact the Court in the applicable region (https://www.albertacourts.ca/docs/default-source/qb/covid_19_amended_master_order_2_english_french.pdf?sfvrsn=e5da8180_1). The Court has provided a form which is required to seek leave for an emergency or urgent appearance (<https://albertacourts.ca/qb/court-operations-schedules/urgent>).

Members of the public who received a jury summons requiring them to attend for jury selection between March 13, 2020 and May 31, 2020 are released from that summons (<https://www.albertacourts.ca/qb/resources/announcements/suspension-of-upcoming-jury-trials-and-jury-selection>).

The Court of Queen’s Bench “essential functions”, as of March 23, 2020, may be seen at https://www.albertacourts.ca/docs/default-source/qb/all-courts-notice-to-the-profession---appendices.pdf?sfvrsn=86018180_1.

Alternative Dispute Resolution and Applications to Enforce Arbitration Awards

On March 17, 2020 an Order in Council was passed (Alta Reg 36/2020), amending several Rules. A change to Rule 4.16 was made effective immediately. The pre-existing version of Rule 4.16 provided:

Dispute resolution processes

4.16(1) The responsibility of the parties to manage their dispute includes good faith participation in one or more of the following dispute resolution processes with respect to all or any part of the action:

- (a) a dispute resolution process in the private or government sectors involving an impartial third person;
 - (b) a Court annexed dispute resolution process;
 - (c) a judicial dispute resolution process described in rules 4.17 to 4.21 [*Judicial Dispute Resolution*];
 - (d) any program or process designated by the Court for the purpose of this rule.
- (2) On application, the Court may waive the responsibility of the parties under this rule, but only if

- (a) before the action started the parties engaged in a dispute resolution process and the parties and the Court believe that a further dispute resolution process would not be beneficial,
 - (b) the nature of the claim is not one, in all the circumstances, that will or is likely to result in an agreement between the parties,
 - (c) there is a compelling reason why a dispute resolution process should not be attempted by the parties,
 - (d) the Court is satisfied that engaging in a dispute resolution process would be futile, or
 - (e) the claim is of such a nature that a decision by the Court is necessary or desirable.
- (3) The parties must attend the hearing of an application under subrule (2) unless the Court otherwise orders.

It is followed by an Information Note:

Note that under rule 8.4(3) [*Trial date: scheduled by court clerk*], the court clerk cannot schedule a trial date unless satisfactory evidence is produced that the parties have participated in a dispute resolution process or the Court, by order, waives this requirement under rule 4.16(2). If the Court sets a trial date under rule 8.5 [*Trial date: scheduled by the Court*] the Court may, if the conditions of rule 4.16(2) are met, give a waiver of that rule at that time.

The new amendments provide:

- (4) A case management judge or a case conference judge may, on application or on the Court's own motion, by order direct that the parties participate in a dispute resolution process.
- (5) In determining whether an order under subrule (4) should be made, the case management judge or case conference judge may consider all relevant circumstances, including
- (a) the issues in the litigation,
 - (b) the nature of the cause of action and the relief claimed,
 - (c) the identity, relationship and means of the parties,
 - (d) whether the action has proceeded to a stage at which alternative dispute resolution is likely to be successful, including whether record production and questioning are sufficiently advanced to support the dispute resolution process, and
 - (e) whether any of the factors in subrule (2) justify delaying, modifying or dispensing with the need to participate in a dispute resolution process.
- (6) As part of an order made under subrule (4), the case management judge or case conference judge may give directions respecting any aspect of the dispute resolution process, including
- (a) the identity of a neutral third party to be involved in the process,

- (b) where an equal sharing of the expenses is not appropriate, directions apportioning the responsibility of each party for the expenses of the neutral third party and other disbursements relating to the process,
- (c) the time, location, structure or conduct of the process, and
- (d) the consequences of the failure of any party to comply with any directions, or to pay its share of the expenses.

These amendments are a strong indicator that the Court will be imposing a culture shift towards alternative dispute resolution, including the use of private services. While the Court cannot impose an arbitration of a case or an issue on the parties, it appears that the Court can find a failure by a party to make use of alternative dispute resolution tools and can impose consequences on parties who fail to meet their alternative dispute resolution responsibilities. The scope and intention of these amendments will surely be clarified by the Court.

On March 31, 2020 the Court of Queen's Bench issued an Announcement addressing Alternative Dispute Resolution and the Enforcement of Arbitral Awards (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).

The Announcement provides a strong signal to counsel and parties:

In the context of the current suspension of hearings except those that are an emergency or urgent, the Court is encouraging counsel and the public to access alternative dispute resolution mechanisms, including mediation and arbitration. These processes will reduce delays in resolving family, civil and commercial disputes in light of the backlog that will seriously challenge timely scheduling of these matters in the Court once the suspension is lifted.

The Court has clarified access to the Court on contested applications to enforce Arbitration Awards pursuant to s. 49 of the *Arbitration Act*, providing the following directions:

1. The application shall be made in writing, shall include a detailed statement of the reasons that enforcement is claimed to be urgent, and shall be submitted electronically (using the email Consent Order filing process - <https://albertacourts.ca/qb/resources/announcements/processing-of-master-justice-consent-orders-by-email>).
2. The application shall be made on notice to the person against whom enforcement is sought, in accordance with the *Alberta Rules of Court*, and shall be supported by the original Arbitration Award or certified copy.
3. The application must include a proposed form(s) of Order.

4. The Court will deal only with applications which it considers to be urgent, and may only deal with interim enforcement, without a hearing, until COVID-19 restrictions are ended or reduced.

JSS Barristers can provide Virtual Alternative Dispute Resolution to help move your matter forward (<https://www.jssbarristers.ca/files/pdf/virtual-dispute-resolution.pdf>).

Provincial Court of Alberta

Filing

As of March 23, 2020, the Provincial Court will only be filing urgent or time sensitive documents, which include (<https://www.albertacourts.ca/pc/resources/covid>):

- Civil Claims where the limitation period/date is about to expire;
- Applications and Affidavits for extending time for service of a Civil Claim that will soon expire;
- Dispute Notes and other time sensitive pleadings;
- Notices of Appeal;
- Applications that are of an emergent nature (such as setting aside a judgment where collection proceedings have commenced, or Landlord/Tenant matters where safety is an issue).

Based on the above list of matters, the court will determine whether any application will be filed, and if or when a hearing will be set. As is clear from the nature of the items listed, the Provincial Court has not, at this time, modified any deadlines. Therefore, any filing and limitations deadlines should be treated as they were before the Covid19 crisis. For example, where there is a deadline to defend, the failure to do so within the pre-existing times prescribed could result in a default judgment being entered. Unlike the Court of Queen's Bench, the Provincial Court has not suspended any deadlines. It has, instead, decided to filter certain types of filings. Additionally, any deadlines by virtue of Orders or directions of the Court in a specific case have not been altered and will continue to apply.

Appearances

As of March 17, 2020, the Provincial Court announced that parties need not attend Court for family, civil, criminal court or provincial offences/traffic court, except where the matter is an in-custody or urgent criminal matter, or an urgent family or child protection matter. In fact, for those matters that are not in the specified categories, parties effectively may not attend. For now, the hearing is in abeyance. Members of the public are no longer permitted to enter the Provincial Court unless they are required to attend one of these urgent proceedings.

All Provincial Court civil matters, including trials, chambers list applications and pretrial conferences that were scheduled to be heard before May 22nd, 2020, including those that were scheduled to be conducted by telephone, are adjourned *sine die*.

At this time, proceedings which are scheduled to be heard after May 22, 2020 remain as scheduled, although parties are encouraged to contact the Civil Divisions Hotline to receive any scheduling updates at 403 297-7219 (Calgary) and 780 644-7638 (Edmonton), as the current health crisis may cause scheduled dates to change as the Courts adapt to the developing circumstances. For now, non-urgent family law matters which are scheduled between March 16 and May 22, 2020 will be rescheduled for 10 weeks from their originally scheduled dates.

With respect to the Province's smaller judicial centres outside of Calgary and Edmonton, some matters will still be heard, although locations may vary, as some circuit courts have now closed. Parties who have a matter scheduled in the Provincial Court outside of Calgary or Edmonton should contact the Courts to confirm the location of their hearing if it involves any of the following:

- Matters with statutory limitations or deadlines;
- Matters with a risk of violence or immediate harm to one of the parties or a child;
- Where there is risk of removal of a child;
- Apprehension orders;
- Initial Custody Hearings;
- First appearance after criminal apprehension;
- Mandatory reviews or show causes under the *Child, Youth and Family Enhancement Act*, *Protection of Children Abusing Drugs Act*, *Protection of Sexually Exploited Children Act*, *Mandatory Drug Testing and Disclosure Act*, and *Mental Health Act*;
- Warrants;
- Emergency protection orders;
- Family Pre-Trial Conferences and Child Protection Case Management Meetings, which will be conducted by telephone unless adjourned; and
- Child Protection Hearings where the parties have consented to a return such as Supervision Orders, Temporary Guardianship Orders or Permanent Guardianship Orders which will occur as agreed by counsel or as directed by the court.

The Court has been sending out notices of cancellation on at least some cases that were scheduled for trials or hearings.

As of March 17, 2020, all Traffic Courts in Alberta (held in the Provincial Court) are cancelled. Parties who have been issued an Appearance Notice must contact the courthouse they are required to attend via email, fax, or telephone prior to their appearance date if they wish to do any of the foregoing:

- Not dispute the ticket but request time to pay the fine;
- Adjourn the matter; or
- Plead not guilty and set a trial date. Not guilty pleas will also continue to be accepted by mail.

As a word of caution, parties who fail to contact the Court prior to their scheduled appearance date in Traffic Court may be convicted in their absence, or have a warrant issued for their arrest. The Provincial Court is no longer permitting parties to attend the courthouse to pay fines in person and directs that all fines be paid online, by mail, or through a registry office.

The Provincial Court's "essential functions" as of March 23, 2020, may be seen at https://www.albertacourts.ca/docs/default-source/qb/all-courts-notice-to-the-profession---appendices.pdf?sfvrsn=86018180_1.

Federal Court of Canada

Filing

The running of all timelines under Orders and Directions of the Court made prior to March 16, 2020, as well as under the *Federal Courts Rules*, subsection 18.1(2) of the *Federal Courts Act* and paragraph 72(2)(c) of the *Immigration and Refugee Protection Act*, are suspended until April 17, 2020. The suspension also applies to timelines or fixed dates set under Orders and Directions, unless they were explicitly set on a peremptory basis (Question 3, [https://www.fct-cf.gc.ca/content/assets/pdf/base/Federal%20Court%20-%20Cour%20f%C3%A9d%C3%A9rale%20Summary%20&%20FAQ%20COVID-19%20\(Eng-fr\).pdf](https://www.fct-cf.gc.ca/content/assets/pdf/base/Federal%20Court%20-%20Cour%20f%C3%A9d%C3%A9rale%20Summary%20&%20FAQ%20COVID-19%20(Eng-fr).pdf)).

With regard to existing Directions and Orders, any fixed specific date for completion of a step in a proceeding that is governed by the Court's suspension will be extended for a period equivalent to the period of the closure (Question 7, [https://www.fct-cf.gc.ca/content/assets/pdf/base/Federal%20Court%20-%20Cour%20f%C3%A9d%C3%A9rale%20Summary%20&%20FAQ%20COVID-19%20\(Eng-fr\).pdf](https://www.fct-cf.gc.ca/content/assets/pdf/base/Federal%20Court%20-%20Cour%20f%C3%A9d%C3%A9rale%20Summary%20&%20FAQ%20COVID-19%20(Eng-fr).pdf)).

The deadlines for commencing actions, appeals or applications under other statutes apply. All other statutory filing deadlines continue to apply (Question 5, [https://www.fct-cf.gc.ca/content/assets/pdf/base/Federal%20Court%20-%20Cour%20f%C3%A9d%C3%A9rale%20Summary%20&%20FAQ%20COVID-19%20\(Eng-fr\).pdf](https://www.fct-cf.gc.ca/content/assets/pdf/base/Federal%20Court%20-%20Cour%20f%C3%A9d%C3%A9rale%20Summary%20&%20FAQ%20COVID-19%20(Eng-fr).pdf)).

Parties are encouraged to use the Federal Court's e-filing portal to file documents. The e-filing portal can be found at: <https://www.fct-cf.gc.ca/en/pages/online-access/e-filing#cont>

The Federal Court has stated that for electronic "Signatures," with the exception of affidavits and statutory declarations, a party filing the document is not required to scan that document for the purpose of proving the presence of signatures. Documents filed solely with a typewritten (electronic) signature are considered to meet the signature requirement under Rule 66(3) of the *Federal Courts Rules*.

Appearances

Effective March 13, 2020 until April 17, 2020, the Federal Court facilities are closed to visitors and is open for urgent case-related matters only. All hearings during that period are adjourned *sine*

die. All General Sittings during that period are cancelled. To reschedule hearings, the Court asks that parties provide their dates of non-availability no sooner than May 1, 2020 and no later than close of business on May 15, 2020 to the Judicial Administrator or case management judge.

The Federal Court continues to hear urgent matters and will allow some matters to proceed as previously scheduled for exceptional reasons only. Parties may also submit a request to the Registry at fc_reception_cf@cas-satj.gc.ca to have the matter decided on the basis of written representations.

Urgent matters may include applications for a stay of release from detention or for a stay of removal from Canada if the release or removal is scheduled to occur during the court closure, or within a few days following the end of the closure [https://www.fct-cf.gc.ca/content/assets/pdf/base/Covid-19%20Practice%20Direction%20and%20Order_FINAL%202020-03-17%20\(for%20release\).pdf](https://www.fct-cf.gc.ca/content/assets/pdf/base/Covid-19%20Practice%20Direction%20and%20Order_FINAL%202020-03-17%20(for%20release).pdf)).

Notices to the Profession from the Federal Court can be found here: <https://www.fct-cf.gc.ca/en/pages/law-and-practice/notices#cont>

Federal Court of Appeal

Filing

As of March 16, 2020, the Federal Court of Appeal has implemented a suspension period, which extends until April 17, 2020. Accordingly, the Court has amended Rule 6 of the *Rules of Federal Court*, such that the period between March 16 and April 17, 2020 will not be included in the calculation of any deadline arising from the Rules of that Court. The ordinary Rules governing filing deadlines pursuant to sections 27 and 28 of the *Federal Courts Act* are still in force, although Judges of this court do have discretion to grant extensions after timelines have expired, in consideration of the current extraordinary circumstances.

In the same vein, all regular statutory filing deadlines for commencing appeals and applications remain unchanged, and cannot be extended or varied, except in the manners provided for in the governing statutes, as is ordinarily the case.

When the service of a document is statutorily required and that service deadline falls within the suspension period of March 17 to April 17, that document may be served after the end of the suspension period. Likewise, when parties file documents electronically during the suspension period, they are relieved from any obligation to file paper documents.

The Court has encouraged parties to file documents by email, rather than in person. Documents filed electronically may not exceed 25MB in size. <https://www.fca-caf.gc.ca/fca-caf/pdf/Notice-Covid-19-EN-deadlines-March-18-2020-FINAL.pdf>

Appearances

All hearings in the Federal Court of Appeal which were scheduled between March 17 and April 17, 2020 have been adjourned *sine die*. This includes proceedings that were scheduled to occur by telephone. In addition, all of the Court's general sittings during the above noted suspension date are cancelled, and any returnable matters which were cancelled during the suspension period will be rescheduled for at least two weeks after the end of the suspension period, subject to availability at the hearing's planned location.

This directive applies to all proceedings, save for urgent matters, and those that must proceed as scheduled for exceptional reasons. The Court has retained discretion to determine whether a matter falls into either one of these exceptions on a case-by-case basis. Finally, any previously scheduled matter falling within one of these two exceptions will be heard via telephone.

In the event that a hearing is rescheduled, parties are required to inform the Court when they are unavailable for the proceedings of the adjourned matter to take place, by no earlier than May 1, 2020, and no later than May 15, 2020. <https://www.fca-caf.gc.ca/fca-caf/pdf/Notice-Covid-19-EN-deadlines-March-18-2020-FINAL.pdf>

Swearing Affidavits, Notarizing or Commissioning Documents

Despite the circumstances arising from the outbreak of COVID-19, the Law Society of Alberta is unable to relax the statutory requirements for in-person execution of certain documents, including testamentary instruments, land title transfers, and sworn affidavits. These requirements are included in the statutes that govern their respective subjects and can only be amended by a legislative body. Therefore, these rules remain in effect, despite the practical issues they pose during the current health crisis.

The Law Society of Alberta has endeavoured to request that the Government of Alberta make urgent legislative amendments to relax personal presence requirements for certain legal documents. Doing so would enable lawyers to more effectively provide legal services to those who require them, while also complying with social distancing policies. To date, the government has not amended laws requiring personal presence. However, due to the Law Society's efforts to request amendments, parties are encouraged to watch for any updates, which can be accessed here: <https://www.lawsociety.ab.ca/about-us/key-initiatives/covid-19-updates/covid-19-faqs/>

In contrast, the Law Society of Alberta has now relaxed the Client Identification Rules in order to ensure that the profession can still provide legal services without neglecting social distancing. Accordingly, lawyers are now permitted to verify a client's identity by video conference.

In light of this temporary change, the Law Society has cautioned lawyers that while verifying a client's identity by video conference, they must be alive to the risks of doing so, by taking the following steps:

- Ensuring that the client's government-issued identification is valid and current;
- Comparing the image in the government-issued identification with the client to be reasonably satisfied that it is the same person;
- Recording the method used to verify the client's identification and the applicable date;
- Treating the transaction as a high-risk transaction and continuing to monitor the business relationship as a high-risk transaction; and
- Documenting the efforts made to verify the client's identity in accordance with the existing rules, and the reasons why the lawyer was unable to verify the client's identity in accordance with the existing rules.

As such, although the client identification rules have been temporarily relaxed to facilitate the provision of legal services during the current health crisis, lawyers must approach this new identification process with the same scrutiny that has always been required.

Likewise, many law offices are now functioning remotely and using electronic signatures regularly. Yet despite these circumstances, electronic signatures are not legally effective for all types of documents, as some such as testamentary documents or land titles transfers cannot be validly executed with an electronic signature. To that end, during this health crisis where so many lawyers are working remotely, it is imperative that both lawyers and clients understand that not all legal documents can be signed electronically.

With respect to affidavits (including affidavits of service) and statutory declarations, the filer must file either a scanned version of the document with a handwritten signature, or an un-scanned version of the document with a typewritten signature. In the interests of caution, copies of all documents sent electronically should be kept for 30 days after the expiry of all appeal periods. For paper-based documents that are scanned to a digital format for electronic filing, the original paper document should be kept.

The Court of Queen's Bench has made accommodations for Affidavits used in that Court, subject to the discretion of the Courts to apply the best evidence requirements (<https://albertacourts.ca/qb/resources/announcements/npp-remote-commissioning-of-affidavits>):

1. Any affidavit to be sworn using video technology must contain a paragraph at the end of the body of the affidavit describing that the deponent was not physically present before the commissioner, but was linked with the commissioner utilizing video technology and that the process described below for remote commissioning of affidavits was utilized.
2. While connected via video technology, the deponent must show the commissioner the front and back of the deponent's current government-issued photo identification and the commissioner must compare the video image of the deponent and information in the deponent's government-issued photo identity document to be reasonably satisfied that it is the same person

and that the document is valid and current. The commissioner must also take a screenshot of the front and back of the deponent's government-issued photo identity document and retain it.

3. The commissioner and the deponent are both required to have a paper copy of the affidavit, including all exhibits, before each of them while connected via video technology.
4. The commissioner and the deponent must review each page of the affidavit and exhibits to verify that the pages are identical and if so, must initial each page in the lower right corner.
5. At the conclusion of the review, the commissioner will administer the oath, the deponent will state what needs to be said to swear or affirm the truth of the facts, and the commissioner must watch the deponent sign his or her name to the affidavit.
6. The deponent will then send the signed affidavit with exhibits electronically to the commissioner.
7. Before completing the affidavit, the commissioner must compare each page of the copy received from the deponent against the initialed copy that was before him or her in the video conference and may affix his or her name to the jurat only upon being satisfied that the two copies are identical.
8. The two copies will then be attached together with a certificate signed by the commissioner stating that the commissioner was satisfied that the process was necessary because it was impossible or unsafe, for medical reasons, for the deponent and the commissioner to be physically present together.
9. The completed package would then be permitted to be filed.

More information on electronic signatures can be found below, although it may soon be subject to change due to the Law Society's efforts to request legislative amendments.
<https://www.lawsociety.ab.ca/about-us/key-initiatives/covid-19-updates/covid-19-faqs/>

The deadline under Rule 13.41(4) which requires originals of Affidavits to be filed with the court clerk within 15 days after the faxed or emailed copy is filed has been suspended until May 1, 2020 (https://www.albertacourts.ca/docs/default-source/qb/covid_19_amended_master_order_2_english_french.pdf?sfvrsn=e5da8180_1)

Questioning

Questioning can be conducted safely and remotely through alternative web-based services. Some Court Reporting agencies have started offering such services.

The *Limitations Act* of Alberta

The Court of Queen's Bench has suspended all filing deadlines under the Alberta Rules of Court, with the exception of those Rules applicable to the commencement of proceedings, including originating applications.

Therefore, limitation dates under the *Limitations Act* and other statutory deadlines still apply. The deadlines for commencing actions, appeals or applications under other statutes apply and cannot be extended or varied unless permitted under the terms of, and in the manner prescribed by, those statutes. Only the Government can change these rules via statutory amendment.

Residential Tenancy Dispute Resolution Service

Filing

RTDRS continues to accept applications through the online eFiling service, available here: <https://rocs.alberta.ca/ols-rtdrs/#!/ols-login>

Appearances

RTDRS offices are no longer open to the public, but the RTDRS is conducting all hearings by telephone. Parties to a previously scheduled in-person hearing should be contacted about the change to a telephone hearing. Parties wishing to proactively provide their telephone number for an upcoming hearing are asked to call 403-297-8550 and leave a message with their name, case number and telephone number.

Applications for possession or termination of the tenancy agreement will be given priority in the RTDRS hearing schedule. Non-urgent applications, such as for damages or return of the security deposit, are being received, but will not be scheduled for hearing while COVID-19 is being managed.

If you have not already subscribed to JSS Rules Newsletter, please do so [here](#). In addition to the JSS Rules Special Edition series, please visit our website at <https://www.jssbarristers.ca/pages/covid-19.cfm> for additional COVID-19 resources.

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