



COURT OF APPEAL OF ALBERTA

May 27, 2020

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Dear Mr. Malik and Mr. Teskey:

The purpose of this letter is to update members of the Bar on steps currently being taken to facilitate a return to more regular sittings of the trial courts in response to the provincial government's recent relaxation of some COVID-19 restrictions.

Alberta's trial courts suspended regular sittings in mid-March 2020 concurrently with the state of emergency being declared by the provincial government.

It should be noted that the Court of Appeal has been operating at full hearing capacity and has continued to hear all matters during the current crisis. Prior to the pandemic, the Court had implemented internally an electronic case management system. This allowed the Court to quickly transition to remote hearings. All correspondence, case and application materials are being sent via email and processed electronically through the Court's electronic case management system. Further, because of the nature of appellate work – hearing oral arguments by counsel without witnesses – the Court of Appeal has not faced the challenges of trial courts associated with hearing live witnesses.

While the courts are an essential service, it has been necessary to drastically reduce the number of persons physically attending our courthouses given the restrictions on gatherings issued by Alberta's Chief Medical Officer of Health. It must also be remembered that a substantial number of those attending court – witnesses, prospective jurors, accused – are compelled by law to do so. It is not a matter of choice. Further, there are no readily available replacements for Alberta's courthouses, particularly given the legal requirement for audio recording of all trial proceedings. Nor is there any backup for the Calgary Courts Centre or Edmonton Law Courts in the event of an outbreak of COVID-19 at one of these facilities.

Prior to March 16, 2020, there was virtually no technological capacity for the trial courts to hear matters remotely – fully, or even partially – and no digitization of court records despite long-standing requests to government for technological support. That is now changing. Just prior to the pandemic, the provincial government recognized these needs and committed \$27,000,000 to improve Alberta's justice system technologically. The courts and government have agreed that e-filing, including a case management system, for the trial courts is now the top priority for the Justice Digital Program.

During this pandemic, Alberta's trial courts have remained open for, and have been hearing, urgent matters in all areas of the trial courts' jurisdiction. That includes Emergency Protection and Restraining Order applications and reviews. Bail hearings in Provincial Court and bail reviews at the Queen's Bench have been continuously scheduled and heard. Urgent parenting matters are being heard, and the criteria for urgency have been expanded in both courts.

In the last eight weeks, the Queen's Bench has implemented new processes for remote Judicial Dispute Resolution hearings, Criminal Pre-trial Conferences, Summary Disposition Court, Family Docket Court, and emergency or urgent matters. It has also created new electronic desk application processes for applications in Masters' Chambers, Justice Chambers and Family Chambers.

Urgent commercial matters, including complex multi-party applications, continue to be heard in the Queen's Bench. Between March 16 and May 22, 2020, the Queen's Bench conducted 415 Criminal Pre-trial Conferences and triaged 1,785 Requests for Hearings in emergency or urgent matters.

In addition, the Queen's Bench is processing applications in surrogate matters and divorce matters electronically. A massive number of desk applications filed prior to March 16, 2020 have been scanned and sent electronically to judges for review remotely. Between March 16, 2020 and May 22, 2020, a total of 2,775 desk divorce and surrogate applications have been processed. The wait time for a desk divorce in Calgary is now 2.5 weeks (12 weeks, pre-pandemic). The wait time for probate in Edmonton is now 4 weeks (9 weeks, pre-pandemic).

In the Provincial Court, all scheduled trials of individuals who are in custody have continued to be heard throughout this crisis whenever counsel are prepared to proceed. Out-of-custody matters including guilty pleas will be scheduled and heard in accordance with Guidelines published on the Provincial Court website on April 23, 2020. In addition, all scheduled pre-trial conferences, simplified trials and binding dispute hearings in Provincial Court are proceeding over the next six weeks by video or audio conference.

There are limits to what the trial courts can do remotely. To schedule in-person trials more aggressively, the trial courts require that appropriate sanitation protocols applicable to public buildings in pandemic conditions be established and implemented so that our courthouses and courtrooms will be safe for increased occupancy.

To this end, a limited number of courtrooms, far fewer than operate in a normal court term, are currently being equipped with plexiglass shields in Edmonton, Calgary and other judicial centres.

Beginning June 1, 2020, the Queen's Bench will start to schedule four trial courtrooms equipped with new plexiglass shielding for in-person trials each week in Edmonton, Calgary, Red Deer and Lethbridge, with priority given to in-custody and Jordan-threatened trials. Similarly, once Provincial Court courthouses and courtrooms identified as priority have had the necessary protective measures put in place, the Provincial Court will commence hearing in-person out-of-custody trials at these locations.

While the current restrictions limiting indoor gatherings to a maximum of 15 forced adjournment of jury trials and jury selections, the Queen's Bench anticipates being able to schedule jury trials in the fall term if the "maximum of 15" restriction is relaxed, sanitation and social distancing protocols are in place, and arrangements can be made for the safe sequestration of juries during their deliberations.

In the meantime, the Queen's Bench has invited the Crown and defence to identify those trials that can proceed either partly or fully remotely as its technological capacity increases and clerks receive the necessary training to operate videoconferencing software. And it has been scheduling criminal trials remotely with the consent of the Crown and accused. It has also invited the Bar to identify those shorter, urgent criminal trials involving few witnesses that can be accommodated with current limited available clerking staff. An online trial booking form provides a simple means of re-booking adjourned Queen's Bench trials.

The Provincial Court has also held several criminal trials remotely. Both trial courts are also aggressively scheduling Criminal Pre-trial Conferences with the goal of resolving adjourned trials. Further, both courts have remained open continuously for short summary dispositions, with priority given to persons in custody.

The Queen's Bench will not be taking its annual summer recess and will instead conduct as many hearings as circumstances allow through July and August to reduce the current backlog. JDR's are also being offered in Queen's Bench over the entire summer with preference given to proceedings adjourned due to COVID-19.

The approach of all trial courts in Canada has been consistently cautious since mid-March. Few are currently conducting in-person trials on more than a limited basis. Given the ongoing state of emergency in Alberta, as with other public institutions offering essential services, the Courts require government's support to ensure courthouses are safe in addition to compliance with social distancing requirements by all those entering the courthouses.

We require the Bar's cooperation in scheduling remote hearings where feasible and in-person hearings throughout the months of June through August, with priority being given to trials adjourned due to COVID-19 conditions. We know we can count on your support. We also thank you for your efforts to ensure that Albertans receive the legal assistance they require during this difficult time.

We will continue to apprise the Bar of incremental steps being taken by our trial courts to return as soon as safely possible to their pre-COVID hearing schedules.

Sincerely,



Catherine A. Fraser
Chief Justice of Alberta



Mary T. Moreau
Chief Justice of the
Court of Queen's Bench of Alberta



Terrence J. Matchett
Chief Judge of the
Provincial Court of Alberta

cc: The Honourable Doug Schweitzer, Q.C.
Minister of Justice and Solicitor General

Frank Bosscha, Q.C.
Deputy Minister of Justice and Deputy Solicitor General

Mary MacDonald
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