



THE CANADIAN BAR ASSOCIATION

L'ASSOCIATION DU BARREAU CANADIEN

Newfoundland & Labrador Branch • Division de Terre-Neuve et Labrador

April 15, 2020

Sent via email

The Honourable Raymond P. Whalen
Chief Justice
Supreme Court of Newfoundland and Labrador – General Division
309 Duckworth Street
P.O. Box 937
St. John's, NL A1C 5M3

Dear Chief Justice Whalen

Re: Court operations and the ongoing COVID-19 pandemic

The Canadian Bar Association – Newfoundland and Labrador Branch (CBA-NL) applauds the Court and Department of Justice and Public Safety for the quick response and measures taken at the outset of the COVID-19 pandemic, to ensure the health and safety of lawyers, judges, court staff and all Newfoundlanders and Labradoreans who utilize the judicial system.

Now that we are into the fourth week of the COVID-19 pandemic in Newfoundland and Labrador, CBA-NL is encouraged by what other provinces, such as Ontario, have been able to achieve by utilizing technology to keep the justice system safely moving forward in the midst of the current crisis.

Finding new and innovative ways to operate, and utilizing technology to the full degree possible, is necessary to avoid an overwhelming backlog of matters once the Courts are able to operate in normal fashion. Our members are understanding of the unprecedented challenge faced by our country and our province, but we are concerned about the consequences of an indefinite shutdown of the normal operations of the judiciary, both for the Bar and for the public.

To keep the system of justice moving forward, where safe and possible, CBA-NL puts forward the following suggestions, for your consideration, to effectively utilize judicial resources and available technology, in order to keep the due administration of justice operating as effectively as is reasonable in the present circumstances.

1. That the Court Registries remotely open to allow for the electronic filing of matters, with this to be an acceptable method to commence proceedings. Matters may be filed by electronic mail, and if possible, payment submitted electronically or on a solicitor's undertaking to provide payment by mail. This would allow matters to be started and served, and to begin the dialogue of parties as is commonplace outside of the courtroom in pre-litigation stages. It would not be necessary to set return dates for matters at the present time, however it would go some distance to keep the



justice system functional if the Bar is at least able to commence proceedings. As members of the Bar, we all appreciate that the majority of matters that are commenced in Court are resolved without going to a full trial. Allowing claims and applications to be filed permits parties to begin the dispute resolution process. We can advise that clients and other members of the public have expressed to our members significant concern that they are unable to advance their matters in any meaningful way, bearing in mind the significant timelines from start to finish inherent in litigation.

Going forward, and in the aftermath of this unprecedented public health emergency, it is hoped that the Courts may examine electronic filing as a common and accepted practice, as it is in many other jurisdictions.

2. That the Courts allow *ex parte* and other “desktop” matters to proceed at the earliest opportunity. These are matters that do not necessitate the physical presence of counsel or the parties, such as estates and quietings, or *ex parte* procedural applications. There is particular concern amongst the practicing Bar over the inability to proceed with probate and administration applications, which are routinely filed electronically. The inability to seek probate and administration has cascading effects into matters that are underway outside of the Court process, such as real estate closings, title work and corporate transactions.
3. Greater clarity is requested on the scope of “urgent” applications for the ongoing duration of restricted operation of the Court. Members of the Bar have expressed concerns about whether matters can be filed or not, particularly in family cases, on matters such as child support or non-emergency access variation.

Given the economic realities of our province and scarce judicial resources, without action now, the post COVID-19 environment will be fraught with insurmountable delays and the inability for many in our province to receive timely access to justice, as the Bar must catch up with a tidal wave of matters that will all come due simultaneously. Increased use of technology and electronic filing, as we suggest above, would allow the practicing Bar to continue in service to the public through these trying times, without imposing undue risk of harm on the judiciary or its employees.

The COVID-19 pandemic has required us all to adjust and adapt. We hope that, while circumstances are difficult at present, the current situation will lead to critical examination and modernization of court procedures, updated legislation and an increased utilization of technology to benefit all participants in the judicial system of Newfoundland and Labrador. We encourage an examination of our Rules of Court and our procedures with an eye to modernization and increased acceptance of the use of technology to facilitate access to justice and efficiency of operation. The recent redrafting of the Court of Appeal Rules and the Family Court Rules have promoted efficiency and acknowledged the dramatic technological advances made since the 1980s.

As always, CBA-NL is open to further discussion and collaboration on these or any matters involving access to justice and the administration of justice in Newfoundland and Labrador. Our Branch Executive remains



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at your disposal for whatever we may do to assist the judiciary and our province toward the better administration of justice.

Respectfully submitted,

(originally copy signed by Christian Hurley)

Christian Hurley, President, on behalf of the Executive Committee of the Canadian Bar Association – Newfoundland and Labrador Branch

cc The Honourable Andrew Parsons, Q.C., Minister of Justice and Public Safety, Attorney General
Sent via email

Brenda Grimes, Q.C, Executive Director, Law Society of Newfoundland and Labrador
Sent via email