



## COURT OF APPEAL

### Notice to the Public Regarding the Court of Appeal for British Columbia's Response to COVID-19

Dated November 6, 2020

*This Notice replaces the Notice to the Public Regarding the Court of Appeal for British Columbia's Response to COVID-19 issued 19 August 2020. New information regarding face masks has been added to section 3.3.2 Hearings in a Courtroom.*

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# 1. Introduction

On 17 March 2020, 30 March 2020, 20 April 2020, 27 May 2020, 10 June 2020, 24 June 2020, 7 July 2020, 22 July 2020, 4 August 2020, and 19 August 2020, the Chief Justice of British Columbia issued directions modifying the operations of the Court of Appeal for British Columbia to protect the health of litigants, court staff, judges and members of the public and to help contain the spread of the 2019 novel coronavirus (COVID-19).

This new notice, which applies to civil and criminal appeals, replaces the 17 March, 30 March, 20 April, 27 May, 10 June, 24 June, 7 July, 22 July, 4 August and 19 August notices, and provides new information regarding face masks which are strongly encouraged in all courthouses in British Columbia (see section 3.3.2 below). Additionally:

## 1.1 Service and filing deadlines reinstated

Service and filing deadlines began to run again on 14 September 2020.

## 1.2 Requests for in-courtroom or video hearings

Parties may still request that their appeal hearing proceed in a courtroom or by Zoom videoconference. Please see 3.3 below for more information.

## 1.3 Continuation of court operations

The following information has not changed:

- ✓ The registry is accepting filings in all matters, and parties are encouraged to advance their appeals if they are able to do so. All litigants and counsel should note that the suspension of service and filing deadlines will not be further extended after 14 September 2020.
- ✓ In civil appeals, electronic filing remains mandatory for counsel and optional for self-represented litigants. Section 3.2 below has been repealed and replaced with the updated instructions on filing materials in all appeals and applications provided in this new [Notice to the Public Regarding Modified Filing Directions](#).
- ✓ The Court will hear all chambers applications and Registrar's appointments, including those that are not urgent, by teleconference or in writing. For all new chambers applications or appointments, litigants must file and serve materials according to the timelines required under the *Court of Appeal Act*, *Court of Appeal Rules*, *Criminal Code*, the *Court of Appeal Criminal Rules* and the Court's Civil and Criminal Practice Directives.

## 2. New Appeals and Applications for Leave to Appeal

### 2.1 Required Time Periods to Commence Civil or Family Proceedings

The required time periods to commence civil or family proceedings stopped running on 26 March 2020. For further details review [Ministerial Order No. M098](#). This means that until further notice you may start an appeal if you wish to do so, but, if you are unable to start an appeal, you can wait without concern that the limitation period to start civil or family proceedings will expire.

**The suspension of time periods to commence civil or family proceedings started on 26 March 2020 and will remain in effect until 45 days after the state of emergency declared under s. 9(1) of the *Emergency Program Act* on 18 March 2020 expires or is cancelled.** For further details review [Order in Council 453](#) and the [COVID-19 Related Measures Act, s. SBC 2020, c. 8](#). Any notice of appeal or application for leave to appeal that needed to be filed before 26 March 2020 is still subject to the usual timeline to initiate, including those that needed to be filed between 18 March 2020 and 26 March 2020.

### 2.2 Required Time Periods to Commence Criminal Proceedings

Parties should continue to file and serve notices of appeal or applications for leave to appeal in criminal matters within required time periods.

## 3. Existing Appeals and Applications

### 3.1 Filing and Service Deadlines

The filing and service deadlines for all existing appeals, existing applications for leave to appeal, and other existing matters before the Court were suspended by direction of the Chief Justice from 18 March 2020 until 14 September 2020. This means that the required time periods to file or serve materials which stopped running on 18 March 2020 started to run again on 14 September 2020. Beginning on 14 September 2020 litigants or counsel had the same amount of time to file and serve materials as they would have been entitled to on 18 March 2020.

For clarity, the Chief Justice further directed that the operation of s. 25 of the *Court of Appeal Act* was suspended from 18 March 2020 until 14 September 2020, meaning that matters were not placed on the inactive list or dismissed as abandoned by operation of s. 25 during that period.

**Neither the direction of the Chief Justice effective 18 March 2020 nor Ministerial Order No. M098 suspended the timelines for taking a step required by court order or direction.** However, counsel/litigants can expect the Court will likely consider the exceptional circumstances created by the COVID-19 pandemic as a factor if an extension is sought.

### 3.2 How to File Documents and Materials

Section 3.2 of this Notice has been repealed and replaced with the court's [Notice to the Public Regarding Modified Filing Directions in Civil and Criminal Appeals](#).

### **3.3 Appeal Hearings**

Since early April, the Court has conducted most appeals by video conference. Since 13 July 2020, however, the Court can accommodate appeal hearings in the courtroom or by video conference subject to the limitations explained below. The parties may also consent to have their appeal conducted solely in writing by submitting a request to the Registrar indicating their consent.

The Court appreciates that during the COVID 19 pandemic the preference of counsel/litigant(s) as to mode of hearing may relate to personal circumstances. The Court does not generally wish to play a role in deciding between the alternatives, although the Court may exercise its discretion to direct the mode of hearing.

#### **3.3.1 Court Proceedings Form - Preferred Mode of Hearing**

In order to permit efficient scheduling, the Court requires that at least seven days before an appeal hearing, counsel/litigant(s) file a "[Court Proceedings Form](#)" described below. Before completing the Form counsel/litigants are encouraged to consult and reach consensus on the mode of hearing to be selected.

Where one counsel/litigant would prefer a video hearing, no reason need be disclosed to the Registry or to the other counsel/litigant(s); in this instance, regardless of whether consensus has been reached, the Court will allow the hearing to proceed by video conference absent extraordinary circumstances.

Where all litigants would prefer an in-courtroom hearing, the Court will allow the hearing to proceed in a courtroom unless social distancing guidelines cannot be met or unless there are other factors that make an in-courtroom hearing unsuitable or impractical.

Counsel/litigants must submit the [Court Proceedings Form](#) to advise the Court:

- 1) the preferred mode of hearing (in-courtroom or video);
- 2) who will be attending the hearing;
- 3) for video hearings, any concerns about the privacy or confidentiality of information that will be involved in the video proceeding;
- 4) for video hearings, any personal concerns about attending by video; and
- 5) for video hearings, proposed steps to mitigate any of the concerns identified.

At the appeal hearing, counsel/litigants must expect to address the nature and terms of any publication bans or sealing orders (including who is subject to such orders).

#### **3.3.2 Hearings in a Courtroom**

The Court has made adjustments to the physical facilities at the courthouse to ensure hearings will comply with public safety guidelines. At this time, all hearings in a courtroom will take place in courtrooms 50 or 60 with a maximum of four lawyers or self-represented litigants attending at one time. Parties should be aware that because of social distancing guidelines, usually no more than seven observers may be accommodated in the courtroom.

Counsel/litigant(s) are asked to advise the registry immediately if unexpected circumstances related to the COVID-19 virus arise prior to the hearing, such that a counsel/litigant prefers to switch to a video conference hearing. No reason need be provided to the Registry and the Court will endeavor to

accommodate such a switch. A request for such accommodation should be made as early as possible but may be made right up until the morning of the hearing.

Counsel/litigants must bring their own water supply and present their arguments from their own table (individual lecterns will be provided). Furniture will be cleaned and disinfected between hearings.

Additionally, people attending courthouses in British Columbia are strongly encouraged to wear face masks, including in entrances, waiting areas, registries, hallways, stairways, restrooms and elevators. If you do not have a face mask, Sheriffs will provide one when you enter the courthouse. Children under two years of age, persons with a medical condition or disability that inhibits wearing a face mask and persons who are unable to place or remove a face mask without assistance are exempt. While inside individual courtrooms the presiding justice or registrar may modify this recommendation.

While wearing a face mask can reduce the spread of infection, it does not substitute for physical distancing, which must be maintained whenever possible. All people attending courthouses in British Columbia are asked to be familiar with all health and safety protocols (including those developed by the [Court Services Branch](#)) and to cooperate in observing them in order to protect everyone in courthouses in this province.

### **3.3.3 Video Conference Hearings**

Video conference hearings will proceed using Zoom, a commercial service that has been employed successfully in conducting hearings in other Canadian courts.

Instructions on videoconference logistics and Court etiquette are provided in this [Notice to the Public regarding video conference proceedings](#). Parties will be expected to become familiar and test their video and audio capabilities using the Zoom platform before any court hearing and are to consult the Court list on the date their appeal is to be heard and join the proceedings using the public Zoom link.

### **3.3.4 Access to Hearings**

Members of the media or public wishing to access hearing in a courtroom or by video conference, should see the [Notice to the Public regarding access to court proceedings](#).

## **3.4 Chambers Hearings**

All chambers applications will proceed by teleconference unless otherwise directed. For all new chambers applications, counsel/litigants must file and serve materials according to the timelines required under the *Court of Appeal Act*, *Court of Appeal Rules*, *Criminal Code*, the *Court of Appeal Criminal Rules* and the Court's Civil and Criminal Practice Directives. Chambers applications may also proceed in writing by approval of the Court on consent request addressed to the Registrar.

The Court's capacity to hear a full chambers list may remain compromised. As such:

- Counsel/litigants should coordinate with one another **before** filing a chambers application and should be prepared to meet all subsequent filing and service deadlines set out in the *Court of Appeal Act* and *Rules*.

- Counsel/litigants must check the online list of available dates **before** filing a chambers application in accordance with [Booking Civil Chambers Applications \(Civil Practice Note, 8 May 2017\)](#), and should check again just before e-filing.
- Counsel/litigants should be patient with the occasional need to re-book chambers applications to other dates, given expected demands. The chambers scheduler, as a Deputy Registrar, has the final say on the reassignment of dates, if necessary (no appeals to the Registrar).

Given the need to conduct chambers matters by teleconference and get materials to the presiding judge, the late filing of chambers materials will not be permitted.

### **3.5 Hearings before the Registrar**

All hearings set to proceed before the Registrar will proceed by Zoom, teleconference, in writing, or as directed by the Registrar. As with chambers, for all new appointments, counsel/litigants must file and serve materials according to the timelines required under the *Court of Appeal Act* and *Court of Appeal Rules*, *Criminal Code*, *Court of Appeal Criminal Rules*, and the Court's Civil and Criminal Practice Directives. Counsel/litigants may also request or consent to an appointment being heard in writing only.

## **4. Self-Represented Litigants**

Self-represented litigants are expected to comply with the modified processes set out in this notice.

Access Pro-Bono has a dedicated appeals program. If you require assistance contact Heather Wojcik 604-424-8286. You can also visit [accessprobono.ca](http://accessprobono.ca) or call 604-878-7400 or 1-877-762-6664 to find out more information about Access Pro-Bono emergency telephone clinics that have been set up in response to COVID-19.

Additionally, anyone e-filing materials in the Court of Appeal or preparing to appear before the Court by Zoom video conference may contact the Canadian Bar Association BC Branch at [members@cbabc.org](mailto:members@cbabc.org) for technical support with managing PDF Adobe or Zoom video conference software.

## 5. Registry Contact Information

General Inquiries: 604.660.2468  
Maria Littlejohn, Court Scheduler: 604.660.2865  
Manjit Gunglay, Chambers Scheduler: 604.660.2859  
Kristine Dhamrait, Registrar Scheduler: 604.660.2729  
Fax filings: 604.660.1951

Mail or Courier: **Vancouver Registry**

**The Registry Counter will be open unless required to be closed in particular COVID-19-related circumstances. Before attending at the Registry Counter, please check [HERE](#) to confirm whether it is open or closed.**

**If the Registry Counter is open:**

BC Court of Appeal  
The Law Courts  
400 – 800 Hornby Street  
Vancouver, British Columbia  
V6Z 2C5

**If the Registry Counter is closed due to COVID-19:**

BC Court of Appeal  
The Law Courts  
206 - 800 Smithe Street  
Vancouver, British Columbia  
V6Z 2E1

**THE FORGOING IS SUBJECT TO CHANGE. ANY UPDATED DIRECTIONS WILL BE POSTED ON THE COURT'S WEBSITE.**

Dated 6 November 2020, at Vancouver, British Columbia

By Direction of Robert J. Bauman  
Chief Justice of British Columbia

