



COURT OF APPEAL

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

Dated 20 April 2020

This Notice replaces the Notice to the Public Regarding the Court of Appeal for British Columbia's Response to COVID-19 issued 30 March 2020. It provides important new information regarding the continuation of Court operations.

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1. Introduction

On 17 March 2020 and 30 March 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 and 30 March notices and provides important information regarding the continuation of court operations. In particular:

1.1 Suspension of service and filing deadlines

The suspension of service and filing deadlines for existing appeals and chambers applications started 18 March 2020 and has been extended from 1 May 2020 to 1 June 2020.

1.2 Continuation of court operations

Despite the suspension of deadlines until 1 June 2020:

- ✓ The registry is accepting filings in all matters, and parties are encouraged to advance their appeals if they are able to do so.
- ✓ In civil appeals, electronic filing is mandatory for all parties beginning 4 May 2020.
- ✓ Beginning 4 May 2020, the Court will hear all appeals, including those that are not urgent, by videoconferencing using the Zoom platform, unless otherwise directed.
- ✓ Beginning 4 May 2020, 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 started on 26 March 2020 and will remain in effect until the state of emergency declared under s. 9(1) of the *Emergency Program Act* on 18 March 2020 expires or is cancelled. This means that 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 and they will remain suspended until 1 June 2020. This means that the required time periods to file or serve materials stopped running on 18 March 2020 and will not start to run again until 1 June 2020. Beginning 1 June 2020 you will have the same amount of time to file and serve materials as you would have been entitled to on 18 March 2020.

For clarity, the Chief Justice has further directed that the operation of s. 25 of the *Court of Appeal Act* is also suspended from 18 March 2020 until 1 June 2020, meaning that matters will not be placed on the inactive list or dismissed as abandoned by operation of s. 25 during this period.

Neither the direction of the Chief Justice effective 18 March 2020 nor Ministerial Order No. M098 suspends the timelines for taking a step required by court order or direction. However, 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.

Despite the suspension of deadlines until 1 June 2020, the registry is accepting filings in all matters, including matters that are not urgent. Parties are encouraged to advance their appeals and to communicate with one another on how they will proceed.

3.2 How to File Documents and Materials

As discussed above, the registry is open to accept all filings. However, to support social distancing, the registry counter is closed and all documents must be filed in the following manner:

3.2.1 The Filing of Documents in Civil Appeals

Beginning 4 May 2020, for civil appeals, all parties must use electronic filing through [Court Services Online \(CSO\)](#) for all documents except those discussed below. For clarity, as of 4 May 2020 the Court will not accept filings by fax, mail or courier in civil appeals, unless the document cannot be electronically filed or submitted by email as described below.

Despite Rule 54.1(5), the only documents that the Court will continue to receive outside of the e-filing system, or by email as described below, will be:

- (a) a motion book;
- (b) a reply book;
- (c) an appeal record;

(d) an appeal book;

(j) a form of order submitted for entry.

Please **do not** contact the registry for assistance with electronic filing, as the registry will not be able to help. Parties who have never used electronic filing can initiate the process by signing up for BasicBCeID at <https://www.bceid.ca/>. Anyone having difficulty with electronic filing can email Courts.CSO@gov.bc.ca or call toll free within Canada 1-800-663-6102 for assistance.

For all material filed by any electronic means (Court Services Online, email, or on memory stick):

- ✓ The use of coloured covers and any requirements for tabs will be dispensed with.
- ✓ Filings must be in proper court forms, be legibly scanned, in PDF, and in Arial 12-Point font.
- ✓ Scanned filings must be OCR'ed (i.e. use Optical Character Recognition so that the PDF can be copied and pasted from into another document).

To File Memorandums of Argument and Books of Authority: These documents must be electronically filed through Court Services Online. However, books of authorities are only to be filed where a party cannot hyperlink in their submission or factum an authority to an open source, such as CanLII or Lexum. Books of authorities may not exceed 10MB in size. Any memorandum of argument must observe the three-page limit set in [Filing Written Argument in Court of Appeal Chambers \(Civil Practice Note, 1 March 2012\)](#).

To File Factums and Transcripts: Parties must now file factums and transcripts by submitting them via e-mail to appealrecords@bccourts.ca and the requirement to file a paper copy is suspended. You will receive an email attaching a scan of the stamped cover page as confirmation that the document is filed. The requirement to file transcript extract books in civil appeals is suspended. The formatting and naming requirements in the Court's directive, [Submission of Electronic Factums and Statements \(Civil & Criminal Practice Directive, 2 July 2019\)](#) must be followed both for factums and for transcripts (by analogy). Hyperlinks to open-source authorities are required, as discussed above.

To File Motion Books, Reply Books, Appeal Records, Appeal Books, and Orders: For filing these documents, parties have two options:

1. They may file by fax if the document is 20 or fewer pages, and otherwise meets the requirements set out in the practice directive on [Use of the Facsimile in the Court of Appeal](#). The prohibition in this directive on filing bound materials is suspended.
2. Paper copies or memory sticks containing electronic copies of these filings may be mailed or couriered to 206 – 800 Smithe Street, Vancouver British Columbia, V6Z 2E1, Attention: Court of Appeal Registry. Please note that the registry will not process these filings for 24 hours, given COVID-19 risks, but will backdate documents to the date they were postmarked or delivered. Please **do not** deliver any copies besides those required by the Court. You will receive an email attaching a scan of the stamped cover page as confirmation that the document is filed and, for that purpose, you must provide an email address on the cover of the document to be filed. You

should serve the remaining copies of your document together with a copy of the stamped cover page.

If none of these options are possible, please call the registry at the phone numbers listed below in Part 5 of this Notice.

3.2.2 The Filing of Documents in Criminal Appeals

To File Factums, Transcripts, and Statements: Factums, transcripts, and statements must be filed in accordance with the directions above in section 3.2.1 that apply to factums and transcripts in civil appeals.

To File Books of Authority: Despite the fact that e-filing is not yet available for criminal appeals, the requirements that apply to books of authority in civil appeals apply also in criminal appeals: they do not need to be filed unless the factum, statement, or written submission cannot be hyperlinked to open source authorities.

To File All Other Documents: For other documents in criminal appeals that cannot be submitted electronically as above, the parties have two options:

1. They may file by fax if the document is 20 or fewer pages, and otherwise meets the requirements set out in the practice directive on [Use of the Facsimile in the Court of Appeal](#). The prohibition in this directive on filing bound materials is suspended.
2. Paper copies or memory sticks containing electronic copies of these filings may be mailed or couriered to 206 – 800 Smithe Street, Vancouver British Columbia, V6Z 2E1, Attention: Court of Appeal Registry. Please note that the registry will not process these filings for 24 hours, given COVID-19 risks, but will backdate documents to the date they were postmarked or delivered. Please **do not** deliver any copies besides those required by the Court. You will receive an email attaching a scan of the stamped cover page as confirmation that the document is filed and, for that purpose, you must provide an email address on the cover of the document to be filed. You should serve the remaining copies of your document together with a copy of the stamped cover page.

If none of these options are possible, please call the registry at the phone numbers listed below in Part 5 of this Notice to discuss other options.

3.2.3 Future Enhancements to the E-Filing System

The government e-filing system is being enhanced by the Court Services Branch to allow for as many documents as possible to be filed through Court Services Online (CSO).

Please check back for further notices, as the requirements for those documents that presently cannot be e-filed may change rapidly, including prior to 4 May 2020.

3.3 Appeal Hearings

All hearings scheduled on or after 4 May 2020 will proceed by videoconference unless otherwise directed. Parties will not be permitted to adjourn appeals on the sole basis that they would prefer not to proceed

by videoconference. Appeals may also proceed in writing by approval of the Court on consent request addressed to the Registrar.

Until a permanent, enterprise videoconferencing solution is provided to the Court by government, hearings will proceed using Zoom, a commercial service that has been employed successfully to conduct hearings in other courts, such as the Ontario Superior Court of Justice.

Instructions on logistics and Court etiquette will be provided to the parties in advance of a Zoom hearing, so parties can understand the proposed process. Parties will be expected to become familiar and test their video and audio capabilities using the Zoom platform before any court hearing.

At least 14 days before an appeal hearing, litigants must complete and submit the [Court Proceedings by Video Conference Form](#) to advise the Court about who will be attending the hearing and any concerns about the privacy or confidentiality of information that will be involved in the video proceeding and proposed steps to mitigate those concerns. Litigants must expect to address the nature and **precise extent** of any publication bans or sealing orders (including who those orders apply to and their exact terms).

Further details on accredited media or public access to video hearings will be forthcoming. Any access questions should be directed to The Honourable Bruce Cohen at scjcommunicationsofficer@courts.bc.ca.

3.4 Chambers Hearings

All chambers applications will proceed by teleconference unless otherwise directed. For all new chambers applications, 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:

- 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*.
- 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.
- 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, 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. Parties may also request or consent to an appointment being heard in writing only.

3.6 Matters Scheduled to be heard between 18 March 2020 and 1 May 2020

All appeal hearings, chambers applications and other matters that were originally scheduled to occur between 18 March 2020 and 1 May 2020 have been adjourned unless designated by the Chief Justice as matters that must proceed. Those appeals have largely been rescheduled for June, though the Court is also sitting throughout the month of July to address any backlogs.

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 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.

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**

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

Dated 20 April 2020, at Vancouver, British Columbia

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

