



UPDATED AND CONSOLIDATED DIRECTIVE – COURT OF APPEAL OF NEW BRUNSWICK

Date: October 13, 2020
To: **Lawyers, Media, Public**
From: J.C. Marc Richard, Chief Justice
Subject: **NBCA COVID-19 – UPDATED AND CONSOLIDATED DIRECTIVE**

This directive updates and consolidates directives dated April 6, 2020 and June 1, 2020, respecting the operations of the New Brunswick Court of Appeal during the ongoing COVID-19 health crisis. It applies to both civil and criminal appeals.

INTRODUCTION

As we face the risk of a second wave of infections by the coronavirus, the seriousness of the COVID-19 crisis cannot be overstated.

The state of emergency declared by the Province of New Brunswick on March 19, 2020 under the *Emergency Measures Act* has been subsequently renewed and remains in effect. A new revised Mandatory Order was also issued by the Province on October 8, 2020. See the latest version of the [renewed and revised Mandatory Order](#).

Like their counterparts across Canada, New Brunswick courts have adapted their operations to the pandemic context and have adopted measures to reduce the spread of the coronavirus and to protect participants in the justice system and other members of the public, while maintaining the rule of law. These measures were implemented on March 16, 2020, and have since been updated. The individual Web pages for the New Brunswick [Court of Appeal](#), [Court of Queen's Bench](#) and [Provincial Court](#) should be frequently consulted for information on the measures in place in each court.

Following are an update and a consolidation of the measures in place in the Court of Appeal.

USE OF MASKS OR FACE COVERINGS

The Province of New Brunswick's Mandatory Order of October 8, 2020, requires everyone to wear an adequate mask or face covering in public indoor spaces whenever they are not eating or drinking.

This Mandatory Order also requires the use of a mask or face covering in court facilities: in common spaces, by everyone; and, in courtrooms, by anyone who is not actively participating in the proceeding and, if so directed by the presiding judge, by participants in the proceeding. Accordingly, under the Mandatory Order, participants in a court proceeding are not required to wear a mask or face covering in the courtroom unless directed by the court to wear one.

The Court of Appeal directs that everyone wear an adequate mask or face covering at all times in its courtrooms unless a judge or a panel of judges directs otherwise. This includes court participants and counsel. This measure is aimed at protecting the health of the Court's users and staff.

FILING AND SERVICE OF DOCUMENTS

On April 6, 2020, the Court of Appeal directed that documents having to be filed, or procedures having to be taken (including the service of documents), under Rules 62 and 63 of the *Rules of Court* while the directive was in effect could be filed or taken up to 30 days from the date upon which the directive would be revoked by notice.

On April 24, 2020, the Province of New Brunswick issued a Mandatory Order suspending certain provincial limitation periods retroactive to March 19, 2020. That order superseded the Court's Directive of April 6, 2020, as it applied to the time limits for the filing and service of documents under Rules 62 and 63 of the *Rules of Court*. On June 1, 2020, the Court revoked its directive for clarity.

On June 19, 2020, the Province of New Brunswick issued a revised Mandatory Order lifting that suspension and directing, namely, that certain limitation periods for commencing a proceeding or time periods for taking steps in a proceeding resume running on September 19, 2020.

In these circumstances, please note the following:

1. All time limits for the filing of documents, or for the taking of steps (including the service of documents), under Rules 62 and 63 of the *Rules of Court* that had been suspended by Mandatory Order of the Province of New Brunswick resumed running on September 19, 2020;
2. Anyone needing to file a document (including a Notice of Appeal or a Notice of Motion) with the Court of Appeal should file the document with the Registrar of the Court of Appeal by emailing it to nbca-canb@gnb.ca or by faxing it to (506) 453-7921. The document will be deemed to have been

received on the date it was sent, provided its original and any prescribed fee are then sent by mail or courier as soon as practicable.

3. Should e-filing or filing by fax be impossible, a document may be filed:
 - a. by sending the document and any prescribed fee by courier, in which case it will be deemed to have been received on the day it was sent, or by mail, in which case the document will be filed on the day it is received;
 - b. by leaving the document and any prescribed fee in a secure box located outside the Registrar's Office at the Justice Building in Fredericton.
4. The prescribed fee referred to above must be paid by a lawyer's cheque, a certified cheque or a money order.
5. For any other inquiries regarding the filing and service of documents, please contact the Registrar, Ms. Caroline Lafontaine, by phone at (506) 453-2945 or by email at caroline.lafontaine@gnb.ca. Please note a reply may take longer than usual.

AFFIDAVITS

During the COVID-19 pandemic, some accommodation must be made for the commissioning of affidavits in circumstances where it is not possible, or it is medically unsafe, for the deponent to physically attend before a lawyer or commissioner. Subject to the discretion of the Court or of a judge thereof to require the best evidence, affidavits to be used in the Court of Appeal may be sworn or affirmed, as the case may be, by video technology in the manner set out below:

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 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 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 initialled 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.

HEARING OF MOTIONS

Scheduled motions and status hearings continue to be heard by telephone conference unless the motion judge or the Chief Justice determines otherwise. The office of the Registrar will make the necessary arrangements and inform the parties or their counsel. Arrangements may be made for represented parties to join the telephone conference provided that, once they have identified themselves, they place their phone on mute and do not interrupt the proceedings except to make appropriate representations.

All lawyers or self-represented litigants who have a matter before the Court of Appeal must ensure the Registrar is provided with their current phone number and email address.

Recording of the proceeding by anyone except the court is strictly prohibited and may constitute contempt of court.

Any request for adjourning the hearing of either a motion or a status hearing may be addressed to the Registrar at (506) 453-2945 or caroline.lafontaine@gnb.ca, who will arrange for a case management telephone conference.

HEARING OF APPEALS

Perfected appeals are being scheduled to be heard in the usual manner, although parties or their counsel may request to appear by video or telephone conference. If the request is granted, the office of the Registrar will make the necessary arrangements and inform the parties or their counsel. When joining a video or telephone conference, the parties or their counsel must put their phone on mute after identifying themselves and must not interrupt the proceedings except to make appropriate representations.

All lawyers or self-represented litigants who have a matter before the Court of Appeal must ensure the Registrar is provided with their current phone number and email address.

Recording of the proceeding by anyone except the Court is strictly prohibited and may constitute contempt of court.

Any request for adjournment, even those with consent of both parties, will be considered by the Chief Justice or a designated motion judge after holding a case management conference. Request for such a conference may be addressed to the Registrar at (506) 453-2945 or caroline.lafontaine@gnb.ca.

MEDIA ACCESS

The COVID-19 pandemic has resulted in temporarily limiting and modifying court proceedings. The Court of Appeal recognizes the critical importance of the open-court principle in all but exceptional circumstances. In these exceptional circumstances, this principle can be upheld by providing accredited media access to court of appeal hearings in the following manner:

1. Journalists can determine what motions or appeals are scheduled by following these links to the Court's [list of motions](#) or the [list of appeal cases](#). These are frequently updated;
2. Members of the accredited media who wish to observe a video conference hearing or monitor one by telephone conference may communicate with the Registrar at (506) 453-2945 or caroline.lafontaine@gnb.ca for information about how they might participate;
3. Media participation in court proceedings taking place by video or telephone may be subject to limits on the number of callers that can be connected through a single teleconference number;

4. Other than identifying themselves, members of the media accessing a court hearing must put their communications device on mute or remain silent throughout the proceeding;
5. Members of accredited media may make an audio recording for the sole purpose of verifying notes. The broadcast of any of the proceedings without prior permission of the Chief Justice is strictly prohibited.