



## **COURT OF QUEEN'S BENCH FOR SASKATCHEWAN DIRECTIVE UPDATE**

As of August 31, 2020

This Directive updates and **replaces** the Directives issued on March 19, April 23 and May 15, 2020, and provides details respecting the general operations of the Court of Queen's Bench while addressing issues arising from the COVID-19 pandemic.

The Court will be continuing with normal operations, modified to the extent necessary to take into account the special circumstances created by the COVID-19 pandemic.

The Court continues to be mindful of its obligation to hear and process as many matters as possible, while simultaneously respecting the need to adhere to recommendations and protocols designed to keep everyone safe.

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**PART 1 - BACKGROUND**

By way of background, the Directive issued on March 19, 2020 adjourned all non-urgent, non-family chambers applications scheduled on a chambers date between March 20 and May 31, 2020 as *sine die*. The Directive also adjourned all non-urgent family chambers applications to specific dates in June 2020 “to be spoken to.”

The Directive issued on April 23, 2020 lifted the restrictions on the Court hearing Appearance Day applications and conducting Case Conferences to permit them to be heard by telephone as of May 1, 2020. This Directive also lifted the restrictions on hearing non-urgent chambers applications to permit them to be heard by telephone as of June 1, 2020.

The Court further announced that as part of its concerted effort to hear chambers applications postponed by the March 19, 2020 Directive, a “chambers blitz” would be implemented for three weeks in June commencing June 8, 2020. The “blitz” included setting additional non-traditional chambers dates in June to maximize all available judicial resources. During this time the Court scheduled approximately 1,000 applications throughout the province, which had the effect of eliminating the backlog of chambers applications that had built up during the time when regular operations were modified.

During the summer months of July and August, the Court offered approximately 200 pre-trial conference dates, which addressed the inventory of pre-trial conferences that had been postponed due to COVID-19 or had freshly arisen. Further, over 50 summary conviction appeals and small claims appeals were scheduled since June 2020, which eliminated the inventory of these types of cases that were waiting to be heard.

## **PART 2 - EFFECTIVE DATE**

This Directive update, subject to the specific dates mentioned herein, takes effect on August 31, 2020.

## **PART 3 - SCHEDULING**

The process for scheduling all matters will, by and large, be similar to the processes in place prior to March 19, 2020.

It is recognized that due to the consequences of COVID-19 on the Court’s already limited judicial resources, going forward some pre-trial conferences, hearings and trials might be scheduled later in the future than may have otherwise been the case. While the Court did relieve some scheduling pressures by implementing a “chambers blitz” in June 2020 and by adding additional sitting weeks in July and August to conduct pre-trial conferences, small claims appeals and summary conviction appeals, demand to schedule matters over the next several months far exceeds the supply of judicial time.

In scheduling matters, priority will be given to:

- criminal matters where the Accused is in custody;
- criminal matters that are at risk of being dismissed due to institutional delay;
- child protection hearings; and
- trials and other proceedings that have previously been “bumped” or adjourned by the Court.

The local registrar in each judicial centre will attempt to schedule all matters as soon as possible, but delay in providing dates may occur for reasons such as a particular judge being seized with the matter, if a trial is longer than one week, or if no mutually agreeable dates are provided by all counsel or parties.

To assist the Court in creating and maintaining an efficient schedule, counsel and parties are encouraged to:

- Take advantage of the expedited pre-trial process described in Practice Directive GA-PD#4 - *Expedited Pre-Trial Conferences*.
- Notify the local registrar as soon as possible when a scheduled conference, hearing or trial date is no longer needed.
- Collaborate with opposing counsel or parties to resolve evidential or other matters that may result in reducing trial time.
- Ensure that settlement discussions are held in a timely fashion so that, if a matter settles, there is sufficient notice to backfill the Court’s time that has become free. (Settling a matter on the “court house steps” results in an inefficient use of institutional resources.)
- Notify the local registrar immediately on becoming aware of any circumstance that could result in the delay of a scheduled matter, as this increases the opportunity for another matter to proceed in the vacated slot.
- Attempt to obtain mutually acceptable dates (several dates would be preferable) when requesting the scheduling of a civil matter and,

thereafter, the party requesting the scheduling shall relay these dates to the local registrar.

- Respond promptly to all messages and calls from the local registrar.

## **PART 4 - USE OF TECHNOLOGY**

### *Video conferencing*

Online video conferencing through WebEx is available for use in the court rooms and conference rooms. Although online video conferencing through WebEx is generally permitted for use in these spaces, its use in any particular proceeding must be approved in advance by the presiding judge and is subject to the availability of resources to set up and manage the video conference.

CCTV video conferencing is also available between court houses and most correctional institutions.

Where counsel or a party to a proceeding believes that the proceeding or a portion of the proceeding can be conducted by video conference without jeopardizing the integrity of the proceeding, they are encouraged to request that the conference, hearing, witness appearance or trial be conducted by video conference. The request should be made either at a pre-trial or through the local registrar. The use of video conferencing is subject to the discretion of the judge presiding at the hearing or trial.

### *Audio/Video Conferencing in Criminal Matters*

The *Criminal Code* contains specific provisions respecting remote appearances. This Directive must be read as consistent with those provisions.

### *Other technology*

The Court is amenable to the use of other technology in court proceedings provided its use does not jeopardize the integrity of the proceeding. The use of other technology for a particular case may be requested at a pre-trial or through the local registrar. The use or development of other technology for general applications may be brought to the attention of the Registrar of the Court. The use of these options is subject to the discretion of the presiding judge.

### *Early Consideration of the Use of Technology*

Counsel or a party considering the use of technology, in whatever form, should consider their possible options in a timely fashion so that the mechanics of the proposed technology can be accommodated. Specifically, the local registrar should be notified at the earliest possible date of the potential for the use of technology (e.g., a witness testifying by video from another province).

### *Reliable Secure Telephone Line*

It is the responsibility of the person choosing to appear by telephone to ensure they have a reliable and secure telephone line. A location where background noise is minimal should be utilized. Also, wherever possible, a land line should be used, rather than a cell phone, as a land line connection is generally of better quality.

## **PART 5 - ALL CHAMBERS APPLICATIONS (INCLUDING CHILD PROTECTION APPLICATIONS)**

### *Schedule*

Civil and family chambers, as well as child protection chambers in Prince Albert, shall continue to be held on the date and time at each judicial centre as set out in the Saskatchewan Gazette and as published on the Court's website at:

<https://sasklawcourts.ca/index.php/home/court-of-queen-s-bench/court-locations-and-sitting-times>.

Child protection chambers matters in the judicial centres of Saskatoon and Regina shall be scheduled on Tuesdays and, until further notice, shall continue to be set at staggered times of 10:00 a.m., 12:30 p.m. and 2:00 p.m.

### *Chambers Presumptively by Telephone*

All applications, including child protection hearings, shall be heard by telephone, unless the presiding judge grants permission or directs a party or parties to appear in person. A party who wishes to appear in person must notify the local registrar of their request to appear in person at least two business days prior to the hearing date, after which the presiding judge will determine whether the party will be permitted to appear in person rather than by telephone.

All parties appearing by telephone shall provide to the local registrar the telephone number where they can be reached on the date and time scheduled for their chambers attendance and shall remain available by telephone at that number on that date until their matter is heard.

*Amendment to Notice of Application Forms (except for Child Protection Notices)*

Until further notice, all Notices of Application, Originating Applications, Applications for Variation or any other hearing notices returnable to chambers (other than child protection applications) must contain the following notice immediately below the date and time set for the chambers appearance:

“Due to the health risks posed by the COVID-19 pandemic, all chambers applications will be heard by telephone unless the presiding judge has decided otherwise. To confirm the telephone number where you can be reached on the date of the application, **you must immediately** contact the office of the local registrar at **(306)** (insert telephone number of local registrar) and provide your telephone number. You must remain available by telephone at that number on that date until your matter is heard.”

*Attachment to Notices of Protection Hearings (in Family Services Matters)*

Until further notice, all Notices of Protection hearings or any other hearing notices returnable to chambers in child protection matters must have appended to the Notice or other hearing notice the following statement:

“Due to the health risks posed by the COVID-19 pandemic, all child protection chambers applications will be heard by telephone unless the presiding judge has decided otherwise. To confirm the telephone number where you can be reached on the date of the application, **you must immediately** contact the office of the local registrar at **(306)** (insert telephone number of local registrar) and provide your telephone number. You must remain available by telephone at that number on that date until your matter is heard.”

*Chambers by Video Conferencing*

Where counsel or a party requests that a chambers application be conducted by video conference, they must notify the local registrar of their request at least two

business days prior to the chambers date, after which the presiding judge will determine whether the party will be permitted to appear by video conferencing rather than by telephone. The use of video conferencing is subject to the discretion of the chambers judge.

### *Civil and Family Chambers Lists*

Civil and family chambers lists will be available to parties or counsel, on request, the morning of the chambers date, in a manner to be determined by the local registrar.

## **PART 6 - APPEARANCE DAY APPLICATIONS**

*The Queen's Bench Rules* have been amended effective September 1, 2020 to provide that all Appearance Day applications will now be scheduled to be heard "30 minutes before the time chambers is scheduled to commence," rather than at "the end of chambers list." [This will mean that most Appearance Day applications will be heard at 9:30, except when chambers commences at 1:30 due to a statutory holiday, in which case the Appearance Day application will be scheduled for 1:00]. This change is intended for the convenience of counsel and the parties. By more precisely designating the time when the Appearance Day application will be heard, the time during which counsel or the parties must remain available for the Court's call is reduced. Appearance Day applications will continue to be heard by telephone. See:

[https://sasklawcourts.ca/images/documents/Queens\\_Bench/QB\\_Rule\\_Amendments\\_2020\\_E.pdf](https://sasklawcourts.ca/images/documents/Queens_Bench/QB_Rule_Amendments_2020_E.pdf)

## **PART 7 - AFFIDAVITS DURING THE PANDEMIC**

The protocol respecting affidavits set forth in previous Directives is continued by this Directive. The following excerpt from the April 23, 2020 Directive remains in effect:

The March 19, 2020 Directive restricted civil and family chambers matters to urgent and emergency matters and provided guidance on how urgency would be determined. The Directive, in Part 3(b)(4) and Part 4(4)(4), included some direction with respect to the *filing* of affidavits as follows:

"In the event it is not possible to provide an emailed sworn affidavit, unsworn documents may be filed, provided the affiant is available by telephone or electronic communication to swear or affirm the document." (Emphasis in original.)



Following the publication of this Directive, the Government of Saskatchewan enacted emergency regulations on March 26, 2020, which allow lawyers to commission and witness documents remotely using electronic means: *The Electronic Information and Documents Act, 2000* and *The Electronic Information and Documents (Public Emergencies) Regulations*.

Following those enactments, the Law Society of Saskatchewan prepared a Practice Directive for its members providing for the execution of affidavits by way of electronic communication: *Emergency Practice Directive 1 - Remote Execution of Certain Documents by Electronic Means*.

Recently, some questions have been raised respecting the interaction of these measures with the Court's Directive. What follows is intended to provide clarification and guidance.

As a starting point, the Court's Directive provides only that unsworn materials may be *filed* with the Court. It does not contemplate that an application would proceed on unsworn affidavit evidence.

Further, while the presiding Justice will make the final determination in each specific matter, it is reasonable to expect that the process prescribed by the Law Society will be followed by all lawyers who are filing evidence in support of an application: either to proceed based on urgency, or on the merits of the application. In the event it is not possible for a lawyer to meet the terms of the Law Society Directive, that lawyer may wish to seek leave from the presiding Justice to have their client/witnesses present by telephone at the hearing of the matter to swear or affirm the document. In that regard, while there may be some leniency at the initial stage where matters are proceeding on a time-sensitive basis, by the date of a chambers hearing it would only be in exceptional circumstances that the Court should be asked to administer affirmations/oaths where a lawyer is involved.

## **PART 8 - CIVIL AND FAMILY HEARINGS AND CONFERENCES WITHOUT *VIVA VOCE* EVIDENCE**

All civil and family hearings scheduled by the local registrar that do not require *viva voce* evidence shall be conducted by telephone, unless the presiding judge directs that the parties appear in person or by video conference. This includes summary judgment applications and judicial reviews, case conferences and case management conferences.

## **PART 9 - CIVIL AND FAMILY PRE-TRIAL CONFERENCES**

All civil and family pre-trial conferences will be conducted in person, unless the presiding judge directs the parties to appear either by telephone or by video conference.

## **PART 10 - CRIMINAL PRE-TRIAL CONFERENCES**

All criminal pre-trials shall be conducted by telephone unless the criminal pre-trial judge grants permission or directs a party to appear in person. A party who wishes to appear in person must notify the local registrar at least five business days prior to the criminal pre-trial conference date, following which the criminal pre-trial conference judge will determine whether such party will be permitted to appear in person rather than by telephone.

Accused persons in custody who may be required to appear at a criminal pre-trial conference shall appear by CCTV. Accused persons not in custody who may be required to appear at a criminal pre-trial conference shall appear by telephone.

All parties appearing by telephone must provide to the local registrar in a timely fashion a contact telephone number to be used at the criminal pre-trial conference. Parties must remain available at their contact telephone number until their matter is heard.

## **PART 11 - SUMMARY CONVICTION APPEALS AND SMALL CLAIMS APPEALS**

All summary conviction appeals and small claims appeals will be conducted by telephone, unless the presiding judge grants permission or directs that counsel or the parties appear in person or by video conference.

## **PART 12 - CRIMINAL PROCEEDINGS OTHER THAN PRE-TRIALS, TRIALS AND APPEALS**

### *Accused Persons in Custody*

For the following proceedings, accused persons who are in custody shall, presumptively, appear via video conference unless the pre-trial judge or presiding judge orders otherwise:

1. Bail reviews, s. 520 of the *Criminal Code*;
2. Detention review chambers (self-represented persons only; accused persons with counsel need not appear);
3. Detention reviews, s. 525 of the *Criminal Code*;
4. First Appearances on Direct indictments;
5. Re-elections;
6. Guilty pleas, where sentencing is to occur at a later date;
7. Guilty pleas, followed by sentencing submissions;
8. Sentencings.

For the following proceedings, accused persons who are in custody shall, presumptively, be produced to appear in person unless the pre-trial judge or presiding judge orders otherwise:

9. Applications for judicial interim release, s. 522 of the *Criminal Code*;
10. Pre-trial motions, regardless of whether evidence is called.

#### *Accused Persons Not in Custody*

For the following proceedings, accused persons who are not in custody shall, presumptively, appear in person—unless a designation of counsel specific to Court of Queen’s Bench proceedings has been filed—and the pre-trial judge or presiding judge decides otherwise:

1. Applications to amend release orders;
2. Bail reviews, s. 521 of the *Criminal Code*;
3. First Appearances on Direct Indictments;
4. Re-elections;
5. Guilty pleas, where sentencing is to occur at a later date;
6. Guilty pleas, followed by sentencing submissions;
7. Sentencings;
8. Pre-trial motions, regardless of whether evidence is called.

#### *Counsel*

For the following proceedings, counsel shall, presumptively, appear via telephone unless the pre-trial judge or presiding judge orders otherwise:

1. Bail reviews, s. 520 of the *Criminal Code*;
2. Detention review chambers;

3. Detention reviews, s. 525 of the *Criminal Code*;

For the following proceedings, counsel shall, presumptively, appear in person unless the pre-trial judge or presiding judge orders otherwise:

4. Applications for judicial interim release, s. 522 of the *Criminal Code*;
5. First Appearances on Direct Indictments;
6. Re-elections;
7. Guilty pleas, where sentencing is to occur at a later date;
8. Guilty pleas, followed by sentencing submissions;
9. Sentencings;
10. Pre-trial motions, regardless of whether evidence is called.

*Requests for an Order/Leave to Deviate from the Presumptions*

If the pre-trial or presiding judge has not made a determination respecting the appearance of the accused, and Crown or Defence counsel wish to seek an order deviating from the presumptions set out in this Directive, they may write to the local registrar, with a copy to opposing counsel, setting out the order requested and the reasons therefor. When making such a request, counsel should familiarize themselves with the relevant *Criminal Code* provisions.

If Crown or Defence counsel wish to seek leave to deviate from the presumptions respecting the appearance of counsel, they may write to the local registrar, with a copy to opposing counsel, seeking leave and setting out the reasons therefor.

## **PART 13 - NON-JURY TRIALS (CIVIL AND CRIMINAL)**

All non-jury trials, both criminal and civil, will be held in the various court houses in the relevant judicial centres and will be conducted in the usual pre-COVID-19 manner, subject to the following:

- The trial judge will determine what modifications, if any, to the trial process will be implemented during the trial. This will include deciding whether witnesses will appear in person, by video, etc.
- Where the required physical distancing is not possible, plexiglass shields have been put in place to separate the judge, clerk, counsel and witnesses.

- The number of persons permitted in the gallery of the court room may be limited in order to comply with the gathering limits recommended by the Chief Medical Health Officer. If necessary and feasible, the local registrar may arrange for the viewing of trial proceedings from another court room when requests are made in advance. The local registrar may also reserve seating for media or other persons with a direct interest in the proceeding.

## **PART 14 - JURY TRIALS (CIVIL AND CRIMINAL)**

All criminal jury trials will be held at a location other than a court house to ensure sufficient space in maintaining appropriate physical distancing for those participating in the trial process, including those persons who respond to a jury summons and those chosen to serve as a juror. The selection of the space and the protocols that will be in place to screen jurors and to maintain physical distancing outside of the courtroom will be managed by the Court Services Division of the Ministry of Justice [“the Ministry”] in accordance with *Court Services Jury Management Policy and Procedures*.

The trial judge will manage all circumstances and situations within the courtroom.

## **PART 15 - GENERAL GUIDELINES RESPECTING HEALTH PRECAUTIONS WHEN ATTENDING THE COURT HOUSE**

All court houses remain open to the public. However, attendance by individuals who are not necessary to a proceeding is discouraged and may be restricted to ensure proper physical distancing is maintained.

### *Public’s Responsibilities*

Everyone attending the court house must take responsibility for their health and safety, and the health and safety of others with whom they may have contact. This means that all attendees must inform themselves and obey the recommended and mandatory Public Health Rules and Orders, including rules respecting hygiene and physical distancing. This information can be found on the Provincial Government’s website:

<https://www.saskatchewan.ca/government/health-care-administration-and-provider-resources/treatment-procedures-and-guidelines/emerging-public-health-issues/2019-novel-coronavirus>

### *Screening*

All persons wishing to enter a court house will be screened with a COVID-19 assessment by Court Security before being allowed entry.

### *When Person required to attend Court is denied Entry to the Court House*

When a person who is required to attend court is denied entrance by Court Security as a result of circumstances related to COVID-19, Court Security will obtain the telephone number or other contact information of the person who has been denied entry and immediately thereafter contact the local registrar. The local registrar is then responsible for notifying the judge whose proceeding is affected in order to obtain instructions on what alternate arrangements should be made.

### *Masks*

Lawyers, parties and members of the public may be required to wear masks.

The presiding judge will determine the requirements respecting wearing masks within the courtroom.

The Ministry's Court Services Division will determine the requirements respecting wearing masks within the court house (not including the courtroom).

### *Water*

Persons attending the court house will be allowed to bring their own water containers. The container will be examined by Court Security's Deputy Sheriffs to determine if it is safe to enter the court house.

Water pitchers and drinking glasses will not be provided in a court room. Bottled water will be available for witnesses.

## **PART 16 - LOCAL REGISTRY SERVICES**

### *Local Registry offices*

Personal access to the Local Registry offices remains restricted.

### *Drop Boxes*

The protocol respecting drop boxes set forth in the March 19, 2020 Directive is continued by this Directive. The following excerpt from that Directive remains in effect:

Effective immediately and until further notice, personal access to the offices of the local registrar is restricted and the following procedures will be implemented.

- To obtain guidance on Court procedures or court schedules, contact the office of the local registrar by phone. Phone numbers for each office can be found on the Court's website here:  
<https://sasklawcourts.ca/index.php/home/court-of-queen-s-bench/court-locations-and-sitting-times>.
- Documents to be filed should be placed in an envelope and delivered either to a drop box located in the hallway (where available) or on the local registrar counter. The envelope should clearly set out the phone number where the party filing the documents can be contacted. All documents delivered will be date stamped and issued on the delivery date unless the documents are insufficient. Local registrars will notify persons who have filed documents by phone if their documents require amendment or completion before filing.
- Documents that are required to be returned will be available for pick up the following day. Pick-up locations at each location will be provided in the court house.

### *Assessments and Taxations*

Subject to the direction of the assessment officer or the local registrar, all assessments and examinations of accounts by an assessment officer or the local registrar will be conducted by telephone or video conference.

### *Email filing*

The Court acknowledges that there is a demand to allow for the filing of court documents by email. At present, current registry resources are not sufficient to manage unrestricted email filing. As the Court recognizes the benefit of email filing, its efficient and reasonable management is currently being explored with the Ministry's Court Services Division.

Until additional resources or processes can be established to manage the expected increase in unrestricted email filing, email filing is restricted to parties and counsel with deposit accounts whose residence or office is outside of the City in which the judicial centre is located. As well, any document that exceeds 50 pages, including attached exhibits or case authorities, will not be accepted by email for filing, except with the prior permission of the local registrar.

The official email for each local registrar's office can be found here:

[https://sasklawcourts.ca/images/documents/Queens\\_Bench/LR\\_contact\\_info.pdf](https://sasklawcourts.ca/images/documents/Queens_Bench/LR_contact_info.pdf)

## **PART 17 - UPDATES TO THE DIRECTIVE**

As the circumstances of the operational challenges posed by COVID-19 change, the terms of this Directive may be amended. Please check this COVID-19 web page for amendments:

<https://sasklawcourts.ca/index.php/home/court-of-queen-s-bench/covid-19-update>

CHIEF JUSTICE M.D. POPESCU