

ELECTRONIC COMMUNICATION ON BEHALF OF:



MCINNES
COOPER

COX & PALMER

May 19, 2020

The Law Society of Newfoundland and Labrador
196-198 Water Street
St. John's, NL A1C 5M3
Attention: Mr. Ian S. Patey

The Canadian Bar Association
66 Slater Street, Suite 1200
Ottawa, ON K1P 5H1
Attention: Mr. Christian J. Hurley

Dear Sirs/Mesdames:

Re: Access to Justice

The undersigned are part of a four (4) province initiative to raise comments and concerns in our respective provinces regarding access to the courts and the continued operation of the justice system. In these challenging times, we recognize the primacy of public health and safety and fully support all measures taken to ensure the safety of the people of the Province of Newfoundland and Labrador ("**Province**").

With respect to access to justice, we are cognizant that things may not return to normal for some time and that the path forward may not be a straight line when we have to balance public health and safety with the need for access to justice in these trying times. Now that the Province of Newfoundland and Labrador has lowered the alert level for social mobility, we must now address the impact of the lessening of these restrictions with the need to ensure that access to the justice system, as an essential service, is being maintained.

We understand that the Courts and for that matter the Registries have asked that members of the local Bar act through the Law Society and the Canadian Bar Association and it is in this regard that we write this letter in the hopes that our concerns can be raised in a timely fashion.

As we see it, there are three (3) primary concerns in relation to the Courts in the Province which we feel need to be addressed; namely:

A. COURTS

1. Court re-entry;
2. Expansion of Court hearings; and
3. Addressing back log of cases.

RE-ENTRY

Without belabouring these matters, we would ask that representation be made to the Courts, and in particular the General Division, to get a sense of the Courts' re-entry plans. Recognizing that only one week has passed since May 11, the Courts may require additional time to determine its re-entry plans given that many factors are beyond the Courts' direct ability to control. That having been said, early communication of the re-entry goals and timelines will help all legal professionals and their offices as they make their own re-entry plans. For example, in New Brunswick the Court has indicated a desire to more fully open by June 1, 2020. In addition, the Provincial Court appeared to be expanding its operations and attempting to hear matters virtually in its most recent notice to the profession and general public.

For our present purposes, we would ask that you seek a response from the Court as to planned re-entry and, in particular, whether they anticipate being open during the summer months. This information will impact all legal professionals' re-entry plans during the summer months.

EXPANSION OF HEARINGS

In addition to Court re-entry is the need for expansion of hearings as restrictions are lessened. While not all matters may be capable of in person hearing due to public safety concerns and guidelines, the question is whether the Courts foresee moving to other platforms to enable virtual hearings. We believe that currently available technology makes virtual hearings a viable and expedient option. The next question will be what matters can be heard, whether a gate keeper or application process will be necessary to have matters scheduled or whether the Court will be setting guidelines for the resumption of non-urgent or emergent cases as well as routine civil and other matters.

BACK LOG

Finally, the issue of addressing the back log which currently exists needs to be reviewed. We understand that the New Brunswick Trial Division is seeking to have the back log resolved by the end of the calendar year 2020. Will that be the case in Newfoundland and Labrador and if yes, what are the plans to address the back log and when does the Court feel it can provide information to the practising Bar to deal with same. As everyone can appreciate, if greater access to the Courts is not attained, justice will not only be delayed, it will be denied in some instances.

B. REGISTRIES

With the passing of the *Temporary Alternate Witnessing of Documents Act*, our government has provided an alternative to in person meetings where that may not be possible or appropriate. However, the requirements for the registration of original signature documents still requires the circulation of potentially contaminated documents and results in a cumbersome process.

It is our wish that the Government consider further amendments to the *Registration of Deeds Act* and the *Electronic Commerce Act* to provide that witnessing "in the presence of" a party be deemed to include audio-video conferencing and to allow for the admission of electronic signatures for registered documents.

The Law Society of Newfoundland and Labrador
The Canadian Bar Association
May 19, 2020
Page 3

Access to justice is a fundamental and constitutionally protected right in a free and democratic society. While that right must be balanced with other concerns such as public health and safety, the daily business of the Courts and the proper functioning of governmental institutions as essential services, cannot be lost in the process.

CONCLUSION

We are cognizant that some matters addressed may have unique solutions in each province. That having been said, plans are now being made in a number of the Courts throughout the country and it is the early communication of re-entry plans, the establishment of guidelines and protocols and the setting of achievable goals and deadlines which will enable us to plan and meet the needs of all parties while meeting the health and safety needs of the citizenry and the Courts in these challenging times.

Yours truly,

Stewart McKelvey

McInnes Cooper

Cox & Palmer