

March 25, 2020

To: The Honourable Chief Justice M.T. Moreau
The Honourable Associate Chief Justice J.D. Rooke
The Honourable Associate Chief Justice K.G. Nielsen
The Honourable Mr. Justice F.F. Slatter (Chair, Rules of Court Committee)
The Honourable Madam Justice D.A. Yungwirth
The Honourable Assistant Chief Judge K.A. Holmstrom
Barb Turner QC (Chair, Family Law Rules Advisory Committee)

Dear Honourable Ladies, Lords, Sir, and Madam:

Re: Facilitating ADR during the suspension of court sittings

We, the undersigned, jointly write to the Courts on behalf of Alberta's arbitration community, to respectfully submit a proposal which may help to address some of the issues occurring during the suspended court sittings, as well as the backlog that will ensue when hearings eventually resume.

First, we thank you for your efforts during these unprecedented times. Thank you for taking the necessary step of suspending most court hearings so as to stop the spread of Covid-19. We recognize that the Courts' priority is addressing the consequences of the pandemic, and appreciate your time in considering this correspondence.

In light of the suspended sittings, we have been encouraging families and lawyers to try alternative dispute resolution mechanisms such as mediation, collaborative law, arbitration, and med-arb. However, not all disputes can be resolved through negotiation and conciliation. Often, interim parenting and support arrangements require a decision to be made by a neutral third party, which is not possible due to the current suspension of sittings. These would likely not fall into the categories established in the Master Order.

We expect, and no doubt the court anticipates, a flood of applications being commenced once restrictions are lifted if they cannot be addressed in another format. We are mindful that this will likely engender further delays of all matters as we anticipate that the applications currently adjourned during suspended sittings will have the first opportunity to reschedule. We are advising our clients that likely any new matters for specials may well be delayed to 2021. The family bar also recognizes that criminal matters will, by necessity, take first priority in the court calendar.

To assist families, who must stay away from the Courthouse, we have been actively directing families and lawyers to arbitration, including options for written, video and telephone arbitration. An educational website has been launched, FamilyArbitration.ca. The same website will soon have a calendar tool to facilitate expedient online scheduling of families with available arbitrators.

There are, however, limitations to what can be accomplished through an arbitration process. Without the courts to enforce arbitration awards, families have expressed skepticism of arbitration awards

being enforced. In that regard, we write to respectfully propose that applications to enforce family law arbitration awards pursuant to section 49 of the *Arbitration Act* be exempted from the current suspension of sittings. While this may sound like an increase in court sittings, we note that as you are likely aware, historically, applications to enforce arbitration awards are rare. Knowing that awards will be enforced is often enough to encourage the vast majority of parties to adhere to the arbitration award. This exemption may not result in any additional hearings, but simply provides for a method of enforcement. It will merely increase confidence in the arbitration model, thereby addressing many crises while social distancing measures are necessary. We also note that enforcement may well not come into play until after suspension of sittings is lifted given the time frames in the *Act*. The *Arbitration Act* mandates that such applications be made to the Court of Queen's Bench, which is the only court that this measure would affect. It could be required that such applications be made by way of written application.



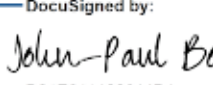
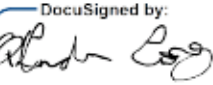
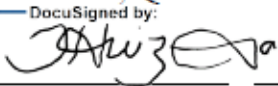
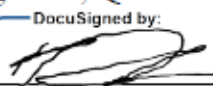

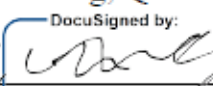
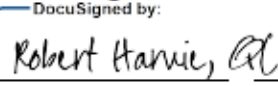
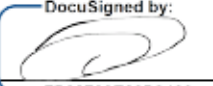
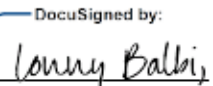

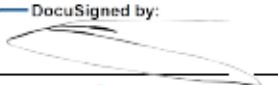
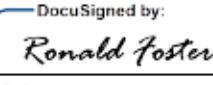
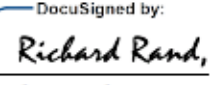
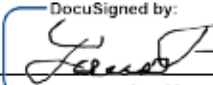
To be clear, we are not asking that courts order spouses into arbitration, we are merely asking that the existing provisions of the *Arbitration Act* be permitted to continue in effect to have awards entered as orders. As the legislation provides for enforcement of awards as if they were a judgment, we anticipate that any applications would be brief, with essentially the court confirming that the form of order accords with the terms of the award.

Referring to arbitration may also help to steer litigants towards the arbitration system, as the recent collaborative law exception to Rules 4.16 / 8.4(3)(a) (ADR before trial) has done. Although family law arbitration has become a popular ADR method in Calgary, outside of Calgary it remains rare, as many family law lawyers have not yet tried arbitration firsthand, and are reluctant to try new processes.

If an exception to the suspension is not possible, we respectfully propose, in the alternative, that the Courts consider expressly encouraging litigants to divert to alternative dispute resolution processes, including arbitration and med-arb.

We are hopeful that as more families and lawyers try these alternative dispute resolution mechanisms during the suspension of sittings, many of them will be more likely to continue to use ADR as a less costly and lower conflict method to resolve disputes, even after this crisis has passed. These steps now may result in a long-term reduction of file loads for the courts, thereby easing budgetary demands and resulting in fewer families embroiled in litigation.

All of which is respectfully submitted,

 Norm Picard, QC DocuSigned by: AB4AC935129948C...	 Doug Moe, QC DocuSigned by: AB4AC935129948C...	 John-Paul Boyd, QC DocuSigned by: D21E811122014B1...	 Linda Long, QC DocuSigned by: 0A9FB53E8904459...
 Tina Huizinga DocuSigned by: 4E00A4367495464...	 Ken Proulx DocuSigned by: 94F240B9E280475...	 Pierre Boileau, QC DocuSigned by: C215B962B491EB...	 Michele Reeves DocuSigned by: EB016800E6B6458...
 Robert Harvie, QC DocuSigned by: 041FCAFE20D58462...	 Adam Letourneau, QC DocuSigned by: 7B90709E23B9466...	 Lonny Balbi, QC DocuSigned by: 06114E05E10244E...	 Anthony Richard, QC DocuSigned by: 84D1183EAC441...
 Sherry Kachur, QC DocuSigned by: 0A7509D195814...	 Ronald Foster, QC DocuSigned by: 7B514862707046C...	 Richard Rand, QC DocuSigned by: 1D0D2C3400B4192...	 Louise Campbell, QC DocuSigned by: 0C3633232D314A5...

Brad Mustard

Bradley Mustard

DocuSigned by:

Geeta Bhargava, QC

Geeta Bhargava, QC

DocuSigned by:

Kevin Hannah, QC

Kevin Hannah, QC

DocuSigned by:

Wayne Barkauskas

Wayne Barkauskas, QC

Deborah Kay

Deborah Kay

DocuSigned by:

Jesse Wilde

Jesse Wilde

DocuSigned by:

Kevin Peddie

Kevin Peddie

DocuSigned by:

Lorraine Stark

Lorraine Stark

DocuSigned by:

Moosa Jiwaji

Moosa Jiwaji

DocuSigned by:

David Carter

David Carter

DocuSigned by:

Sid Kobewka

Sid Kobewka

DocuSigned by:

Lesley Kroeker

Lesley Kroeker

DocuSigned by:

Jonathan Griffith

Jonathan Griffith

DocuSigned by:

Dereck Jones

Dereck Jones

DocuSigned by:

Lindsay Ewens-Jones

Lindsay Ewens-Jones

Michael Hokanson

Michael Hokanson