



The CBA-Alberta Branch takes the opportunity to provide minutes arising from a telephone conference call between the Bench and members of the family law bar, which included attendance by the Chairs of the CBA Family Law Sections (north and south).

The CBA-Alberta Branch is committed to providing its members with current and relevant information across all practice areas which is facilitated by CBA-Alberta's strong relationship with the Bench.

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**Summary of Teleconference Between  
the Bench and Family Bar  
Wednesday, April 15, 2020**

**Justices in Attendance:**

Chief Justice Moreau

Associate Chief Justice Nielsen, Chair of Court of Queen's Bench Pandemic Response Committee

Justice Yungwirth, Co-Chair of Family Law Steering Committee (Edmonton)

Justice Kenny, Co-Chair of Family Law Steering Committee (Calgary)

Justice Slawinsky (Red Deer)

Justice Miller (Lethbridge)

Justice Kubik (Lethbridge)

**Discussion**

- In expanding its operations, the court is striving to treat all geographical areas of the province and practice areas similarly.
- The court continues to work on the IT necessary to move to remote hearings. The Court of Appeal was further ahead in this process when the pandemic hit and is almost fully remote. They also control their own budget. The Court of Queen's Bench has to work within a set budget.
- The Court of Queen's Bench is working through 4 phases. The first phase was to continue to address emergency and urgent matters. The Court is now moving into the second phase of planning for a docket approach to cancelled cases and to triage dealing with cancelled cases, potentially using EICC or ADR. Phase 3 will be a docket system to family and civil cases with places ready to refer cases to, and then phase 4 will be when services are back to normal.
- Hearings of urgent matters:
  - Last week in Edmonton, 100 requests were received for urgent hearings. 56 of those total requests were for family matters. 57 of those total requests were



- approved to proceed. The majority of those approved were family matters and the majority of approved family members involved self-reps.
- Last week in Calgary, 65 requests were received for urgent hearings. 30 have been approved so far with 18 of those being family cases. 13 are still being triaged.
- The Court cannot yet run regular applications through the urgent triage system.
  - Lethbridge has trialed remote hearings with Judges at home using the WebEx system. There were some difficulties but it worked well overall.
  - EPO reviews are ongoing in person as are in person viva voce hearings in Calgary and Edmonton. In Lethbridge all have been dealt with remotely. Legal Aid Alberta (LAA) has requested and made a proposal for all EPO duty counsel appearances to be by phone. It is proposed that Applicants and Respondents will be served by police with notices of how to apply for counsel/set up remote attendance in Court. The Court will be working with LAA on this. The Court would like a contingency plan in place so that the Court can still deal with EPOs if it becomes necessary to prohibit all in-person attendances.
  - The Family Justice Steering Committee is recommending the following process to deal with Notices to Disclose:
    - The Notice to Disclose would no longer contain a return court date. The notice portion would advise the Respondent that they must complete a disclosure statement within 30 days. A template Response would also be served along with the Notice to Disclose for the Respondent to fill out if they cannot provide all of their disclosure, to explain why. A draft Disclosure Order would also be served.
    - Within 1 month, the Respondent provides their disclosure statement and template Response if not all disclosure is provided.
    - If disclosure is incomplete, the Applicant can then elect to submit a desk application electronically without further notice to the Respondent. Proof of service would be provided along with a “Notice of No/Incomplete Response”, like a noting in default, to advise that disclosure was incomplete.
    - The court can grant the Disclosure Order and return it to the Applicant, who would then serve the Respondent.
    - If this process works well, the Court would be looking to keep it in place longer term. This will assist in keeping disclosure matters out of chambers while the court is trying to catch up on the backlog.
  - The Court will also be adopting a desk process for simple Chambers applications:
    - The Court looked to Nova Scotia, which is already using this process.



- Examples of simple matters that may be suitable for desk process: consent to travel; dispensing with signature on passport application; table child support based on line 150 income; determination of a section 7 expense; holiday parenting time (for example, special occasions like Christmas, birthdays, Mother's Day or Father's Day); stay of enforcement; exclusive possession; listing price for sale of a home; access to a child's health or other records; enrollment of a child in an activity; change of name; filing deadline extensions; adjournments; simple child support variations; CYFEA 126.11 applications.
  - The Applicant would put forward an application, affidavit and proposed order. The Respondent would be served and would have 5 days to respond. If no response is received, the application goes to a Judge for review. If a response is received, a reply can be filed. Then the documents would go to a Judge for review. The Judge can sign the order, refuse the order with short reasons, or grant an amended order. If the matter is too complicated, it can go to regular chambers.
  - The decision would be given by way of endorsement – very concise reasons; not precedent setting. Benefit is these desk applications are not recorded and do not require a clerk.
  - Not anticipated to include cross-applications; likely too complicated.
- Goal to have desk process for Notices to Disclose and Simple Applications running by May 4.
- Chief Justice Moreau commented that they are still looking at applications in writing only, potentially as a replacement option for certain Special Chambers hearings. This will be considered for the next phase, but they want to try desk Notices to Disclose and Desk Simple Applications for a couple of weeks to iron out wrinkles before moving forward.
- Submitting Consent Orders: please do not send multiple copies of Consent Orders through different means. If you email, you do not need to fax and send a paper copy as well. This is causing confusion for the clerks. Email is preferred.
- The court plans to start back with JDRs the week of April 27<sup>th</sup>. Priority will be given to cancelled JDRs and cancelled trials.
- Family Docket – presented by Justice Yungwirth
  - When the Alberta Family Court was being planned, the discussion included the idea of a docket setting to early assess each file. To enter docket a one-page intake document would be prepared. The idea is to purposefully limit the pleadings at this stage so that conflict doesn't ramp up before the docket date.



- The Court is now looking to this approach to help get a handle on backlog of family matters in Edmonton and Calgary.
  - From docket, matters would be referred various places. Those referral options are not yet all set up. Currently, matters could be referred to a desk application, urgent chambers, EICCs if both parties are represented and JDRs.
  - These steps would be toward a process that should work better for family law matters in the long run. This process is not finalized but is being worked on.
  - The Court is also looking at separate docket environments for civil and criminal matters.
- ADR Alternatives – the Court has been advised that the Co-Parenter app has an online mediation option. Justice Yungwirth advises that the Child Support Resolution Office is now working remotely. She has been advised that Resolution Services mediation remains an option for qualifying parties.
- Note that Rule 12.39 allows for both written interrogatories and questioning in family law matters.
- Questions/Comments from the bar:
  - Q: Clerks have advised some lawyers that court will be closed until June. Is this the case?
    - A: No announcements have been made, but based on information from the Chief Medical Officer, the Pandemic Response Committee has recommended to the Chief Justice that the suspension on court hearings remain in place to the end of May.
  - Q: Is there a process for tracking submitted Consent Orders?
    - A: No.
  - Q: Is remote commissioning of Affidavits meant to be limited to situations where there is a serious medical concern, or is a desire to social distance enough?
    - A: The court takes a broad view of this and it is not the court's intention to encourage people to go out to swear affidavits. A desire to social distance is sufficient.
  - Q: Are multi-day QB trials in June likely to proceed? Parties are concerned about the cost of preparing for a trial that could be postponed.
    - A: It is unknown when the court will re-open; consider a JDR for these matters. The Court is looking at trials set for May to the end of June to see if a JDR would assist.
  - Comment: It seems that the party who may be benefiting from the delay in a matter being dealt with is reluctant to agree to an ADR process like mediation/arbitration. Some caselaw is coming out indicating that the Court will



not look well upon this sort of action – this may motivate people to consider ADR.

- A: updated rule allows a Case Management or Case Conference Judge to require parties to engage in ADR. This may be able to be utilized as well. (Amendment Reg to Rule 4.16 in mid-March)
- Q: Is there an opportunity when dealing with support orders to have those orders vetted by MEP so that MEP does not reject/refuse to enforce certain orders?
  - A: A briefing note has been submitted to the Minister of Justice regarding a process for MEP to get more involved in dealing with child support payment agreements. Justice Yungwirth will follow up with her MEP contact about this further.
- Q: Issue with the Court's phone lines. Are only 2 people able to be connected at a time?
  - A: Yes currently there are some problems, and this is being worked on. Potential to use a call-in number or WebEx audio.

**Next meeting:**

- The next telephone meeting will occur on May 13<sup>th</sup>.
- The Desk Notice to Disclose and Desk Simple Applications should be up and running for a couple of weeks by that point which will allow feedback on those processes.