



COURT OF QUEEN'S BENCH FOR SASKATCHEWAN DIRECTIVE UPDATE

As of April 23, 2020

This Directive updates and replaces, where applicable, the March 19, 2020 Directive. Significant changes were introduced in response to the spread of COVID-19. Quick and decisive action was imperative. The changes limited in-person hearings; postponed all jury trials scheduled in March, April and May; mandated strict public health protocols within court houses; and restricted chambers applications to those demonstrated to be urgent or an emergency. It is still not possible to proceed with jury trials in June 2020 due to the ongoing requirement to practice social distancing. Jury trials scheduled for June will be postponed to Fall 2020. Although a return to “back to normal” is not yet a reality, following consultation with public health authorities and other stakeholders, it is apparent that the time has come to loosen some of the restrictions imposed in March. While social distancing and other health protocols remain in effect, many users of the legal system have been able to adapt and now have the capability to again engage in court proceedings. The Court is mindful of its obligation to hear and process as many matters as it can, while simultaneously respecting the need to adhere to recommendations and protocols designed to keep everyone safe.

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PART 1 - EFFECTIVE DATE

This Directive Update, subject to the specific dates mentioned herein, takes effect immediately.

PART 2 - JURY TRIALS SCHEDULED FOR JUNE 2020

All jury trials scheduled to commence in June 2020 will be postponed.

**PART 3 - NON-URGENT CONSENT ORDERS AND WITHOUT NOTICE
APPLICATIONS**

While the March 19, 2020 Directive addressed applications without notice, it did not expressly specify whether non-urgent consent orders, in both civil and family law, would be accepted and considered. However, the Court has been accepting and considering non-urgent consent orders in the usual manner and will continue to do so.

To further clarify, in civil matters, submission of consent orders may be done by way of applications without notice, as contemplated in Part 3(e) of the Directive, which states:

“Applications without notice, where permitted by *The Queen’s Bench Rules* or specific legislation, may be filed with the office of the local registrar in accordance with the filing procedures set forth herein.”

In family matters, submission of consent orders may be done by way of applications without notice, as contemplated in Part 4(1)(iv) of the Directive, which states:

“Uncontested divorce proceedings, uncontested family law proceedings, and without notice applications, may continue to proceed in accordance with *The Queen’s Bench Rules* or legislative enactment and may be filed with the office of the local registrar in accordance with the filing procedures set forth herein.”

PART 4 - AFFIDAVITS DURING THE SUSPENSION OF REGULAR OPERATIONS

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 added.)

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 5 - APPEARANCE DAY APPLICATIONS AND CASE CONFERENCES

Commencing May 1, 2020, the restriction on the Court hearing Appearance Day Applications, as contemplated by Rule 6-24(1), and Case Conferences, as contemplated by Rule 4-4, is lifted, and Appearance Day Applications and Case Conferences may proceed by telephone.

PART 6 - CIVIL AND FAMILY AND CHILD PROTECTION PRE-TRIAL CONFERENCES

Commencing June 1, 2020, pre-trial conferences will resume. The nature and relative urgency of the action will be assessed by the Court when determining which parties will be offered pre-trial conference dates. Additionally, in an effort to address the backlog of cases, the Court will be substantially increasing its Summer sittings in order to accommodate hearing as many as 200 pre-trial conferences during July and August.

Until further notice, pre-trial conferences will be conducted either by telephone or, where appropriate and possible, in person. The manner in which the pre-trial conference will be conducted will be at the discretion of the Justice assigned to preside at the pre-trial conference, following consultation with the parties. Where the pre-trial conference is determined by the presiding Justice to be in person, all precautions set forth in Part 5 of the March 19, 2020 Directive shall be followed.

Further details as to precisely how these pre-trial conferences will be scheduled will follow.

PART 7 - RESTRICTIONS ON NON-URGENT FAMILY AND CIVIL CHAMBERS APPLICATIONS LIFTED EFFECTIVE JUNE 1, 2020

Commencing June 1, 2020, the Court's restrictions respecting hearing only urgent and emergency chambers applications will be lifted. The Court will implement a "chambers blitz" during the weeks of June 8 to 12; June 15 to 19; and June 22 to 26. A concerted effort will be made to hear the chambers applications that had been postponed as a consequence of the restrictions set forth in the March 19 Directive, as well as new applications. All chambers applications, unless otherwise ordered by the assigned chambers Justice, will be by telephone. All available judicial resources will be utilized.

During this period, additional non-traditional chambers dates will be set in many of the judicial centres, recognizing that additional time is required for hearing matters by telephone, thus potentially limiting the number of matters heard per day.

Further details as to precisely how these matters will be scheduled will follow.

PART 8 - UPDATES TO THE DIRECTIVE

As the circumstances of the operational challenges posed by COVID-19 change, the terms of this Directive and other Directives issued by the Court 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