



Updated Practice Direction and Order (COVID-19)

April 4, 2020 – This document supersedes the Practice Direction and Order dated March 17, 2020.

Developments since that time, and since the Court released Frequently Asked Questions (FAQ) on March 20, 2020, have given rise to the need to revise the measures being taken to deal with the COVID-19 pandemic. Those intervening developments include the closing of the U.S. – Canada border, the imposition of a mandatory 14-day quarantine period for those returning to Canada, and the announcements of states of emergency in many provinces and municipalities. In addition, the Court continues to be apprised of the ongoing difficulties being encountered by members of the bar, including both the private bar and government counsel, when attempting to work from home. Many Court staff also continue to encounter similar difficulties.

The principal changes addressed in this Practice Direction and Order include:

1. An extension of the previously announced Suspension Period until May 15, 2020.
2. Recommencement of case management hearings by telephone and videoconference, for matters being specially managed by a Case Management Judge.
3. An expansion of the scope of matters that may be dealt with on consent by telephone or video conference, or in writing.
4. The process for rescheduling hearings that have been adjourned or may be adjourned as a result of the Suspension Period.
5. The waiver of certain filing fees, effective April 6, 2020, until the end of the Suspension Period and the postponement of the requirement to pay certain other filing fees.
6. The process to file confidential material.
7. The deemed consent to service of documents electronically.
8. The commissioning of affidavits remotely.
9. The Court's commitment to dealing, this summer, with matters that are adjourned during the Suspension Period. To this end, the conventional two-week period of reduced weeks in the summer will be cancelled.
10. Suspension of the requirement to gown.

The Court will require electronic copies of all documents that are necessary for any telephone or videoconference hearing, or for the adjudication of any matter in writing during the Suspension Period. Parties are reminded of the importance of (i) numbering each page in an electronically filed document or package of documents, and (ii) referring to such page numbers in their written and oral submissions. *Confidential materials filed pursuant to a confidentiality order or direction should not be filed using the e-filing portal.* (See instructions below.)

The Court will continue to monitor this extraordinary situation as it evolves. Parties are encouraged to follow the Court on Twitter (@FedCourt_CAN_en) and regularly visit the Court's website (www.fct-cf.gc.ca) for updates and for information regarding changes in the scope of the Court's operations. The Court is committed to being as flexible as reasonably possible in assisting the public to deal with this situation and the hardship that it is causing.

EXTENSION OF SUSPENSION PERIOD

The Suspension Period is being extended by a further four weeks. It now runs from March 16, 2020 through to May 15, 2020. It may be extended on further notice by the Court.¹

TIMELINES AND HEARINGS DURING SUSPENSION PERIOD

Suspension of Timelines

During the Suspension Period, and subject to the caveat and the three exceptions discussed below, the running of all timelines established pursuant to the following instruments is suspended:

- Orders and Directions of the Court made prior to March 16, 2020;
- the *Federal Courts Rules*;
- the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*;
- subsection 18.1(2) of the *Federal Courts Act*;
- subsection 72(2) of the *Immigration and Refugee Protection Act*; and
- subsection 22.1(2) of the *Citizenship Act*.

The intent is that a party will pick up from where things stood before the Suspension Period, as if the intervening period never existed. So, for example, if that party had three days prior to March 16th to do something, the party will have those same three days at the end of the Suspension Period. The other party would then have the period originally contemplated after that to complete its next step, with all remaining steps in the litigation similarly and sequentially extended. Any deadlines that were to expire on a specific day are equally extended by the duration of the Suspension Period. A party who requires an extension of a deadline may make an informal request for such extension.

Timelines set out in any Orders or Directions issued since (and including) March 16, 2020 remain in effect. In issuing such Orders or Directions, the Court was mindful of the current crisis.

Caveat: Deadlines for commencing actions, appeals or applications under other statutes continue to apply and cannot be extended or varied unless permitted under the terms of and in the manner prescribed by those statutes. Unless the Court has been given authority, and has exercised that authority, to change a statutory deadline or other time period, that deadline or time period will therefore continue to apply, subject to any action that Parliament or the Governor-in-Council may decide to take, or where applicable, the legislature of a province (e.g., for provincial statutes

¹ For greater certainty, the start date (March 16th) and end date (May 15th) are included in the Suspension Period.

of limitations). Parties will be able to request an extension of time for deadlines set out in other applicable statutes if they are unable to meet the filing deadlines in light of current circumstances. However, they should refrain from doing so until after the Suspension Period.

Suspension of Hearings

Subject to the exceptions described below, all hearings² that had previously been scheduled to take place during the Suspension Period are adjourned *sine die* and all General Sittings are cancelled. Parties are responsible for contacting the Court to request that their matters be placed upon a General Sittings list once the Suspension Period is lifted and General Sittings have resumed.

Exception 1: Urgent or exceptional matters

The Court will determine what constitutes “urgent” and “exceptional” on a case-by-case basis. By way of guidance only, applications for a stay of release from detention or for a stay of removal from Canada will be considered to be “urgent” if the release or removal is scheduled to occur during the Suspension Period, or within seven (7) days following its termination. Likewise, an application in respect of the seizure of a ship, an aircraft, or other property, will also be considered to be urgent. Similarly, matters where hardship or substantial financial consequences are likely to result from delay may be considered to be “urgent” or “exceptional.” Such matters will be heard by telephone or video conference.

The Court will require all documents that are necessary for the adjudication of “urgent” and “exceptional” matters to be provided electronically, even if paper copies have previously been provided (see section below on *Service and Filing of Documents*).

Exception 2: Case management hearings

The Court’s Case Management Judges will continue to manage cases, and issue orders and directions, provided that (i) the case is urgent, (ii) the case is subject to a fixed trial/hearing date, (iii) the case is subject to a statutory deadline, or (iv) all parties consent to the matter advancing during the Suspension Period.

Where at least one of these conditions is met, the matter shall continue in case management under the following provisions:

1. All documents required for a matter to be determined shall be filed electronically, as required below under the heading *Service and Filing of Documents*, or as otherwise directed by the Case Management Judge, and made available to all parties in electronic format; and
2. Subject to the exercise of discretion by the Case Management Judge, any matters requiring resolution or adjudication shall be determined in writing, by telephone conference that is no more than 90 minutes in duration, or by video conference that is no more than 2 hours in duration.

² This includes hearings that were scheduled to proceed by way of a telephone conference, unless specific arrangements have been made with a Case Management Judge or the Court, as described below.

Exception 3: By request of a party

To ensure that parties who wish to be able to access the Court during the Suspension Period have an opportunity to do so, the Court will endeavour to accommodate any requests for a hearing by telephone or video conference during that period. These requests will be assessed on a case-by-case basis and subject to the following requirements:

1. All parties consent;
2. A joint schedule of availability is provided;
3. All documents required for the hearing have been or will be filed electronically, as described below, and are available to the other parties in electronic format³; and
4. The hearing is for a duration of less than two hours, subject to the exercise of the Court's discretion.

Rescheduling

If, by May 1, 2020, the Court has not extended the Suspension Period beyond May 15, 2020, parties shall provide the Judicial Administrator with their mutual dates of non-availability up to December 18, 2020, for the rescheduling of hearings that have been adjourned, or may be adjourned as a result of the Suspension Period, by email to HEARINGS-AUDIENCES@FCT-CF.CA. Such dates should be provided no sooner than May 1, 2020 and no later than the close of business on May 29, 2020. Where a matter has previously been placed in case management, please send such dates to the attention of the case management judge.

For Immigration or Citizenship proceedings for which leave was granted and a hearing was scheduled outside the Suspension Period, the Court encourages parties to consent to an alternate timeline for the filing of outstanding documents, as contemplated by the last paragraph of the leave granted order. If necessary, parties may request an adjournment of their hearing while keeping in mind the volume of matters that will need to be re-scheduled.

Unless a matter is urgent or otherwise time-sensitive, and subject to the availability of the parties, the scheduling of matters that have been or will be adjourned due to the Suspension Period will be broadly undertaken on a first-in first-out basis. For example, the Court will endeavour to reschedule matters that were previously scheduled to be heard during the week of March 16, 2020, on earlier dates than it reschedules matters that were originally scheduled to be heard in subsequent weeks.

Adjudication in writing

During the Suspension Period, the Court will continue to adjudicate motions in writing made pursuant to Rule 369, as well as any other matters that the Court is requested to determine in writing, provided the following conditions are met:

1. All parties consent; and

³ Where a party has the materials available electronically, that party is encouraged to make the materials available to the other parties and the Court, and should communicate this to other parties in advance of submitting a request to proceed with a hearing.

2. All documents required for the matter to be determined have been or will be filed electronically, as described below under *Service and Filing of Documents*.

The Court encourages parties to consent to proceed in writing with respect to the following matters, by sending a request to the Registry: FC_Reception_CF@cas-satj.gc.ca:

1. Requests for adjournment of matters scheduled outside the Suspension Period;
2. Matters related to settlement, such as a motion for consent judgement; and
3. Other motions that are amenable to adjudication in writing.

Parties interested to have their hearings on the merits that have been adjourned determined in writing should send their request to the Judicial Administrator by email to HEARINGS-AUDIENCES@FCT-CF.CA.

If the file was perfected when it was adjourned, the Court will proceed based on the written submissions already on file unless the Judge seized of the matter requires further submissions.

Gowning

The requirement to gown for an appearance in Federal Court is suspended. Counsel and parties are expected to dress in appropriate business attire. Judges and prothonotaries will similarly dress in business attire.

SERVICE AND FILING OF DOCUMENTS (INCLUDING AFFIDAVITS) DURING SUSPENSION PERIOD

Court Fees

Effective April 6, 2020, for the duration of the Suspension Period, all fees payable on filing or issuance under item 1 of Tariff A of the *Federal Courts Rules* are waived. With respect to fees relating to a proceeding against the Crown, the statutory filing fee (\$2.00) contemplated by section 48 of the *Federal Courts Act* is to be paid only after registry operations return to normal. In the meantime, the Registry will accept the documents for filing.

Electronic Filing

Parties should use the Court's [E-filing portal](#) to file all documents that do not contain confidential information. On an exceptional basis, where parties cannot access the E-filing portal and the filing of documents is urgent, parties may file by e-mail (max 25 MB) at FC_Reception_CF@cas-satj.gc.ca. For more information regarding electronic filing, please consult the Federal Court's [Notice to the Profession](#) and [Annex](#) thereto.

Paper copies: Parties who file documents electronically during the Suspension Period are exempted from any requirement to file paper copies.

Page numbering and pinpoints: Parties are reminded of the importance of (i) properly numbering the pages of any documents or packages of documents filed electronically, and (ii) referring to such page numbers in their written and oral submissions. In addition, although not mandatory, the Court also encourages parties to bookmark multiple

documents when delivered as a single PDF, such as in a motion record or affidavit with exhibits, creating the electronic equivalent of tabs.

Confidential Documents: Confidential materials filed pursuant to a confidentiality order or direction should not be filed using the e-filing portal. Parties may contact the Registry to arrange for the submission of a confidential document at 1-800-663-2096.

(Alternatively, see this [Telephone List](#) for local office telephone numbers). One acceptable procedure is to submit a password-protected PDF or a secure electronic file transfer to the Court's CMT email addresses and provide the password or instructions to the Registry by email or telephone as appropriate. Such documents must be clearly identified as confidential and broken down into documents not exceeding 25 MB, or by such other means as may be directed by the Court or, where matters are case managed, by the Case Management Judge.

Selection of Local Office in E-Filing Portal: parties are encouraged to select their local office in the appropriate drop-down menu when e-filing a document.

Parties who are not able to submit documents electronically as described above may contact the Registry by phone at 1-800-663-2096 (or see this [Telephone List](#) for local office telephone numbers) or by email at FC_Reception_CF@cas-satj.gc.ca for assistance to resolve the issue.

Service of Documents between Parties

A party may serve a document electronically pursuant to the following [Federal Courts Rules](#): Rules 139(1)(e), 141, 143, and 146(1) and forms 141A (Notice of consent to electronic service), 141B (withdrawal of consent to electronic service), and form 146A (affidavit of service).

Deemed consent: If a party has provided an electronic address on a document filed in Court, that party shall be deemed, for the duration of the Suspension Period, to have consented pursuant to Rule 141 to electronic service of documents at that electronic address. Pursuant to Rule 148, on informal request by a party who did not have notice of a served document or did not obtain notice of it at the time of service, the Court may set aside the consequences of default or grant an extension of time or an adjournment.

Originating documents: Personal service of an originating document filed electronically by a party other than the Crown in proceedings brought under the *Immigration and Refugee Protection Act* or the *Citizenship Act* shall be effected by the Registry on the Crown, the Attorney General of Canada or any other Minister of the Crown in accordance with the practice under Rule 133 of the *Federal Courts Rules*. Service effected in this fashion will relieve an applicant from the requirement to effect personal service.

During the Suspension Period, the Registry may issue an originating document electronically, which shall be deemed to meet the requirements for issuance under the *Rules*.

Timelines for service: For the sake of clarity, a day that falls within the Suspension Period shall not be included in the computation of time under the *Federal Courts Rules* for serving an originating document filed in the Federal Court. Where service of a document that is required to

be served personally cannot practicably be effected, parties may apply informally by letter (sent electronically) for an order for substituted service (Rule 136) or to validate service (Rule 147).

Commissioning of Affidavits

During the COVID-19 pandemic, some accommodation must be made for the commissioning of affidavits in circumstances where it is not possible or is medically unsafe for the deponent to physically attend before a commissioner. Examples might include deponents who are required to self-quarantine, others who are unable to leave their residences, and those who are not permitted to receive visitors. Many provinces and Superior Courts have adopted and published accommodations and mechanisms for remote commissioning, swearing or affirming affidavits to be used in proceedings during the pandemic.

Pursuant to s. 53(2) of the *Federal Courts Act*, and subject always to the discretion of the Court to apply the best evidence requirements, affidavits sworn or affirmed remotely using modes deemed acceptable in any Superior Court of any province will be accepted for filing during the Suspension Period. For greater certainty, all affidavits must be sworn. During the Suspension Period, a scanned version of an affidavit may be accepted for filing, provided that the original version is filed with the Court within two weeks (14 days) of the resumption of its regular operations.

ACCESS TO COURT DURING SUSPENSION PERIOD

The Federal Court remains committed to the open court principle throughout the COVID-19 pandemic. While Federal Court facilities are closed to members of the general public, the Court remains accessible through electronic means. Inquiries may be made to the Registry at FC_Reception_CF@cas-satj.gc.ca or by phone at 1-800-663-2096 (or see [Telephone List](#) for local office telephone numbers).

Limited Access to Documents on the Court Record

Members of the media and general public seeking access to documents on the Court record may request electronic copies of non-confidential documents. However, due to extremely limited staffing on-site during the Suspension Period, only the following will be available:

- a. documents that have been submitted to the Court electronically by the parties, and
- b. documents that have previously been scanned to the record by the Registry.

Subject to the above restrictions, requests for documents may be made at the following e-mail address: FC_Reception_CF@cas-satj.gc.ca

Members of the public, including the media, may consult the Calendar of Hearings on the Court's website (<https://www.fct-cf.gc.ca/en/court-files-and-decisions/hearings-calendar>) to find out which matters are to be heard. Where the matter proceeds remotely, arrangements may be made to allow for attendance of members of the public and the media provided that an advance notice of two business days is given. Such notice must be provided by email to HEARINGS-AUDIENCES@FCT-CF.CA.

Date: 20200404

Ottawa, Ontario, April 4, 2020.

PRESENT: The Honourable Mr. Chief Justice Paul Crampton

WHEREAS the Court issued an Order, dated March 17, 2020, establishing an initial Suspension Period from that date through April 17, 2020;

AND WHEREAS all hearings previously scheduled to be heard during that initial Suspension Period were adjourned *sine die*, and all General Sittings falling within that period were cancelled;

ORDER

THE COURT HEREBY ORDERS THAT:

1. Subject to paragraphs 3, 4 and 5 below, all hearings previously scheduled to occur in the period April 18, 2020 through May 15, 2020 are also adjourned *sine die*.
2. All General Sittings previously scheduled to occur in the period April 18, 2020 through May 15, 2020 are also cancelled, and any matters that were put down for hearing are adjourned *sine die*. Parties are responsible for contacting the Court to request that their matters be placed upon a General Sittings list once the Suspension Period is lifted and General Sittings have resumed.
3. Previously scheduled and new matters that the Court considers to be “urgent” or “exceptional” in nature will be heard by telephone or video conference, unless the Court determines that an in person hearing is required.
4. The Court’s Case Management Judges will continue to manage cases, and issue orders and directions, provided that (i) the case is urgent, (ii) the case is subject to a fixed trial/hearing date, (iii) the case is subject to a statutory deadline, or (iv) all parties consent to the matter advancing during the Suspension Period. Where one of these conditions is met, the matter shall continue in case management under the following provisions:
 - a. All documents required for a matter to be determined shall be filed electronically, as described in the Practice Direction issued jointly with this Order or as otherwise directed by the Case Management Judge, and made available to all parties in electronic format; and

- b. Subject to the exercise of discretion by the Case Management Judge, any matters requiring resolution or adjudication shall be determined in writing, by telephone conference that is no more than 90 minutes in duration, or by video conference that is no more than 2 hours in duration.
5. To ensure that parties who wish to be able to access the Court during the Suspension Period have an opportunity to do so, the Court will endeavour to accommodate any requests for a hearing by telephone or video-conference during that period. These requests will be assessed on a case by case basis and subject to the following requirements:
 - a. All parties consent;
 - b. A joint schedule of availability is provided;
 - c. All documents required for the hearing have been or will be filed electronically, as described in the Practice Direction issued jointly with this Order, and are available to the other parties in electronic format; and
 - d. The hearing is for a duration of less than two hours, subject to the exercise of the Court's discretion.
6. During the Suspension Period, the Court will continue to adjudicate matters to be decided based on the written representations of the parties, provided that the conditions set out in the Practice Direction issued jointly with this Order are met.
7. Pursuant to Rules 3 and 55 of the *Federal Courts Rules* (the "Rules"), and for the duration of the Suspension Period (March 16, 2020 through May 15, 2020), and unless indicated otherwise, the running of all timelines is suspended under:
 - Orders and Directions of the Court made prior to March 16, 2020;
 - the *Federal Courts Rules*;
 - the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*;
 - subsection 18.1(2) of the *Federal Courts Act*;
 - subsection 72(2) of the *Immigration and Refugee Protection Act*; and
 - subsection 22.1(2) of the *Citizenship Act*.
8. Effective April 6, 2020, for the duration of the Suspension Period, all fees payable on filing or issuance under item 1 of Tariff A of the *Courts Rules* are waived. With respect to fees relating to a proceeding against the Crown, the statutory filing fee (\$2.00) contemplated by section 48 of the *Federal Courts Act* is to be paid within 30 days following the last day of the Suspension Period, as extended. In the meantime, the Registry will accept the documents for filing.
9. Parties shall provide the Judicial Administrator with their mutual dates of non-availability up to December 18, 2020, for the rescheduling of hearings that have been adjourned or may be adjourned as a result of the Suspension Period. Such dates of non-availability shall be provided no earlier than May 1, 2020 and no later than the close of business on

May 29, 2020. Where a matter has previously been placed in case management, such correspondence shall be addressed to the attention of the case management judge.

10. Parties who file documents electronically during the Suspension Period are exempt from any requirement to file paper copies.
11. Notwithstanding Rule 4(2) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, parties who file the originating document electronically in proceedings brought under the *Immigration and Refugee Protection Act* or the *Citizenship Act* may rely on the Registry to serve the document on the Attorney General, similar to the practice under Rule 133, and thus relieving the applicant from the obligation to effect personal service.
12. If a party has provided an electronic address on a document filed in Court, for the duration of the Suspension Period that party is deemed, pursuant to Rule 141, to have consented to electronic service of documents at that electronic address. Pursuant to Rule 148, on informal request by a party who did not have notice of a served document or did not obtain notice of it at the time of service, the Court may set aside the consequences of default or grant an extension of time or an adjournment.
13. Pursuant to s. 53(2) of the *Federal Courts Act*, and subject always to the discretion of the Court to apply the best evidence requirements, affidavits sworn or affirmed remotely using modes deemed acceptable in any Superior Court of any province shall be accepted for filing during the Suspension Period. For greater certainty, all affidavits must be sworn. During the Suspension Period, a scanned version of an affidavit may be accepted for filing, provided that the original version is provided to the Court upon the resumption of its regular operations.
14. There will be no two-week period of reduced summer sittings this year.
15. Any requirement to gown for proceedings in the Court is suspended for the duration of the Suspension Period.

Paul Crampton
Chief Justice