



Consolidated COVID-19 Practice Direction (June 25, 2020)

[1] This practice direction consolidates the particular provisions of COVID-19 practice directions and orders dating back to March 13, 2020 that remain in force.¹

Suspension of Regular Operations

[2] All hearings previously scheduled to be heard from March 16, 2020 through June 15, 2020 (the “Suspension Period”) have been adjourned *sine die* and all General Sittings in that period have been cancelled.

[3] During the Suspension Period, 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*.

[4] 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, or where applicable, the legislature of a province (e.g., for provincial statutes of limitations), may decide to take. 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.

Exceptions to the Suspension of Regular Operations

[5] The provisions of paragraphs 2 and 3 above are subject to the following five exceptions:

- A. Urgent or exceptional matters: The Court will continue to hear any urgent motions or requests pursuant to Rule 35 of the *Federal Court Rules* by teleconference. The Court will determine what constitutes “urgent” and “exceptional” on a case-by-case basis.

¹ Those prior practice directions and orders may be found in the [Notices](#) section of the Federal Court’s website.

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.

- B. Case management hearings: The Court’s Case Management Judges will continue to manage cases, and issue orders and directions, when the Court considers it appropriate to do so.
- C. By request of a party: The Court will endeavour to accommodate any requests for a hearing by telephone or video conference during the Suspension Period. These requests will be assessed on a case-by-case basis and subject to the requirements set forth in the attached Order. When the Court decides to move forward in this regard, the following provisions shall apply:
 - a. All documents required for a matter to be determined shall be filed electronically, as described below;
 - b. Such documents shall be made available to all parties in electronic format; and
 - c. 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 or by video conference.
- D. At the Court’s initiative: The Court has identified a substantial number of matters that are ready to proceed, or are close to being ready to proceed, subject to ensuring that the documentation required for the hearing is available to the parties and the Court, either in paper or electronically. It has begun to reach out to parties to discuss scheduling those matters, as well as any additional matters that evolve into this category, by video conference or teleconference. Indeed, virtual hearings in many of those matters have already been held.
- E. Adjudication in writing: During the Suspension Period, the Court will continue to adjudicate motions in writing made pursuant to Rule 369, applications for Leave to apply for judicial review, and any other matters that the Court is requested to determine in writing, subject to the requirements set forth in the attached Order. The Court encourages parties to consent to proceed in writing with respect to any matter that would have normally be determined in person, by teleconference or videoconference, by sending a request to the Registry using the Court’s [E-filing portal](#).

[6] The consent of all parties is not a pre-condition to the Exceptions above, except for requests to proceed in writing with respect to (i) a matter that had previously been scheduled to be heard in person, by teleconference or by video conference, and (ii) a matter that had not previously been scheduled, but would ordinarily be adjudicated other than in writing. For all other matters,

when one or more of the parties does not consent to advancing, the Court will consider all of the circumstances, including whether there is a true impediment to proceeding by video conference or teleconference, before making a decision as to whether, when and how to proceed.

Western Canada and Atlantic Canada

[7] The Court allowed the Suspension Period to expire in the four provinces of Western Canada and the four provinces of Atlantic Canada on June 15, 2020.

[8] To provide parties and their legal counsel with an opportunity to prepare for hearings after the expiry of the Suspension Period:

- A. The Court will not hold General Sittings or other hearings in these provinces before Monday, July 13, 2020; and
- B. Timelines for the filing of documents and the taking of other procedural steps in proceedings in those provinces will be extended to June 29, 2020.
- C. For greater certainty, the provisions of this paragraph do not apply to proceedings that are, or will be, moving forward pursuant to one of the five exceptions described in paragraph 5 above.
- D. All hearings that had previously been scheduled to take place from June 16 to July 12, 2020 in these regions of the country are adjourned *sine die*, and all General Sittings in that period are cancelled.

Ontario, Quebec and the Three Territories

[9] The Suspension Period is extended to June 29, 2020 in Ontario, Quebec and the three Territories. The Court will be allowing the Suspension Period to expire in those regions of Canada on that date.

[10] To provide parties and their legal counsel with an opportunity to prepare for hearings after the expiry of the Suspension Period:

- A. The Court will not hold General Sittings or other hearings in those regions before Monday, July 27, 2020.
- B. Timelines for the filing of documents and the taking of other procedural steps in proceedings in those regions will be extended to July 13, 2020.
- C. For greater certainty, the provisions of this paragraph do not apply to proceedings that are, or will be, moving forward pursuant to one of the five exceptions described in paragraph 5 above.

- D. All hearings that had previously been scheduled to take place from June 16, 2020 to July 26, 2020 in these regions of the country are adjourned *sine die*, and all General Sittings in that period are cancelled.

All of Canada

[11] The lifting of the Suspension Period is subject to the following provisos:

- A. Until further notice, the Court will continue to schedule all *applications for judicial review* as well as *all general sittings* to be heard by video conference (or exceptionally by teleconference). Requests to have such matters heard in person will be considered and determined after considering recommendations by public health authorities, the availability of court staff and court officers, and any delays that may occur in reconfiguring the Court's facilities to ensure that they are safe for all participants. For general sittings, such requests should be made by submitting a letter under Rule 35(2) of the *Federal Courts Rules* to the Registry via the Court's e-filing portal. For applications for judicial review scheduled as a special sitting, the requests should be sent to HEARINGS-AUDIENCES@FCT-CF.CA within 14 days of the date of the scheduling Order or Direction. In-person hearings may be scheduled to take place at a later date than the initially scheduled video conference hearing.
- B. The mode of hearing for other proceedings, including, motions, mediations and actions, will be determined after providing parties and their counsel with an opportunity to make representations in that regard.
- C. Where one or more counsel or a self-represented party to a proceeding in Western Canada or Atlantic Canada is situated in Ontario, Quebec or in one of the territories, that proceeding will remain subject to the Suspension Period until June 29, 2020 and will benefit from the provisions of paragraphs 8.A and 8.B above. Such counsel or party can request that the matter be exempted from the Suspension Period, or that the matter proceed by video conference or teleconference. Such requests should be sent to HEARINGS-AUDIENCES@FCT-CF.CA.
- D. Viewing of court files at Registry counters continues to be suspended until further notice. However, members of the media and the general public may request electronic copies of non-confidential court documents. (See paragraph 26 below.)
- E. Proceedings that are in Case Management will continue to be subject to the discretion of the Case Management Judge.

[12] Parties and their counsel are encouraged to avail themselves of the opportunity to move their proceedings forward electronically, and to have their matters determined by video conference, teleconference or in writing, as contemplated by the exceptions at paragraphs 5.C – E above.

[13] Parties and their counsel are also encouraged to file their documents via the e-filing portal. For those who are unable to avail themselves of the Court's e-filing portal, paper documents may be filed at the Court's Registry counters, which will open on June 29, 2020 with reduced staff.

Immigration Proceedings That Were Scheduled Beyond the Suspension Period

[14] 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.

Rescheduling

[15] Upon the expiry of the Suspension Period in a province or a territory, parties to a proceeding that has been adjourned in that province or territory shall provide the Judicial Administrator with their mutual dates of non-availability up to December 18, 2020. Such dates shall be communicated by email to HEARINGS-AUDIENCES@FCT-CF.CA, and should be provided no later than the close of business on the 14th day following the expiry of the Suspension Period in the province or territory in question. Where a matter has previously been placed in case management, please send such dates to the attention of the case management judge.

[16] The mode of hearing (video conference, teleconference or in-person) will be determined in accordance with the provisions of paragraph 11 above.

[17] 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 has been endeavouring to reschedule matters that were previously scheduled to be heard in March, on earlier dates than it has been rescheduling matters that were originally scheduled to be heard in April.

Perfected Matters

[18] If the Court's record was perfected when it was adjourned, the Court will proceed based on the written submissions already on file unless the judge or prothonotary seized of the matter requires further submissions.

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

Proceedings by Video Conference, Teleconference and in Writing

[20] For the time being, video conference hearings will be conducted over Zoom. The Court's approach to such hearings is explained [here](#).

[21] 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.)

Electronic Filing

[22] 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.

- A. Paper copies: Parties who file documents electronically during the Suspension Period are exempted from any requirement to file paper copies.
- B. 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.
- C. Confidential Documents: Confidential materials filed pursuant to a confidentiality order or direction should not be filed using the e-filing portal. For the filing of electronic copies of confidential documents, 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. Paper copies of confidential documents may be filed at the Registry.
- D. Selection of Local Office in E-Filing Portal: parties are requested to select their local office in the appropriate drop-down menu when e-filing a document.
- E. Inability to Submit Documents Electronically: 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

[23] 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).

- A. 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.
- B. 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.
- C. 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*.
- D. 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).

Access to the Court and to Court Documents during the Suspension Period

[24] The Federal Court remains committed to the open court principle throughout the COVID-19 pandemic. Where Federal Court facilities remain 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).

[25] The Courts Administration Services will soon be posting a guide on its [website](#) to inform the public on the special measures it has taken to address the COVID-19 pandemic as well as inform visitors to CAS facilities of the protocols to observe.

[26] Members of the media and general public seeking access to documents on the Court record may request electronic copies of non-confidential documents. Requests for documents may be made at the following e-mail address: FC_Reception_CF@cas-satj.gc.ca. However, due to limited staff on-site, only the following may 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.

[27] 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.

[28] 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.

Fees

[29] For the period April 6, 2020 to June 29, 2020, inclusive, all fees payable on filing or issuance under item 1 of Tariff A of the *Federal Courts Rules* are waived. As of June 30th, any fees payable may be paid by phone (Find a local phone number: [Telephone List](#)), using a valid VISA, MasterCard or American Express credit card. Fees may also be paid in person either by credit card or debit to minimize the handling of cash. 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* shall be paid before the close of business on July 29, 2020.

Gowning

[30] The requirement to gown for an appearance in Federal Court is suspended for all hearings that proceed by video conference. Counsel and parties are expected to dress in appropriate business attire. Judges and prothonotaries will similarly dress in business attire. Gowning for in-person hearings remains subject to the [February 6, 2017 Notice](#).

Commissioning of Affidavits

[31] 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.

[32] 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 or affirmed. 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 four weeks of the expiry of the Suspension Period.

Flexibility

[33] 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.