

PROVINCIAL COURT OF ALBERTA
CBA WEBINAR – QUESTIONS AND ANSWERS
April 23, 2020

Q. What is the top priority for The Provincial Court in its Response Plan related to the COVID-19 pandemic?

A. Our top priority in creating our Pandemic Response Plan has been to maintain reasonable access to justice and provide the court’s most essential services, while at the same time trying to maintain the health and safety of our staff, judges, and the general public. We have relied upon the advice of Alberta Health Services when deciding the steps to take to restrict access to courtrooms

While the Pandemic Response Plan, which is available on our website (<https://www.albertacourts.ca/docs/default-source/pc/prov-court-pandemic-plan-covid19.pdf>) is our overarching strategic document, almost every day or 2 over the past 5 weeks we have published documents outlining new initiatives to either further reduce health risk or to enhance access to justice.

Q. Are those courts that continue to remain open providing the same services, or do the services provided depend on court location?

A. The Courts that are open provide the same legal services- we have identified a list of essential services, which are listed as an Appendix to our Pandemic Plan.

There may be differences in when certain types of hearing time is available, or with external supports available (such as family court counselors) depending on the court house.

We are currently piloting the use of the WebEx platform to allow for more types of court appearances to be conducted remotely. The roll out of this technology has been in stages as we work through the kinks. We have been running the pilots in Edmonton, Calgary, and Red Deer to date. Over the next number of weeks, we hope to have WebEx remote capability in most larger locations and in criminal, Family and civil Courts.

Q. What changes have been made and the current status that applies to criminal and youth matters?

A. For Criminal matters, only in-custody matters have been proceeding since the Court implemented its Pandemic Plan.

The Court is continuing to address in-custody docket appearances, guilty pleas/sentencings, bail hearings, in-custody trials or ‘urgent’ out of custody matters (i.e. bail variations that need to be addressed in a timely fashion etc.).

All of our out of custody matters are being presumptively adjourned 10 weeks up to and including May 22, 2020.

In the courtroom, many courts are now remote appearance only either through telephone or WebEx. The only in person appearances in the larger centres are for in-custody trials. Social distancing is maintained in all instances where there are in person appearances.

WebEx continues to expand across the province-for docket appearances as well as trials

The Provincial Court hopes to soon be able to begin hearing out of custody guilty pleas either by WebEx or telephone depending on the region. We anticipate that many will be joint submissions with the assistance of duty counsel or defence counsel for non-custodial sentences although we also anticipate being able to permit guilty pleas to be entered with various reports being ordered

Q. What changes have been made and the current status that applies to civil matters?

A. At present, we are not conducting any matters that entail personal appearance. As part of the resumption planning process, we are beginning to hold pretrial conferences and case management conferences by telephone.

Initially, in mid-March, filing was permitted for only urgent matters, and only urgent matters are presently accepted at the clerk's counter for filing.

However, the Civil Division now accepts all matters sought to be filed, and runners, counsel and self-represented parties are able to access the drop boxes in Edmonton and Calgary. Non-urgent matters are accepted for filing in the drop boxes. These would include applications for substitution service, default judgement and the like.

The drop boxes will also accept desktop applications for judgement, and other matters such as request for limited demographic searches.

Our goal is to begin holding pretrial conferences, simplified trials and perhaps other trials by WebEx within the next week or two. The simplified trial process, with the advance filing of trial statements is ideally suited to WebEx type trials.

The Civil Division also will be embarking on an e-filing initiative, with an objective of permitting e-filing of documents by mid-September. At present emails are accepted with the documents attached, but an e-filing process is not yet in place.

A ministerial order has been issued permitting the clerks to defer or waive filing fees in certain circumstances to facilitate filing remotely.

Q. What changes have been made and the current status that applies to Family and Child Protection?

A. For child protection matters we have reduced personal court appearances as much as possible. Telephone appearances are occurring where the parties have agreed with the court, and teleconferences are being used for case management/conferences. Apprehensions continue, including telephone apprehensions. Timelines leading to initial custody determination are being met. Initial custody hearings still occur in person.

Many trials have been adjourned, but due to the nature of these types of matters, some still have to proceed. In those instances, every effort is being made to create safe distances in courtrooms.

The Family Court Counselors have agreed to work with self-represented people around the province in respect of potentially urgent matters, and have been very successful in keeping matters out of the courts, as they usually are.

Family dockets are adjourning matters 10 weeks, with few personal attendances. Trials and JDR's are similarly adjourned 10 weeks to docket.

In Family Court, protocols are in place for urgent matters to be addressed. Further protocols are being developed to start hearing some family matters in court via telephone or video in May, with short hearings, no viva voce testimony, generally with counsel and on matters already filed – not matters just being filed now (unless they are urgent under the previously published protocols). Some areas will commence with JDRs in this respect.

Child support issues due to loss of employment or inability to pay due to COVID-19 issues are to be addressed with Maintenance Enforcement as far as possible.

Q. What changes have been made and the current status that applies to Traffic Court?

A. There are over 2 million tickets a year in Alberta. Traffic Court is still operating. The difference is that people do not need to come to court, lawyers do not need to come to court and all individuals are discouraged from coming to court. The only time people need to come to the Courthouse is for a trial, and these are being adjourned and set approximately 6 months down the road.

All options to deal with a ticket can be faxed, emailed, scanned or done by phone. The contact information is on the back of the ticket and the Provincial Court website. Tickets can be paid online. **There is no longer a service fee for these payments during the COVID-19 crisis.** Partial payments cannot be made online. Tickets can also be paid at Alberta Registries. There is a fee of \$6.00 to \$9.00. Some registry offices are closed and some have reduced hours.

Set Aside applications to deal with Convictions in Absence (where no steps have been taken by a defendant to deal with the ticket) are not dealt with in Provincial Court Courtrooms. They will continue to be done by Justices of the Peace and outside of court.

Q. What changes have been made and the current status that applies to the Justice of the Peace Program?

A. All first appearance bail in Alberta is conducted by Justices of the Peace through the Hearing Offices in Calgary and Edmonton. The Bail Program has operated remotely for about 4 years with Crown, Duty Counsel (or Defence Counsel), and the Accused appearing by video or telephone to the courtroom of the Justice of the Peace and clerk. It is business as usual.

Justices of the Peace continue to deal with court process documents such as swearing Informations, issuing subpoenas etc. They also handle emergency applications such as warrants, Emergency Protection Orders, and Child Apprehension Orders after court hours. All efforts have been made to avoid the necessity of individuals appearing in person for urgent matters.

Q. What are your biggest limitations right now that are impacting on Provincial Court operations? Is it the availability of Judges, is it accessibility to technology, the availability of secure video-conferencing, or is it the need for restricted public access as a public health imperative?

A. The biggest limitation is the need for restricted public access as a public health imperative. This causes major challenges for everything from filing of documents to the holding of dockets, trials, or any kind of hearing where people are required to attend in person. Lack of physical presence is a major challenge; there has been a shared belief that people are entitled to their day in court (including counsel) and attending in person to case management meetings, a JDR or PTC often satisfies that need/desire. In addition, the lack of personal attendance makes it difficult to review documents, watch expressions and other forms of body language.

The next biggest challenge is the accessibility of technology – the Courts, with limited exceptions, are not well positioned to use remote technology because it has not been made available to us. We have had the ability to receive prisoners by CCTV and from time to time witness are allowed to testify by CCTV. We have used this opportunity to re-imagine how a court can operate and are working hard to effectively using the technology that we have and that we are acquiring.

We have already moved beyond restricting court proceedings to emergency and urgent matters. We have been conducting in custody bail and guilty pleas remotely from the onset of the Pandemic. In addition, we are beginning to hear remote out of custody applications including guilty pleas, and will begin to hear remote applications in Family and Child Protection matters in early May. Resolving matters by telephone is a major challenge, from the practical to the technological. For example, one of the frustrations we encounter is not being able to reach the party when the matter is ready to be heard. Counsel get frustrated having to wait to be called. Lines get dropped and we have a limited number of lines in each court room.

The case backlog is being carefully monitored by all the participants. The Court is already considering very carefully how each division in each region can respond to the anticipated backlog.

Q. Currently, how are non-urgent/emergency ex parte applications being addressed?

A. Civil Cases: Any party or counsel may apply to have their matter heard on an urgent basis. Typically, when a party or counsel indicate that a matter is urgent it is referred to a judge who will immediately consider the matter and direct the matter be heard if determined to be urgent.

Family Cases: Lawyers can submit applications via e-mail to the clerk's office to be reviewed by a judge in chambers to be determined if they are urgent and self-represented litigants can do that through the Family Court Counsellors.

The judge will determine if the matter is urgent and may direct that it proceeds ex parte or may grant a substitutional service order and an abridgement of time for service. Details of what qualifies as urgent and the material that should be in such an application is contained in a Notice to the Law Society from Chief Judge Matchett, that was distributed by the Law Society. That

Notice also has a list of the appropriate e-mail addresses for counsel to send their applications to the court for consideration by a Duty Judge.

Q. To apply for a matter being considered “urgent” requires a lawyer to contact the clerk’s office which then refers it to a judge:

What is the turnaround time on getting a decision on those applications?

Are reasons given as to when a decision is made denying a matter as being “urgent”?

A. Civil Cases: A duty judge in the civil division is available every business day. A decision will likely be made within one half day.

A determination as to whether a matter is urgent is based solely on the submissions of the party or counsel. The onus is on the applicant to satisfy the judge that the matter is urgent. Reasons will be given typically by desktop notes.

Family Cases: The judge will either just say granted or denied. At most they will say urgency requirement not met or met. There is a Duty Judge in Chambers so the files are dealt with in a matter of hours. When the matter appears in court will depend on how urgent the Duty Judge deems the matter to be and any service requirements.

Q. A public concern is that without in person hearings, and applications limited to urgent/emergency matters, judges are underutilized or aren’t doing any work. What is your response to that concern?

A. Absolutely by necessity we are not operating at full capacity under the Pandemic Plan and Alberta Health Services guidelines- not all of our Judges are as engaged in courtroom work. We cannot hold the same number of sittings as we did before the pandemic.

However, many our judges are very engaged in complicated work to provide access to justice through the use of new technology. Others are doing trials or pretrial conferences remotely and will soon be doing more matters like Judicial Dispute Resolution hearings and case conferences. Judges are also working from home to complete reserved decisions and their Fatality Inquiry Reports.

We are still doing dockets with judges in the courtroom and we are still doing in custody trials. Soon we will be opening courtrooms remotely to handle out of custody resolutions.

We held a successful pilot in which one of our criminal court judges heard an entire trial via videoconference, while self-isolating at home. Another such trial is underway.

There are a number of new practice notes, procedures, and a few new Rules of Court that have been posted on The Provincial Court website. Each of these has required legal analysis, consultation with the bench and Provincial Court partners. The Court works with our IT professionals in order to develop new processes and procedures. Many judges have been involved in that effort. Some recent examples are the Warrant Protocol that was published on April 6, and the extension to the Criminal Fine Payment process published on April 9.

Our judges have devoted substantial amounts of time to these issues. They have also been meeting with members of the bar, and other stakeholder groups to begin formulating business resumption plans.

Q. The Provincial Court is unique in Alberta for the specialized courts that you run – the Drug Treatment Court, the Indigenous Court, the Mental Health Court. How are the operations of these courts affected presently?

A. We are very fortunate to have a number of specialized courts across the province. That includes the Mental Health Court in Edmonton, Drug Treatment Courts and Domestic Conflict Courts in both Edmonton and Calgary and the Integrated Services Court in Lethbridge.

For Drug Treatment Courts the work continues on in the background with the participants and case managers still being engaged and drug testing at the larger residential facilities-mostly through Zoom. Judges are kept up to speed on what is happening with participants. Any issues regarding compliance are dealt with by the case managers. In situations of warrants or urgent bail variations, those are being addressed in court with the lawyers appearing remotely. Business resumption plans are being discussed once we are able to have people in the courthouse. Both Edmonton and Calgary have lengthy wait lists of applicants who have been approved to be admitted. Discussions regarding the proposed Lethbridge Drug Treatment Court continue.

For the Mental Health Court in Edmonton all out of custody matters are presumptively adjourned as well. The psychiatric nurses involved in this program have had to be redeployed to a different front line. Those in custody still needing fitness assessments or fitness hearings are served by the Doctors in our docket courts as they would have been prior to the creation of this court.

For The Calgary Indigenous Court, the case management table continues to meet virtually every Monday. The elders continue to provide support to participants by telephone. There are limitations on ceremony currently because of the need for social distancing. The NCSA worker continues to develop bail plans as she did in the past and make referrals to the various support agencies should bail be granted. Those current participants who are in custody are being assisted in our in-custody docket courts. Those who are out of custody will continue to work with the elders and support organizations with updates provided to the Crown prosecutor.

For the Domestic conflict courts, all out of custody matters are presumptively adjourned. In custody matters continue to be addressed in our in custody docket courts.

For the Integrated Services Court in Lethbridge, while the matters have been presumptively adjourned for 10 weeks, the Court still receives reports (similar to the Drug Treatment Court) every 2 weeks on how the participants are managing in the community.

Q. When the courts re-open after COVID, how will the backlog of cases that were adjourned sine die be dealt with?

A. Civil Cases: Every effort will be made to ensure that parties are treated fairly. In rescheduling those matters which have been adjourned, priority will be given to matters in chronological order, but matters will be assessed on an individual basis. For example, in re-scheduling

telephone pretrial conferences that have been adjourned, parties are being contacted in the order in which the matter had been scheduled.

We intend to hear matters as scheduled after whatever “resumption” date may be determined. Matters which have been adjourned earlier due to COVID-19 will be given priority when vacancies arise. We are anticipating significant overbooking in the weeks and months that follow the resumption date.

Family Cases: Several options are being discussed at this time. What will happen will partially depend on the advice of public health officials about what we can and cannot do. We will endeavor to treat everyone equally and fairly. In Calgary we have engaged several members of the Bar in assisting with our business resumption plan.

We will be overbooking more matters and also looking at either aggressive case management or another JDR for trials that have been adjourned, as we anticipate that the evidence about the family’s circumstances will have changed due to the pandemic.

Criminal Cases: It should be anticipated that Courts will resume the provision of services in a staged progression keeping safety of justice system participants paramount.

Soon, courts throughout the Province will be starting to hear guilty pleas by video conferencing where available, and by telephone where this technology is not yet provided. In addition, Pre-sentence and Gladue reports can be ordered now for consideration at a later date. It is anticipated that within the next four to six weeks, video conferencing will be installed and available at all of the base courts in the Province.

During this period of reduced service, Crown Counsel have been actively reviewing files; withdrawing files where they do not feel they would have a good possibility of conviction and making offers of resolution on others. Their continued work will reduce the number files needing to be dealt with after we resume as well as will free up trial time which can be used for rescheduling trials that have been adjourned over the past month(s).

It will be important to determine the number of cases in each of our regions that will have to be rescheduled so that we can effectively plan for the rescheduling of these matters.

Cases will also have to be prioritized. As we proceed with resumption of services in a staged way, an assessment of the outstanding files will need to be conducted. Initially, it is anticipated that we will still be required to socially distance for some time so traditional trials in a courthouse may not be possible. However, with the use of technology, some trials may be heard remotely. Some trials have already been conducted in this way. Not all trials of course would lend themselves to this form of hearing; however, Crown and Defence Counsel will identify these trials and set them for electronic hearing with the consent of the Court.

Once we return to more traditional court services, the Crown will also lead in assessing the files and prioritizing them for hearings. In determining the priority, consideration will be given to variables such as age of file, whether there are child or vulnerable witnesses. Crown Counsel will have responsibility in bringing these matters forward for setting new dates.

These prioritized files will be re-scheduled firstly and thereafter, other matters will be scheduled on a first-in-line basis.

Each of the courts will consider whether additional trial time can be made available to deal with the backlog of cases. However, the result may be that some trials currently scheduled for hearing after May 23rd are adjourned to allow prioritized matters to proceed.

Q. How has COVID-19 impacted The Provincial Court's strategic priorities? Has COVID-19 introduced new priorities, or changed their priority?

A. Our Court's priorities have not changed in any significant way.

The one area that has drawn much more of our attention, however, is the investment in technology and the need for our court to adapt our processes in this regard. That is certainly a theme that has come to the forefront of our attention and we will not want to lose momentum on this front.

We have long sought investment in updated technology infrastructure and will continue to work towards this goal.

Q. Is there anything that you've seen in terms of new processes that you think might be useful moving forward?

A. For Criminal cases there are a number of changes to processes that would be useful to preserve post-Pandemic, including:

1. Enhanced use of CCTV for in-custody accused court appearances

Currently accused persons are only transported for in-person appearances for trial or preliminary inquiry. This has resulted in reduced stress and health risks to inmates, Sheriffs, Court staff and other justice system participants. There are also reduced costs associated with inmate transport. All of these benefits would apply post-Pandemic.

2. Remote Pre-trial and Pre-preliminary inquiry conferences (PTCs)

PTCs are now conducted remotely with the assigned judge and counsel having some flexibility as to timing. This has prevented the 1:00 p.m. "rush hour" in Judges Chambers and has all but eliminated collapsed PTCs due to the unavailability of counsel or the judge. Post-Pandemic the same benefits would apply.

3. Remote court appearances by counsel

The WebEx technology platform is rolling out across various court locations. In Edmonton, this has allowed Crown, Defence and Duty Counsel to appear in our 3 docket courtrooms by video streamed over the internet. Although currently used to respect physical distancing requirements prescribed by our public health experts, counsel are already asking if the remote appearance option can be preserved for docket appearances post-Pandemic for efficiency reasons. This could be particularly useful for counsel to avoid travelling long distances for non-trial/non-preliminary inquiry matters.

4. Remote court appearances by a Judge

We've had several judges conduct hearings remotely due to self-isolation restrictions. We will also be conducting a two-week pilot project to assess the feasibility of judicial remote court

appearances in a busy docket court setting, in the event that future operational requirements dictate such appearances. Post-Pandemic, judicial remote court appearances could be used for a variety of purposes, such as: spreading out the judicial workload equitably across the Province; and, expanding access to our limited pool of bilingual judges for French trials.

5. Remote out-of-Custody Summary Disposition Court

As a part of our business resumption planning efforts, various court locations will be commencing remote out-of-custody summary disposition courts. In order to maximize scarce court resources available to deal with out-of-custody matters during this Pandemic period, strict guidelines will be imposed upon counsel to ensure that Court time is used efficiently. Post-Pandemic many of these requirements could be maintained to continue to save valuable court time and to reduce high collapse rates in our summary disposition courts.

6. Remote warrant application pilot project

Commencing the week of April 27, Edmonton Judges' Chambers will commence a pilot project that will see all applications for search warrants and other judicial authorizations sought by law enforcement to be submitted and processed digitally through a highly secure technology platform. The Court promulgated a Digital Judicial Authorization Rule of Court and Protocol to enable this pilot project, which has the potential to be scalable to the entire Province. During the Pandemic period physical distancing is maximized by eliminating the need for law enforcement officials to physically drop-off and pick-up warrants and other judicial authorizations at Judges' Chambers or at a judge's personal residence. Post- Pandemic, this process would significantly reduce the "traffic" in Judges' Chambers and would save travel costs and valuable time of law enforcement officials.

In sum, this Pandemic has required the Court and justice system participants to work together to quickly adapt to technological change. Many of these changes show great promise to maximize the use of scarce court resources and to enhance access to justice. The benefits of further technological change can be enhanced by concurrently examining and further modernizing and streamlining our court processes.