

COURT OF QUEEN'S BENCH OF NEW BRUNSWICK COVID-19 DIRECTIVE

This Notice replaces the Court's previous Directives issued April 7, 2020, August 11, 2020 and March 4, 2021 and is to be read in conjunction with the [COVID-19 General Notice](#) effective at midnight on July 30, 2021.

ENTRY INTO COURTHOUSES

The Province has lifted all restrictions on entry to all courthouses, for anyone in Canada who is not otherwise required to self-isolate under any applicable federal guidelines for international travel. However, anyone who plans to attend a court hearing while experiencing COVID-19 symptoms, awaiting the result of a COVID-19 screening test, or required to self-isolate under any applicable federal guidelines for international travellers is prohibited from entering a courtroom and must instead, in a timely manner, arrange to attend the hearing by video or telephone conference by contacting the the clerk of the court for the applicable [judicial district](#).

USE OF MASKS

As indicated in the **COVID-19 General Notice** the use of masks will not be required in the common areas of courthouses, although anyone wishing to wear a mask will be allowed to do so. However, persons attending a courthouse for jury duty may be required to wear a mask for the duration of jury selection.

In courtrooms, court participants and the public are to adhere to a respectful distance between themselves and others and to wear an adequate mask, until receiving direction from the presiding judge. Upon considering the number of persons in attendance and any other relevant factor, the presiding judge may, in his or her discretion, permit all or some persons in attendance to remove their masks, and impose other public health measures to be applied in the courtroom.

FILING AND SERVICE OF DOCUMENTS

Counter services at offices of the clerks of the Court of Queen's Bench are available by appointment.

Court documents, including originals, and the required copies, are to be filed in the secure drop boxes available in each Court of Queen's Bench location or alternatively, by mail, in accordance with the *Rules of Court*. Filing fees may also be left in the secure drop box. Electronic filing by email will only be accepted in extenuating circumstances when approved by the Clerk/Clerk's office in advance.

For any inquiries regarding the filing and service of documents, please contact the clerk of the court for the applicable [judicial district](#).

AFFIDAVITS

During the COVID-19 pandemic, some accommodation is made for the commissioning of affidavits in circumstances where it is not possible, or it is medically unsafe, for the deponent to physically attend before a lawyer or commissioner. Subject to the discretion of the Court or of a judge thereof to require the best evidence, affidavits to be used in the Court of Queen's Bench may still be sworn or affirmed, as the case may be, by video technology in the following manner:

1. Any affidavit to be sworn using video technology must contain a paragraph at the end of the body of the affidavit describing that the deponent was not physically present before the commissioner, but was linked with the commissioner utilizing video technology and that the process for remote commissioning of affidavits was utilized;
2. While connected via video technology, the deponent must show the commissioner the front and back of the deponent's current government-issued photo identification and the commissioner must compare the video image of the deponent and information in the deponent's government-issued photo identity document to be reasonably satisfied that it is the same person and that the document is valid and current. The commissioner must also take a screenshot of the front and back of the deponent's government-issued photo identity document and retain it;
3. The commissioner and the deponent are both required to have a copy of the affidavit, including all exhibits, before each of them while connected via video technology;
4. The commissioner and the deponent must review each page of the affidavit and exhibits to verify that the pages are identical and if so, must initial each page in the lower right corner;
5. At the conclusion of the review, the commissioner will administer the oath, the deponent will state what needs to be said to swear or affirm the truth of the facts, and the commissioner must watch the deponent sign his or her name to the affidavit;
6. The deponent will then send the signed affidavit with exhibits electronically to the commissioner;
7. Before completing the affidavit, the commissioner must compare each page of the copy received from the deponent against the initialled copy that was before him or her in the video conference and may affix his or her name to the jurat only upon being satisfied that the two copies are identical;

8. The two copies will then be attached together with a certificate signed by the commissioner stating that the commissioner was satisfied that the process was necessary because it was impossible or unsafe, for medical reasons, for the deponent and the commissioner to be physically present together; and
9. The completed package would then be permitted to be filed.

ARRANGEMENTS FOR THE HEARING OF COMMERCIAL INSOLVENCY MATTERS

1. Until further notice, commercial insolvency matters of the type described in Schedule “A” must be commenced in the Judicial District of Saint John.
2. Matters that are urgent or time sensitive, or those in which there are immediate and significant financial repercussions that may result if there is no judicial hearing, may be scheduled on an urgent basis. The Court will use its discretion to determine whether a matter should be heard urgently.
3. Counsel are directed to contact the Clerk of the Judicial District of Saint John at 506-658-2587, NB-Insolv@gnb.ca with details regarding any such matter they wish to have heard urgently, identifying why the matter is urgent, time sensitive or will result in significant financial consequence. Counsel should also advise of a time estimate for the hearing. This information, together with a draft of the relevant application/motion, must be provided in writing.
4. Any steps taken by the Court or counsel outside the usual procedure due to COVID-19, including proceeding by way of teleconference, should be expressly noted and recorded in the endorsement or order, if necessary.

Conduct of Teleconference Hearings

1. If the Court accepts that a matter is to be heard urgently, the Court may direct counsel to communicate directly with the Judge who will hear the matter. That Judge will provide direction with respect to service and timing.
2. The matter may proceed by way of teleconference. The Court anticipates having teleconference lines available, some with recording capabilities. In the meantime, the Court may ask counsel to provide conference facilities.

3. The Court expects counsel to follow the three Cs: cooperating, communicating and using common sense, particularly in terms of scheduling.

Materials for Hearing Urgent Matters

Parties shall email the Court all relevant materials necessary for the teleconference hearing unless otherwise directed by the presiding Judge. The system cannot accommodate large Records. Parties should exercise discretion in determining what materials are necessary. Parties should also consider sending large documents by way of secure file share rather than attachments. Caselaw and other source materials referenced in any facta should be hyperlinked. Where hyperlinks are provided, it will not be necessary to file a Book of Authorities. The Judge will ask for further materials if necessary, and hard copies of Records may be filed with the Court at a later time or as otherwise directed by the Judge.

Affidavits Regarding Urgent Matters

1. Parties should have regard to the Guidelines regarding the commissioning of affidavits detailed above.
2. The Court will accept unsworn affidavits prior to the hearing, provided that a sworn affidavit is provided prior to or at the hearing, or the affiant is available at the teleconference to swear the truth of its contents in accordance with the Guidelines.

Orders for Urgent Matters

1. Finalized draft orders should be emailed directly to the Judge. The Judge will sign the order and send a scanned signed copy to counsel.
2. Orders may be entered at the courthouse. If this changes, the Court will provide further direction.

Reservation

This directive is being issued on an interim basis in response to the challenge posed to our economy and the efficient administration of justice by COVID-19. The Court reserves the right to direct that any matter submitted to it in accordance with this directive be commenced in an alternate judicial district for processing and disposition in the usual course.

Schedule “A”

Matters

The following are commercial insolvency matters that may be considered essential or urgent:

- a. an application for an initial order or stay extension order under the **Companies Creditors Arrangement Act (“CCAA”)**;
- b. the appointment of a liquidator, receiver, interim receiver or receiver-manager under **the Canada Business Corporations Act (“CBCA”), Business Corporations Act (“BCA”), Bankruptcy and Insolvency Act (“BIA”) or Rules of Court**;
- c. applications for an interim and/or final order of arrangement, or shareholder disputes requiring immediate relief, under the CBCA or BCA;
- d. applications for bankruptcy orders under the BIA falling within the jurisdiction of the Court; or
- e. an application for relief specific to a restructuring proceeding under the BIA or CCAA.

This directive, issued by the Honourable Tracey K. DeWare, Chief Justice of the Court of Queen’s Bench of New Brunswick, on August 18, 2021, is effective immediately and until further notice.