

**THE COURT OF KING'S BENCH
OF NEW BRUNSWICK**



**LA COUR DU BANC DU ROI
DU NOUVEAU-BRUNSWICK**

Notice to Profession and Public – Updated COVID-19 Directive

This Updated Directive effective September 12, 2022, replaces any previous directive on the operations of the Court of King's Bench of New Brunswick during the COVID-19 pandemic.

On February 24, 2022, the Government of New Brunswick announced effective March 14, 2022, it would lift the majority of pandemic restrictions.

Throughout the COVID-19 pandemic, all courtrooms of the Court of King's Bench of New Brunswick have been operating under restrictions designed to ensure the safety of all participants. Given the unique position of the Courts, where persons who attend are often compelled to do so, and where vulnerable segments of the population attend, there is an ongoing need to continue with the restrictions contained in this directive until further notice.

ENTRY IN COURTROOMS, USE OF MASKS AND PHYSICAL DISTANCING:

Masking is no longer required to enter a courtroom and to circulate inside. However, attendees are strongly encouraged to wear an adequate mask in courtrooms. If the circumstances require (for example, if the Court is made aware of the presence of a vulnerable person or the courtroom is particularly crowded), the presiding judge may order those present to wear a mask.

The presiding judge may also direct that court participants and members of the public be required to maintain physical distancing between themselves and others with whom they do not reside.

The presiding judge may limit the number of people who may be present in courtrooms at any given time.

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 King's Bench may still be sworn or affirmed, as the case may be, by video technology in the following manner:

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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

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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.

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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 facts 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.

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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 King's Bench of New Brunswick, on September 12, 2022, is effective immediately and until further notice.