



UPDATED DIRECTIVE – COURT OF APPEAL OF NEW BRUNSWICK

Date: September 30, 2021

To: **Lawyers, Media, Public**

From: The Honourable J.C. Marc Richard, Chief Justice of New Brunswick

Subject: **NBCA COVID-19 – UPDATED DIRECTIVE**

This directive replaces previous directives on the operations of the New Brunswick Court of Appeal during the COVID-19 pandemic. It applies to both civil and criminal appeals.

INTRODUCTION

Like their counterparts across Canada, New Brunswick courts have adapted their operations to the pandemic context and adopted measures to reduce the spread of the coronavirus and to protect participants in the justice system and other members of the public, while maintaining the rule of law. Courts adopted initial measures on March 16, 2020, and have been updating them in response to changes in public health policy. As we experience an increase in COVID-19 cases in our province, the seriousness of the crisis cannot be overstated.

On July 30, 2021, the provincial government lifted the state of emergency declared in our province on March 19, 2020. On September 24, 2021, a state of emergency was declared in response to the spread of the coronavirus during this fourth wave of the pandemic, and a mandatory order came into effect at 23:59 p.m. that night. Please consult the Province of New Brunswick's [website](#) to familiarize yourself with the [Revised Mandatory Order](#) and to obtain additional information.

This Updated Directive applies to the Court of Appeal. The individual home pages of the [Court of Queen's Bench](#) and the [Provincial Court](#) of New Brunswick should be consulted, as needed, for information on any measures that apply in these courts.

ENTRY INTO THE JUSTICE BUILDING

Under the Province's [Revised Mandatory Order](#), courthouses are closed to the general public, except to judges, persons whose work requires their presence in a courthouse, litigants, accused persons, witnesses and other persons attending under a summons, one or two persons attending in support of each accused person and each victim witness, and accredited media. Other persons may enter a courthouse by appointment to pay a fine or to meet with a clerk or Crown prosecutor, and any other person may be admitted to drop off documents for filing with a court. These measures apply at the Justice Building, at 427 Queen Street, in Fredericton, where the Court of Appeal is located.

To adhere to public health guidelines, the Court of Appeal limits the number of people who may be present in one of its courtrooms at any given time. The maximum number of people may not be exceeded at any point during the proceeding. Priority will be given to parties and their counsel.

Participants in proceedings before the Court of Appeal who are experiencing any COVID-19 symptoms or are required to self-isolate may not attend at the Court of Appeal even if their presence is necessary to the hearing. They must immediately contact the Registrar of the Court of Appeal, Ms. Caroline Lafontaine, by phone at (506) 453-2945, or by email at caroline.lafontaine@gnb.ca, and follow instructions given. In addition, anyone else who is permitted to attend a hearing of the Court of Appeal may instead request to do so by video or telephone conference by contacting Ms. Lafontaine as soon as possible.

USE OF MASKS

The wearing of a mask is mandatory in all indoor public spaces, including in courthouses, in New Brunswick.

This mask-wearing requirement applies to everyone, including persons who are fully vaccinated, in the Court of Appeal's courtrooms. Based on the number of persons in attendance and any other relevant consideration, however, a judge who is presiding a hearing of the Court of Appeal may, in his or her discretion, permit all or some persons in attendance to remove their masks, and impose other public health measures in the courtroom.

FILING AND SERVICE OF DOCUMENTS

Counter services at the office of the Registrar of the Court of Appeal are available by appointment only.

Anyone who needs to file a document (including a Notice of Appeal or a Notice of Motion) with the Court of Appeal should file the document with the Registrar by emailing it to nbcacnb@gnb.ca, or by faxing it to (506) 453-7921. The document will be deemed to have been received on the date on which it was sent, provided its original and any prescribed fee are then sent by mail or courier as soon as practicable.

Should e-filing or filing by fax be impossible, a document may be filed:

- (a) by sending the document and any prescribed fee by courier, in which case it will be deemed to have been received on the day it was sent, or by mail, in which case the document will be filed on the day it is received; or
- (b) by leaving the document and any prescribed fee in a secure box located outside the Registrar's office at the Justice Building, in Fredericton.

The prescribed fee referred to above is to be paid by a lawyer's cheque, a certified cheque or a money order.

For any inquiries regarding the filing and service of documents, please contact the Registrar, Ms. Caroline Lafontaine, by phone at (506) 453-2945, or by email at caroline.lafontaine@gnb.ca.

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 Appeal 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.

HEARING OF MOTIONS

Scheduled motions and status hearings continue to be heard by telephone conference unless the motion judge or the Chief Justice determines otherwise. The office of the Registrar will make the necessary arrangements and inform the parties or their counsel. Arrangements may be made for represented parties to join the telephone conference provided that, once they have identified themselves, they place their phone on mute and do not interrupt the proceedings except to make appropriate representations.

All lawyers or self-represented litigants who have a matter before the Court of Appeal must ensure the Registrar is provided with their current phone number and email address.

Recording of the proceeding by anyone except the court is strictly prohibited and may constitute contempt of court.

Any request for adjourning the hearing of a motion or a status hearing may be addressed to the Registrar at (506) 453-2945 or caroline.lafontaine@gnb.ca, who will arrange for a case management telephone conference.

HEARING OF APPEALS

Perfectured appeals are scheduled to be heard in the usual manner, although parties or their counsel may request to appear by video or telephone conference. If the request is granted, the office of the

Registrar will make the necessary arrangements and inform the parties or their counsel. When joining a video or telephone conference, the parties or their counsel must put their phone on mute after identifying themselves and must not interrupt the proceedings except to make appropriate representations.

All lawyers or self-represented litigants who have a matter before the Court of Appeal must ensure the Registrar is provided with their current phone number and email address.

Recording of the proceeding by anyone, except by the Court, is strictly prohibited and may constitute contempt of court.

When parties or counsel who plan to attend a court hearing are experiencing COVID-19 symptoms, awaiting the result of a COVID-19 screening test, or required to self-isolate under any applicable federal or provincial travelling guidelines, the Chief Justice or a judge designated by him will consider requests for adjournment, even those with consent of both parties, after holding a case management conference. Request for such a conference may be addressed to the Registrar at (506) 453-2945 or caroline.lafontaine@gnb.ca.

MEDIA ACCESS

The Court of Appeal recognizes the critical importance of the “open court” principle in all but exceptional circumstances. When the number of seats available in a courtroom is insufficient to allow members of the accredited media to attend a hearing in person, the Court of Appeal can uphold this principle by providing them with access to the hearing in the following manner:

1. Members of the accredited media may determine which motions or appeals are scheduled to be heard by following these links to the Court’s [list of motions](#) or the [list of appeal cases](#). These are frequently updated;
2. Members of the accredited media who wish to observe a video conference hearing or monitor one by telephone conference may communicate with the Registrar at (506) 453-2945 or caroline.lafontaine@gnb.ca for information about how they might participate;
3. Media participation in court proceedings taking place by video or telephone may be subject to limits on the number of callers that can be connected through a single teleconference number;
4. Other than identifying themselves, members of the media accessing a court hearing must put their communications device on mute or remain silent throughout the proceeding; and
5. Members of accredited media may make an audio recording for the sole purpose of verifying notes. The broadcast of any of the proceedings without prior permission of the Chief Justice is strictly prohibited.