



COVID-19 Client Update

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Introduction

The outbreak the respiratory disease known as COVID-19 is a major public health crisis, affecting every aspect of Canadian society. The rapidity with which all levels of government and public health authorities have had to act to counter the spread of the disease has led to very abrupt changes to the way many clients interact with their lawyers and the legal system, and to the way they conduct their business and other every day affairs.

This document is a brief overview of various areas of law which may be of interest to Veria Law's clients. You may click on the table of contents above to find the discussion on a particular area of law. Note that there are also hyperlinks within the document which you can click which will link to external websites.

Please note that this document does not constitute legal advice, and should not be construed as such. Rather, it is merely Veria Law's commentary as of the date of this update and constitutes very basic information. Should you have a specific question about your situation, please call us.

Family matters – updated 30 April 2020

Q: What happens with existing Court Orders and parenting arrangements?

A: We are in unprecedented times, but all Court Orders remain in effect until they expire or are varied. Given the lack of judicial resources at the moment, it will be tremendously difficult to vary existing Orders.

The Chief Medical Officer of Alberta suggests that separated parents could work together to create a 'common isolating group', notwithstanding that parents live in different households. Accordingly, parenting time should still be exercised, but strict parameters should be put into place

between the parties restricting the total number of people who may be in close proximity to each other. One way to think about such arrangements is as ‘one large group in two households’.

Therefore, our suggestion at the moment is to use common sense. It is likely a good idea to maintain a sense of normality for children, especially younger ones, given that classes have been cancelled. That normality should include maintaining parenting time arrangements that have been in place.

That said, everyone has a role to play in limiting the spread of COVID-19. For example, if one party is required to self-isolate due to the presence of symptoms, then that party likely should not be insisting on exercising parenting time. Similarly, the other party should do his or her best to accommodate such changes.

A very recent and excellent summary of parenting time issues in the midst of the COVID-19 pandemic comes from the Ontario Superior Court of Justice: [*Ribeiro v. Wright*, 2020 ONSC 1829](#). In this case, the Court declined to permit the hearing on an urgent basis of an application to restrict the other party’s parenting time merely because of the existence of the current COVID-19 crisis.

The Court’s opinion was that “existing parenting arrangements and schedules should continue, subject to whatever modifications may be necessary to ensure that all COVID-19 precautions are adhered to, including strict social distancing.”

[The American Academy of Matrimonial Lawyers and the Association of Family and Conciliation Courts have released a set of seven suggestions for separated parents during the pandemic.](#) The rule of law (whether by Court Order or by contractual relations between parties) should be respected notwithstanding the public health crisis. The alternative, taken to the extreme, could be anarchy if parties attempt to leverage the pandemic for selfish purposes. The other suggestions are all common sense, practical ones which are good reminders given the COVID-19 crisis has affected so many aspects of society. Ideally, the COVID-19 crisis will encourage separated parties to work together for the greater good of their children.

Q: How can we resolve any ongoing family law disputes while the Courts are not hearing most matters?

A: As ever, Veria Law’s approach is to seek practical solutions. The first step in doing so is typically picking up the phone or communicating with the other party’s lawyer. That approach will continue during the time that social distancing measures are in effect. You may also wish to participate in [Collaborative Family Law](#), where the parties agree specifically not to use the Court process to resolve their disputes.

The process most commonly associated with Collaborative Family Law is the four-way meeting. This approach can also be used outside of the Collaborative Family Law process if the parties and their counsel wish to do so. Whilst it may be possible to hold such meetings with sufficient social distancing, the more prudent course of action is to have all four parties meet virtually, provided all parties have the technology available. Veria Law can accommodate such virtual meetings.

If your matter is contentious, and is of emergency or urgent nature, then potentially the Court will hear an application, as discussed below. The Court of Queen’s Bench has enacted directives on the remote swearing of affidavits by video conference, but these are limited to civil and family law areas.

Q: What is happening with my upcoming court application?

A: The Court of Queen’s Bench has adjourned essentially all in-person applications and trials. The Court of Queen’s Bench will not schedule any matters until at least 1 May 2020.

Effectively, this means that if your matter is in Queen’s Bench and was scheduled for a hearing between 16 March and 1 May 2020, it has been adjourned to an indeterminate date. If your matter

is in Provincial Court, it has automatically been adjourned 10 weeks. However, it appears that all scheduling is in a state of flux, and subject to change at any moment.

The Court of Queen's Bench has set out two categories of matters that may be heard notwithstanding the overall shutdown of the Courts. These categories are 'emergency' or 'urgent'

Meanwhile, the Provincial Court will only carry on essential functions. The scope for essential family law matters is rather narrowly defined at the moment (see below for more details).

Q: What is an 'emergency' matter?

A: The Court of Queen's Bench specifies that a matter is an emergency matter if there may be serious consequences to people or to property if the matter is not heard; there may be a loss of jurisdiction or the expiration of an existing Protection or Restraining Order in the following circumstances:

1. where there is a risk of violence or immediate harm to a party or a child;
2. where there may be a risk of a child's removal from Alberta; and
3. Emergency Protection Order reviews.

Q: What is an urgent matter?

A: The Court of Queen's Bench specifies an urgent matter if does not rise to the level of an emergency, but still requires hearing in a timely fashion. In the family context, an urgent application means any matters regarding parenting time, contact or communication with a child that cannot be reasonably delayed.

However, note that these categories are not exhaustive, and the Court may well hear other applications. On the other hand, the Court may also decline to hear any application. Unfortunately, the already scarce judicial resources are going to be even more scarce for the time being.

If you have a question about your matter, please contact us.

Q: What about Provincial Court matters?

A: Provincial Court has automatically adjourned all scheduled matters between 16 March and 22 May 2020 for a period of 10 weeks. [A list of dates with corresponding adjournment dates can be found here.](#) Provincial Court JDRs are cancelled if there are trial dates scheduled. If no trial dates are scheduled, then the 10 week adjournment rule applies. Pre-trial conferences will proceed as scheduled, but by phone.

Provincial Court will continue to hear "Family Court matters that are urgent eg. Absconding with child."

Q: There is probably going to be a backlog when the Courts eventually start hearing matters in person again. What options do I have to speed up the process?

A: Avoiding the anticipated backlog in Court applications could encourage settlement, along with other dispute resolution processes, such as mediation or private arbitration. Naturally, Collaborative Family Law is another option, as it does not involve applications in Court at all. [Learn more about Collaborative Family Law by clicking here.](#)

Q: Can I still commence a divorce when the Court is not hearing applications?

A: Yes. As of 25 March 2020, the Court is still open for document filing. That means a divorce or family property action can be commenced. Once filed, the Statement of Claim can still be served. Note that the Court of Queen's Bench has indicated that all filing deadlines under the Alberta *Rules of Court* are suspended, with the exception of rules regarding the commencement of proceedings. Please call us if you have any questions about document filing and deadlines.

However, there are apparently some backlogs already with in-person document filing at the Courthouse. Whilst law firms can file via fax and now also by email, these options are not open for members of the general public.

Litigation matters – updated 27 March 2020

Q: Can I seek any Court assistance with a civil matter right now?

A: Generally, the same comments regarding family law matters are applicable to civil litigation matters, ie. all applications are adjourned, and only emergency and urgent applications will be heard.

The Court of Queen's Bench has indicated that these types of applications must be related to the pandemic; injunctions of an urgent nature only (such as treatment or end of life issues); Restraining Orders (not in a family context); Preservation Orders (regarding property); and specific types of administrative relief.

Q: What filing deadlines are in place for starting civil litigation matters?

A: Note that while many filing deadlines within the *Rules of Court* are presently suspended, other than rules regarding the commencement of proceedings. In other words, if a Statement of Claim has already been filed but not yet served, it must still be served within a year of filing.

It does not appear that the pause in the Court's in-person hearings and trials will give a 'free pass' in limitation dates. Accordingly, if you were contemplating a lawsuit, have not yet filed and your limitation date is approaching, the prudent course of action is to file your claim immediately. Please call us if you have any questions.

Real Estate – updated 30 April 2020

Q: My real estate transaction is scheduled to close soon. What's going to happen?

A: The Alberta Land Titles Office is continuing to accept documents for registration, but there is no walk-up service. That does not affect Veria Law's real estate operations as all documents sent for registration are carried by our court runner.

Further, other than the curtailing of branch hours, there is no indication that the banking system as a whole will be shut down. On a high level, all levels of government are keen to ensure that business is still conducted as much as possible.

You may have heard that Alberta's provincial government's list of essential businesses that are permitted to remain open includes real estate brokerages, banks and law firms.

Accordingly, Veria Law's present view is that real estate transactions will continue to close as scheduled. Note that there may be further restrictions imposed by government and health authorities which may affect real estate closings. Practically though, it is unlikely that there will be many real estate showings during the COVID-19 outbreak.

Q: Can I sign my real estate documents remotely?

A: The short answer is yes. Effective 3 April 2020, the Land Titles & Surveys Branch of Service Alberta confirmed that in order to assist Albertans with self isolation and social distancing during the spread of COVID-9, Land Titles documents that have been witnessed, sworn or affirmed by Alberta lawyers using two-way teleconferencing will be temporarily allowed. This will allow for the remote execution of the documentation required to close your real estate transaction. Veria Law has put in place procedures to facilitate remote signings in accordance with the above. We are available to discuss this process in further detail.

Q: What are some examples of clauses I should think about including in my Purchase Agreement?

A: Given the constantly evolving nature of the current COVID-19 pandemic and effect on every day life and business situations, both parties should include a condition in the Purchase Agreement stating that the contract is subject to review by each parties' own legal counsel, in particular

regarding the addition of any terms to the Purchase Agreement which deal with issues arising as a result of COVID-19. Independent legal advice should be sought by both parties and be based on each individual's specific circumstance.

Several examples of terms parties may wish to include in the Purchase Agreement are:

- a) a buyer may wish to include a clause obliging the seller to have the purchased property professionally cleaned and sanitized prior to closing;
- b) both parties may wish to include a provision automatically extending the closing date in the event either party is quarantined or hospitalized in the interim period between final acceptance of the Purchase Agreement and possession; and
- c) both parties may also wish to include a provision automatically extending the closing date in the event law firms and banks are also required to close by government directive (although notably, there is presently no public information that such plan in place).

As stated, any term which is added to the Purchase Agreement in respect to COVID-19 should be accompanied by independent legal advice.

Q: What happens if the Purchase Agreement has already been executed and the buyer or seller is in quarantine or hospitalized on the day of closing?

A: In the event that the buyer or seller is in quarantine on the date of closing the parties can agree to push back the closing date by way of Amendment to the Purchase Agreement. It is important that this Amendment be signed by all parties prior to the original closing date. The Amendment may be signed remotely or digitally.

Q: What happens if the Alberta Land Titles Office closes?

A: Although there is presently no public information that there is a plan to close the Alberta Land Titles Office, there is a process for the transaction to close on time by way of title insurance.

Wills – updated 27 March 2020

Q: Can I sign my Will, Enduring Power of Attorney or Personal Directive remotely?

A: Unfortunately, testamentary documents still need to be signed in person. The reason is that the rules governing the swearing of affidavits is governed by statute. Until there are formal amendments to statute, there is no relaxation of the requirement to swear affidavits in person. Unfortunately, the Court of Queen's Bench's protocols for remote swearing of affidavits for family and civil law affidavits do not apply to testamentary documents.

Note that there is the ability to verify identification documents remotely.

Veria Law's protocols for social distancing and sanitizing common touch surfaces are in effect to minimize potential community transmission.

All of that said, it is our view that a Will, Enduring Power of Attorney or Personal Directive may be signed and witnessed with the parties separated by a transparent barrier.

Q: What if I can't see my lawyer to sign my Will, Power of Attorney or Personal Directive?

A: With respect to Personal Directives, the Government of Alberta has created a 'do it yourself' PDF fillable Personal Directive including instructions with respect to its execution:

<https://www.alberta.ca/personal-directive.aspx>

The Personal Directive provided by the Government of Alberta still needs to be executed before a witness. Once it is signed in accordance with the provided instructions, it is valid.

With respect to Wills, a Will in Alberta may be valid without witnesses, if the following criteria are met:

- a) it is completely handwritten,

- b) it is signed and dated,
- c) it states that it is your last Will and Testament, and
- d) it clearly shows your intention to leave a gift to a beneficiary after your death.

This is called a Holographic Will. Under normal circumstances we do not recommend using a Holographic Will as its validity is often disputed and often contains errors and omissions. However, if left no choice, this type of testamentary document could be deemed as valid by the Court. It is a good idea to include a statement in the Holographic that you are of sound mind when preparing the Holographic Will.

Please note that if a gift is being left to minor a trust will need to be set up when drafting the Will. This is something that should be done by a lawyer.

With respect to Powers of Attorney, the witnessing requirement remains unchanged in Alberta, accordingly this document is required to be executed in person.

We are available to discuss these important estate planning documents via phone or webcam at this time.



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