



NOTICE TO THE PARTIES AND THE PROFESSION

TO: Parties and the Profession

FROM: The Honourable Marc Noël
Chief Justice of the Federal Court of Appeal

DATE: April 15, 2020

SUBJECT: Update on the Management of Court Files During the COVID-19 Suspension Period

[1] By [Notice to the Parties and the Profession dated March 19, 2020](#), the Federal Court of Appeal suspended the running of time under the Rules, orders and directions of the Court. This was to allow the Registry time to reorganize and manage its resources carefully, to allow for an adjustment period, and to wait until government advice concerning COVID-19 had stabilized. By further [Notice to the Parties and the Profession dated April 2, 2020](#), this Court extended the period of suspension to May 15, 2020.

[2] Circumstances have now evolved to the point where the Court can exempt some of its cases from these Notices and allow them to progress towards a determination on the merits.

[3] The Court is now gradually reviewing its list of pending cases to determine which should progress. It is doing so on the basis of the nature of the case, the complexity of the case, the extent to which the record is or can be made electronic, and the ongoing resource challenges facing the Registry.

[4] What follows are the procedures for cases that are selected to progress and cases that are not selected to progress.

A. Cases that are selected to progress

(1) Cases that are ready to be determined

[5] Cases that have been selected to progress and that are ready for determination—*i.e.*, cases in which the parties have completed all necessary procedural steps—may be determined by one of three modes of hearing: (a) on the basis of written materials; (b) by teleconference or video conference; and (c) by in-person attendance of the parties. In-person attendance is not yet possible.

[6] When selecting a case to progress, the Court will make a preliminary decision as to the mode of hearing considering, among other things, the nature of the case, its complexity, and any other relevant consideration.

(a) Dispositions in writing

[7] Where the Court has made a preliminary decision that a case will be determined on the basis of the written materials, the parties will receive an order indicating that the matter is set down to proceed in writing. In all cases, the order will allow each party to file five pages of supplementary written submissions (over and above the memoranda of fact and law already filed) by way of informal letter sent by email to Information@fca-caf.ca within one week of the order.

[8] Parties dissatisfied with the preliminary decision to dispose of the case in writing may register their objection with supporting representations in their supplementary written submissions. The panel is free to uphold the objection and direct that the matter proceed by a teleconference or video conference. The panel may also direct that an in-person hearing is appropriate, in which case the matter will be postponed until an in-person hearing is possible. If the panel dismisses the objection or if it does not receive an objection, it will determine the case on the basis of the written materials (the memoranda of fact and law and the record of evidence already filed and the supplementary written submissions), subject to its overriding discretion described in para. [11] below.

(b) Hearings by way of teleconference or video conference

[9] Where the Court has made a preliminary decision that a case will be heard by way of teleconference or video conference, the Judicial Administrator will notify the parties and canvass availability. The Court will subsequently issue an order setting out the time for the conference and the Registry will be in touch to notify the parties of the arrangements.

[10] A party desiring an in-person hearing rather than a teleconference or video conference may make submissions to that effect during the conference. If so persuaded, the panel will adjourn the hearing to a date for an in-person hearing to be set by the Court when circumstances permit.

(c) Panel's overriding discretion

[11] Regardless of the mode of hearing, the panel assigned to determine the case may direct the parties to provide additional written submissions, attend for a teleconference or video conference or attend for an in-person hearing to address particular issues or questions.

(2) Cases that are not ready to be determined

[12] For cases that have been selected to progress and that are yet to be perfected—*i.e.*, cases where there are still some procedural steps to be completed—in appropriate cases, the Court will issue a direction to move the case forward. The direction will notify the parties that the

Suspension Period under the Court's Notices to the Parties and the Profession will not apply as of a particular date. From that date, time under the Rules, orders or directions will begin to run.

[13] When a case becomes ready to be heard, the Court will decide whether the case should progress to hearing in accordance with para. [3] above and, if so, the mode of hearing in accordance with para. [6] above.

B. Cases that are not selected to progress

[14] As advised in previous Notices, parties remain at liberty to request on consent that their case be heard remotely. As well, as advised in previous Notices, a party may request at any time that a case be allowed to progress due to urgency. The Court will consider these requests and issue a direction. Requests and any responses to requests may be filed by way of informal letter or email addressed to the Judicial Administrator and sent to Information@fca-caf.gc.ca.

C. Miscellaneous

[15] Except as varied by this Notice, all previous Notices to the Parties and the Profession remain in effect.

[16] Under this Notice, the parties may file certain materials. By way of reminder, the [Notice to the Parties and the Profession dated March 16, 2020](#) and the [Notice to the Parties and the Profession dated April 2, 2020](#) offer guidance as to how filing should be effected at this time.

"Marc Noël"

Chief Justice,
Federal Court of Appeal