

Meeting with the Civil Bar and Alberta Court of King's Bench

June 5, 2023 Highlights

Disclaimer: The following are highlights of this videoconference and circulated for your reference and courtesy. We invite you to consult the King's Bench website for precise language and direction. If there is any discrepancy, the information on the KB website prevails.

The panelists for this meeting were: Chief Justice Mary Moreau; Associate Chief Justice Ken Nielsen; Acting Associate Chief Justice Paul Jeffrey; Justice Glen Poelman (Co-Chair of the Civil Steering Committee); Justice Marta Burns (Co-Chair of the Civil Steering Committee); Applications Judge Lorne Smart; Applications Judge John Prowse; and Beth Wheaton (Executive Director of Court of King's Bench Operations). Approximately 300 members of the Bar joined the Webex Events videoconference.

The following Agenda was circulated by Ginette Goldenberg, Executive Assistant to Chief Justice M. T. Moreau, Court of King's Bench of Alberta

AGENDA:

1. Update on Edmonton Law Courts power outage
2. Filing Lead Times and Clerk's Office Vacancies
3. Judicial Vacancies
4. Digitalization of KB processes
5. Proposed Civil Triaging Project
6. KB Hearing Modes (in-person vs. virtual)
7. Remote Commissioning of Affidavits
8. Lead Times to Justice Chambers and Applications Judges Chambers
9. Smudging Facilities at Alberta Courthouse
10. KC Ceremonies

1. Update on Edmonton Law Courts power outage – Associate Chief Justice Nielsen

- A power outage on January 3, 2023 affected the South tower only, including King's Bench and the Court of Appeal. There was a problem with the main distribution system within the South tower, which is partially resolved with a temporary cable installation, which has allowed the South tower to operate at approximately 80% of normal building load. Not everything has been restored at this point in time. Permanent repair is in progress and anticipated to be completed by June 30.
- An unrelated power outage occurred on April 17, 2023 which affected both the South and North towers, including the Court of Justice. Power was restored that same evening and the problem has been resolved.
- As a result of the power outage issues, another government building has been identified where three courtrooms and other office space has been set up as a contingency location.

2. Filing Lead Times and Clerk's Office Vacancies – Beth Wheaton, Executive Director of Court of King's Bench Administration

- Calgary (as of May 30)
 - Most filing areas – currently within 24 hours.
 - General e-filing – currently within 8 business days.
 - Divorces (paper, i.e. not digital) – currently within 16 business days.
 - Estates (paper) – currently within 10 business days.
 - Represented Adults (paper) – currently within 4 weeks.
- Edmonton (as of May 30)
 - All filing areas – currently within 24-72 hours.
 - Divorces (paper) – currently within 5 weeks.
 - Estates (paper) – currently about 8 weeks.
 - Represented Adults (paper) – currently about 5 weeks.
- Red Deer (as of May 30)
 - All filing areas – currently within 72 hours.
 - Divorces (paper) – currently within 4 business days.
 - Estates and Represented Adults (paper) – currently within 1 business day.
- Lethbridge (as of May 30)
 - All filing areas are current, including Divorces and Estates.
- Provincial filing average (as of May 30)
 - All filing areas – currently averaging 72 hours.
 - Divorces (paper) – currently averaging 10 business days.
 - Estates (paper) – currently averaging 9 business days.
 - Represented Adults (paper) – currently averaging 8 business days.
- Filing lead times have remained relatively consistent across the Province since tracking started in October, 2022.
- There are a number of Clerk vacancies across the Province, but with digital services, the impact of these vacancies is minimized as the work can be moved between locations. Vacancies may have some impact on the more labour intensive in-person processes, such as paper filing, counter services and email filing.
- Clerk vacancies are affecting Calgary (email filing), Red Deer, St. Paul, Fort McMurray.
 - Clerks from Edmonton have been able to assist with the St. Paul digital processes. There have been times where the St. Paul counter has had to be closed due to unintended absences or extra court proceedings. In these cases, signage directs members of the public and counsel as to how to complete their filing via digital services or by calling the CJS Contact Centre.
 - Fort McMurray digital filings are up to date with the assistance of other locations.

Standard tips from the Clerk’s office (updated):

- Naming Conventions:
 - It is very important to follow the naming conventions for email filing to ensure the documents are sent to the correct specialized clerk for processing.
 - Emails are automatically sorted using the naming convention, so it is imperative to follow the naming conventions to avoid any delay or loss of documents.
 - The details are set out on the website:
<https://www.albertacourts.ca/kb/resources/announcements/new-email-filing-procedure>
- Ways to contact the Clerk’s office:
 - Please do not email Clerks directly for follow up.
 - The first route of follow up or routine inquiries should be sending an email to your local KB filing email address in the location where the document was sent for filing:
 - Subject line: “QB Filing – ATTN Supervisor” or “QB Filing – ATTN Supervisor – URGENT”
 - Emails are routed to the Supervisors who will respond to inquiries within 24-48 hours.
 - In the event you do not receive a reply from a Supervisor after 48 hours, you can contact the KBA Leadership team directly:
kbaleadershipteam@just.gov.ab.ca
- Urgent Matters:
 - When marking matters “urgent” follow the procedure set out on the website (revised October 29, 2022):
<https://www.albertacourts.ca/kb/resources/announcements/announcement-from-cjs-filing-dates-for-documents-filed-via-email>
 - Ensure that you have indicated the deadline when completing the online form.
- Email filing triage: Documents marked urgent are processed first (follow urgent matters process). Other documents are processed in the order they are received.
- The term “filing lead times” describes the amount of time that the clerk’s office takes to process incoming documents. Some documents are processed and immediately returned to counsel and some are redirected as required, i.e. proposed order and divorce applications are forwarded to the judicial sector.
- One way to determine the current lead time in the location counsel is dealing with is to send an email to the filing email address noting “test” in the subject matter line. The auto-reply email will have details about the current processing times in that area. This auto-reply message is updated weekly on Mondays.

3. Judicial Vacancies – Chief Justice Moreau

- Currently 8 judicial vacancies in the province:
 - 5 - King’s Bench
 - 1 – Associate Chief Justice (South) to replace former Associate Chief Justice Rooke

- 1 – Lethbridge to replace Justice D.K. Miller who took supernumerary status
 - 1 – Red Deer (new King’s Bench position created by the federal government in 2021)
- June 1, 2023: Justice Chris Millsap was appointed in Grande Prairie to fill the new King’s Bench position created by the federal government in 2021.
- June 7, 2023: A further vacancy will be created in Edmonton when Justice Eldon Simpson takes supernumerary status.
- Also reporting on recent Court of Appeal appointments from the Court of King’s Bench
 - Appointed to the Court of Appeal from Calgary: Justice April Grosse and Justice William deWit
 - Replaced by Justice Lisa Silver and Justice Allison Kuntz
 - Appointed to the Court of Appeal from Edmonton: Justice Jane Fagnan
 - Replaced by Justice Kent Teskey
 - Current vacancies: 2 in Court of Appeal for Calgary and 1 in Edmonton.

4. Digitalization of King’s Bench Processes – Chief Justice Moreau

- Wills, Estates and Trusteeships:
 - Coming up on the one-year mark of desk digital applications for Probate.
 - The Court is currently working with Justice Digital on desk applications for Grants of Administration, which should come into effect during the summer.
 - Next after that will be desk Guardianship and desk Trusteeship applications. At this time the Court does not have a timeline on this project.
 - In due course the Court will review digitizing desk applications for self-represented individuals.
- Commercial:
 - Generalized digital filing and applications are well in hand on the commercial side.
 - Currently only new matters commenced by Originating Notice are on the commercial case management platform.
 - Next on the list to add to the platform are new Statements of Claim.
 - The overall plan is to have all matters, including those already commenced, on the case management plan.
- Civil:
 - There are now over 150 documents that can be digitally filed.
 - There is a pilot project in the four KB residential judicial centres of the province for digital filing of Special civil application materials, moving next to regular Chambers filings.
- Family:
 - General digital filings are currently accepted.
 - Following the completion of the Civil Chambers Specials and Regular Chambers projects, Justice Digital will be moving to Family Chambers matters.
 - Work is under way on desk divorce applications by digital processes (with or without children involved).

5. Proposed Civil Triaging Project - Justice Burns (North) and Justice Poelman (South), Co-Chairs Civil Bar Steering Committee

- The Civil Triaging Project will address a serious problem with the time delays in processing a civil suit through the court system (focus currently on non-family civil suits). The hope is to have the new system implemented by about January, 2024.
- The current practice is to schedule trial dates when an action is effectively ready to go to trial (i.e. pleadings, questioning, undertakings and document disclosure, etc. are complete). Trial dates are approximately 71 weeks out.
- The proposal is a change in the order of steps so that at a very early age in a civil action, after the close of pleadings and after the deadline for the first affidavit of records has passed, any party may apply for a trial date under the existing Rule 8.5 application process.
- The party who wants to obtain a trial date will circulate a proposal for a litigation plan and proposed Order, after which they can attend in court for the application. The Court anticipates this being a special list court (tentatively called civil appearance court) that will be held on regular intervals (biweekly or monthly). If the presiding judge sets the date for trial, the parties would then be required to follow the accompanying litigation plan to work towards the scheduled trial date. Also, there will be consequences enforced for parties who do not follow the targets set out in the litigation plan.
- A further court appearance will occur several months prior to the scheduled trial date to confirm that the parties are ready for trial. The parties could lose the scheduled date if it is determined that they are not ready to proceed to trial.
- The changes should allow the court system to be more accessible and ultimately quicker and more cost-effective for the litigants.

6. KB Hearing Modes (in-person vs. virtual) – Chief Justice Moreau

- The Remote Hearings Ad Hoc Committee has been reviewing the pilot project, including feedback obtained from the previous internal and external outreach to Judges and various Bar and pro bono organizations.
- Early results demonstrate generalized satisfaction with the current Hearing Mode defaults.
- The Committee's report is expected to be finalized by the end of June. Thereafter it will be reviewed by the Executive Board, which is meeting next in the early fall. Any changes would be effective after approval by the Executive Board at this meeting.

7. Remote Commissioning of Affidavits – Associate Chief Justice Nielsen

- Members of the Bar have expressed a desire to continue with the remote commissioning of affidavits as set out in the March, 2020 Notice to the Profession and Public due to Covid-19 restrictions.
- The Court is working with the Law Society on a new Practice Note permitting remote commissioning of affidavits.
- A survey of various jurisdictions in Canada found the approach is not uniform.
- In Alberta, the process worked very well during the pandemic and the Court is of the view that we can continue with remote commissioning of affidavits so long as the process is followed to ensure

that the identity of the component and the execution of the documents is appropriate and adequate.

8. KB Hearing Lead Times – Applications Judge and Justice Chambers – Justice Burns (North) and Justice Poelman (South), Co-Chairs Civil Bar Steering Committee

- Edmonton (Justice Burns)
 - Applications Judge Chambers – current as of June 5, 2023.
 - Applications Judge Special Chambers – after September 1, 2023 (to be released mid-June).
 - Justice Chambers – June 8, 2023.
 - Justice Specials
 - Half Day Specials – February 16, 2024.
 - Full Day Specials – September 4, 2024.
- Red Deer (Justice Burns)
 - Applications Judge Chambers – current as of June 5, 2023.
 - Applications Judge Special Chambers – after September 1, 2023 (to be released mid-June).
 - Justice Chambers – June 9, 2023.
 - Justice Specials
 - Half Day Specials – August 25, 2023.
 - Full Day Specials – November 2, 2023.
- Calgary (Justice Poelman)
 - Applications Judge Chambers – current as of June 5, 2023.
 - Applications Judge Special Chambers – after September 1, 2023 (to be released mid-June).
 - Justice Chambers – June 22, 2023.
 - Justice Specials
 - Half Day Specials – February 15, 2024.
 - Full Day Specials – November 4, 2024.
- Lethbridge (Justice Poelman)
 - Applications Judge Chambers – current as of June 5, 2023.
 - Applications Judge Special Chambers – after September 1, 2023 (to be released mid-June).
 - Justice Chambers – June 27, 2023.
 - Justice Specials
 - Half Day Specials – December 7, 2023.
 - Full Day Specials – March 6, 2024.

9. Smudging Facilities at Alberta Courthouses – Associate Chief Justice Nielsen

- The Court will have rooms available within the Court’s facilities in which litigants, witnesses or other participants in criminal, civil or family matters could smudge prior to the start of the proceedings.
- At the present time, there are rooms in both the Edmonton Law Courts and the Calgary Court Centre where smudging can take place (“indigenous courtrooms”). In Edmonton the Court is required to use a mobile scrubbing unit to exhaust and treat the air in the indigenous courtroom. The Calgary facilities were designed at a time when smudging was anticipated.

- The Court is working with infrastructure to identify further spaces in both Edmonton and Calgary in which smudging can occur. This will also be extended to other courthouses across the province. Steps have to be taken to ensure facilities used for this purpose are properly ventilated.

10. KC Ceremonies

- The Court held ceremonies for the 2020 King’s Counsel group in Calgary and Edmonton last week.
- Will catch up to the 2022 KC’s on September 13, 2023 in the ceremonial courtroom in Calgary and on September 22, 2023 in Edmonton.

11. Questions and comments from the Civil Bar

Webex Events does not allow for oral representations by attendees. Attendees were directed to use the chat function for questions. Any questions that were not addressed during the meeting can be forwarded to King’s Bench Operations (relating to Clerk’s office) or King’s Bench Judicial.

1. Members of the Bar asked, in light of the Civil Triaging Project, what effect would that have on the mandatory ADR rule.

CJ Moreau advised further to the current JDR booking procedures, counsel must be setting a matter for trial by completing Form 37 in order to obtain a JDR due to strain on the current judicial resources. Therefore there would not be any impact on the ability to get a JDR as long as the booking requirements are fulfilled.

See NPP#2019-03

<https://albertacourts.ca/kb/court-operations-schedules/scheduling/judicial-dispute-resolution>

CJ Moreau notes the rule is specifically referencing mandatory ADR, not mandatory JDRs. In matters where there were opportunities from a financial perspective for a private mediation, arbitration or other form of ADR, counsel can take advantage of that. The lifting of the suspension of the rule was the Court’s encouragement for counsel to look at other alternatives. In the event of a party not agreeing to proceed with an ADR, counsel could apply to have the ADR waived.

2. Members of the Bar asked about the lead times in scheduling JDRs and Specials.

CJ Moreau advised that the Court continues to have judicial vacancies which need to be filled and working on the backlog caused by the pandemic. The Court is seeking to get back to the JDR table and will advise the Bar as soon as the Court is able to extend the judicial complement that can be assigned to JDRs.

An alternative program is the pilot program for special JDRs for long trials (“Specs”) that are conducted very shortly before trial. The eligible matters have been sitting on the long trial list and are ready to go to trial and an offer is made by the Court for a JDR to determine whether or not the case can avoid that kind of trial time. This is available for the fall term.

An ad hoc Scheduling Committee headed by Associate Chief Justice Nielsen has reviewed alternative ways to address scheduling issues and have provided its report to the Executive Board for review.

3. Members of the Bar asked about Applications Judges scheduling Specials, including in Red Deer.

Judge Smart advised that Applications Judges have begun a new process with regular release dates to improve the availability issues. Dates are released one month at a time, currently 3 months ahead (for example, on June 1 the September dates were released for Calgary). This may be reviewed in the future if circumstances change.

Judge Park was recently sworn in for Red Deer. It is anticipated that he will be scheduling 3 specials per month starting in September. It is anticipated that Judge Park will handle all of the regional specials. Edmonton and Calgary Courts will assist with overflow or make use of any open specials available.

Judge Park will also handle all of the bankruptcy matters. Advertising for the position of part-time Registrar was posted last week (open until July 13, 2023). This position will take a substantial amount of the bankruptcy work off of Judge Park's schedule, thereby allowing him additional time for specials and will impact the overall scheduling and planning.

Going forward meetings will continue to be scheduled quarterly with dates to be announced in the Law Society of Alberta (LSA) e-bulletins.

The Court encourages the Bar to correspond with the Court in their jurisdiction of practice with any concerns and to feel free to make suggestions.