

At a glance: COVID-19 court protocols

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Introduction

COVID-19 has forced society to embrace all things technological and forced individuals to adapt to working remotely. After all, life must go on – and so must access to the judicial system

As it stands, court operations before the Magistrates Court and the Supreme Court are restricted to essential services until the first working day after the expiry of the Emergency Powers (COVID-19) (No 2) Order 2020, which may be extended by amendments. On 17 March 2020 Chief Justice Brian Moree implemented the judiciary's first set of mitigation protocols, which were drafted in line with the Emergency Powers (COVID-19) (No 2) Order 2020 and demonstrate its 'twin priorities' of:

- protecting the health and safety of judicial officers and staff, law enforcement personnel, members of the Bar and public users of the courts; and
- ensuring that the judiciary can effectively provide continued access to justice.

The social distancing policies implemented to minimise in-person hearings can take any of the following forms:

- teleconference calls;
- videoconferencing;
- web conferencing applications; and
- disposition of applications on written submissions.

The manner in which a hearing will proceed will be determined by the presiding judge. However, when in-person hearings are unavoidable:

- attendance in courtrooms will be limited and inclusive of press representatives;
- attendees must maintain a distance of at least three feet;
- face masks must be worn; and
- the hearing's duration will be limited by the presiding judicial officer.

The remainder of this article sets out what is permitted according to the judiciary's latest Mitigation Protocols (Notice 4 dated 31 March 2020 and Notice 5 dated 14 April 2020) concerning civil and commercial matters.

Magistrates Court

Civil trials are suspended until two working days after the expiry of the Emergency Powers (COVID-19) (No 2) Order 2020. Part-heard matters are adjourned to a date to be fixed by the presiding magistrate.

Supreme Court

New trials are suspended until five working days after the expiry of the Emergency Powers (COVID-19) (No 2) Order 2020.

Part-heard trials are adjourned to a date to be fixed by the presiding judge. However, matters considered urgent can, upon application, be heard at an earlier date.

Urgent interlocutory matters will be heard electronically whenever possible. These include:

- injunctions;

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- domestic violence protection orders;
- child protection orders;
- orders under the Mental Health Act;
- orders under an international treaty;
- writs of *habeas corpus*; and
- any other order deemed by the judge to be fit for hearing on an urgent basis.

All other interlocutory matters are adjourned to a date fixed by the presiding judge. Applications for all other matters claimed to be urgent must be made to the specified judge.

Registrar, deputy registrar and assistant registrar court hearings are adjourned to a date fixed by the presiding registrar, deputy registrar or assistant registrar.

The Family Registry, Probate Registry and Appeals Registry are all closed until the first working day after the expiry of the Emergency Powers (COVID-19) (No 2) Order 2020.

Both the Civil and Criminal Registries are operating from a satellite office between the hours of 1:00pm and 4:00pm until the first working day after the expiry of the Emergency Powers (COVID-19) (No 2) Order 2020. The same applies to Cause List searches.

In addition, the Supreme Court (Covid 19) Rules 2020 provide for an extension of the time limits fixed by the Rules of the Supreme Court or any practice direction, court order or direction for filing any pleading or document or taking an action (procedural or otherwise) for 14 days after the expiry of the Emergency Powers (COVID-19) (No 2) Order 2020.

The judiciary's COVID-19 Mitigation Protocols are subject to change in accordance with any amendments that the government makes to the Emergency Powers (COVID-19) (No 2) Order 2020.

Court of Appeal

As of 4 May 2020, urgent civil appeals will resume before the Court of Appeal in accordance with Practice Direction 1/2020 (Operation of the Court of Appeal During the COVID-19 Pandemic), which remains in force until the expiry of the Emergency Powers (COVID-19) (No 2) Order 2020.

Although it was not stated what is considered an 'urgent civil appeal', the Court of Appeal has provided guidance on how these limited operations are to resume. For instance, hearings of appeals, case management, summons to settle the record and all other applications may occur at Cloughton House or by remote access using videoconferencing as the president or presiding justices may direct.

Where videoconferencing has been directed, the Zoom platform will be used; an invitation will be emailed to the parties within 24 hours of the date of the hearing.

All parties (counsel and clients) must be properly attired and set a plain background for the duration of a hearing taking place via videoconferencing. Parties are also prohibited from recording any part of the proceedings as all hearings will be conducted in the same manner as if they were being held in person.

Matters scheduled to be heard before the Court of Appeal will continue to be posted on its website.

Hearings will be heard promptly at either 10:00am or 2:00pm. All parties must be in place no later than 10 minutes before the scheduled time.

The Court of Appeal Registry will operate from Monday to Friday between the hours of 9:30am and 1:00pm.

Parties must file their paper documents and email an electronic copy on the same day of filing to the Court of Appeal at 'info@courtofappeal.org.bs'. These documents must be paginated and in PDF format. The email must also include a phone number and any other email addresses by which the parties wish to be contacted.

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