

ᑕᑭᑦᑎᑦᑎᑦᑎ Memo



ᑕᑭᑦᑎᑦᑎᑦᑎ To: The Bar of Nunavut, Justice Stakeholders, Media, Members of the Public

ᑕᑭᑦᑎᑦᑎᑦᑎ From: Acting Chief Justice Bonnie Tulloch

ᑕᑭᑦᑎᑦᑎᑦᑎᑕᑭᑦᑎᑦᑎᑦᑎ CC: Chief Justice Neil Sharkey

ᑕᑭᑦᑎᑦᑎᑦᑎ Date: 11/18/2020

ᑕᑭᑦᑎᑦᑎᑦᑎ Re: Suspension of Operations on Account of COVID-19 - Nunavut Court of Justice Operations Update in response to Coronavirus (COVID-19); Jurisdictional Issues flowing from circuit court cancellations through January 8, 2021.

Introduction

Due to this week's developments relating to COVID-19 in Nunavut, and following the Chief Public Health Officer's decision to place the Territory into a two-week lockdown through to December 2, 2020, yesterday afternoon I directed the Manager of Court Operations to issue an Emergency Closure Order ("ECO") suspending regular operations in the Nunavut Court of Justice ("NCJ") in Iqaluit through to the close of business on January 8, 2021.

Prior to issuing the ECO I convened a meeting with members of Nunavut's Bar, inclusive of management and lawyers from the PPSC, LSB, and the private sector. Management from the Department of Justice's Court Services division also participated. In the meeting I advised attendees that in addition to the suspension of regular operations in Iqaluit, all circuits outside of Iqaluit would be cancelled for the remainder of 2020. I then directed that separate ECOs be issued for each community that will be impacted by a cancelled circuit in the coming weeks.

The decision to suspend regular operations was based solely on pressing public health considerations. I sincerely hope this temporary suspension will assist in the efforts to protect the health and safety of all Nunavummiut.

NCJ and Justice of the Peace Operational Capacity through to January 11, 2021

I want to make it clear that while regular operations have been suspended, the NCJ remains open to hear matters counsel and/or litigants wish to bring forward to address remotely. Counsel have been advised that any matter they feel can be addressed remotely may be added to a docket by simply notifying the civil registry or criminal registry via email (ncj.civil@gov.nu.ca and ncj.criminal@gov.nu.ca). We have dispensed with the requirement to file a bring forward request utilizing a Form 10B through to January 8, 2021.

I have assigned our resident judges to act as duty judges each week during the temporary suspension. Judges will thus have good availability to hear matters that have been brought forward. Additionally, Section 525 detention reviews will continue to be scheduled as they are brought to Chambers' attention. Court Services has advised they will have a skeletal staff available onsite to administer the hearings that are brought forward.

While all civil matters that were previously set for hearing between today and January 8, 2021 have been adjourned *sine die*, the NCJ **will continue to hear all child welfare and guardianship matters** as docketed. As with criminal files, counsel may bring forward any civil matter they feel is able to be substantively addressed remotely.

Chambers will also continue to convene judicial pre-trial conferences during the suspension of regular operations. Please note that all previously scheduled conferences remain on the schedule. Should counsel wish to reschedule I would ask that they contact Chambers through the ncj.chambers@gov.nu.ca or ncj.trialcoordinator@gov.nu.ca email addresses.

Bail hearings will continue in the ordinary course as will *Family Abuse and Intervention Act* hearings. Please direct any and all Justice of the Peace program questions to jp.info@gov.nu.ca.

Counsel who have had special chambers sittings impacted by the suspension of regular operations, and who wish to have the matter continue in Iqaluit between December 2, 2020 and January 8, 2021, are encouraged to contact Chambers to canvass the possibility of rescheduling during the post December 2 suspension period. If the lockdown ceases on December 2 and we can accommodate such hearings, we will make best efforts to do so.

Jurisdiction

During my meeting with counsel, concerns were raised relating to the legal issue of jurisdiction. As counsel wanted clarity on the NCJ's approach to jurisdiction, I am attaching the March 16, 2020 Notice on Jurisdiction as sent from Chief Justice Sharkey's office to the Bar. Chambers maintains this approach to jurisdiction.

Conclusion

I conclude by thanking everyone for their support and cooperation this week as we worked together to enhance communication and make very difficult decisions at this time in conjunction with our Department of Health.

It is reassuring to know that everyone is focussed on balancing the safety of all Nunavummiut with the need for access to justice whenever possible.

Stay safe.

A handwritten signature in blue ink that reads "Bonnie M. Tulloch". The signature is written in a cursive style.

Acting Chief Justice Bonnie Tulloch
Nunavut Court of Justice

ᑕᑭᑦᑎᑦᑎᑦᑎ Memo



ᑕᑭᑦᑎᑦᑎᑦᑎ To: The Bar of Nunavut

ᑕᑭᑦᑎᑦᑎᑦᑎ From: Mark Mossey, Executive Legal Officer, Office of the Chief Justice

ᑕᑭᑦᑎᑦᑎᑦᑎᑕᑭᑦᑎᑦᑎᑦᑎ CC: Chief Justice Neil Sharkey

ᑕᑭᑦᑎᑦᑎᑦᑎ Date: 3/16/2020

ᑕᑭᑦᑎᑦᑎᑦᑎ Re: Nunavut Court of Justice Operations Update in response to Coronavirus (COVID-19) : Jurisdictional Issues flowing from circuit court cancellations through May 31, 2020

As mentioned at the start of the Court's Memo to stakeholders of March 11, 2020, the Nunavut Court of Justice ("NCJ") is committed to ensuring the continued efficient, timely, and safe delivery of justice in Nunavut.

After consultations with the Chief Medical Officer of Health, at 2 p.m. on Friday, March 13, 2020 Chief Justice Sharkey directed that all circuit courts (outside of Iqaluit) be cancelled through to May 31, 2020. Additionally, all jury matters scheduled between March 13 and May 31, 2020 were also cancelled.

As the situation has been increasingly fluid over the past six days and the need to respond quickly in the interests of the health and safety of Nunavummiut has received primary consideration by the NCJ, the Chief Justice has asked that this memorandum serve as an information item relating to the issue of jurisdiction for those individuals with court dates on circuit during the closure period. The Chief Justice thanks both the PPSC and LSB for contributions on this issue made over the weekend.

To retain jurisdiction, Emergency Closure Orders (ECO's) will be issued to each impacted circuit. The ECOs are being authorized through amendments made yesterday to Practice Directive #37, Emergency Closure Orders. The PD now reads:

PRACTICE DIRECTIVE#37: EMERGENCY CLOSURE ORDERS

Explanatory Note: This Practice Directive is intended to alleviate the hardship and uncertainty associated with the Court closing for an emergency, particularly weather emergencies. The Emergency Closure Order provides for the notification of all litigants of the existence and anticipated duration of a court closure. It also provides for the retention of jurisdiction pursuant to s. 485(1.1), s. 482(1) and 482(3)(a) of the Criminal Code; the extension of filing deadlines to cover this period; and ensures the orderly adjournment and resumption of cancelled sittings.

A. The Emergency Closure Order

The Court may be closed if weather, technological failure or **other hazardous or emergency conditions** and events exist that threaten the safety or welfare of community members, court personnel, or other justice participants, or otherwise prevent the court from continuing to function. In the event of an emergency, the Chief Justice of the Nunavut Court of Justice or his or her designate, in consultation with the Director of Court Services, may order that all sittings of the Court in the impacted community be immediately suspended, including the operations of the Court Registry if court operations in Iqaluit are impacted.

Upon being notified of an emergency closure, the Manager of Court operations shall as soon as practical cause a copy of the Emergency Closure Order in Form 37A to be transmitted electronically by email to all members of the Nunavut Law Society, the RCMP, Department of Corrections and any other persons or agencies who have advised the Manager of Court Operations in writing of their wish to receive Emergency Closure Notices. The party wishing to receive such notification is obligated to ensure that the Manager is given a valid and subsisting email address for the purpose of receiving these notifications.

The Manager of Court Operations shall further cause a copy of the Emergency Closure Order to be posted on the front door of the Courthouse in Iqaluit or at the facility holding court in the community, in a conspicuous location. The Manager of Court Operations will also cause a copy of the closure order to be posted online at www.nunavutcourts.ca

B. The Effect of the Emergency Closure Order

The sittings of the Court are cancelled or suspended, and any matters set for hearing shall be adjourned to 930a.m. on the next full day that the Court resumes its normal operations in the impacted community, to fix a new date for hearing.

If the closure impacts operations in Iqaluit, the Court Registry will be closed for the duration of the emergency closure and the filing or entry of any legal documents with the Court shall be suspended.

When by a procedural rule or statute, or by notice given under a procedural rule or statute, or by court order, any filing, act, or hearing is required to be done at or within a specified time, and that time expires during an Emergency Closure, the deadline for performance of the filing, act, or hearing as the case may be, shall be extended until the close of business on the next full day after the Court resumes normal operations.

Any remand warrant, warrant of committal, removal order, subpoena, summons or other court process returnable during a period of emergency closure shall continue in full force and effect until the close of business on the next full day after the Court resumes normal operations in the impacted community.

C. Re-Opening of the Court after an Emergency Closure

Upon returning to normal operations, the Manager of Court Operations shall transmit an electronic Notice of Resumption of Court Operations in Form 37B to all members of the Law Society of Nunavut, the RCMP, the Department of Corrections and other persons or agencies that have notified the Manager of their desire to receive emergency closure notices. The notice shall provide that all matters returnable in Court during a period of closure shall be spoken to at 930a.m. on the next full day of Court operations. The Notice shall further provide for an extension all filing deadlines until the close of business on the first full day of the court resuming normal operations. This deadline will be set out in the Notice of Termination.

This practice directive comes into force immediately.

Issued this 1st day of May 2010 upon the direction of the Judges of the Nunavut Court of Justice.

Mr. Justice R. Kilpatrick

Mr. Justice E. Johnson

Mr. Justice N. Sharkey

Madam Justice S. Cooper

Amended this 15th day of March 2020, upon the Direction of the Judges of the Nunavut Court of Justice:

Mr. Chief Justice Neil Sharkey

Madam Justice S. Cooper

Madam Justice B. Tulloch

Mr. Justice P. Bychok

Madam Justice S. Charlesworth

Mr. Justice C. Lyons

In addition to the amendments made to PD#37, the following will be attached to each endorsement on an impacted information:

“Jurisdiction on this charge is maintained pursuant to the ECO dated _____, and by virtue of section 597(4) of the Criminal Code a jurisdictional bench warrant is hereby issued to be held and not executed and not to be placed on CPIC. This case is adjourned until the next scheduled circuit after May 31, 2020 which is July 27, 2020

Thanks again to leadership at both the PPSC and LSB for the input and importance they have contributed to the jurisdictional issue

Please feel free to contact Mark Mossey at mmossey@gov.nu.ca with any questions relating to the above.