

# NOVA VOICE



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The Voice of the Legal Profession in Nova Scotia



## COVID-19 SPECIAL EDITION

LEGAL IMPLICATIONS OF THE PANDEMIC

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## EXECUTIVE UPDATE



Dan Wallace,  
McInnes Cooper

### PRESIDENT

The last couple of weeks have been unprecedented. Every day, every hour we learn of some new, usually disheartening, event. However, life goes on and we adapt.

I am pleased that my firm, McInnes Cooper, has taken proactive and consistently updated measures to address the COVID-19 outbreak. The firm has embraced working from home, put in social distancing measures at the office and is assisting firm members during this difficult time.

In many ways, my practice seems unaffected at this early time. I can communicate with and respond to clients just as I did prior to the pandemic.

I am fortunate to have a practice that enables me to work from home, which is something that I typically do one day a week. However, working from home



Agnes MacNeil,  
Department of  
Justice

### VICE PRESIDENT

Our CBA office has been a tour-de-force! Not only have they been able to seamlessly (at least from our perspective) move to remote support from home, but they have switched to online CLE for section meetings. A shout-out to Jenn Taylor and our ED Jane Bates for an excellent presentation by Dr. Ungar on resilience. While it was a Young Lawyers Section meeting, some of us old people joined too, as it was relevant for all ages and lengths of practice. There has been a host of other webinars looking at the impact



now has two new complications: a 5 and 8 year-old who require a certain amount of attention. This has meant an hour of work, followed by a healthy dose of jigsaw puzzle making and Harry Potter reading. It's only early days, but that balance as well as regular outdoor activities has seemed to keep everyone in good spirits.

I hope that everyone stays safe and takes care to look after themselves and those around them. This difficult time may not pass quickly, but it will pass, and we will get through this.

of the pandemic on a variety of practice areas, which have been well attended by members.

Planning for the next annual conference is well underway. Although we are hopeful that it will be a good opportunity to come together again and see old friends, meet new ones, and attend some interesting and informative CLE sessions, we are also examining various contingencies for virtual delivery.

In terms of my office's move to work from home, as a manager of a team, I can say that the reactions have varied. Some people love it, and some people do not. It certainly takes more effort to stay connected. There is no chance you will run into a colleague in the hallway.

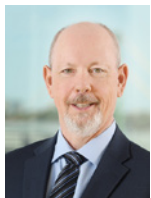
However, it has challenged many of us to use the technology we have better to keep in touch and to see each other, even if over the internet.

My university aged children are home and the atmosphere for me has felt like working during the holiday season, having time with everyone together, and particularly with the snow we have had falling in the background. I am lucky

that we have space enough for everyone in my family to have their own work area so we are not on top of one another. Much of the work I do is computer-centric, so for me, the switch to working from home has not been such a shock. I am enjoying the added time from not having to commute and being able to wear more comfortable clothes, unless there is a WebEx or Zoom meeting!

I think as a group, Nova Scotians are used to facing adversity with strength, determination and a sense of humour. I know we will get through this and staying at home will help protect the health workers and first responders on the front line, and our loved ones. It will be worth it, and when we come through on the other side, we will find that we have increased the ways we can work and share together. Stay safe!

## TREASURER



Terry Shepperd,  
BoyneClarke

Although I'm not sure I have any funny or inspiring stories, here is a picture of how I am coping with the pandemic and supporting our Nova Scotia Craft Brewers all at the same time!



brutal, with no time left in the day to get any exercise or fresh air. Little did we know when we bought the place 20 years ago that it would be pretty good for waiting out a pandemic and maintaining physical distance.

WFH is going fairly well. It's difficult to have blocks of uninterrupted time with two school-aged kids who are "in school" at home, which means I have to make up for hours lost in the evening and on weekends. In the work law world, clients need lots of advice and representation at this time on matters such as health and safety, refusals to work, lay-offs and terminations and compliance with constitutions and by-laws. We are also trying to keep non-COVID-19 related work moving with telephone conference and Zoom hearings, using agreed statements of facts and pre-hearing written submissions when possible. We worry about delayed justice for our clients, and the backlog that will exist when this is over. In the meantime, we are also focusing on our social media platforms, providing regular updates on COVID-19 implications for workplaces.

On the negative side, I'm doing far too much "doomsurfing," which I am sure is affecting my mood and my sleep. I'm not very productive, either, but I am giving myself some time to adjust. We already had up-to-date wills that provide for



our kids' care if something happens to both of us, but I recently made sure that younger members of our family know where to find them.

Things that have helped me cope and stay positive: an impending pandemic-panicked purchase of a Nespresso machine, for which, in order to get a good deal, I had to buy 100 years' worth of coffee capsules; cake and brownie mixes to make with the kids; making donations to organizations like Feed NS and Elizabeth Fry; going for a walk every day; and kayaking on weekends. We've just added weekly Sunday video calls with our extended family to our routine, and each Sunday we'll have a theme. The last one was crazy hair day. Not a stretch for me as my mane gets bigger and greyer every day. I easily perched a large fake bird on my head and used my hair as a nest!



Gail Gatchalian, QC  
Pink Larkin

## PAST PRESIDENT

I'm very fortunate to live outside of the city, on a lake and surrounded by woods. During normal times, the commute to work and back can be



# PANDEMIC PROGRAMMING

The ongoing pandemic has brought with it many things, from school closures to physical distancing and unprecedented shifts in our workforce and economy. For many, the situation has also brought uncertainty, anxiety and a sense of disconnect. CBA-NS staff and volunteers have worked quickly to bring timely programming to our members to address some of these issues and will continue to do so in the weeks and months ahead. Our COVID-19 related sessions so far have included:

- Providing Family Law Services in the Age of Social Distancing (March 25, 2020)
- Resilience During Times of Change and Challenge (March 26, 2020)
- Workforce Issues and Immigration During Uncertain Times (March 27, 2020)

- Pandemic Management and Privacy Implications (March 30, 2020)
- Remote Working and the Law: Setting Up for Success (April 1, 2020)
- Tech Tools and Tips to Work from Home (April 3, 2020)

Our CBA partners across the country are also working to meet the needs of our members during this time. Several resources that may be of interest to you are listed below.

- CBA National COVID-19 Resource Hub (<https://cba.org/Membership/COVID-19>)
- CBA National Wellness Programming, including the Mindful Lawyer Series (<https://cba.org/wellness>)
- CBA Ontario Branch's Priority Programming ([https://www.oba.org/2020\\_COVID\\_19/Priority-PD-Programs](https://www.oba.org/2020_COVID_19/Priority-PD-Programs))

Despite the uncertainty of the current climate, another thing this ongoing situation has brought with it is a renewed sense of community. We are very thankful to our Section Chairs and others who answered our call and willingly (often with short notice!) shared their expertise with our members. From your home offices, living rooms and kitchen tables you have joined us to not only get answers to some of your questions, but also remember that you are not alone. We look forward to continuing to support you with substantive, practice management and wellness programming during, and after, this pandemic.

*From the CBA-NS Staff*

***You will find within the pages of this special edition of Nova Voce, a range of articles discussing the legal implications of the COVID-19 pandemic across almost all practice areas represented in Nova Scotia. Please keep in mind that these articles are provided for general information only – they do not represent legal advice. Given the constantly evolving nature of the state of emergency, and legal and governmental responses, there is the potential that the information contained herein may no longer be current at time of print.***

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## EDITORIAL BOARD

- Tammy Wohler, Nova Scotia Legal Aid
- Victor J. Ryan, Burchells LLP
- Michael Murphy, McInnes Cooper
- Damien Barry, Louisbourg Seafoods Group

Special thanks to everyone who contributed to the magazine and CBA-NS staff for their assistance.

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# WORKING REMOTELY TIPS AND BEST PRACTICES



**SIMON  
GINGRAS**  
Canadian Bar  
Association

In this new age of remote working, here are some tips and best practices to ensure the security of your information:

1. Home internet connection (WIFI)
  - If you did not change your router password when it was installed, you should do it now!
2. Personal computer and device (tablet, mobile)
  - Your personal computer and/or device should be protected with a strong password and lock after 10-15 minutes of inactivity.
3. Keep work data at work
  - Keep your personal computer and/or device software up to date.
  - Make sure your personal computer has up to date anti-virus software installed.
  - Try to avoid downloading work data on your personal computer or USB key.
  - If you need to print work data, make sure it does not stay unattended. Documents should be kept locked in your home office or in a filing cabinet.
4. If you need to communicate personal/confidential information, it should be encrypted and password protected at all times.
5. Never leave your laptop and/or device unattended or in a car.
6. Use a VPN or Citrix connection to connect to your office network.
7. Watch out for email phishing:
  - There has been an increase in phishing attacks recently. Look out for unusual emails with misspelled email addresses. If you receive a request to purchase or transfer money, it should be confirmed by phone with the requester.
  - Hover over links to see the URL and don't click links or attachments unless you trust the sender 100 percent. If in any doubt, contact the alleged sender using a phone number or email address that you find somewhere other than in the suspicious email.

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## PANDEMIC GUIDE FOR LAW FIRMS

In 2014, the CBA's Labour and Employment Law Section created the Pandemic Guide for Law Firms. This comprehensive report remains just as relevant today, and contains advice and recommendations regarding

the legal duty to prepare for a pandemic and how to manage employees during a pandemic period.

A summary of the Guide is contained below, with the full version able to

be downloaded at <https://www.cba.org/Sections/Labour-Employment/Resources/Resources/2014/Pandemics-and-the-Workplace-A-Resource-for-Lawyers>.



# Pandemics and the Workplace A Resource for Lawyers


## What could be different in your workplace during a pandemic?

Inter-pandemic period	Pandemic alert period	Pandemic period
<b>LEVEL OF ILLNESS DURING FLU SEASON</b>		
<ul style="list-style-type: none"> <li>• 5 – 8 %</li> </ul>	<ul style="list-style-type: none"> <li>• level of illness increasing: 8+ %</li> </ul>	<ul style="list-style-type: none"> <li>• 15 – 35 %</li> </ul>
<b>HEALTH &amp; SAFETY ISSUES</b>		
<ul style="list-style-type: none"> <li>• Understood within normal operational realities</li> </ul>	<ul style="list-style-type: none"> <li>• May be heightened concerns about working near a co-worker or serving a customer who appears to be ill.</li> <li>• May be need to provide protective equipment such as masks, gloves, sanitizers.</li> <li>• May be need to increase frequency of facility cleaning or cleaning methods, etc.</li> <li>• May be need to restrict work-related travel service delivery (e.g. over the phone rather than in person).</li> </ul>	<ul style="list-style-type: none"> <li>• Heightened fear of health risks and pressure to take all protective measures possible.</li> <li>• For work places with health and safety committees, illness levels may prevent meetings or require online meetings.</li> </ul>
<b>PUBLIC HEALTH INVOLVEMENT</b>		
<ul style="list-style-type: none"> <li>• General messaging regarding hand-washing, getting flu shots, etc.</li> </ul>	<ul style="list-style-type: none"> <li>• Warnings about spread of illness</li> <li>• Possible directives on what to do if ill, e.g. stay at home for 7 days.</li> <li>• Possible directives not to visit a doctor or clinic unless specific symptoms present.</li> </ul>	<ul style="list-style-type: none"> <li>• Imposition of quarantine</li> <li>• Directives concerning some segments of the population (e.g. pregnant women)</li> <li>• Directives concerning return to work protocols, etc.</li> </ul>
<b>REQUESTS FOR COMPASSIONATE CARE LEAVE</b>		
<ul style="list-style-type: none"> <li>• Rare</li> </ul>	<ul style="list-style-type: none"> <li>• More likely as family members may be ill and require care.</li> <li>• Directives concerning some segments of the population (e.g. pregnant women)</li> <li>• Directives concerning return to work protocols, etc.</li> </ul>	<ul style="list-style-type: none"> <li>• Expected to increase significantly with 1 in 3 people in the population ill and being told to stay home</li> <li>• May be a heavy impact on employees with school-aged children or elder care responsibilities</li> </ul>

## What could be different in your workplace during a pandemic?

Inter-pandemic period	Pandemic alert period	Pandemic period
<b>REQUESTS FOR ACCOMMODATION</b>		
<ul style="list-style-type: none"> <li>Handled as part of routine management function</li> </ul>	<ul style="list-style-type: none"> <li>Increased volume of requests in a short period of time.</li> <li>Usual decision-makers may be ill.</li> </ul>	<ul style="list-style-type: none"> <li>A flood of requests in a short period of time</li> <li>Usual decision-makers may be ill</li> <li>Situation may enable employer to refuse requests as “undue hardship” during the crisis</li> </ul>
<b>DECISION-MAKERS</b>		
<ul style="list-style-type: none"> <li>Routine decision-making process</li> </ul>	<ul style="list-style-type: none"> <li>Some decision-makers may be ill or not able to meet in person; next-in-line decision-makers have to step in</li> </ul>	<ul style="list-style-type: none"> <li>Many of the decision-makers are ill and unavailable; who may make decisions?</li> </ul>
<b>RECORD-KEEPING</b>		
<ul style="list-style-type: none"> <li>Routine record-keeping process</li> </ul>	<ul style="list-style-type: none"> <li>Some record-keeping staff may be ill.</li> <li>Decisions may need to be made by people who are not familiar with record-keeping systems and protocols</li> </ul>	<ul style="list-style-type: none"> <li>Many record-keeping staff may be ill</li> <li>Decisions may need to be made quickly (e.g. permission to work from home, permission to return to work without a doctor’s note, shift change requests)</li> </ul>
<b>PRIVACY / CONFIDENTIALITY</b>		
<ul style="list-style-type: none"> <li>Routine</li> </ul>	<ul style="list-style-type: none"> <li>Possible need to breach confidentiality to let co-workers / customers know of a risk to their health</li> <li>Difficulty in maintaining privacy / confidentiality when there is a heightened sense of danger from a serious and contagious illness</li> <li>May need to obtain additional medical information from employees</li> </ul>	<ul style="list-style-type: none"> <li>Possible directives to report illness to public health authorities with no process in place on how to do this while maintaining privacy</li> <li>Possible loss of control of privacy / confidentiality with untrained staff handling notices of absence, accommodation requests, record-keeping, etc.</li> </ul>
<b>GRIEF</b>		
<ul style="list-style-type: none"> <li>Usual practices followed</li> </ul>	<ul style="list-style-type: none"> <li>Possible need to respond to an unexpected number of deaths among workers and their families</li> </ul>	<ul style="list-style-type: none"> <li>Fear of becoming ill and grief over colleagues who have died from the illness may lead to low morale</li> <li>Possible deterioration of employer / employee relations if management is perceived as not looking out for employees or acting appropriately given the crisis of a pandemic</li> </ul>

November 2014 © The Canadian Bar Association



## Ressources juridiques gratuites sur les questions relatives au COVID-19

À tous les professionnels du droit,

Alors que les événements reliés au COVID-19 continuent de se développer, l'équipe de LexisNexis Canada propose des nouvelles juridiques, des analyses et d'autres ressources clés spécifiquement conçues pour soutenir votre prise de décision et vos conseils sur les questions relatives au COVID-19.

Ces ressources juridiques comprennent des conseils aux employeurs sur leurs obligations pendant une pandémie, sur les principales implications de la COVID-19 pour les entreprises publiques canadiennes, sur les ententes et accords commerciaux, sur les communications en gestion de crise, etc. et c'est pourquoi, nous vous offrons un accès gratuit au contenu COVID-19 sur Lexis Practice Advisor®.

Veillez visiter [lexisnexis.ca/covid-19](https://lexisnexis.ca/covid-19) pour profiter de ces ressources ou cliquez sur les liens suivants :

- [The Lawyer's Daily News & Analysis on COVID-19](#)
- [Lexis Practice Advisor Coronavirus Guidance for Canada](#)

*\*Le contenu de Lexis Practice Advisor et du Lawyer's Daily est disponible en anglais seulement*

À fur et à mesure que la situation évolue au Canada et dans le monde, nous continuerons à mettre à jour des informations et des ressources, à la disposition des personnes qui se trouvent en première ligne de la pandémie de COVID-19. Nous comprenons l'impact et l'importance de la communauté juridique en période de difficultés sociales et économiques, et nous croyons fondamentalement que vos efforts sont essentiels pour maintenir la primauté du droit et revenir à la normale le plus rapidement possible.

Je tiens également à vous assurer que LexisNexis Canada a mis en place des pratiques visant à garantir la même qualité d'information et de service que celle à laquelle vous vous attendez. Veuillez communiquer avec votre représentant de LexisNexis Canada si vous avez des questions ou si vous rencontrez des problèmes d'accès.

Cordialement,



Eric Wright  
CEO, LexisNexis Canada







## Free legal resources on COVID-19 issues.

To our legal community,

As COVID-19 events continue to unfold, the LexisNexis Canada team is working to deliver legal news, analysis, and other key resources specifically geared to support your decision-making and counsel on COVID-19 matters.

Therefore, we are offering no-cost access to COVID-19 related content from Lexis Practice Advisor® which includes guidance for employers on their obligations during a pandemic, key implications of COVID-19 for Canadian public companies, insight on commercial deals and terms, crisis communications, and more.

Please visit [lexisnexis.ca/covid-19](https://lexisnexis.ca/covid-19) to take advantage of and share these resources, or click below:

- [The Lawyer's Daily News & Analysis on COVID-19](#)
- [Lexis Practice Advisor Coronavirus Guidance for Canada](#)

As the situation evolves in Canada and around the world, we will continue to make up-to-date information and tools available to those on the front lines of the COVID-19 pandemic. We understand the impact and importance of the legal community in times of social and economic difficulty, and fundamentally believe that your efforts are essential to maintaining the rule of law and returning to normalcy as quickly as possible.

I'd also like to reassure you that LexisNexis Canada has practices in place to ensure the same high quality of information and service you've come to expect. Please contact your LexisNexis Canada representative if you have questions or encounter any access issues.

Sincerely,



Eric Wright  
CEO, LexisNexis Canada



# IMPLICATIONS OF COVID-19 ON INDIGENOUS PEOPLES HEALTH



**VICTOR  
RYAN**

Burchells LLP

All across the country, individuals, industry and government are taking extraordinary measures to contain the spread of COVID-19. The threat posed by this global pandemic is felt everywhere, and Indigenous communities, governments and nations are no different. Some communities will be better prepared than others, and some communities contain unique, compounding factors that render them particularly susceptible in the fight against COVID-19. Still, the impact of this pandemic on the health and well-being of First Nations and Inuit communities in Atlantic Canada cannot be separated from the ongoing, persistent crises in relations between Indigenous nations and the Crown.

Across Atlantic Canada, Indigenous people face a spectrum of access to reliable, culturally competent health care. While some First Nations communities may have their own health care centres

and clinics, other communities must travel to neighbouring communities to access care. This becomes even more pronounced in Newfoundland and Labrador, where residents of coastal Innu and Inuit communities in Labrador must often fly hundreds of kilometres to access the nearest hospital. This uneven access to basic health care will undoubtedly be exacerbated in the event of a sharp increase in COVID-19 cases.

The social determinants of health will also play a role in Indigenous communities' ability to respond to the COVID-19 pandemic. In some Indigenous communities, a lack of housing and other vital infrastructure investments from the Crown has led to issues like overcrowding, a lack of reliable drinking water, and food insecurity. In an era where social distancing and frequent hand washing have become critical health care tools, some Indigenous communities face large structural disadvantages that will impede an effective response to the rapidly spreading virus.

It is encouraging that the federal government appears to recognize and

appreciate the urgent need to assist First Nations, Inuit and Métis nations in all jurisdictions in crafting an effective response to COVID-19. The Minister of Indigenous Services has announced millions of dollars in funding, in both new and existing areas, to meet the needs of this crisis. As with many Crown announcements of funding, it is unclear at this point how these funds will be distributed among Indigenous communities, and how quickly the funds will be released where they are needed most.

The influx of COVID-19 has demonstrated that the federal government has the capacity to react swiftly and forcefully in the face of a crisis where the political will to do so exists. In order to properly and adequately support Indigenous communities, nations and government to respond to COVID-19, that political will has to extend towards large, systemic investments in health and infrastructure. This should ensure that not only is the COVID-19 crisis dealt with, but the underlying disparities that placed Indigenous communities at higher risk for COVID-19 are also eradicated.

# CONSIDERATIONS FOR CHARITIES AND NOT-FOR-PROFIT ORGANIZATIONS IN LIGHT OF COVID-19



SELINA BATH

Wickwire Holm

As COVID-19 continues to impact our daily lives, charities and not-for-profit organizations face unprecedented demands. In carrying out their purpose and assisting those in vulnerable positions, they must remain nimble and responsive in a situation that is rapidly changing. This article discusses 4 key considerations in these uncertain times.

### **Closure of non-essential workplaces**

Nova Scotia declared a State of Emergency on March 22, 2020. As a result, many non-essential workplaces have been ordered to close to reduce the spread of COVID-19. While some charities and not-for-profit organizations may fall under the provincial list of essential services, many will be required to close. Non-essential businesses may continue to operate if employees are able to work remotely or through other contingency measures.

### **Employment matters**

Occupational health and safety legislation requires employers to take precautions to provide a safe work environment for employees. In the circumstances of this global pandemic, that includes taking steps to reduce the risk of COVID-19 exposure and transmission in the workplace. Many

workplaces have moved to remote-working operations. If this is not feasible, employers should take steps to maintain social (or physical) distancing which may include rearranging workstations to ensure a minimum physical distance between employees, staggering work hours to minimize contact between employees, and directing that all meetings be conducted virtually.

### **Governance**

As we strive to maintain social (or physical) distancing, many organizations will wonder how to handle meetings, including upcoming annual general meetings. To determine what procedures are permissible, organizations must first look to their governing legislation. This may be the Canada Not-for-profit Corporations Act or provincial legislation such as the Nova Scotia Societies Act or Companies Act. Look to the organization's constituting document (such as by-laws) to determine which applies. The organization's by-laws may also set out requirements for a meeting of directors. Alternatives to in-person meetings may include virtual meetings, in-person meetings with remote access options, or a hybrid of in-person and virtual. Whatever method you choose it is incredibly important at this time to communicate with directors and shareholders how the organization is carrying on its obligations and directives.

### **Finances**

The Federal Government has announced a wage subsidy of up to 75% on the first

\$58,700 of an employee's salary for qualifying businesses including not-for-profit organizations, charities and certain Canadian Controlled Private Corporations (CCPCs). The subsidy is for a period of up to 3 months, retroactive to March 15, 2020. Information relating to eligibility criteria and delivery of the program continues to evolve.

The CRA's Charities Directorate has extended the filing deadline to December 31, 2020 for all charities with a Form T3010, Registered Charity Information Return due between March 18, 2020 and December 31, 2020. This allows charities more time to complete and submit their T3010 as their resources are deployed to address the effects of COVID-19.

The Charities Directorate has suspended operations until further notice. This includes the call centre as well as all registration and audit activities.

### **Conclusion**

The situation continues to change rapidly with new information and directives being announced almost daily. Charities and not-for-profit organizations are reminded to stay informed of and follow government orders and directives.

**Editor's Note:** On April 11, 2020, the provincial government issued a *Direction of the Minister (20-004)* regarding Shareholder or Member Meetings which allows annual general meetings to be deferred or held virtually. Further details can be found at <https://novascotia.ca/coronavirus/docs/Ministers-direction-EMA-AGM.pdf>.



# COVID-19 TRAVEL TIPS FOR FOREIGN NATIONALS



SARAH  
MCINNES  
McInnes Cooper

We seem to be hearing the same key phrases over the last few weeks: this is “unchartered territory,” and, these are “unprecedented times.” This is particularly the case for immigration lawyers trying to understand and apply interim travel restrictions for foreign nationals, which have been rolled out quickly and patchily. While clarification is still being anticipated, here are some tips from immigration lawyers for travel to Canada during the pandemic.

On March 26, 2020, the Canadian federal government released two Orders in Council pursuant to the federal *Quarantine Act* to provide guidance for travel to Canada.

The Order for travel from the U.S., initially in force until April 21, 2020, and recently extended for 30 days, prohibits entry from the U.S. for foreign nationals who wish to enter Canada for an optional or discretionary purpose (tourism, recreation and entertainment). The Order for travel from the U.S. does not require temporary foreign workers to have a valid work permit

or approval letter prior to travelling to Canada (provided they have been in the U.S. for at least 14 days); as such, foreign nationals travelling from the U.S. are entitled to apply for a work permit at the Port of Entry. While the Order only prohibits travel for optional or discretionary purposes, a Canada Border Services Agent (CBSA) has the discretion to determine whether to issue a work permit and may refuse to issue work permits to individuals whose travel to Canada is deemed non-essential.

The Order for travel from any country other than the U.S. is in force until June 30, 2020, and prohibits all travel to Canada unless the foreign national holds a valid work permit or a work permit approval letter, or meets one of the narrow exemptions provided in the Order. These exemptions were identified as preserving life, health and basic societal functioning and includes, but is not limited to, providers of emergency services for the protection or preservation of life or property (i.e. firefighters and medical service providers); workers in the marine transportation sector who are essential for the movement of goods by vessel; and persons delivering, maintaining, or repairing medically necessary equipment or devices or making medical deliveries required for patient care in Canada.

As of now, temporary foreign workers that do not fit into one of the above categories (for example, foreign nationals who would like to work under a work permit exemption category, those who hold work permit support letters issued by the Province, and those who are coming with Labour Market Impact Assessment approvals), are not permitted to travel to Canada. These people would have neither a work permit nor a work permit approval letter. In other words, foreign nationals travelling from outside the U.S. will not be able to apply for a work permit at the Port of Entry.

In effect, air operators are being asked to apply immigration policy to determine which travelers are authorized to travel to Canada under one of the Orders in Council. In the past few weeks, this has resulted in a lot of confusion, inaccurate assessments, missed flights, frustration and angst. While we continue to seek clarity on how the travel restrictions are being applied by both air carriers and CBSA, here are some tips for foreign workers travelling to Canada at this time:

- 1. Employer confirmation:** Foreign workers with valid work permits or work permit approval letters are technically exempt from the travel ‘ban’, but they must also carry: the employer’s confirmation it’s still operating and is not subject to mandatory closure of non-essential businesses; confirmation the job is still available; and an explanation of why they need to travel to Canada at this time, since all non-essential travel, even if it’s work-related, is to be avoided. Port of entry applicants should carry similar documentation.

**2. Medical Clearance:** Canada’s federal government is asking airline operators to conduct a health check of all air passengers travelling to Canada from international locations. To reduce the chance a foreign worker is held back for health reasons, it will be helpful if they carry recent medical evidence confirming their health.

**3. Self-isolation Plan:** CBSA is doing its best to ensure travelers to Canada adhere to the 14-day self-isolation rule implemented by the federal government. In order to assist, have a self-isolation plan ready addressing key questions like: Where are they self-isolating? How are they going to get to their accommodations without being in contact with anybody? How

are they going to have groceries delivered? If the worker is exempt from the self-isolation requirements, bring the relevant self-isolation exemption order issued by the province of destination.

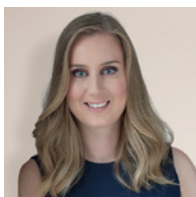
**4. Family Members:** If a foreign worker plans to travel to Canada with immediate family members, they will need authorization from a consular officer, as family members of foreign nationals do not meet one of the exemptions under the Orders in Council.

**5. Seasonal Temporary Foreign Workers:** Employment and Social Development Canada (ESDC) has implemented changes to the Temporary Foreign Worker

Program (TFWP) that specifically exempt seasonal agriculture workers and seafood processors from the COVID-19 travel ban and has temporarily modified the Labour Market Impact Assessment (LMIA) process to waive the required 2-week recruitment period for the next 6 months. Employers hiring workers under the TFWP can also increase the maximum employment duration for workers from one to two years, intended to improve flexibility and reduce the administrative burden for employers. Specific instructions for agricultural workers under the Seasonal Agricultural Worker Program and the Agricultural Stream are being developed, with more details to follow.

# STAYING HOME

## REFLECTING ON MOBILITY RIGHTS IN THE CONTEXT OF THE NOVA SCOTIA / NEW BRUNSWICK BORDER MEASURES DURING THE COVID-19 PANDEMIC



**MARY ROLF**  
Barteaux Lawyers

Until recently, if someone had asked me “How do you move through the world?” I would have assumed the question was a figurative one. COVID-19 has served as a stark reminder of how literal and vital this question really is as we confront the reality of government and public health directives to stay home except for essential outings.

As we grapple individually and collectively with what this means on a practical level, it’s clearer than ever that it’s a privilege to be able to restructure your life so you don’t need to go anywhere. Working from home arrangements, online grocery ordering and delivery, resources to occupy yourself or your kids at home while schools and parks are closed – these are things to which not everyone has access. The fact is someone needs to pick and pack that ‘click and collect’ order. Even the privilege of social distancing is not available to all, thinking especially of people accessing emergency shelters and

people in jails and prisons.

And then there’s the matter of living on one side of a provincial border and working on another.

Generally, our provincial borders aren’t that noticeable. They’re a blink-and-you’ll-miss-the-sign landmark out the window on your last road trip. But on March 22, 2020 when the Government of Nova Scotia declared a state of emergency in response to COVID-19 and announced increased screening and restrictions on social travel to

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Nova Scotia, the border between New Brunswick and Nova Scotia was suddenly not so invisible, particularly to people who cross it every day for work. New Brunswick followed suit on March 25, 2020, setting up checkpoints and prohibiting non-essential travel into the province. Many vehicles have been refused entry into New Brunswick<sup>1</sup> and essential service workers face long lines to pass through the checkpoints.

The bottom line is that there is a lot of personal and political tension around the ways we are being asked to move or not move during the COVID-19 outbreak. Thinking about this tension caused me to consider the mobility rights enshrined in section 6 of the *Charter*. Like our provincial borders, section 6 has never been that noticeable to me. Let's face it, there are more "happening" sections of the Charter to litigate and discuss, including those perennial constitutional law chart-toppers at sections 2, 7, and 15.

### Section 6(2)(b) and COVID-19

The issue of living and working across provincial boundary lines crystallizes in subsection 6(2)(b) as modified by subsection 6(3):

6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.
- (2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right

- (a) to move to and take up residence in any province; and
  - (b) to pursue the gaining of a livelihood in any province.
- (3) The rights specified in subsection (2) are subject to:
- (a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and
  - (b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.

### Key Points in Applying Section 6(2)

There are a few things to note about the application of section 6(2).

First, the Supreme Court of Canada has considered the issue of interprovincial work and confirmed that interprovincial border commuters do not need to establish residency in their province of employment in order to have a guaranteed right to work.<sup>2</sup>

Second, section 6(2) is subject to both an internal limitation in subsection 6(3) and to the standard external limitation in section 1. With respect to the internal limitation, laws or practices must not discriminate primarily on the basis of residency except where reasonable residency requirements serve as eligibility criteria for public social

services. And of course, all measures that infringe the *Charter* must meet the *Oakes* test and be in accordance with the principles of fundamental justice.

Third, section 6 as a whole is not subject to the notwithstanding clause at section 33 of the *Charter*. The notwithstanding clause only applies to sections 2 and 7-15.

Perhaps most importantly in thinking about COVID-19 interprovincial border restrictions, section 6 does not clearly enshrine a general right to freedom of movement between provinces for all purposes. Even if a court were to interpret the COVID-19 measures as a *prima facie* section 6 violation, the *Oakes* analysis would be strengthened by the pressing and substantial public health objectives during a pandemic.

However, the *Charter* reflects Canadian values, including personal autonomy and self-determination which are closely tied to our mobility rights. Many of us have family, friends, colleagues, and clients in New Brunswick and elsewhere. It is disconcerting to know that for the most part, right now we are physically cut off from some of our nearest neighbours, even if out of necessity.

For now, one of the best things we can do is "stay home together". It's daunting, but necessary to support the effort to flatten the curve. In the meantime, it helps to remember that physical distance doesn't mean social isolation. Community looks different right now, but it's still there.

<sup>1</sup> CBC News, "N.B. COVID-19 roundup: Community transmission now confirmed in province" (March 30, 2020), online: *CBC News* <https://www.cbc.ca/news/canada/new-brunswick/coronavirus-covid-19-pandemic-1.5514557>.

<sup>2</sup> *Black v Law Society of Alberta*, [1989] 1 SCR 591 at paragraph 61.

# COVID-19 AND THE ROLE OF IN-HOUSE COUNSEL



**DAMIEN BARRY**  
Louisburg Seafoods Group

In-house counsel play a critical role within private and public companies and are responsible for many functions such as risk compliance, intellectual property management, government relations, restructurings, corporate secretarial, and labour and employment. With the suspension of all major worldwide economic activity, in-house counsel are now being called upon to provide advice across various areas of law, including contract, labour and employment, immigration and privacy, among others.

Aside from providing legal advice, in-house counsel are also faced with the challenge of providing objective advice and recommendations to colleagues and friends within companies and non-profit organizations during a time of heightened anxiety and stress. Many organizations are facing the grim reality of layoffs, and are questioning whether they will be able to continue operating in the future. In short, with the outbreak of the COVID-19 pandemic, in-house counsel face new and ever-changing challenges each day.

The inability to continue operations in the manufacturing and processing sectors has

caused previously unknown disruption to commercial operations, relationships and supply chains. This has severely impacted the ability of parties to perform their contractual obligations. This in turn has led many companies to invoke *force majeure* clauses in contracts where applicable. *Force majeure* clauses identify and define circumstances beyond the parties' control that can render contractual performance too difficult or ultimately impossible. Where an event, or series of events, triggers a *force majeure* clause, the party invoking the clause may look to suspend, defer, or be released from its duties to perform without liability.

*Force majeure* clauses will generally identify events such as fire, flood, explosion, earthquake, or other natural forces, war, civil unrest, any strike or labor disturbance, as well as pandemics or public health emergencies. Once an identifying event has been confirmed, notice periods, causation and mitigation will then be considered. It is also important to note that the inclusion of a *force majeure* clause will generally only delay the performance of the contract whilst the identifying event is ongoing.

In the absence of a *force majeure* clause, contractual parties may rely on the common law doctrines of frustration of contract or impossibility of contract to seek to discharge themselves from performance of a contract. Other contractual considerations

for companies involved in export and international sales include *forum conveniens* as well as the ability to enforce contract breaches. It is certain that unforeseen contractual issues that arise during the current global crisis will be explicitly outlined and identified in future contracts.

In-house counsel also must be conscious of labour and employment laws and regulations in their provinces of operation during this uncertain time. Questions such as:

- can I compel employees to come to work at this time;
- am I obliged to allow my employee to work from home; and
- must I report any suspected COVID-19 cases involving an employee to the relevant government authorities

are all pertinent issues that have arisen recently.

In addition to labour and employment issues, there may also be privacy issues involved, particularly when compelling employees to self-identify or when actual cases of COVID-19 have been identified within the workplace. Within the fisheries sector where my company operates, we also face the challenges associated with being identified as an essential service in food production, whereby employees are still able to work in our various processing plants where possible. Familiarity with

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legislation in relation to employment, privacy and health and safety, as well as government directives and policies is essential in these situations.

In addition to private and public companies, in-house counsel also have a vital role to play in advising public and non-profit organizations during these challenging times. Michelle McCann is Director for Risk and Legal Services at the QEII Foundation in Halifax and also advises many smaller non-profit and charitable groups in her private practice.

Michelle’s role with the QEII Foundation usually involves her offering advice and guidance primarily on policy and human resources matters. With the outbreak of the COVID-19 crisis, Michelle has been called upon to review all existing policies in place as well as draft and advise on new policy directives to deal with the current

pandemic. With the marked increase in employees working from home, Michelle is now advising managers on how to coordinate approximately 50 employees working from 50 different locations and ensuring that all policies and infrastructure are in place to support this new reality.

In addition to providing legal advice, Michelle, like many other in-house counsel at this time, is called upon to provide more practical advice to colleagues in her organization. As Michelle notes, when private practitioners are called upon to provide legal advice to organizations, they can do so and then move on to advising their next client. With in-house counsel, we are more often than not advising colleagues who we interact with every day and as such, in addition to providing legal advice, we are also involved in helping to implement the same advice across our organizations. More often than not, the advice that is

given not only involves the drafting of a policy or guidelines but on a more practical level involves trying to alleviate colleague’s anxiety and stress levels, especially in these uncertain times.

In conclusion, in-house counsel have a vital role to play in advising organizations and companies during the current COVID-19 crisis. In addition to providing ongoing legal advice, we also have to deal with the realities of significant economic and financial impacts on our companies, organizations and colleagues, as well as reacting on a daily basis to the ever-changing economic and societal challenges being faced during this pandemic. In short, we have to offer advice to ensure that the proper decisions are being made to safeguard not only the future of our companies and organizations, but also those of our employees and colleagues.

# SUPPORTING THE VULNERABLE



**TAMMY WOHLER**  
Nova Scotia Legal Aid

As a lawyer representing low-income persons, I am keenly aware that I am

much better positioned than my clients to face the COVID-19 crisis.

I can work from home in a house and property that allows for breathing space – my husband and teenage boys are self-sufficient and we can spend as much time together or apart as we like. Even going into our second month of staying home,

things are going smoothly. I can afford to keep my pantry, freezer, and medicine cabinet well-stocked, (not to mention the space in the basement we jokingly call “the wine cellar”). I have plenty of options for wellness, free or otherwise, and the education and training to know of the importance of focusing on wellness during this time.



The pandemic has highlighted that I have a life of privilege and means. A life of many choices and few barriers.

For those facing income and housing insecurity, the COVID-19 pandemic not only highlights but exacerbates their everyday challenges and barriers. In HRM, persons with lower incomes tend to require housing with lower monthly rents. The availability of affordable rental properties in the city is incredibly low, and what lower rent properties do exist can often be in smaller, more densely populated areas and buildings. This, in turn, increases the risk of exposure at a time of a highly contagious pandemic.

Social media is running amok with stories of panic-shopping and hoarding necessary supplies for personal or, worse, financial gain. Some is panic and overreaction. The reality is that we do need to stock up – to be ready. The harsh reality in Nova Scotia, however, is that many families – and numerous children – cannot adequately prepare for this pandemic.

For those living beneath the poverty line, the fall-out of COVID-19 will be immense. Local community resources are closing doors, food banks are in need, and libraries, a valuable free resource and means of accessing technology and the internet, are shut down. Some of the poorest in our province do not have phones with which to seek help. Others have smart phones that work only when they access free Wi-Fi, such as at a local coffee shop or fast food restaurant – businesses that are now closed to walk-in patrons or closed altogether.

Income assistance is typically insufficient to cover all monthly expenses. Families rely on the local food banks or other

community supports to meet basic food needs. They are never “stocked up” and make choices monthly about what they can do without and which bill they can put off paying a little while longer. They are not making trips to Costco for crates of food, toilet paper, Lysol, or anything else. Bulk buying requires money they do not have.

If they chose to “rob Peter to pay Paul” – decide that food and supplies is more important than rent in case of a lockdown or empty grocery shelves – they will fall into arrears and risk eviction. The eviction freeze is a limited one – it does not protect those receiving fixed benefits such as income assistance or CPP-Disability benefits. It does not protect those diverting their limited income to different basic necessities because of COVID-19.

Between increased financial pressures and severe restrictions on our movements, high conflict families will be under greater stress and without the means or ability to remove themselves easily, if at all, from a volatile situation. Supports for such families, such as anger management programs, have been suspended. News reports suggest an increase in domestic violence reports. While domestic violence and conflict affects those in all socio-economic brackets, the opportunities to access services or to implement a plan to leave safely increases with socio-economic status.

An increase in domestic violence leads to an increase in child protection investigations, interventions, and the taking of children into care. Children in care during the COVID-19 crisis face significant hurdles in having access with their parents. In-person access is largely

suspended and virtual access requires technology that lower-income persons may not possess. With children in care, lower-income families stop receiving a significant portion of their income – the child benefit. In smaller centres and rural areas, finding a lawyer for child protection proceedings is already a significant challenge. And so the stressors increase.

As the challenges rise up, so too do the people of our province. Individuals, communities, advocacy groups, service agencies, government departments, political leaders, the judiciary and court staff, lawyers and legal support staff; everyone is coming together - even while social-distancing - to support persons and families in need.

In particular, the legal profession and the courts are working together to ensure emergency matters are addressed (such as child protection) and to limit the numbers of people incarcerated, which will limit exposure – areas which often impact lower-income and marginalized segments of our province the most. Efforts are being made to limit the impact of this crisis on the justice system – with the needs of the most vulnerable at the forefront.

As a profession and as individual lawyers, we should always be looking at what we can share with those less fortunate – less lucky – in our communities than us. We have time, talent, and resources to share, now and later.

This health crisis will end. Our work to support the vulnerable in our society should not.

# LOOKING OUT FOR THE ELDERLY



GRACE  
MACCORMICK  
Patterson Law

We are all aware of the enormous impact that COVID-19 has had on both our personal and professional lives. Now, more than ever, is a time to look out for others. As we have seen, older adults appear to be more vulnerable to becoming severely ill with the virus.<sup>1</sup> According to the US Center for Disease Control, 8 out of every 10 deaths in the US have been in adults 65 years or older.<sup>2</sup> From an elder law perspective, we must recognize that the potential vulnerabilities of our clients extend beyond the physical to increased risks of elder abuse, social isolation, mental health decline, and undue influence.

Long term care facilities in Nova Scotia have been closed to visitors. This brings increased emotional and social

isolation to a population that is already so prone to these issues. We have seen some facilities moving to creative solutions to address the situation, offering visits through windows and using more virtual methods of connection.<sup>3</sup> Unfortunately, the window visits have had to be curtailed in recent days.<sup>4</sup> This underscores our need to be creative in our support for the elderly population. This situation is constantly evolving and we must evolve with it as methods of contact and communication that were acceptable one day become impossible the next.

As practitioners, we should also be more creative in our offerings of service to our clients. The Nova Scotia Barristers' Society has posted a list of frequently asked questions and answers on its website to assist lawyers in providing effective service in the context of the COVID-19 pandemic.<sup>5</sup> One of the questions posed is, "My client requires a Will, Power of Attorney, and/or Personal

Directive. Can I witness the execution of these documents remotely?". The NSBS's response should be reviewed frequently as it continues to be updated.

Given current restrictions, the Wills, Estates & Trusts Section of the Canadian Bar Association – Nova Scotia Branch has written to the Minister of Justice to seek a relaxation of the strict requirements of the *Wills Act*, RSNS 1989, c 505. In the meantime, we will start to see more holograph wills and "other writings" as permitted by sections 6(2) and 8A of the *Wills Act*. Those of us who practice on the litigation side of the estate law practice should be prepared to see more contested matters surrounding these types of documents in the coming years.

1 <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public/myth-busters>

2 <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications/older-adults.html>

3 <https://www.cbc.ca/news/canada/nova-scotia/nursing-homes-covid-19-health-care-1.5500555>

4 <https://www.cbc.ca/news/canada/nova-scotia/some-ns-nursing-homes-end-window-visits-amid-covid-19-1.5536823>

5 <https://nsbs.org/covid-19-questions/>

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# EQUITY CONSIDERATIONS DURING A PANDEMIC: IMPACTS OF COVID-19



ANGELA  
SIMMONDS

Nova Scotia  
Barristers' Society

Like so many Nova Scotians, I have been following the press releases, news updates, and commentaries surrounding the COVID-19 pandemic. Currently all provinces and territories have declared some sort of state of emergency, restricting social gatherings and shuttering businesses like bars and restaurants. This pandemic has brought into sharp focus the continued inequities between races, classes, genders and ages. We have listened to Dr. Robert Strang, Nova Scotia's chief medical officer, indicate we have a narrow opportunity to mitigate the impact of COVID-19 by practicing social distancing. Nova Scotia defines social distancing as follows: limiting your contact with other people and staying about 2 meters (6 feet) apart. Essentially, social distancing asks us to actively avoid gatherings and large events, and to minimize close contact with others.

The restrictions against gathering will have a particular impact on Black and Indigenous Peoples. We know from the data released on street checks that racialized people, in particular African Nova Scotians, are disproportionately targeted by police in our community. The

Health Association of African Canadians have been conducting weekly webinars to discuss the impacts of COVID-19. Many individuals, including myself, have participated in these conversations and also raised concerns regarding the disparities between African Nova Scotian and Indigenous communities' housing, finances and care resources when compared with more privileged communities. Because of this, these restrictions will likely affect these communities differently.

The behaviour of Black or Brown people is often interpreted as "hazardous or unsafe", which makes individuals more likely to be reported on by neighbours and confronted by authorities. There are also cultural norms, like sharing care of each others' children, looking after elders in our communities, and travelling between Black and Indigenous communities that are differentially impacted by the public health restrictions in place.

In addition, asking individuals to self-isolate can be very complicated for some. It assumes everyone has equal access to space and resources. If you live in a big house and you have a yard with a swing set for your kids to play outside or you have a downstairs area to escape to when you need alone time, practicing social distancing is much easier. If you have a laundry room and aren't reliant on community laundromats, and can afford to keep a freezer full of food because

you can afford hundreds of dollars of groceries at a time, these restrictions are much easier for you to follow.

But the reality of social distancing looks very different for someone in a one-bedroom apartment, in a huge building with limited scenery. Trying to keep your children quiet, with no in-suite laundry space and only a few dollars at a time to buy groceries are just some examples of the ways in which social distancing and limiting your trips out are much more difficult. A month inside for that person looks a whole lot different and is a lot more draining on mental and emotional health.

The reality is that we know those who have lost jobs or had their hours greatly reduced, and the reality is that most people are not in a position to earn no income for months. There are also many service-oriented jobs still requiring employees to attend and with no options for child care in a single parent home this creates additional barriers and stress.

If COVID-19 policies are going to respond to the needs of those individuals impacted the most there must be access to information, equitable access to resources and supports. For example, so many people rely on community food programs like the Dartmouth North Food Centre who support individuals on and off Mi'kmaq communities as well as other marginalized communities. With the Centre closed and not being able to

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respond to community needs, people are struggling. If the first point of access for COVID-19 related concerns is through an online self-assessment screening tool with all libraries closed, this poses a significant barrier for people who do not have access to reliable internet or

may have limited literacy skills. It may be very difficult or impossible to navigate an online assessment tool.

For many in these communities, the climate and conditions placed on people in light of COVID-19 are not new circumstances. Understanding the history of African Nova Scotians

and Mi'kmaq peoples in the midst of this pandemic requires an element of knowledge and critical evaluation of equity and inclusion. Implementation of equitable policies involves those in positions of power continuing to educate themselves and seriously considering the burden those policies are placing on these communities.

# SEPARATION IN THE AGE OF SOCIAL DISTANCING



CHRISTINE  
DOUCET  
MDW Law

A few short weeks ago, my biggest concern as a lawyer/mediator with MDW Law and a parent was whether I would get through the piles of work on my desk and in my inbox before I got on a plane and ready to enjoy a week of much needed March Break rest and relaxation. Many of my colleagues were in the same boat.

A lot has happened since then. Vacations have been cancelled or interrupted. Children are home from school and daycare for the immediate future. March Break camps were cancelled. Libraries, malls, cinemas, pools and rinks are closed, and sport seasons have been cut short.

Today, as lawyers and mediators, we are thinking about things we never thought we would have to worry about. We are focusing on a new reality where the very lifeblood of our business – court appearances, mediations and meetings – have become risky breeding grounds for the novel coronavirus. The management team of my office continues to consider how our business needs to change in this time of uncertainty to continue to meet the needs of our clients. While we don't have all the answers, we have some ideas and we are committed to pivoting and flexing to face the challenges the days ahead will bring.

### **Immediate Changes**

As with most small businesses in Nova Scotia, MDW Law has had to make immediate changes to continue to meet the needs of our clients while protecting the health of our employees. Most meetings have been shifted

to telephone or video conferencing format. Where a face-to-face meeting is absolutely necessary, for example to sign documents, we are using a dedicated large boardroom to allow for distancing. The table is cleaned after each use. From the start, we stopped offering beverages to our clients and magazines have been removed from the reception area.

### **Clients Need Legal Advice**

We know that pressing legal issues cannot be put on pause. We meet new clients seeking advice and direction at all times of the year, sometimes due to planned events but often due to unexpected circumstances. People need reliable and timely information and guidance on their rights and obligations in the event of a separation or if they have sustained an injury in an accident.

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We expect new clients will continue to require these consultations, even though we may not be able to shake their hands or sit down in a meeting room together.

We also expect that clients will be faced with new issues that they did not anticipate as a result of the coronavirus pandemic, such as parenting obligations during self-isolation, expectations for parenting schedules when children no longer have school or extra-curricular obligations, and/or child support or spousal support obligations when facing a job loss or work reduction.

We recognize that those seeking advice on a legal matter may be self-isolating due to recent travel, immunocompromised, or unwell. All are heeding government direction to practice social distancing. In light of such considerations, we have made changes to ensure our intake process can be entirely conducted by telephone or email. Our client forms are interactive and can be completed online. We have two paralegals dedicated to intake (family and personal injury). They will help clients arrange their initial consult, and subsequent meetings, by telephone or videoconferencing, i.e. Zoom.

### **Technology**

Through technology, we are able to provide seamless service to clients. All our lawyers and staff are now equipped to work remotely. Our office uses an electronic client management system called Trialworks, which allows all client documents, lawyer notes, emails, etc. to be saved in a central database that can be accessed from wherever we may be working. Our goal is to provide clients with the same level of service and



quality regardless of whether we are in a physical or virtual office.

Routine tasks such as confirming a client's identify or taking a client's oath now require creative solutions. We are researching our legal obligations and crafting plans.

### **Courts**

Courthouse common areas have high traffic flow, corridors are often tightly packed as parties wait for their matters to be called, lawyers and clients often sit close together, they hand documents to clerks and witnesses. For these reasons, Nova Scotia courts are now closed for all but urgent and essential matters.

As Nova Scotia courts cancel settlement conferences, hearings, and non-emergency matters, there will be hundreds of individuals and families who will need to consider other options to resolve their matters. For many, they will need to reconsider their position that court was their only and last resort. As their lawyers, we will need to be creative and responsive when guiding our clients towards a solution.

### **Other Forms of Dispute Resolution**

We see an enormous opportunity to offer an alternative form of dispute resolution to Nova Scotians who may not be able to turn to the courts as planned in the coming weeks or months. We have modified our mediation process so it can be entirely conducted remotely. Each party meets with a mediator by video conferencing for an intake session to determine if the matter is appropriate for mediation. With the use of a smart phone or computer, clients can then be linked together in a virtual mediation. Documents can be shared remotely. If parties wish to have their lawyer present and involved in the mediation, the lawyer can be connected from either the same location as the client or a separate location.

Mediation and arbitration services ensure that parties need not put their dispute resolution on hold in this unprecedented time. Clients can be proactive and creative in finding a new way to tackle existing problems and can even do so from the comfort of their own home or office.

# PLUS ÇA CHANGE?

## RESPONDING TO ANOTHER PANDEMIC

### A LAWYER'S LESSONS FROM H1N1 TO COVID-19



**MATT SAUNDERS**  
Cox & Palmer

The road taken to begin my legal career was certainly less travelled. After completing a Masters in political science at Simon Fraser University, which focused on bioterrorism preparedness in North America, I was not ready to dive into the workforce just yet. This, despite the fact that my field of study was front page news after 9/11 and the subsequent anthrax attacks. However, the legal ramifications of al Qaeda's evolution and the United States' response – eventually culminating in the “global war on terror” – intrigued me as much as the threat of biological and chemical weapons. As a result, I enrolled in the novel international criminal law program at the University of Sussex.

After witnessing Slobodan Milosevic at his war crimes trial in The Hague, debating the legality of the second Gulf War, and completing a thesis investigating Chinese state organized crime in Canada and the U.S., it was time to return to Vancouver. With an LL.M in-hand, I soon found a career in... emergency management consulting.

I know – not quite the traditional role for someone with an international law degree. But given my experience

studying planning and preparedness best practices for bioterrorism incidents, I was able to translate those skills into a management role at a unique consulting firm in British Columbia. As our principal was an emergency room physician, and other senior leaders had previously held emergency management roles, our team was able to secure contracts with both public and privacy sector clients to develop comprehensive pandemic response plans. From health authorities in Ontario, BC, and even California, to commercial clients in the financial and oil and gas sectors, we built and implemented a range of operational plans meant to facilitate the reduction to essential services, mass vaccination, mobile screening facilities, and crisis communications. It was exciting and rewarding work, brought all the more closer to home with lessons learned from SARS in 2002-03 and the outbreak of H5N1 avian influenza in 2005.

At the time, however, I knew if I didn't go to law school I would never get the chance to use my LL.M in a true legal setting. I applied for and was accepted into McGill's common and civil law program. While moving to Montreal in 2009, the H1N1 influenza pandemic began to unfold. As a result, I ended up multitasking both first year classes and consulting with my old firm, participating in client teleconferences and activating the pandemic plans we had just developed as H1N1 continued to spread around the world.

Fast-forward 11 years, those experiences from dealing with H1N1 are now front and centre once again with COVID-19. To be honest, I was concerned with the initial response (or lack thereof) and coverage of the coronavirus in a number of jurisdictions. However, I'm now pleased to see so many of the planning steps and emergency measures my old firm previously advocated are being implemented and followed by the public-at-large. From individual personal hygiene and social distancing measures, to more institutional essential services models being rolled out, these substantive procedures are necessary in limiting human contact (and the potential for viral spread).

Such efforts, when combined with clear and consistent crisis communications, ongoing collaboration between all levels of government, and realistic financial support will go a long way to getting us through the pandemic. However, there are a growing number of issues caused not only by the extreme and devastating impact the pandemic is having over global health and economic stability, but also by malicious actors looking to take advantage of this worldwide emergency:

- The abuse of emergency measures in the name of public health: A number of less-than-democratic regimes are relying on the excuse of responding to COVID-19 while imposing draconian (and perhaps

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permanent) legislation aimed at curbing dissent and entrenching their power. And it is not just regimes – cybercriminals are also taking advantage of emergency declarations in ramping up phishing attacks that reference public health announcements, COVID-19 cures, and emergency supplies in a bid to get online users to click the bait.

- Mass surveillance enhanced by 21st century data collection techniques. As already witnessed during China’s response, sophisticated data tracking tools are being employed or considered in countries such as South Korea, Israel, and even Canada, raising a real risk that without proper legislative debate and protections, personal information collection in the name of the “greater good” will have far-reaching and negative impacts over one’s right to privacy.
- Missed opportunities to be better prepared. While hindsight is always 20/20, it is shocking to see how unprepared the world-at-large was for another pandemic. Not only was H1N1 just over a decade ago, but the lessons

learned from that outbreak – the need to increase ICU capacity, ramp-up critical stockpiles of ventilators, and improve personal protective equipment, for example – were no-brainers. And yet, here we are, scrambling once again, with shortages and an increasing risk to health care providers and the general public as a result.

Nevertheless, as I’ve now transitioned my emergency management experience into cybersecurity and data privacy planning at Cox & Palmer, there are a number of reasons to be optimistic when considering how things will look post-COVID-19:

- Maintaining and continuing to implement newfound efficiencies in court operations: From e-filing to non-essential motions via teleconference, it is a significant and positive development to see this technological shift in legal services, while the bench and bar leadership also considers important principles such as access to justice and our open courts.
- Increasing the general public’s awareness (and benefits) of public health measures: The pandemic has raised a number of general public health “best practices”

when it comes to infection control and personal hygiene (e.g., staying home when sick, the importance of clean hands) that may go a long way in improving overall health and wellness once the emergency has passed.

- Adaptability and flexibility in what 21st century “work” looks like: Be it through the advancement of novel remote work technologies or simply a general appreciation of allowing for more flexibility when it comes to how (and where) employees do their job, the concept of “work” will be forever changed as a result of COVID-19, and hopefully for the better.

As dire as things may presently appear and as negative as the never-ending news cycle may sound, I truly believe there will be a range of opportunities for society as a whole – and lawyers in particular – to take advantage of at the conclusion of COVID-19. I saw those opportunities after H1N1, and I’m looking forward to tackling what’s on the horizon after this pandemic passes, too.

# CERB BENEFITS FOR WORKERS



DALE DARLING, QC

Health Association Nova Scotia

The Federal government recently implemented a new Canada Emergency Response Benefit (CERB) under the *Canadian Emergency Response Benefit Act* (CERBA) across the country, replacing the previously implemented Emergency

Care Benefit and Emergency Support Benefit. The Act can be found at Part 2 of Bill C-13, proclaimed on March 25, 2020, to implement a number of federal COVID-19 responses.<sup>1</sup>



In keeping with the unprecedented times in which we find ourselves, most of the details regarding the CERB are found, not in the Act, but in a press release<sup>2</sup> issued that same day and followed up by guidelines issued by the Federal government.<sup>3</sup> The Act states that details will be provided by regulation, but those have not yet been created.

The broad intent of the CERB is to provide income to workers who are suffering loss of employment for a number of COVID-19 related reasons.

**What is the amount of the benefit?**

\$2,000.00 per month for a 16-week period. The portal for applications became available April 6, 2020, and payments are anticipated to be made within 10 days of application. At time of writing, it will be available for any four-week period between March 15, 2020 and October 3, 2020, and at present is taxable income.

**Is every worker in the country not working entitled to the CERB?**

No, they must be at least 15 years of age, contractors, employed or self-employed and had made more than \$5,000.00 last year or in the last 12 months, and have ceased working for reasons related to COVID-19.

**Is every income loss covered?**

No, the worker must have been without income for at least 14 consecutive days of the 4-week period applied for, and that means that during that period they have not received:

- income from employment, self-

- employment or contract work
- employment insurance (EI) regular, sick or parental/pregnancy/adoption benefits
- possibly other income sources not identified in the legislation or press release, which may appear in the regulations when created.

The Press Release clarifies that workers who are either in receipt of EI, or have applied, should not apply for the CERB, but may do so once their benefits cease. Alternatively, if a worker applies for the CERB, they can then apply for EI after the 16-week period of CERB, if still experiencing income loss.

**Where are the conditions of eligibility to be found?**

The Press Release from the Federal government on March 25, 2020 says it applies to those who:

- have lost their job
- are sick
- are quarantined
- are unable to work because they are taking care of someone who is sick with COVID-19
- are “working parents who must stay home without pay” to care for their children because they are sick, or at home because of school and/or daycare closures
- are still employed but who are not receiving income because of the disruption to their working arrangements caused by the COVID-19 pandemic.

On April 15, 2020 the CERB eligibility

requirements were further amended to allow workers to make up to \$1,000 in income, as well as providing relief for seasonal workers and those who have exhausted EI with no work to return to.

Some conditions of eligibility are unclear at the moment, particularly where work continues to be available but the worker is out of the workplace for another of the identified conditions of eligibility. When work is available, workers will still need to engage with their employers to confirm that they have embarked on an approved leave under the terms of their conditions of employment. Some workers may have access to benefits such as sick leave, family illness leave, emergency leave, personal leave or compassionate which may impact their entitlement to the benefit. The CERBA also specifically disallows claims from workers who “voluntarily quit their employment”, as opposed to “ceased working for reasons related to COVID-19”. It is likely that this distinction will cause some confusion, for example, in circumstances where work is available.

It is hoped that further clarification will be provided by the federal regulations created under the Act, when they become available. In the interim, in those circumstances where work continues to be available, communication between employers and workers as to the challenges being faced due to the COVID-19 pandemic is the best strategy to give effect to the protections offered by the CERB.

1 <https://www.parl.ca/DocumentViewer/en/43-1/bill/C-13/royal-assent#ID0E0VC0AA>  
 2 <https://www.canada.ca/en/departement-finance/news/2020/03/introduces-canada-emergency-response-benefit-to-help-workers-and-businesses.html>  
 3 <https://www.canada.ca/en/revenue-agency/services/benefits/apply-for-cerb-with-cra.html>  
 4 <https://pm.gc.ca/en/news/news-releases/2020/04/15/prime-minister-announces-expanded-access-canada-emergency-response>

# BUSINESS INTERRUPTION INSURANCE: ARE YOUR BUSINESS LOSSES COVERED DURING THE COVID-19 CRISIS?



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WARD**

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During this unprecedented crisis, almost all businesses have been negatively affected. Some have been forced to shut down entirely while others have been severely curtailed in their ability to earn income. A question at the forefront of many business-owners' minds is whether or not their insurance can assist. The answer will likely depend on whether or not their insurance policy includes business interruption coverage, and the scope of that coverage.

Business interruption insurance is aimed at protecting the income of the insured during a period of shutdown. Typically, this type of insurance is added onto property insurance policies and triggered by damage to insured property resulting from typical events such as fire, windstorm or other natural disaster. For example, a manufacturing business that has suffered fire damage to its manufacturing plant and equipment

may have to close for a period of time to conduct repairs and get plant and equipment back up and running.

Less commonly, business interruption insurance may be written or extended to cover loss of business income which does not result from the loss of or damage to property. If coverage is available, business interruption insurance would typically pay an insured's loss of profits and any continuing expenses.

Here are a few questions that business owners should be asking:

### ***Do I have business interruption insurance?***

For many business-owners, the answer to this first question may be obvious. For others, it may not be, seeing as how business interruption insurance is often purchased as an add-on to an existing property insurance policy, and not commonly a stand-alone policy.

Business owners should look at their existing policy, beginning with the declarations or coverage page. In particular, close attention should be made to determine if there are any extensions or endorsements to the policy that provide for business interruption insurance.

### ***Am I covered?***

Commercial insurance policies cover insured "perils". A "peril" is the event that triggers the coverage. Commercial insurance policies will generally cover either named perils or be all risk. Policies covering named perils will only cover losses caused by perils specifically listed in the policy, subject to any exclusions. Examples of named perils in a typical property insurance policy include "fire" or "windstorm". Comprehensive, or "all risk" policies will cover losses caused by any peril unless specifically excluded.

While business interruption policies are not standardized, most policies will contain language indicating that the insurer will pay for the actual loss of "business income" due to the "necessary suspension" of operations during the "period of restoration". Traditional

policies will require that three conditions be met in order to trigger coverage: (1) direct physical loss or damage; (2) of covered property; (3) resulting from a covered cause of loss.

Of particular note in the wake of the COVID-19 crisis is the first requirement: that there be physical loss or damage.

As noted above, traditionally, business interruption insurance was meant to protect a business' income stream after it had sustained some kind of damage to its physical operations, for example due to a fire or flood. Economic loss without a tangible physical loss to accompany it will often be insufficient to trigger coverage. For this reason, most policyholders will likely not be covered for interruptions related to COVID-19.

However, insured parties should examine their policies carefully to see whether or not there is specific coverage for interruptions caused by non-physical events. For example, some policies may even provide specific coverage in the event of an "epidemic", "pandemic" or access to the premises being prohibited by a "civil authority".

Beyond the common requirement that there be a physical loss of or damage to property, there are other requirements to think about in the context of the COVID-19 crisis. One of these is that there be a total cessation of business. Traditional policies often will not provide coverage in the case of a mere downturn of business. This was confirmed recently by the Ontario Superior Court of Justice

in *Le Treport Wedding & Convention Centre Ltd. v. Co-operators Insurance*.<sup>1</sup> In interpreting the words "interruption of business" in a policy, the Court found that these words indicated a requirement that the business cease operating.

Whether or not you will be covered for an interruption caused by COVID-19 will ultimately depend on the wording of your policy and the particular facts of your business, so be sure to examine the policy carefully and watch out for (1) a requirement that there be some physical damage; (2) explicit language covering losses arising from specified risks such as "epidemics"; and/or prohibition of access to the premises, (3) a requirement that the business be completely shut down.

#### **What exactly is covered?**

Recognizing that we are currently in the middle of the COVID-19 crisis and what occurs in the coming weeks remains uncertain, another important consideration in determining the extent of coverage available, is the length of the indemnity period. There are typically two types of policies covering two different time periods:

1. Limited coverage covers the time until the business resumes and damage has been repaired or property replaced. It will not cover any losses following the reopening of the business even if that business has not regained its previous level of earnings. Coverage will also expire at the end of a maximum defined indemnity period, regardless of whether or not the business has reopened.

2. Extended coverage covers the time until a business resumes its normal, pre-interruption level of business, subject again to any maximum defined indemnity period.

There might also be a requirement in a policy that the insured exercise due diligence in seeking to rebuild and replace its damaged property, or more relevantly in the present circumstance, otherwise attempt to mitigate its lost earnings.

Coverage may also exist for extra expenses that a business must incur in remaining operational during a period where it has been affected by loss or damage. For example, if a business must move to new premises and incur rental costs for equipment, these costs might be covered under a policy that includes extra expenses. Expenses incurred in attempting to mitigate loss, if economically justified, will often be covered.

#### **What This Means for You**

Business interruption insurance is one of the more complicated forms of insurance offered. As noted, it is only triggered in certain circumstances and is always subject to certain exclusions and limitations. Business owners should examine their policies carefully and where necessary, seek legal advice on the coverages available to them.

*This article was originally published on the Stewart McKelvey website and is reprinted with permission.*

<sup>1</sup> 2019 ONSC 3041.



# THE RIGHT TO REPAIR MEDICAL EQUIPMENT DURING A PANDEMIC



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On March 29, 2020, the U.S. federal government delivered 170 broken ventilators to the state of California to battle the global pandemic against COVID-19. Almost immediately upon receiving them, California's governor Gavin Newsom announced a plan to repair them and put them to use.<sup>1</sup> This urgency is well warranted, as California is currently experiencing some of the highest infection rates of COVID-19 in the United States.

Modern ventilators are computerised machines which are controlled largely by software. The broken ventilators in California have been serviced by independent technicians and without the involvement of manufacturers. The ability to conduct these swift repairs draws attention to the importance of the ability for independent repair technicians to keep high-tech equipment and products running during a pandemic.

Alarming, intellectual property

protections related to copyright and software can often impose roadblocks for conducting crucial repairs to computerised devices in this way. Often these protections preclude the ability for independent repairers to offer their services, which in turns acts as an impediment to prompt and affordable repair. Much has been discussed on this issue in relation to the consumer right to repair personal electronics in Canada and elsewhere. The COVID-19 pandemic, however, sheds light on the implications of these intellectual property protections in the context of the public interest and public health.

The primary impediment to independent repair and maintenance of computerised medical equipment in Canada is the framework protecting technological protection measures ("TPMs") under Canada's *Copyright Act*. Originally incorporated into Canada's copyright framework as part of the 2012 *Copyright Modernization Act*, TPMs have been heavily discussed and debated in Canada – often referred to as "digital locks".<sup>2</sup> The original conceptualisation of TPMs were copy control technologies that would prevent users or consumers from making copies of works stored on digital media. However, the vague definition of TPMs

and what it ought to protect are a source of ambiguity under Canada's copyright framework. This has allowed TPMs to be used in a much broader sense by controlling access to underlying software or firmware of computerised devices such as ventilators. This restricted access can in some cases inhibit or prevent repair altogether.

Since the advent of protections for TPMs in Canada in 2012, Canadian courts have taken these protections seriously. In the 2017 *Nintendo of America Inc v King* decision of the Federal Court, a seller of "mod chips" for video game console systems was facing a claim for (among other things) circumventing the TPMs used by Nintendo on its video game consoles.<sup>3</sup> These mod chips would allow users and consumers to run their own home-made games on these systems as well as to play infringing copies of games. They are physical chips that are soldered into the console to bypass protections put in place by the manufacturer. The Federal Court took no mercy upon the mod chip seller, finding that Canada's TPM regime grants copyright owners the power to control access to their works. The Court awarded statutory damages of \$11,760,000 and \$1,000,000 in punitive damages.

The concerns raised by this heavy-handed approach to TPMs in Canada has been addressed partially in the most recent statutory review of the Act.<sup>4</sup> In June of 2019, the Standing Committee on Industry, Science and Technology recommended that the government examine TPM protections to facilitate the maintenance, repair or adaptation of lawfully-acquired devices for "non-

1 <https://time.com/5812147/california-coronavirus-broken-ventilators/>

2 <http://www.michaelgeist.ca/2016/02/the-trouble-with-the-tpm-day-37-damages-for-breaking-digital-locks-for-personal-purposes/>

3 <https://www.canlii.org/en/ca/ctf/doc/2017/2017fc246/2017fc246.html>

4 <https://www.ourcommons.ca/Content/Committee/421/INDU/Reports/RP10537003/indurp16/indurp16-e.pdf>

infringing purposes”. Moreover, several provinces in Canada have tabled legislation to address the consumer protection implications of the right to repair, including the need to source replacement parts and special tools. However, these calls have come about primarily in the context of consumer protection and competition law. Commentary on the issue has ranged from those who merely wish for more freedoms to tinker with the devices that they own to rightsowners alleging that such exceptions would compromise safety and security. While no consensus has been reached on the issue of how far the right to repair should extend, the current debate is very much contained to the private sphere.

While it is true that precluding independent repair restricts consumer choice, generates more electronic waste

and undermines the downstream market, the public interest implications of these controls have come to light in the context of COVID-19. Should Canada see an increase in cases commensurate with the United States, it may very well be that the strain on our medical system requires the repair and maintenance of numerous computerised medical devices, including ventilators. Any number of these devices can contain TPM protections over software or firmware that will impede maintenance and repair. In some cases, TPMs can act to render an entire piece of equipment inoperative if a replacement part is not “activated” by the devices’ firmware. In other cases, the mere unlawfulness of circumventing the TPMs will preclude independent technicians from taking on the job. In the context of the current pandemic, these logistical barriers act as a block to having these

pieces of equipment back online.

TPM protections should not be used to impede the repair and maintenance of medical equipment in this way. The public interest requires that in the circumstances of a global health crisis, private rights must yield some room to public needs. Therefore, in addition to the consumer protection, environmental and competition law aspects, calls for the right to repair in Canada should find public interest support. In its forthcoming examination of the Act, the Federal government would be wise to strongly consider an exception to TPM protections which would allow circumvention in the context of public health emergencies. By broadening who may offer independent repair and servicing of these devices, we can act more quickly to ensure that crucial equipment is back online and saving lives.

# EMPLOYER’S CHALLENGES AND OBLIGATIONS DURING THE COVID-19 OUTBREAK



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With the combination of serious public health and economic impacts caused by COVID-19, employers are finding themselves facing unprecedented challenges.

While it is not possible to develop a cookie cutter response to every situation,

it is fundamental that employers make decisions with a grounded understanding of their legislated obligations to employees and increasingly strict public health safety requirements.

The information outlined below represents statutory duties imposed

on employers in Nova Scotia. While this article focuses on these statutory duties, employers should also be aware of possible obligations created through other means such as company policies, collective agreements or employment contracts.

## ***Provincial State of Emergency***

On March 22, 2020, Nova Scotia declared a provincial state of emergency pursuant to subsection 12(1) of the Emergency Management Act due to the COVID-19 pandemic.

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Once a provincial state of emergency is declared, the Minister of Municipal Affairs may do everything necessary for the protection of property and the health or safety of persons in the Province. Under the current state of emergency, companies can be fined \$7,500 for failing to practice social distancing guidelines (currently 2 meters) and for not abiding by the limitations on gatherings of more than five people. If a business remains open during the state of emergency, workspaces and other high-touch surfaces must be cleaned and disinfected twice a day, or as needed.

Certain businesses that are essential services must remain open during the state of emergency. Essential services are not defined in either the Emergency Measures Act or the Health Protection Act in Nova Scotia. However, an order issued by the Nova Scotia Chief Medical Officer provides additional clarity on the provincial restrictions in place. This order specifies certain essential businesses and workers who are exempt from various restrictions. Further, while this order directs some public facing businesses to close, most businesses are permitted to continue to operate provided that they practice social distancing and avoid gatherings in excess of 5 people.

While the order provides clarity, it nonetheless must be read carefully and critically to consider what restrictions do, and do not, apply to an employer's business and employees.

### **Legal Considerations**

#### **a) Occupational Health & Safety**

The Occupational Health and Safety Act obligates employers to take every reasonable precaution to provide a safe workplace for not just their employees,

but all persons in the workplace. This includes making efforts to identify risks and to implement proper controls to address those risks.

This duty to provide a safe workplace may well include sending an employee home if they are symptomatic and certainly if they meet the requirements for self-isolation or self-quarantine under the current public health order. Similarly, an employer must take steps to identify where a COVID-19 positive employee has been in the workplace and who they have interacted with in order to ensure that those exposed can be notified and that appropriate disinfection can take place. Employers should also immediately contact public health officials where they believe COVID-19 exposure has occurred in the workplace.

The obligation on the employer to provide a safe work environment is paired with the right of the employee to refuse unsafe work where the employee has reasonable grounds to believe their health and safety is likely to be endangered. So far, indications are that regulators do not view the general public risk of COVID-19 as grounds for a work refusal, but an employee may have valid grounds to refuse work where the employer has failed to implement necessary safety precautions, such as social distancing, provision of adequate PPE or implementation of appropriate sanitation.

In any event, if an employee invokes the right to refuse work, the Nova Scotia Occupational Health and Safety Act addresses the steps that must be taken pending a determination of whether the refusal is valid. Employees who refuse unsafe work may be reassigned pending the determination, although, given the

nature of possible COVID-19 related complaints that may not be possible. Another opportunity is to consider work from home options.

#### **b) Labour Standards**

Many employers are facing the need to institute lay-offs as a result of the impacts of COVID-19. Some articles recently written have stated that lay-offs are unlawful and may attract civil claims from employees. While civil claims are a possibility in virtually any scenario, the point seems to overlook the practical reality of the unprecedented situation employers currently find themselves. Ultimately, the most important thing for employers to do before instituting lay-offs is to ensure they have obtained proper advice with respect to their contractual obligations (implied and explicit) and the Nova Scotia Labour Standards Code.

That being said, employers must not forget that the Nova Scotia Labour Standards Code also provides several types of unpaid job-protected leave that may be taken by employees for themselves or to care for family members who have contracted COVID-19. Employees may pre-emptively seek these job-protected leaves before any lay-off is instituted.

Perhaps most notably, employees in Nova Scotia are entitled to unpaid leave where an emergency prevents them from performing their duties or results in a requirement to care for a family member impacted by the emergency. Emergency leaves continue as long as the emergency prevents the employee from completing their duties and ends on the day the emergency is terminated or the emergency no longer prevents the employee from performing their duties. As Nova Scotia declared a provincial state of emergency on March 22, 2020,



this leave will be available to certain employees, particularly those who are specifically prevented from working as a result of public health orders.

**c) Workers' Compensation**

A significant portion of the Nova Scotia employers participate in the Workers' Compensation scheme established under the Workers' Compensation Act. This legislation generally provides that the Workers' Compensation Board will pay compensation to an employee who suffers injury through an accident arising out of and in the course of their employment.

Questions may arise as to an employee's right to claim Workers' Compensation for work missed due to COVID-19. In determining whether the injury is "arising out of and in the course of employment", courts in Canada have interpreted the phrase to include activities that are incidental to employment. Accordingly, an employee who becomes exposed to COVID-19 in connect with employment may have a claim to Workers' Compensation benefits. In addition, the employer of such an employee may be shielded from civil claims set out in the Workers' Compensation Act.

**d) Human Rights and Discrimination**

Disease-related illnesses are not a specific protected characteristic pursuant to the Nova Scotia Human Rights Act. That said, this legislation does protect employees from discrimination on the basis of physical or mental disability. While transient temporary illnesses have generally been found not to constitute a physical disability, during the 2003 Severe Acute Respiratory Syndrome (SARS) outbreak, SARS was treated as a "disability" under the Ontario Human

Rights Code. Therefore, an individual inflicted with COVID-19 may be entitled to protections under human rights legislation and employers should consider that in dealing with afflicted employees.

Another important and unique prohibited ground to consider in Nova Scotia is discrimination on the basis of "an irrational fear of contracting an illness or disease". This human rights protection prevents employers from discriminating against employees who have been diagnosed with illnesses or diseases where there is no rational reason to fear transmission or spread of the illness or disease. For example, a Nova Scotia Human Rights Board of Inquiry has held that terminating an employee who once had hepatitis on the basis he could spread the disease to children he worked with was discriminatory because the employee was no longer infectious. Therefore, while employees must be prudent in preventing the spread of COVID-19 in the workplace, they must also ensure that they are acting reasonably and based on actual government/medical guidance rather than purely subjective assumptions.

Employees who are required to take time off work to care for family members may also be protected from discrimination and entitled to accommodation on the basis of family status. Whether the duty to accommodate applies will depend on many factors. Where an employee wishes to take a leave of absence to care for a family member due to COVID-19, employers should carefully assess the specific circumstances to determine if the duty to accommodate applies.

Finally, misconceptions and stereotypes regarding people who may carry COVID-19 due to the suspected origins

of the virus should not be tolerated. These notions are unfounded and any action by an employer to discriminate on the basis of race, colour, ethnicity or national origin will be in breach of human rights legislation.

**e) Privacy Concerns**

Generally, employers should not disclose the identity of people diagnosed with or suspected of having COVID-19. For example, Nova Scotia labour standards legislation requires an employer to maintain confidentiality with respect to all matters that come to the employer's knowledge in relation to an employee's leave. Employers may not disclose that information, except with the employee's written consent, and only to employees who require the information to carry out their duties, or as required by law. Additionally, an employer subject to the Federal Personal Information Protection and Electronic Documents Act (PIPEDA) must protect the personal information of their employees where such information can be used to identify the individual.

Identifying information about an individual's physical or mental health is further protected. While most employers will not be custodians of personal health information as defined in the Personal Health Information Act, employers should be aware of the confidential nature of this information. Practically speaking, protecting information about employees who have or may have COVID-19 avoids adverse treatment of the infected employee in the workplace, but may in certain cases be necessary to address outbreak concerns.

Where employees have been approved to work remotely, employers should

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also take steps to prevent unwanted data breaches due to malicious malware and phishing scams looking to take advantage of the COVID-19 pandemic. Already, we are seeing that several platforms for e-meetings are being targeted.

Further, employers should be implementing a clear and consistent communication system that keeps employees connected and aware of the importance of securing their devices while working from home. IT teams should also remain in contact with employees working from home to ensure programs and security software is kept up to date. Minor steps, such as reminding employees to constantly save/back up their work and to lock their computer when leaving workspaces in a shared environment, can help prevent unwanted privacy breaches.

### **f) Employment Insurance/Federal Programs**

The Federal Employment Insurance Act provides unemployment benefits to qualified insured persons. This legislation defines insured person as an individual who is or has been employed in insurable employment. An insured person qualifies if the person:

- has had an interruption of earnings from employment; and
- has had during their qualifying period a prescribed minimum number of hours of insurable employment in relation to the regional rate of unemployment that applies to the person.

The specific terms of benefits available will depend on the reason why the

employee is off work. Most commonly in the COVID-19 pandemic, the reason will be a lay-off due to lack of work or leave due to illness/quarantine requirements.

While Employment Insurance is the standard benefit for persons off work, the Federal Government has announced a number of special measures to assist employers and employees during the COVID-19 pandemic. This includes:

- Enhancement to Canada's Work-Sharing Program, which is a program designed to help employers avoid layoffs when there is a temporary reduction in the normal level of business activity due to circumstances beyond the control of the employer. The amount of time an employer or employee may qualify for Work-Sharing benefits has been doubled from 38 to 76 weeks.
- The Canada Emergency Response Benefit (CERB). The CERB provides \$500 a week for up to 16 weeks to any worker over the age of 15 residing in Canada who has stopped working because of COVID-19. The applicant must have had income of at least \$5,000 in 2019 or the last 12 months prior to their application and must not have voluntarily quit their job. The Federal government has also recently announced that the CERB will be expanded to cover workers who have not completely lost work, but are earning \$1,000 or less per month. Notably, many persons not otherwise eligible for EI will be eligible for the CERB.

- Introduction of the the Canada Emergency Wage Subsidy ("CEWS"). Employers who have suffered a qualifying reduction in revenue in periods between March 15 and June 6 will be eligible to receive government support of up to 75% of employee salary (up to \$847 per week) for up to 12 weeks, retroactive to March 15, 2020. While the roll out of this benefit and timing of payments continue to be finalized, applications for the CEWS will be processed online through CRA business accounts.
- Introduction of the Temporary Wage Subsidy ("TWS") available to qualifying privately held Canadian businesses. This program is currently available and allows employers a subsidy of 10% of wages paid between March 18 and June 20, 2020, up to a maximum of \$1,375 per employee and \$25,000 per employer. Note that no application is needed for this program. Instead, qualifying employers are to deduct the TWS from normal payroll remittances.

### **Takeaways**

The continued outbreak of COVID-19 poses incredible challenges for many businesses. The result is that difficult decisions must be made on a daily basis. While that cannot be changed, a proper understanding of legal obligations and considerations will help guide employers through these decisions and ultimately mitigate their employment risks.



# VIRTUAL MUNICIPAL COUNCIL MEETINGS DURING STATE OF EMERGENCY



JC  
REDDY

Power, Leefe,  
Reddy & Rafuse

Since March 22, 2020, the province of Nova Scotia has been under a declared Provincial State of Emergency, made pursuant to section 12 (generally) of the *Emergency Management Act*. The declaration of emergency incorporated the Chief Medical Officer's directive/order under section 32 of the *Health Protection Act*. In addition, this declaration also gives the province general powers as listed under sections 14 (a) to (m) of the *Emergency Management Act* ("EMA").

Section 14 of the EMA allows a mayor/warden to declare a state of local emergency. However, it does not specifically refer to what municipal units may do in a state of emergency regarding municipal council meetings. Section 14 (a) of the EMA makes general reference to an "emergency management plan", but the following subsections describe a series of powers without reference to municipal units or the *Municipal Government Act* ("MGA").

Speaking from my experience in the hours advising the Town of Bridgewater in the period between the declaration of emergency and the hours leading up to their scheduled council meeting the evening following (March 23), there was a general sense of "what do we do with this?". In my reading of the MGA, there are no express provisions allowing for "virtual" appearances at council meetings, nor for the general conducting of such meetings "virtually", as the MGA does not specifically define "meet" or "meeting" (see, for example, sections 19 and 22 of the MGA). Therefore, at least for our municipal unit, there was a general sense of uncertainty as we appeared to be in uncharted waters on the morning of March 23.

The Minister of Municipal Affairs and Housing did retroactively introduce a directive pursuant to the EMA (retroactive to 2 p.m., March 22) which directed municipal units to discontinue holding meetings in person, and permitting "only virtual meetings by video or telephone". To my understanding, this is the first time since the MGA was introduced in 1998 (and such was likely not considered under predecessor legislation either)

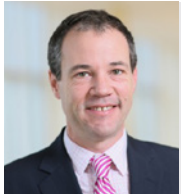
that municipal units have been expressly directed or allowed to not meet in person.

As a legislative aside, I have received feedback that not all municipal units are impressed that the directive states minutes must be posted on a public website within 24 hours of the meeting (which one could interpret as the end of the meeting, but the directive is unclear on that point). Furthermore, the directive is unclear as to what subsection it has been enacted under (one could argue that section 14 (a) of the EMA gives sufficient authority as part of an emergency management plan), but these are minor points. From a legislative perspective, it was a relief to the municipal law community that the gap was sufficiently bridged.

However, this experience has revealed a potentially problematic gap in the legislation. Time will tell if amendments are proposed to either the EMA or the MGA to allow for a more orderly legislative flow in any such future circumstances, but thankfully most, if not all municipal units have this technology at current, and in the Town of Bridgewater's case, thanks to dedicated staff, the council meeting was validly constituted and conducted.



# PRIVACY IN A TIME OF PANDEMIC



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Since the early days of the COVID-19 pandemic, privacy questions have been in the headlines. International media reported stories from Asia about smartphones being used to enforce quarantine orders.<sup>1</sup> In Ontario, Premier Ford suggested using telecom data to track social isolation compliance<sup>2</sup> and more recently the Quebec police announced that it had arrested a woman in violation of a quarantine order by tracking her down via her cellphone.<sup>3</sup>

Companies are wondering what information they can require from employees about their health, diagnosis or risk factors, and what information they can provide to public health authorities if asked. Companies also have similar questions about customer information.

## What privacy laws apply?

Since Canada has a patchwork of privacy laws, the first question is always whether a privacy law applies at all and if so, which one. In Atlantic Canada, public sector

employers and “federal works, undertakings and businesses” are subject to privacy regulation for employee information, but the private sector is only covered for customer information. The majority of private-sector employers in Atlantic Canada fall in the gap without privacy regulation for the workplace. This does not mean that privacy should be thrown out the window.

Companies should be guided by privacy best practices described below, all of which are embodied in privacy statutes across Canada. These best practices align closely with what employees have come to expect regarding handling of their personal information. Organizations that adopt these principles generally avoid negative reaction from employees that their personal information has been misused. Transparency also encourages honest reporting, as individuals are usually more comfortable with disclosing personal information to an organization that is forthright about how they propose to use the information.

Organizations should be concerned about the relatively new common law causes of action for “intrusion upon seclusion” and “public disclosure of private facts”. Given that health information is particularly sensitive and the irrational stigma that seems to

attach to the COVID-19 disease, one might allege that disclosing infection risk or status to others may meet the “highly offensive to a reasonable person” threshold for the torts. Applying best practices would minimise the risk of liability.

Balancing privacy with public and occupational health

For employers, what should emerge is a careful balance between privacy principles and legitimate occupational health and safety concerns. The occupational health and safety imperative is a legal one, on both the employer and the employees, as the Occupational Health and Safety Act of Nova Scotia places obligations on both sides to ensure a safe workplace. Given the mode of transmission of the novel coronavirus, employers have a responsibility to keep employees who are at risk of spreading infection out of their workplaces. Some companies have decided to take the temperature of everyone entering the premises and excluding anyone with a fever. Others have adopted questionnaires or mandatory reporting of risk factors. Each of these scenarios involves the collection of personal information, so tread carefully.

What practices to adopt should be informed by the following privacy best practices:

- the collection of personal information must be justified, reasonable and non-discriminatory;
- individuals should be given notice of the purposes for the collection, use and disclosure through policy or other direct communications such as signage;
- personal information collected should be restricted to the minimum that is reasonable in the circumstances;

1 BBC, “Coronavirus: Under surveillance and confined at home in Taiwan” (24 March 2020) <https://www.bbc.com/news/technology-52017993>.

2 iPolitics, “Ford doesn’t rule out using cell data to trace COVID-19 patients” (16 March 2020) <https://ipolitics.ca/2020/03/16/ford-doesnt-rule-out-using-cell-data-to-trace-covid-19-patients/>

3 CTVNews, “A woman who tested positive for COVID-19 was arrested in Quebec City after she left isolation” (21 March 2020) <https://montreal.ctvnews.ca/a-woman-who-tested-positive-for-covid-19-was-arrested-in-quebec-city-after-she-left-isolation-1.4862611>

- personal information should only be used for those purposes and should not be disclosed further than necessary; and
- the personal information should be accurate, as it will be used to make a decision of whether the employee, contractor or visitor will be permitted to work in the workplace.

What is justifiable and reasonable should be informed by the latest information from public health.

Disclosing personal information to public health authorities

Until recently, public health officials have largely been out of the spotlight, but they have been discreetly and diligently working to contain public health hazards, such as sexually transmitted infections. They've been given special powers to do so, which includes the ability to require personal information from others. Section 15 of the Health Protection Act gives the Chief Medical

Officer of Health or his delegate broad powers to order information from third parties. Every privacy law in Canada permits disclosures where required by law and many also permit disclosures where it's reasonably necessary related to the health and safety of the individual.

While health and safety are of course top of mind in this pandemic, privacy considerations should also be taken into account.

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# PRACTICAL ADVICE AND CONSIDERATIONS FOR REAL PROPERTY TRANSACTIONS



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In the last several weeks since COVID-19 began impacting our day-to-day lives here in Nova Scotia, we have all been wondering: what would we have done if this was 2005?

A colleague recently reminded me that it was 2005 when she sent her first e-submission in for registration at the Land Registration Offices (LRO). The ability to electronically file documents is one hurdle that, unlike our litigation colleagues, we have not had to contend with – at least, not to the same extent. That said, no practice area is insulated from the effects of this pandemic.

### **Force Majeure**

The most prevalent impact COVID-19 has likely had on our practice area is the inability

of our clients to fulfill their contractual obligations for reasons outside their control, owing to self-isolation, social distancing, mandatory quarantine, and office closures.

The contractual concept of 'Force Majeure' cannot be invoked and will not be implied into a contract unless it is expressly provided for and our standard form residential agreements of purchase and sale do not provide for it. This has led many in our profession to decide whether a 'Force Majeure' clause should be negotiated into Agreements within the usual lawyer review condition period – something that could benefit both parties, given the uncertainty around how this pandemic is unfolding.

Including a Force Majeure clause in new Agreements does nothing to address those contracts that were already in place and unconditional long before COVID-19 began impacting our communities. So far, parties and their lawyers have been addressing this issue on a case by case basis and, as always, relying on the reasonableness of parties, where possible, to negotiate extensions and terminations on terms that are mutually acceptable.

### **Wet/Dry Signatures**

By direction dated March 18, 2020, the Registrar General temporarily relaxed the rule requiring authorized users to obtain "wet" signature documents before e-submitting them for registration at the LRO. Only one "wet" signature is now required to meet the guidelines for registration.

Many lawyers have therefore decided to revisit their own interpretation of the way

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they are required to properly take affidavits and declarations, opting to do so via video conference rather than face to face and in the same room as the affiant or declarant.

The issue is how we interpret the language in the Nova Scotia Evidence Act which provides that oaths, affidavits, affirmations, or declarations may be administered, sworn, affirmed or made before the affiant or declarant. Some lawyers have decided that, in certain circumstances, they are comfortable that taking an oath and witnessing a signature by video conference meets this requirement. Lawyers should update the jurats of their affidavits to reflect signing by videoconference and should require originals to be provided to them when possible.

Discussion surrounding the location of the affiant and location of the witnessing lawyer are also important. Though lawyers have been given temporary permission to swear affidavits by video, does this extend to swearing an affidavit in Nova Scotia when your client is located in another jurisdiction at the time of their signing?

**Client Identification Verification**

The sharp rise in use of video conferencing

in place of face-to-face client meetings has presented challenges both in complying with our obligations as lawyers and also complying with identification verification requirements imposed by our lender clients.

While Part 4 of the Regulations made pursuant to Legal Profession Act regarding Client Identification continues to apply, the NSBS has issued a set of recommendations on how to best comply with the Act when the requirements cannot be strictly adhered to, all focusing on mitigating the risk of fraud or other illegal activity.

Many lawyers have required clients to present identification on camera during a video conference and then asking them to take photos and text or email those photos in real time as a way to verify client identification.

**Title Insurance to the Rescue?**

Some, if not all, title insurance policies already provided coverage to lenders in the event of fraud where client identification and verification or execution of documents were conducted during a virtual meeting rather than in person. Some insurers are now providing extended gap coverage for transactions and no extra cost in cases where there is a disruption in timely document registration.

There have been discussions with First Canadian Title who is exploring the possibility of launching its EasyFUND program in Nova Scotia to facilitate paperless and secure ways to transfer closing funds and pay out disbursements without the need for cheques and couriers. Hopefully this will become a viable option in Nova Scotia, not likely in time to address any COVID-19 related issues, but to provide efficiency where efficiency can be had.

If there is any silver lining that we can find in this crisis, it is that in a matter of weeks we have come together and launched ourselves into an electronic world, relying on technology more than ever to carry on operating as best as possible and continue to serve our clients.

Zoom, FaceTime, Google Duo are some of the apps and programs that many of us have become intimately familiar with over these last few weeks. Do our clients have the ability to print and scan from home? Which platform is best? What cyber-security issues do we need to consider, when communicating with our clients using third party software? These are questions that we will no doubt work through over time, long after the COVID-19 pandemic has subsided.

# ESTATE PLANNING IN A STATE OF EMERGENCY



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As a result of the State of Emergency declared for the Province of Nova Scotia on March 22, 2020, lawyers with estate planning practices around the province have been faced with a dilemma: the prospect of serving clients who are concerned about their health and looking to urgently sign new or updated estate planning documents (or just finish off those drafts which have been in their “to do” pile for the last few months), but who may be unable to meet in person to observe the formalities of execution for wills, powers of attorney, personal directives, and guardian

appointments.

Along with the rest of the profession in Nova Scotia, estate planning practitioners have been talking to their colleagues and trying to develop best practices to deal with these unusual times. In this article, we have assembled suggestions, tips and advice from our membership and our colleagues, and present them here for your consideration. Although no one solution fits every situation, and a set of best practices is yet to emerge in these early days, our hope is that you may find one or more of these ideas useful in your own practice in the days and weeks ahead.

**Can you safely meet with the client in person (while observing public health orders)?**

- In terms of ensuring formal validity requirements for estate planning documents are met, personally attending at your client’s signing meeting remains the best option, if you can do so while observing any public health orders issued under the State of Emergency. Depending on your circumstances, you may be able to do this by setting up signings in large boardrooms, or open air spaces, where the required two metre distance between individuals can be observed, and the lawyer can witness the signing from beyond this distance.
- Lawyers are also getting creative with the ways they can act as a witness for their client signings; it may be possible to witness the signing of estate plan documents in-person through a door or window, or while in different cars, or other unorthodox methods designed to preserve distance between the client and lawyer.

**Are appropriate witnesses available?**

- Where appropriate witnesses (in accordance with each governing act) are available in the place where the

client is located, the lawyer may be able to supervise a signing in front of those witnesses through conference call or videoconference technology. This would allow the lawyer to evaluate factors like capacity, undue influence or duress; document the signing by way of a memo to file; and answer any questions or concerns which may arise at the time of the signing. When conducting a remote signing meeting, it would be prudent to advise the client to plan to re-sign their documents, including swearing affidavits, when the State of Emergency is lifted to ensure that the documents are valid.

Given the State of Emergency for Nova Scotia, personal attendance and sufficient witnesses are no longer easy to arrange. In light of this, other useful ideas to consider may include the following:

- The Wills Act (Nova Scotia), section 8A allows a court of competent jurisdiction to order that a ‘writing’ is valid and fully effective as though it had been executed in compliance with the formal requirements imposed by the Wills Act, in situations where the court is satisfied that such a writing embodies: (1) the testamentary intentions of the deceased; or (2) the intention of the deceased to revoke, alter or revive the will of the deceased; or (3) the testamentary intentions of the deceased embodied in a document other than a will. In situations where the formal validity requirements of the Wills Act cannot be met (for example, in respect of a client who lives alone or only with the beneficiaries, has health challenges, and is therefore unable to obtain two witnesses to comply with the rules of the Wills Act), the lawyer may consider revising the execution language in the will to reflect that it is being signed during a State of Emergency declared for the Province of Nova Scotia, and tracking the language found in section 8A of the Wills Act,

in order to provide contemporaneous documentary evidence of the intention of the testator, which may be useful at a later date to a court attempting to evaluate the validity of a will executed without the requisite formalities. The client should also be advised to re-sign their documents at their earliest opportunity once the State of Emergency ceases, in order to ensure they will be valid.

- The Wills Act in subsection 6(2) recognizes those wills which are wholly in the testator’s own handwriting and signed by the testator (a “holograph will”) as valid, so under certain circumstances (particularly where the client’s needs are not complex), the lawyer can provide input and advice into the preparation of the holograph will by phone or videoconference during the writing of the will by the client.
- As a last resort, the lawyer may be able to set up a conference call or videoconference with the client to observe the signing of wills and other estate planning documents (such as powers of attorney, personal directives, and guardian appointments) which do not comply with formal validity requirements. While advising the client that without witnesses such documents may not be valid, the lawyer still has a role to play in evaluating capacity, undue influence or duress, documenting the circumstances of signing for the client, advising the client to re-sign their documents at their earliest opportunity once the State of Emergency ceases.

Ancillary items to consider with remote signings:

- Lawyers should provide information and advice on safe storage methods for newly signed original documents which are kept in the client’s home for the time being.
- Where possible, lawyers should ask clients to send scans or photos of each signed

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document to the lawyer for electronic filing, in case something happens to the originals before they can be safely stored (in a vault at the lawyer’s firm, or in secure external storage arranged by the client).

- Lawyers should follow up with a communication in writing to clients about the importance of re-signing documents in order to swear any required affidavits or other ancillary documents in front of the lawyer once the public health situation returns to normal, in order to

ensure that the documents will be valid.

Finally, looking ahead, the present situation is a useful reminder of the importance of maintaining up-to-date electronic client records in a modern legal practice. In a situation which has seen many offices temporarily close in order to maintain compliance with the rules around social distancing, it is important that lawyers continue to have access to crucial client information in order to provide services to those clients. Maintaining these records in a secure electronic format will allow lawyers

to continue providing client services while reducing the risks to lawyers and staff of working in person at an office.

**Editor’s Note:** On April 16, 2020 the CBA-NS’s Wills, Estates & Trusts Section wrote to the provincial government to request a Ministerial Directive be issued allowing estate planning documents to be witnessed by a lawyer via videoconference and, where required, a second witness, for the duration of orders issued pursuant to the Emergency Management Act, SNS 1990, c 8 and Health Protection Act, SNS 2004, c 4.

# STAYING SANE WHILE REMOTE WORKING: HOW TO BE A LAWYER, AND A FEMINIST, IN THE AGE OF COVID-19



JENNIFER TAYLOR

Stewart McKelvey

As many of us enter our second month of working from home, it bears repeating that these are scary and surreal times. Many Type-A lawyers, like me, thrive on control, routine and predictability. Those touchstones have all gone out the window, as we confront the COVID-19 pandemic and try to adapt to our changed circumstances.

The starting point is that being able to work from home is an incredible privilege. While many are bravely fighting this crisis on the frontlines, the adjustments for a lot of lawyers are far more comfortable and manageable.

That doesn’t make this hiatus easy. To that end, I crowdsourced tips from my network on how to navigate working from home while maintaining mental health, social connections, and (yes) feminism.

### How to WFH

- “Nespresso.” – *Natalia Bryant, Health Sciences Association of B.C.*
- “Time block and take breaks. Have realistic expectations of what you can accomplish, but also set your priorities so you can get the most important things done. Chat with colleagues by phone or LoopUp to remain connected, and share any humorous memes / online content — as well as cute animals — to stay sane and positive.” – *Kathleen Leighton, associate, Stewart McKelvey (Halifax)*
- “Get up and shower; don’t work in PJs.

Also, shut it all down and leave your workspace when you’re done for the day... Videoconferences are way better than conference calls. I’m a big fan of the Zoom meeting platform, which isn’t expensive even for small and solo practitioners (visits from pets during VCs are awesome). And working from home doesn’t mean you have to stop writing client update bulletins, etc. Clients are scrambling for information on a lot of topics right now.” – *Laurie Livingstone, partner, Cassels (Calgary)*

- “Accept that things are different now – full-time working from home in the middle of a pandemic is not my usual job description. So take it easy on yourself and give yourself time to mentally adjust to the new ‘normal’, because we’re going to be here a while.” – *Teagan Markin, lawyer, BLG (Toronto)*

- “Puppy coworker (also fresh air and exercise, which both include puppy).” – *Meg MacDougall, solicitor, Halifax Regional Municipality*
- “At work, I use a white noise app, so doing the same thing at home (even if it’s quiet) helps me to keep a working mindset. My co-clerks and I have been group Skyping to check in with each other, which has been so helpful. Even in a job where we work independently, it’s good to check in with each other.” – *Julianne Stevenson, Law Clerk, Nova Scotia Court of Appeal*
- “While I’m transitioning to an entirely-remote practice for the time being, I’ve sought out as many tips as possible from colleagues across the country on how to practice efficiently away from the office. I’ve also been bombarding my colleagues with tips and precedents, to assist our more ‘seasoned’ colleagues with navigating remote practice. I’m not sure all my unsolicited advice is appreciated, but they can’t stop me!” – *Joe Thorne, partner, Stewart McKelvey (St. John’s)*

*Now for my disclaimer:* I endorse all of the above, except for one thing: I strongly oppose any suggestion that we should wear our usual work clothes when working from home.<sup>1</sup> To quote feminist writer Jessica Valenti: “I’ll be damned if I’m going to wear anything but elastic waist pants in my own home.”<sup>2</sup>

**Maintaining mental health, social connections, and feminist energy**

- “Perhaps a primary opportunity of this crisis, demanding that we all retreat and slow down, is a reengagement with our soul through the introverted time that she craves. I’m encouraging clients to embrace all the creative projects and spiritual callings they’ve

been avoiding. To me, that’s feminism of the highest order.” – *Satya Doyle Byock, depth psychotherapist, Quarterlife.org*

- “Regular outdoor time, and check-ins with friends. Supposed to be starting virtual Zoom coffees with pals soon, especially those at home alone or (alone) with kids. Plus outdoor time and bike rides for sure.” – *Yuk-Sing Cheng, legal counsel, Metro Vancouver (whose advice was echoed by almost everyone who reached out for this piece)*
- “Engage in communication that doesn’t centre around myself or my worries, but instead communication that is community-centred. By this I mean: checking in on loved ones, creating spaces for your community to connect (whether it’s your building/neighbourhood or your professional one), signing petitions to urge governments to make sure vulnerable populations like migrants, precarious workers and prisoners are included in the COVID-19 response.” – *Rosel Kim, staff lawyer, Women’s Legal Education & Action Fund (LEAF) (Toronto)*

• “I’m writing. I’m in physical pain with anxiety but still writing. I’m spending money. I’m checking in with my people. I’m washing my feminist hands.” – *Martha Paynter, RN and doctoral candidate, Dalhousie University*

• “For my own part, I find myself trying to remember that care work is feminist work. I find myself trying to remember that being productive is an imperative that is often oppressive. I find myself trying to slow down and notice where we are...and let that sink in. I try to remember to take a deep breath.” – *Prof. Erin Wunker, Dalhousie University (from the Hook & Eye post).*<sup>3</sup>

**To add some tips from my own list:**

- Practice yoga.<sup>4</sup> (Sweat and spirituality is a healing combination.)
  - Watch penguin videos<sup>5</sup> and comforting tv.<sup>6</sup>
  - Look for online versions of your regular social activities. So far, I’ve done online church services and a barre class on Instagram Live, and I plan to steal LEAF lawyer Rosel Kim’s idea of hosting a virtual book club.
  - Lead or amplify calls to release incarcerated people to prevent the spread of COVID-19 in jails and prisons; to ensure abortion is treated as an essential service; to keep shelters open for survivors of domestic violence; to increase pay for grocery workers. (These demands — many of which are being met — are feminism in action.)
  - If you’re on a non-profit board or otherwise involved in community organizations, try to help out with their pandemic response and contingency planning. This kind of productivity feels especially useful, because you are responding to the crisis by taking control of what you can.
  - Understand that social distancing and self-isolation are acts of community care — of the most urgent kind.
  - And if you’re financially able, consider donating to local organizations that could use extra help right now – food banks are a good option.
- Finally, be proud of yourself for getting out of bed. That means there’s a shred of hope in your heart. Hold on to it.

*An earlier version of this article was published on the CBA National website on March 23, 2020 and is republished with permission. Jennifer Taylor can be found on Twitter @jennlmtaylor. The views expressed here are her own.*

1 <https://www.nytimes.com/2020/03/19/us/work-from-home-mothers-coronavirus-covid19.html>  
 2 <https://gen.medium.com/advice-from-10-years-of-working-from-home-in-elastic-sweatpants-a5d6483245c0>  
 3 <https://hookandeye.ca/>  
 4 <https://www.youtube.com/user/yogawithadriene>  
 5 <https://earthsky.org/earth/penguins-explore-closed-aquarium-video>  
 6 <https://www.nytimes.com/article/comforting-streaming-tv-shows.html>



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