

VIA EMAIL

June 2, 2020

Stephanie Boydell Chief Legal Officer, Legal Services Board

Sara Siebert Siebert Law

Nancy Hellyer
President, Canadian Bar Association (Nunavut Branch)

John MacLean President, Law Society of Nunavut

Dear Counsel:

RE: Your Letters of May 29 and June 1, 2020

Thank you for your letters of May 29 and June 1 2020 and the issues raised, both substantial and procedural.

To begin, I would like all of you to know that I understand and hear the concerns you have raised in relation to consultation. There is no question that meaningful and timely consultation with the Bar is vital to the proper administration of justice.

This is precisely why, last week, I invited leadership of the LSB and Crown to join a Criminal Justice Reform Committee (CJRC) in Nunavut. I will also be extending invitations to the private bar, CBA, the LSN and other stakeholders in the coming days. Consultation and substantive input from the Bar will be imperative to legitimizing the recommendations I hope to come out of the CJRC that will materially better the work of the Court in Nunavut for the benefit of Nunavummiut.

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Resumption of Court Users and Criminal Bench and Bar Meetings

To further demonstrate this Court's commitment to consultation, I have decided, after careful contemplation of your letter, to re-institute quarterly Court Users meetings between myself and justice stakeholders. A Notice will be sent out in the coming days to invitees advising of the draft schedule of these meetings and attendance options. It is currently thought that the first Tuesday morning in March, June, September, and December will be the days the meetings will take place.

I am also going to use this opportunity to formally set the Criminal Bench and Bar to the afternoon of the first Thursday in April and November. These meetings have always contributed significant value to the NCJ's operations, and I think will benefit from an established, set schedule. And I hope as well that the Bar will feel welcome to raise any on-going operational issues as they arise (for example, as happened a couple of years ago with mental health assessments).

I hope the above will demonstrate to you my continued commitment to and belief in consultation with the Bar.

Notice of May 27, 2020

Regarding the May 27 Notice which served as the catalyst to this exchange, I will extend my apologies for a lack of clarity which may have resulted in offence being taken by your respective offices. It certainly was not the Court's intention.

The Notice of May 27 was intended as a "good-news" story, full stop. Chambers had received multiple trial scheduling requests in May from counsel asking when their clients' matters could be scheduled for trial (particularly out-of-custody trials).

Accordingly, and as I had done previously since March, I looked to operational leaders within Court Services and Chambers: those who understand staff resource limitations, safety concerns, and other operational logistics, for guidance on what, if any, expanded services the NCJ might be able to offer to court users. These staff members make up what we refer to internally (and which we referenced in the May 27 Notice) as our Pandemic Planning Committee.

This group met and produced a draft plan that I reviewed and directed be submitted to Dr. Patterson for consideration; without Dr. Patterson's approval, even this simple short trial protocol would not fly.

When I met with Dr. Patterson last week, shortly after the Government of Nunavut released its phased re-opening plans, Dr. Patterson advised that the

 plan put together was sufficient to move the limited Court operations to the "low-risk" operating classification. With this information in hand, we put out the Notice advising that the NCJ could now accommodate out-of-custody, in-person trials.

The Notice was intended to simply advise that certain, limited trials could take place should counsel be able to proceed. It is incumbent on me, in my capacity as Chief Justice, to ensure the Nunavut Court of Justice operates to its fullest capacity, given the circumstances.

If counsel are able to take advantage of the trial time made available in June, fine. If counsel's operational limitations do not permit trials from being scheduled in June, so be it, they can be scheduled at a later date. The Notice was meant to convey this simple message, obviously it did not. In hindsight, I can appreciate the courtroom protocol detail connected to the proposed opening along with the notion that the NCJ is ready to hear cases might have been off-putting, so to speak, in terms of your own resources and views. The memorandum was not, by any means, meant to illustrate the only way that trials could be conducted and we remain open to any and all suggestions on how In-Person court (IPC) may proceed.

To Conclude

Thank you again for your letter. The COVID situation remains fluid in terms of NCJ operations I look forward to working with the Bar as we navigate the waters ahead and build off-of the lessons learned over the past few months in terms of how our Court is able to operate during this very stressful time.

Yours sincerely,

Chief Justice Neil Sharkey