



Nunavut Branch Division du Nunavut ュュタト bンドケロウェ Nunavutmi Katujiqatigit

Monday, June 1, 2020

Attention: Pandemic Planning Committee

Nunavut Court of Justice

(By email to Mark Mossey, Executive Legal Officer, Office of the Chief Justice)

Re: Concerns regarding lack of inclusion of Justice System participants in the NCJ Pandemic Planning Committee and with respect to the NCJ Memorandum of May 27, 2020

To the Nunavut Court of Justice and the Pandemic Planning Committee,

On behalf of the Executive Committees of the Law Society of Nunavut and the Canadian Bar Association-Nunavut Branch, we write to express our concerns with the memorandum dated May 27, 2020 "Nunavut Court of Justice operations update in response to Coronavirus (COVID-19): Resumption of limited In-Person Court (IPC) criminal proceedings" (the "Memorandum").

Overall, we are troubled by the lack of consultation with the Nunavut bar in the development of the Court's re-opening plan, particularly the resumption of in-person proceedings. In our view, portions of the Memorandum are unworkable for the public and Justice System participants.

Social Distancing in the Courtroom

We acknowledge that the Court is exempt from the Chief Public Health Officer's Order Respecting Social Distancing and Gatherings. However, the Court's re-opening plan as set out in the Memorandum does not take into account the presence of interpreters, victim services staff, and support persons. With social distancing requirements, it is unclear how lawyers are supposed to effectively take instructions in private while social distancing during trials.

Resumption of Civil and Family Law Matters

The Memorandum does not include any information about the resumption of civil or family law matters. Based on past experience, it is possible to conduct many civil and family matters via teleconference or videoconference. Neither the Chief Public Health Officer, nor the Executive Council has the power to extend or suspend the limitation periods set out in the *Limitation of Actions Act*. We are concerned that further delays in resuming civil and family matters constitute a barrier to access to justice and will lead to further delays once social distancing measures are relaxed or rescinded.

Timing of the Re-opening

The timing of the notice and accompanying administrative processes has been hurried and has not allowed for adequate time for preparation. The Memorandum was completely unexpected given the May 6, 2020 Notice stating that regular Court operations are suspended until July. Offices are still largely closed to the public, including at the Public Prosecution Service of Canada, Legal Services Board, and the Government of Nunavut. Additionally, the dockets are no longer posted online on the Nunavut Court of Justice website, and were disseminated to a limited number of Justice System participants at nearly 8:00pm on a Friday night for court at 9:30am on Monday morning.

Information for Self-Represented Litigants and the Media

There is no readily accessible information in the Memorandum or the Nunavut Court of Justice website for call-in numbers to court for self-represented litigants, the media, and the public. We would urge that this information be easily accessible to the public to ensure the open court principle.

Health Screenings and Privacy

While we respect the Court's authority to make rules respecting access to the Courthouse, we are concerned that Sheriffs do not have the necessary training to conduct health screenings upon entry. Further, there is no place in the courthouse to conduct these screenings in private. We are concerned that Court Services Division does not have the statutory authority to collect personal health information pursuant to the Access to Information and Protection of Privacy Act. Any new collection, use, or disclosure of personal information requires a privacy impact assessment be completed; we are unaware of any such assessment being conducted.

Future Consultations

As the Executive Committees representing the regulator and the advocate for the legal profession in Nunavut, we are disappointed that the Court did not consult with members of the public and private bars when developing its re-opening plan.

Moving forward, we respectfully request that the Court consult with the bench and bar committees (civil and criminal) and the Court Users Committee when developing its re-opening plans. Doing so would ensure that Justice System participants can have their concerns voiced prior to decisions being made.

Sincerely,

John L. MacLean, CIC.C

President

Law Society of Nunavut

Nancy Hellyer

President

Canadian Bar Association Nunavut Branch

CC. Chief Justice Neil Sharkey