# CHIEF JUSTICE: It's important to maintain public access to courts during pandemic

**OPINION/ Saltwire Network/ print and online/ by David H. Jenkins/ posted April 07 2020**

***David H. Jenkins is the Chief Justice of Prince Edward Island***

On Friday, March 13, the chief justices of our three P.E.I. courts and our courts administration collectively realized that they faced an urgent call to action. We convened in person in a jury room, as it dawned on each of us: the coronavirus was on our doorstep, and we needed to take immediate steps.

How do we strike the right balance between protecting the public and providing court services?

The public, lawyers, court staff, and judges had to be informed that we were immediately implementing public health advisories on social distancing, hand washing, and keeping people with symptoms away from courthouses. At the same time, we needed to make new arrangements to assure the public that court services would be maintained. What was the right message? The underlying theme would be measures to “avoid community spread” while still providing “urgent or emergency” service. We would reduce in-person attendances, and ramp up use of technology.

Admittedly, we were caught off-guard. The coronavirus was hidden in plain sight. The spectre of a pandemic had been in the news during January and February, and our public health officials had been issuing cautions. But as late as March 12, it was pretty much business as usual. Schools were still in session, and businesses, restaurants, and health spas were in full swing. In-person court hearings were taking place. Within the community, handshakes and hugs had been replaced by elbow touches, our local coffee shop owner was doling out hand sanitizer to all customers, but lawyers and self-represented people were still congregating in the courts. We were guessing the future and planning on the fly.

Then the next wave of reality struck. Late Friday, the province announced school would stay out for two further weeks following March break. By Monday, we knew that most Island churches had decided to close. Our focus now moved squarely to the safety of court personnel and members of the public. Staff would have to be sent home, and in-person attendances by litigants minimized. This would be especially challenging for P.E.I. Provincial Court, which deals daily with large numbers of people, in close proximity.

Then on Tuesday, the Chief Public Health Office declared a public health emergency for the province. Our court administration view of possible court services became subject to a huge further constraint. Now, we really had to reduce operations because we could retain only minimal – “essential” – staff on site.

Throughout the ever-changing scenarios, everyone acknowledged this fundamental condition: the courts must remain accessible. Our provincial superior courts and our provincial court provide an essential public service. Access by individual members of the public to our courts is a vital underpinning of our Canadian democracy. Our courts ensure the maintenance of the rule of law by deciding disputes between people, and disputes between people and the state. Cases will be decided by impartial judges serving the public as members of a judiciary independent of political or partisan influence.

We felt that our statement needed to be more than aspirational. Continuous access to courts of law needs to be meaningful and effective, yet manageable in the presence of the omnipresent and hyper-contagious coronavirus.

Our three courts’ administration developed plans in conjunction with the law society, the provincial government and court management personnel responsible for court administration. With the dual objectives of complying with directives from public health authorities, and providing assurance of continuing access to the public, we scrambled together our plan. Comparing the practices of other courts across Canada, we borrowed some of their best practices, and took comfort in our own direction. Our public message would be the straight goods: compliance with public health directives to protect against community spread; reduction in level of service to urgent and emergency matters; assurance of necessary public access; and candid explanation of why.

Courts of law must remain accessible to the public. Our Canadian democracy is founded on universal acceptance that our relationships, both person-to-person and between individuals and the state, are both subject to and protected by the rule of law.

Public courts of law, served by an independent and impartial judiciary, are essential to the effective functioning of the

rule of law. Individual Canadians must be able to rely on the availability of the courts to protect their rights and interests. In Canada, there is a constitutional separation of power among the three branches of government – legislative, executive and judicial. The judiciary assures meaningful operation of the rule of law through our public courts. Impartial judges hear and decide cases based on their oath of office, the law and legal rules of procedure, and the facts. Continuity of service by our courts of law is essential, and Canadians need to be assured that this forum is accessible to protect their rights under the law.

In the midst of a public health emergency, how should administrators employ reduced and limited resources to ensure continuing public access to the courts? So far, this has involved limiting services to “urgent” or “essential or emergency” matters. Use of our limited available technology is being maximized to provide essential services. Work-arounds are being developed. To the extent possible, hearings that need to occur are conducted by video or audio. Lawyers, law firms, and the public have been understanding and obliging.

Already, necessary in-person attendances at courthouses are replaced by virtual court “appearances” and court document filing using technology.

Within this new reality, court administration and the judiciary recognize that “urgent or emergency” need to be flexible terms. The importance and urgency of a court matter will very much be in the eye of the beholder, and urgency may become exacerbated with the passage of time. Of course, there will be a variation of views as to whether a matter is urgent, and competing requests that urgent matters be heard. There cannot be an exhaustive list. Triaging and case-by-case decision-making by judges will bring some objectivity to this scenario. Top-of-mind, urgent matters might include: a bail hearing; a parent seeking access to her or his child under a custody order or agreement, or in a child protection scenario where the state has removed a child from the parent’s care; in civil law, a small business operator or residential tenant locked out by a landlord and seeking reentry into their premises; in all areas, looming filing deadlines and limitation periods.

As well, where the state exercises power in implementing an emergency measure that is challenged by an individual, this may require emergency judicial review – such is the nature of critical “checks and balances” in our democracy. Indeed, the very presence of the pandemic and associated restrictions in personal movement may bring its own urgent matters. Ensuring continuity in public access to the courts, especially in the presence of a public health emergency, promotes public confidence.

A public health emergency can test our fundamental institutions. These are the early days of the COVID-19 pandemic. So far, our experience is encouraging. Excellent co-operation in our various work-arounds is being exhibited among the judiciary and court staff, public health officials, provincial government public safety and court services agencies, the law society and the public. With each passing day, a new business model is emerging that enables the courts to adhere to the directives of the Chief Public Health Office and still maintain urgent or essential court services.

Within these parameters, we will grow together and meet new challenges as they arise.