



May 20, 2020

Office of the Chief Judge
Chief Judge Gillespie

[Redacted]

Assistant Deputy Attorney General
Peter Juk, Q.C.

[Redacted]

Regional Administrative Judges
Judge Hamilton

[Redacted]

Regional Crown Counsel
Andrew MacDonald

[Redacted]

Judge Milne

[Redacted]

Shannon Halyk

[Redacted]

Judge Galbraith

[Redacted]

Lori Stevens
John Hempstead (Acting)

[Redacted]

Judge Rogers

[Redacted]

John Labossiere

[Redacted]

Judge Shaw

[Redacted]

Wendy Kavanagh

[Redacted]

Chief Federal Prosecutor
Todd Gerhart

[Redacted]

Re: Reopening the Provincial Court

We write on behalf of the Criminal Defence Advocacy Society (CDAS) to address the ongoing concern of our members and their clients regarding the continued closure of the Provincial Court across the province.

During this unprecedented time, the Courts and justice system participants throughout the province have made monumental efforts to adapt and work towards solutions that protect public health while simultaneously protecting the interests of all those involved in the justice system. We acknowledge the extraordinary challenges the Court has faced, and the heroic efforts made to accommodate in custody and urgent matters following the closure of the courts. We recognize the appropriateness of this closure, the necessity to adjourn matters for 90 days, and the challenges that will occur as efforts are made to re-schedule these files. It is in light of all of this, and the overarching

responsibility to make decisions accounting for public and individual health, that we write this letter.

By the first weeks of June, clients whose files were adjourned in March will have appearances in court. Many of those clients are bound by bail conditions and will have continued prejudice if their file is simply adjourned again, with no overarching plan in place to provide resolution or accommodate the smaller number of matters that will require a trial. The number of cases in the court system will only grow as the weeks pass.

A coordinated response involving Defence counsel, Crown Counsel and the Judiciary is needed in order to navigate the ongoing challenges that face our criminal justice system. It is through this lens that CDAS urges the Courts and Crown to take immediate action, with a target date of June 8, 2020, by implementing the following recommendations:

1. Prior to the first appearances for matters adjourned due to COVID, we ask that Crown Counsel review each file with a view to resolution. A determination by Crown Counsel of what files actually need to go to trial, and what files can be resolved, could have the effect of freeing up court time for the small number of matters that will actually require trial time. Discussions regarding resolution before the pandemic may need to shift in order to constructively cull any file that, from a public interest and safety perspective, does not require the scarce judicial resources of trial. In order to conduct these reviews, the Crown may need to assign a number of senior counsel to take on this task. We acknowledge that although Crown Counsel have been encouraged to do just this, the response thus far has not been consistent, nor dramatic enough to seriously reduce the number of files in the system.
2. On a pre-determined date in the coming weeks, we ask that the Courts open up 2-3 large courtrooms at each HUB location in order to accommodate matters for resolution as described above. This would allow out of custody accused and counsel to appear and quickly resolve matters without adjourning to future dates, while in custody accused continue to appear by video. Many of our clients do not have an ability to appear by phone or by video because of their many challenges. Thus, if in person appearances are not accommodated, these matters will be further adjourned and simply add to the tsunami of other matters outstanding before the Courts.

CDAS has suggested June 8 given that the British Columbia Supreme Court intends on a limited reopening on that date. As the Courts begin to reopen, we will have to monitor what works at each location in order to move as quickly as possible toward a return to running a limited number of in person trials. This will require ongoing dialogue with stakeholders, including CDAS to ensure decisions are made in a fair, equitable and safe fashion. We look forward to those discussions, and recognize this will take some creativity, perhaps including the enhancement of funding for the judicial system in order

to meet our constitutional requirements of providing access to justice for not only the accused, but also the complainant and others involved in the matter.

CDAS recognizes the challenges presented, however, in our view, these challenges are not insurmountable. There has and will continue to be a fundamental shift in how the courts and society at large operates. The Court and Crown Counsel have respectively taken impressive measures in continuing access to justice for urgent matters and providing disclosure through remote means. We encourage expanding these changes while a coordinated plan is developed to reopen the courts in a safe manner, and suggest that this can be done, for example, through Sheriff screening, physical distancing measures through tape and plexiglass, careful monitoring, and staggered appearances.

CDAS and our members look forward to working with all stakeholders during this very difficult time. Our hope is that if many of the COVID adjourned cases can be resolved, court time would be freed up for the smaller number of cases requiring a trial. Trials will be challenging and require further consideration, however CDAS suggests that many of the physical distancing procedures outlined above could allow for some trials to proceed in a safe manner.

CDAS is fundamentally concerned with the interests of our clients and members. Defence counsel are an integral part to the justice system, and CDAS worries about the ability of our members to financially sustain further closures, and to connect and properly provide meaningful service to our clients. Remote appearances will not and cannot provide meaningful access to justice for many of our disenfranchised clients. Many of those clients are extremely vulnerable, suffering from addictions issues, mental health challenges, homelessness and have no access to technology. These clients will effectively be frozen out of the justice system if remote appearances are the only option provided. CDAS will continue to forcefully advocate on behalf of our members, and press the judiciary and Crown Counsel to take the steps necessary to ensure our client's interests remain in sharp focus during these difficult times.

The Courts are an essential service and fundamental to the functioning of a democracy. It is imperative that we collectively find a way to responsibly reopen to a limited degree. As the province begins to open up, so must the Provincial Court.

Best Regards,



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