

# NOTICE TO MEMBERS COVID-19 UP-DATE

(November 30, 2020)

The Law Society of Yukon continues to monitor the Coronavirus (COVID-19) public health risk. As cases increase in Yukon and across the country, more restrictions are being announced. The Society provides the following information to lawyers to support them in the delivery of legal services during these challenging times.

## Up-Coming Membership Renewal

Notices regarding membership renewal for the 2021 membership year will be sent via email in the very near future. Members are required to renew their membership, or advise of any change, by January 31, 2021.

Currently, the Society accepts payment of fees by cheque or cash. If you are unable to provide payment by either of these methods due to disruptions caused by COVID-19, please contact our office and we can discuss alternative methods of payment.

A secure drop box will be available at the office for dropping off renewals. Due to potential issues with delayed mail and/or courier services, our office will also accept electronic copies of completed forms sent to [info@lawsocietyyukon.com](mailto:info@lawsocietyyukon.com).

## Ministerial Orders – Up-date

A list of ministerial orders issued by the Government of Yukon under the *Civil Emergency Measures Act* and the *Public Health and Safety Act* in response to the Covid-19 pandemic is available at the following link:

- <https://yukon.ca/en/health-and-wellness/covid-19-information/latest-updates-covid-19/legislation-changes-covid-19>

Please note, Ministerial Order 2020/39 allowing for virtual commissioning, signing and witnessing was repealed September 9, 2020.

Ministerial Order 2020/25: “Civil Emergency Measures Limitation Period and Legislated Time Periods (Covid-19) Order” remains in force.

Members should ensure they stay current with any legislative changes due to COVID-19.

## Guidance for lawyers testing positive or presumptively positive for COVID-19 virus

Lawyers who have tested positive for the COVID-19 virus, or who are being treated as presumptively positive, may be required to provide information to a health officer or their designate, pursuant to the relevant public health act and regulations. The information sought may include the names and contact information of individuals with whom the lawyer has had recent contact, which could include the names of and contact information for clients. Under some circumstances, health authorities may also seek more detailed information such as the nature of the lawyer's recent encounters with individuals or their duration. Such information is confidential and, in some circumstances, may be privileged.

However, the Code of Conduct provides an exception to the duty of confidentiality in order to protect public safety or prevent future harm.

The Supreme Court of Canada has recognized an equivalent exception to privilege if a serious and imminent threat to public safety exists to an identifiable person or group of persons (*Smith v. Jones*, [1999] 1 SCR 455).

#### *Extent of Information Communicated*

In providing recent contact information to health authorities, a lawyer who has tested positive for the virus, or who is being treated as presumptively positive, may disclose the names and contact information of clients with whom the lawyer has been in recent contact. However, the lawyer must not disclose more information about those individuals than is required. In particular, a lawyer should take care not to identify as clients any individuals included in the disclosure or make any unnecessary reference to the purpose or circumstances of the contact.

Where the health authority asks about additional circumstances, such as the recency, proximity, location and duration of the contact, the lawyer should provide information only to the extent necessary to answer the related inquiry.

#### *Steps for Lawyers to Take*

A lawyer concerned about disclosure should contact a practise advisor for ethical advice if they have concerns.

Client consent in advance to the disclosure of information is not required; however, notice of the disclosure to any affected clients should be provided within a reasonable time.

#### *Record-Keeping Requirements*

If confidential client information is disclosed, the lawyer should record and retain a note of the disclosure in accordance with commentary [5] of s. 3.3-3 of the Code of Conduct which states:

[5] If confidential information is disclosed under rule 3.3-3, the lawyer should prepare a written note as soon as possible, which should include:

- (a) the date and time of the communication in which the disclosure is made;
- (b) the grounds in support of the lawyer's decision to communicate the information, including the harm intended to be prevented, the identity of the person who prompted communication of the information as well as the identity of the person or group of persons exposed to the harm; and
- (c) the content of the communication, the method of communication used and the identity of the person to whom the communication was made.

## **How can you prepare and protect your firm/organization?**

If lawyers do not have disaster or business continuity plans in place, or existing plans do not adequately address the concerns raised by COVID-19, they should review the below resources:

- Law Society of Alberta: [Disaster planning and recovery resources](#)
- Canadian Bar Association: [Pandemics in the Workplace: A Resource for Lawyers](#)
- LawPRO®: [Managing Practice Interruptions](#)
- American Bar Association: [A Lawyer's Guide to Disaster Planning](#)

Other specific practice management considerations for lawyers and firms preparing for practice interruptions include:

### *Working from Home*

If lawyers or law firm staff choose to work remotely from home, they should consider whether all the key information they require is readily accessible and current. This includes client contact information, client files, staff and service provider contact information, bank account information, and passwords for personal and staff voicemail, computers and emails.

Lawyers and staff should also consider how they will:

- Keep client information confidential from family members or others.
- Communicate with clients and other firm members.
- Secure and receive deliveries to their offices.
- Continue to delegate to, and appropriately supervise, other staff.

Consider these practices and tips if working from home:

- Protect your passwords.
- Lock your computer if leaving it unattended.
- Work in a private area, particularly if you are video-conferencing or dialing into meetings.

- Safeguard physical records and documents – ensure that the information is only visible to you and emphasize to others that no one else is permitted to look at the documents. Lock them away if necessary.
- Avoiding downloading firm or client documents onto home computers and devices where they can be accessed by others.
- Be alert to cyber-security hazards and phishing, particularly in a disrupted environment. Home computer systems may also not have the same security levels as those in the office. If possible, it is best for staff to work remotely using a work-issued laptop with updated security. If not, they should ensure they have updated security and are using strong passwords.

### *Illness or Absence of Lawyers or Staff*

Lawyers and staff should consider what tasks are affected if they are unable to attend the office, and ensure that coverage is provided so that clients are not prejudiced. Consult the firm's diary system to ensure filing deadlines can be met and other scheduled events may be managed or rescheduled.

### *Ongoing Communication*

Firms should engage in timely communication with clients and staff if changing their business hours, using alternative means of communication, anticipating delays in communication, or changing firm operations. Consider using email updates, notices on websites, or other means, based on the needs of clients and staff.

Communication with employees is key. There is no 'business as usual' in the current environment. Firms should reassure their professional and support staff of measures they are taking to provide for their safety and to maintain business continuity.

Firms should also be alert to the well-being of their staff. Many will feel personally isolated, or may be facing financial stress. Provide reassurance and set up a regular schedule to keep in touch by video or phone, not just through email.

## **Virtual Meetings**

In order to comply with public health officials' recommendations to avoid in-person contact and exercise social distancing, lawyers have turned to using video-conferencing options such as Zoom, Skype, FaceTime and other platforms to meet with clients and conduct meetings.

When using video conferencing for the provision of legal advice or services, lawyers should:

- Confirm the client's consent to proceed in this manner.
- Ask that all individuals in the remote location introduce themselves.

- Ensure there is no one else at the remote location who may be improperly influencing the client.
- Make sure that audio and video feeds are stable and that you can hear and see all parties.
- Where identification is produced to support verification of identity, ensure that a copy of the document (front and back) is sent to you in advance of the online meeting and that when it is produced that the entire document is visible and legible.
- Determine how to provide the client with copies of the document executed remotely.
- Confirm your client's understanding about the documents they are executing and provide adequate opportunity for them to ask questions during the video conference.
- Maintain detailed records including: date, start and end time, method of communication, identity of all present, and minutes of content of meeting.

Video technology platforms such as Zoom, Skype, FaceTime are easy to use and inexpensive, but, like any technology, they need to be used correctly to preserve confidentiality. Some tips for this include:

- Never reuse passwords or login information from previous video calls, and never post them online where cyber-criminals can use them to disrupt or eavesdrop on your calls.
- Familiarize yourself with video settings that control guest access and usage. Most video conferencing software lets you direct guests to a holding area until you let them into the main conversation. You can prevent participants from recording the conversation and from sharing their screens without permission. Check your settings to ensure all these features are turned on.
- Take a moment to confirm who is there and that you have the correct participants at the start of every video call. Pay particular attention to anyone whose webcam is turned off, making it harder to confirm their identity.
- Quit the conversation immediately if an uninvited guest joins your video call. Reconnect with the intended participants on a new call with new login credentials.
- Consider the impact if a video conference is hacked. The more sensitive the topic of conversation and information being exchanged, the more caution is required.

A lawyer should understand the benefits and risks associated with all relevant technology, recognizing it is the lawyer's duty to protect confidential information as set out in section 3.3 of the Code of Conduct.

If a lawyer elects to hold a meeting virtually that would normally be held in-person, they should consider and mitigate any heightened or potential security risks.

## **Lawyers Assistance Program**

If you are experiencing concern and/or anxiety regarding the spread and/or impact of COVID-19 we encourage you to reach out to the Lawyers Assistance Program. Information is available at <https://lawsocietyyukon.com/for-the-lawyer/lawyer-assistance-program/>.

## **Law Society Office**

The Society office remains open at this time. However, to reduce the risk of spreading COVID-19, we ask you to contact us via phone at (867) 668-4231 or alternatively by email at [info@lawsocietyyukon.com](mailto:info@lawsocietyyukon.com).

We appreciate these are challenging times and are here to support you in your practice. If you have a specific question about how to comply with your professional obligations or how to navigate practice management issues in the context of COVID-19, please contact our office.

If it becomes necessary, staff may be working remotely and our response times may be slower than usual. We appreciate your patience.

This Notice, together with prior Notices to members, are available at the following link: <https://lawsocietyyukon.com/for-the-lawyer/notices-to-members/>.

Take care and stay well.

Linda