

SUMMER LAW INSTITUTE

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ONTARIO JUSTICE EDUCATION NETWORK
RÉSEAU ONTARIEN D'ÉDUCATION JURIDIQUE

A Brave New World – 2020 Edition: Criminal Justice During the Pandemic

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ojen.ca



The Before Times



The Before Times

The Before Times – the Magna Carta



The Before Times – The Code and the Charter

- The *Criminal Code of Canada* and the *Canadian Charter of Rights and Freedoms* govern the practice of criminal law. These laws and rights are interpreted and applied by judges, based on centuries of jurisprudence.
- The Code allows for every justice participant (that includes accused persons, police, witnesses, counsel, the judge or justice of the peace) to participate in criminal proceedings remotely. Practically speaking, this occurred very infrequently in the Before Times.
- The Criminal Rules, implemented in July 2012, govern the procedure of criminal law. They were an effort to modernize the system, and they allowed for electronic service and filing of documents before COVID-19, but again, this occurred very infrequently and only with judicial permission.

The Rules

Criminal Rules of the Ontario Court of Justice:

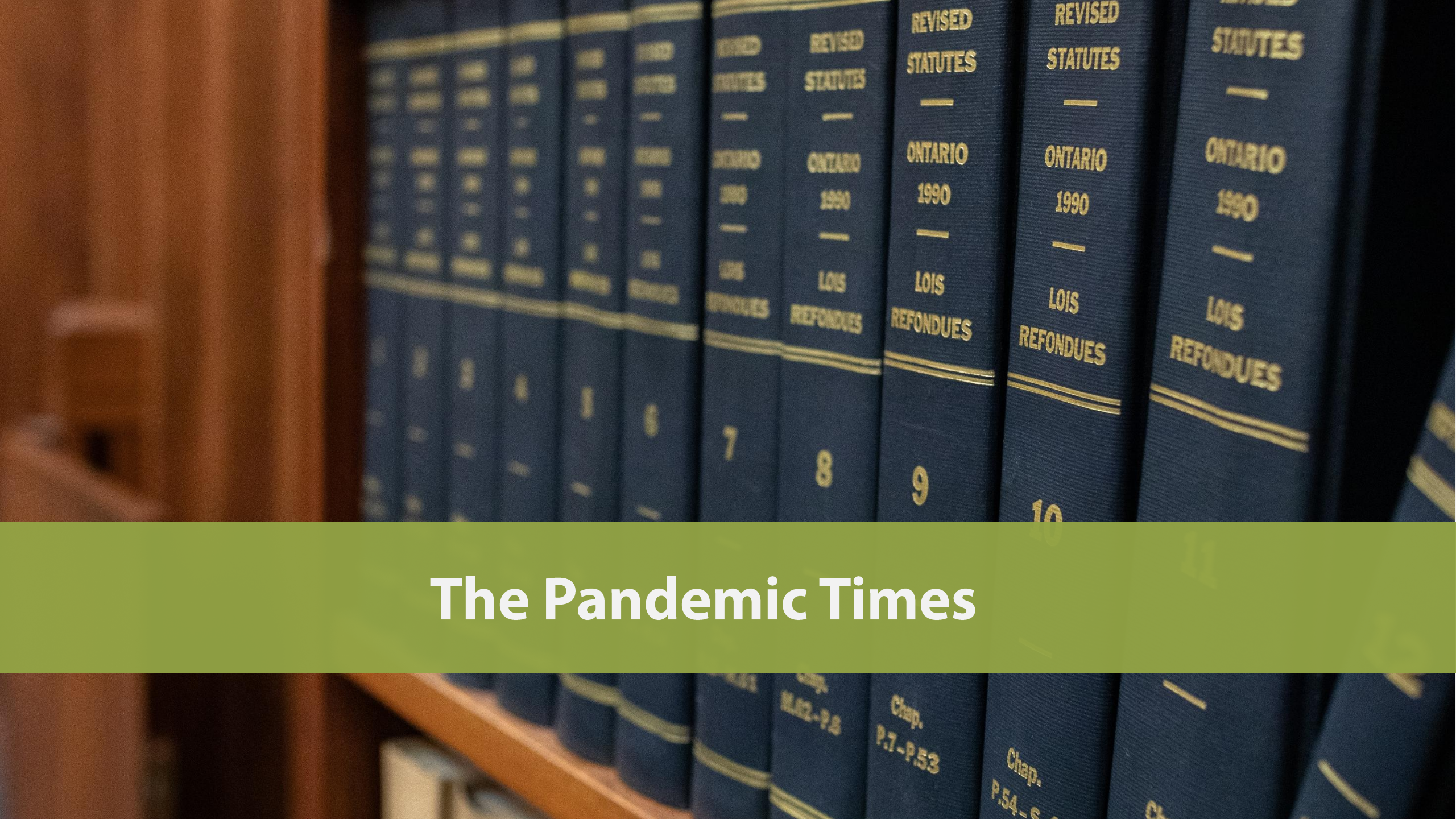
Methods of service

3.3 (1) Service under these rules may be made in person, by fax or by email, and **hard copies of the documents served shall be filed.**

Electronic filing technology

(2) If electronic filing technology is available and a practice direction authorizes its use, the documents may be served electronically, filed electronically or both. When a document has been filed electronically, it is not necessary to file a hard copy, unless the Court orders otherwise.





The Pandemic Times

Virtual Courts

- Overnight, a criminal justice system based on the Magna Carta and more than 800 years of history and jurisprudence changed completely.
- Trials and preliminary hearings were suspended in both levels of criminal courts in Ontario from March 17-July 6.
- Courts continued to function throughout the Pandemic, but were reduced to the barest essentials: bail court and guilty plea court, as well as remand court to adjourn matters to another date.
- Courts switched from mandatory in person appearances, with no audio or video appearances for counsel, jurists and the accused to mandatory remote appearances by telephone and in some cases video for all parties.
- Electronic service and filing of documents became mandatory.
- Informations, the charging document that begins a criminal process, were sent electronically to court and signed by a justice of the peace without the need for an officer to attend in person to swear to them.

Electronic Informations

1. The **Information with the “Deemed to be sworn/affirmed” box ticked** and complete Information below.

Information Number / N° de la dénonciation

☒ Deemed to be sworn/affirmed – To be completed where information is laid other than in person:
Réputée être déclarée sous serment/affirmée solennellement – À remplir lorsque la dénonciation est déposée autrement qu'en personne :

I, _____, state that all matters contained in this information are true to my knowledge and
Je soussigné(e) (name of informant / nom du dénonciateur) déclare que tous les renseignements contenus dans la présente dénonciation
belief, pursuant to s. 508.1(2) of the Criminal Code.
sont, à ma connaissance, véridiques, en vertu du par. 508.1 (2) du Code criminel.

Dated at _____ in the Province of Ontario, this _____ day of _____, 20____
Fait à(au) dans la province de l'Ontario, ce jour de

2. The clerk will email the Information to the jurist who will confirm it then email it back to the clerk.

☐ To be completed where information is laid in person:
À remplir lorsque la dénonciation est déposée en personne:

Sworn/affirmed before me at the _____
Déclarée sous serment/affirmée solennellement devant moi à/au
of / de _____
in the Province of Ontario / dans la province de l'Ontario

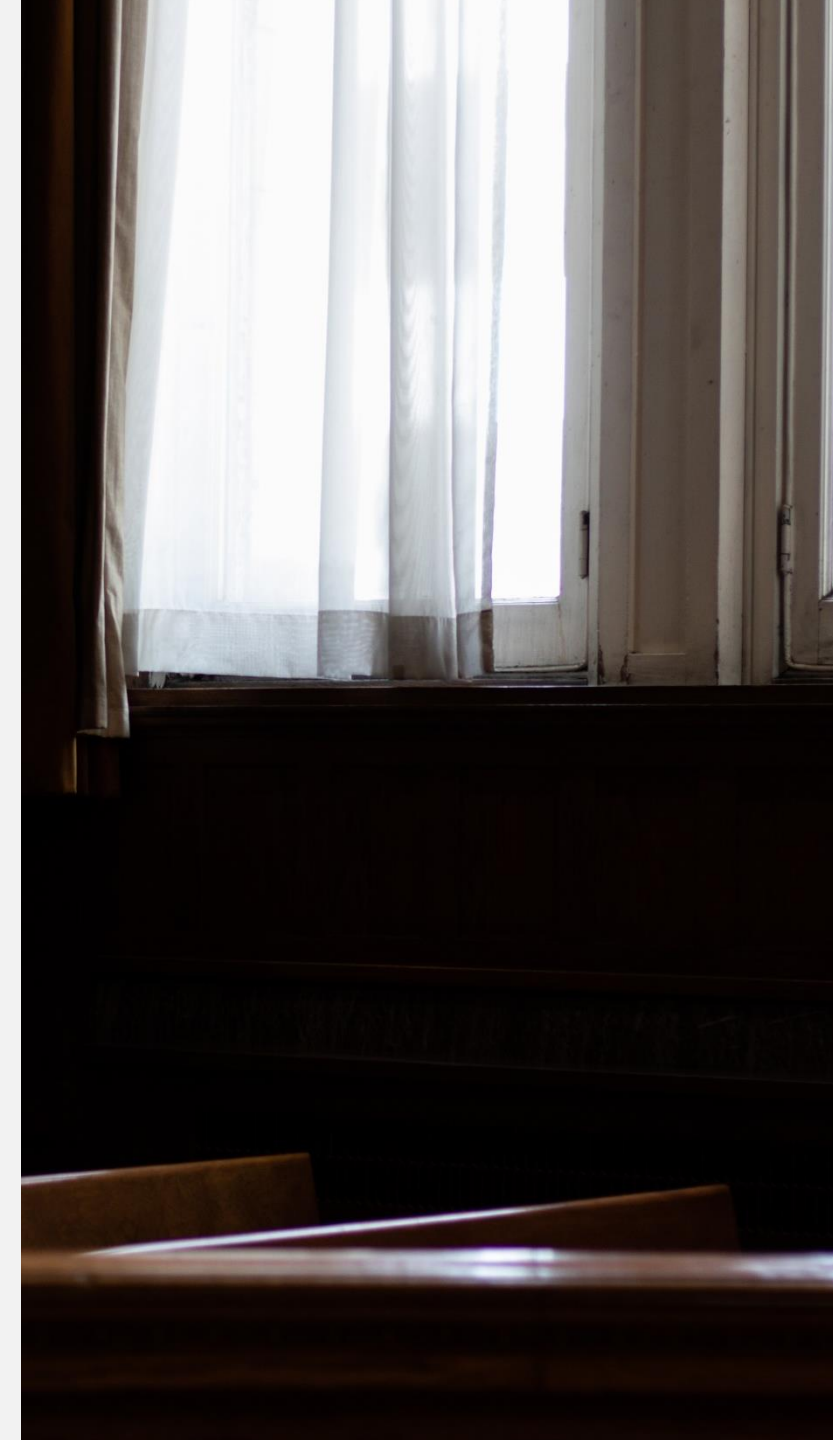
this _____ day of _____, 20____
ce jour de

Informant / Dénonciateur

Justice of the Peace / Juge de paix

Arrests and Bail

- March 16, 2020: Ontario Courts announce that as of the following day only urgent and emergent criminal, civil and family cases would be heard.
- March 17, 2020: Ontario Government enacts Declaration of Emergency.
- Directives were given to Police and Crowns to release any and all accused persons who were safe to release without a bail hearing.
- Only those accused persons who could not be released due to safety concerns or due to nature of charge requiring a bail hearing were held in custody.
- Of those held, directives given to release accused persons if bail plan could ensure safety.

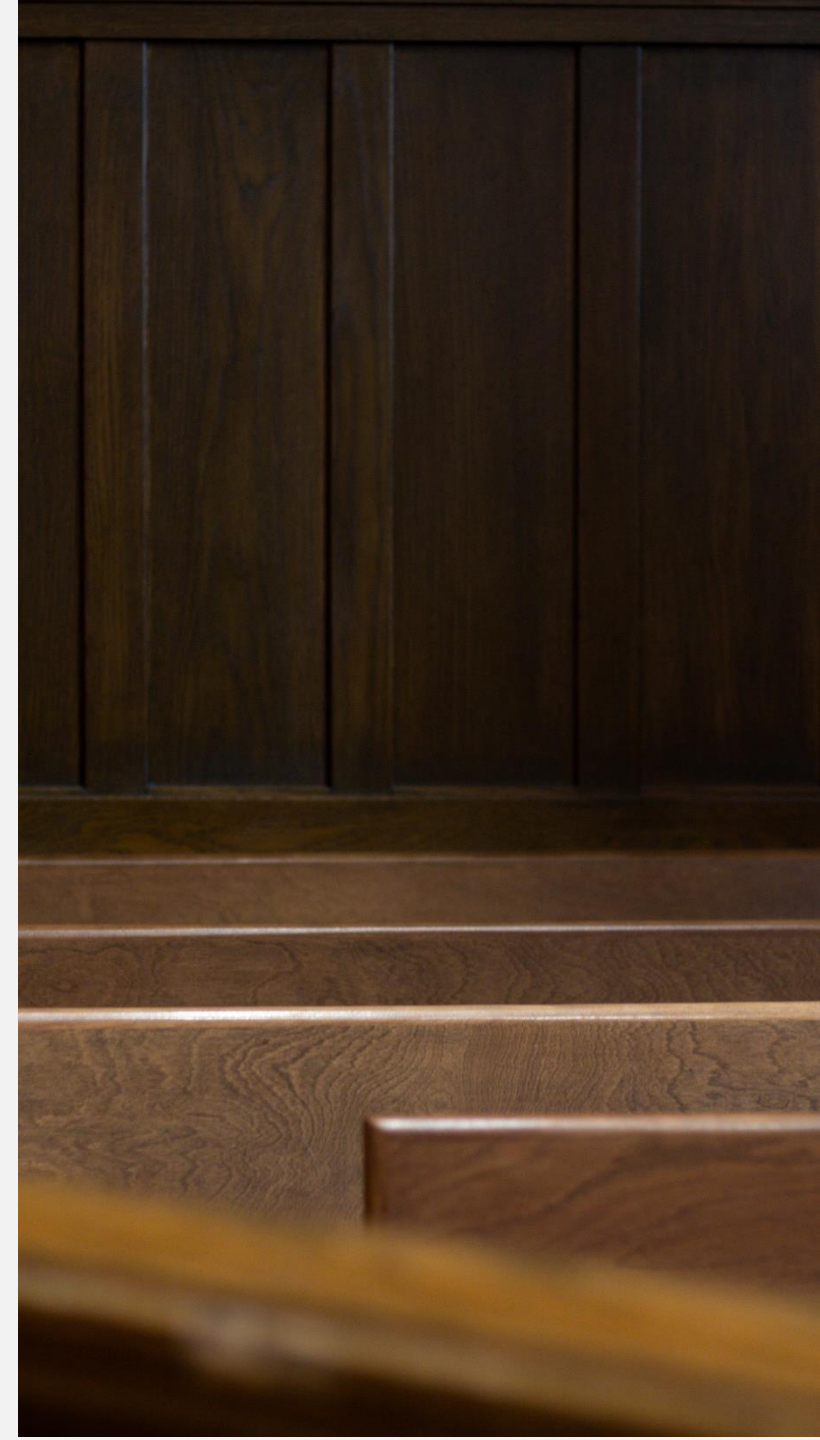




A Brave New World

Virtual Courts

- As of July 6, all manner of hearings and trials are now taking place in a variety of formats: in person, by video, by telephone and through a combination of all three.
- Here is a recent decision of the Ontario Superior Court of Justice, a place where until recently, one attended court in person, in a three piece black outfit: pants/skirt, vest and robes, with an old-fashioned neckpiece called tabs and a white shirt with a winged collar, as lawyers have worn in England for centuries. No wig, though. We're modern like that.



A Brave New World

2020 Edition



<https://www.osgoode.yorku.ca/three-friends-class-2016/>

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[*R. v. Qureshi, \[2020\] O.J. No. 3055*](#)

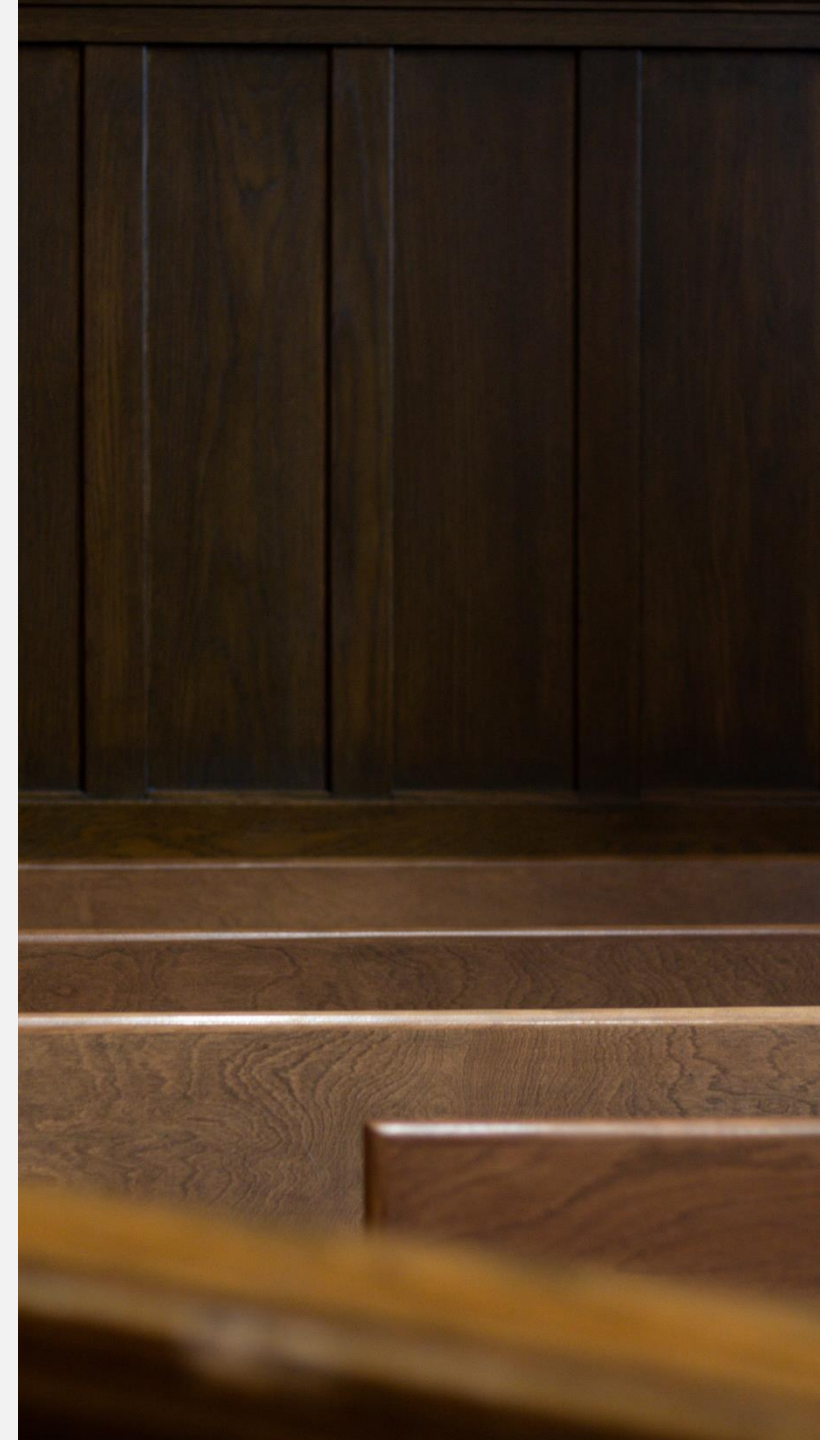
33 Having had a fulsome discussion with counsel regarding the logistics, the Court makes the following Orders with respect to the trial.

34 The trial via Zoom will take place on July 21, 22, August 4, 5, 6, 7, and September 1 and 2, 2020.

35 Co-ordinates for the Zoom hearing will be provided by the Court office in advance of the first day of trial.

36 Counsel need not gown for the Zoom hearing.

37 If a further conference is needed prior to July 21, 2020, the parties should contact the trial coordinator's office requesting a conference and briefly explain the reasons.





Thank you to the Law Foundation of Ontario for their support of the Summer Law Institute.

