

## Raising the Bar

# Overview of Status and Availability of Ontario Courts in Light of Pandemic

**Date:** April 3, 2020

Below is an update regarding the current status and availability of Ontario Courts in light of the COVID-19 pandemic. This information is current as of April 3, 2020.

## General

[An order](#) made under the *Emergency Management and Civil Protection Act* relating to the suspension of limitation periods states:

1. Any provision of any statute, regulation, rule, by-law or order of the Government of Ontario establishing any limitation period shall be suspended for the duration of the emergency, and the suspension shall be retroactive to March 16, 2020.
2. Any provision of any statute, regulation, rule, by-law or order of the Government of Ontario establishing any period of time within which any step must be taken in any proceeding in Ontario, including any intended proceeding, shall, subject to the discretion of the court, tribunal or other decision-maker responsible for the proceeding, be suspended for the duration of the emergency, and the suspension shall be retroactive to March 16, 2020.

## Superior Court of Justice

Pursuant to a Notice issued on March 15, 2020, all criminal, family and civil matters scheduled to be heard on or after March 17, 2020 are adjourned *sine die* (with no scheduled return date).

**Urgent matters:** The Court is continuing to hear urgent matters during the emergency period. A hearing may be conducted in writing, by teleconference or videoconference, unless the Court determines that an in-person hearing is necessary. In terms of civil and commercial list matters, Courts will hear the following:

- a. urgent and time-sensitive motions and applications in civil and commercial list matters, where immediate and significant financial repercussions may result if there is no judicial hearing.
- b. outstanding warrants issued in relation to a Small Claims Court or Superior Court civil proceeding.

There is a further exception for any other matter that the Court deems necessary and appropriate to hear on an urgent basis, however the use of this exception will be strictly limited at this time.

**Non-urgent matters:** Effective March 17, 2020, the Superior Court of Justice suspended normal operations until further notice. All criminal, family and civil matters, including telephone and videoconference appearances, to be heard on or after March 17, 2020 are adjourned, unless directed otherwise by the presiding judicial officer.

Effective April 6, 2020, remote hearings will be expanded to include:

1. Pre-trial Conferences – Pre-trial conferences that were cancelled between March 16, 2020 and May 31, 2020 due to the court closure can be rescheduled at the request of the parties. The objective and purpose of the pre-trial conferences will be settlement of the action only, and will not focus on trial management. Parties must certify that the case is capable of settlement with the assistance of the pre-trial judge.

2. Rule 7 motions or applications for approval of settlement, in writing.
3. Consent motions, in writing.

Note: Each region in Ontario has different directions regarding which matters may be heard. For a complete list of civil matters that may be heard in each region and details specific to each region, please visit: <https://www.ontariocourts.ca/scj/notice-to-the-profession-the-public-and-the-media-regarding-civil-and-family-proceedings-update/>

**Service:** Notwithstanding provisions in the *Rules of Civil Procedure* and subject to an order of the Court directing otherwise, it is not necessary to obtain consent or a court order to serve a document by e-mail where e-mail service is permitted.

**Filings:** Counsel and parties are discouraged from physically attending courthouses in person to file documents. During the suspension of the Court's regular operations, the Court will accept filings by email only for those matters that are "urgent" or have been identified to be dealt in a region's Notice to the Profession. Where counsel and parties deliver materials by email, they undertake to file the same materials in paper format, and pay the requisite filing fee, at the court counter when regular court operations resume.

Email addresses for requests to observe Superior Court proceedings during the suspension of regular operations can be found at: <https://www.ontariocourts.ca/scj/files/notices/Media-public-access-request-emails.pdf>

## Superior Court of Justice – Small Claims Court

Effective March 16, 2020, all Small Claims Court matters in Ontario were suspended indefinitely until further notice. This includes, but is not limited to, all trials, settlement conferences, motions, assessment hearings, garnishment hearings, contempt hearings and examinations, teleconference hearings and videoconference hearings.

According to the Ministry of the Attorney General, courthouses will remain open. Small Claims Court filings may continue at those courthouses. If filing is impossible or if the courthouse is believed to be unsafe, the Superior Court of Justice instructs parties not to attend the courthouse. Where procedural rules or court orders require the regular filing of documents during this emergency period, and where filing is impossible or the courthouse is believed to be unsafe, parties can expect the Court to grant extensions of time once the Court's normal operations resume. Parties are still required to comply with orders and rules requiring the service or delivery of documents as between parties.

Claims can continue to be filed online.

## Superior Court of Justice – Divisional Court

Starting April 6, 2020, the Divisional Court will begin scheduling hearings for non-urgent matters, subject to available resources. Hearings will be conducted electronically, by teleconference or videoconference (videoconferences will be conducted via the application ZOOM). Parties will be required to confirm their ability to participate using the selected technology in advance of the hearing. All documents required for the hearing must be filed electronically, via email at [scj.divcourtmail@ontario.ca](mailto:scj.divcourtmail@ontario.ca). For full details on filing guidelines, please visit <https://www.ontariocourts.ca/scj/notice-to-the-profession-div/>.

The Court's schedule of cases as of the suspension of ordinary court operations is, itself, entirely suspended, and matters will not be heard according to that schedule so long as in-person hearings are suspended. Therefore, a party in a matter that has been scheduled previously for hearing in the coming weeks will have to obtain a new date for hearing following the process set out below, if the party wishes the case to proceed during the suspension of in-person hearings. In order to have a Divisional Court matter heard, the directions below must be followed.

### *Scheduling a Divisional Court Matter*

A party wishing to schedule a Divisional Court matter must send an email to the Court at [scj-csj.divcourtmail@ontario.ca](mailto:scj-csj.divcourtmail@ontario.ca), with a copy sent to all other parties. The email referenced above should contain the following information:

- a. Title of Proceedings, file number, and jurisdiction (judicial region) from which the case originates.
- b. The names and email addresses of representatives of the parties (counsel, or self-represented persons).
- c. The nature of the matter to be scheduled (motion, application or appeal) and some brief particulars in a sentence or two. Where the decision below has been reported on CanLII, a citation to that decision should be included.
- d. The estimated time required for the hearing.
- e. A brief explanation of any urgency, time sensitivity, or other factor the party wishes the court to consider in scheduling.
- f. Whether some or all parties consent to scheduling the matter (consent is not required but will be considered).

Matters will be scheduled at the direction and in the discretion of the Divisional Court Administrative Judge or his designate. Court staff will then contact the parties to confirm arrangements for providing file documents to the court in electronic format and to provide hearing details. Scheduling preference will generally be given as follows:

- i. where a matter is considered urgent by the Administrative Judge or his designate.
- ii. where the matter is not considered urgent but is considered time sensitive by the Administrative judge or his designate.
- iii. other matters will be scheduled to be heard in due course, with consideration to urgent and time sensitive matters and available resources. The length or time that a matter has been awaiting a hearing and the likely delay if the matter is not heard until in-person hearings resume will be considered.

Motions for leave to appeal that have been filed with the Court prior to the suspension of in-person hearings will generally not be decided during the current suspension of court operations. If a party to a pending motion for leave to appeal believes the matter is urgent or time sensitive, they may seek a direction from the Administrative Judge or his designate to have the motion proceed, by emailing a request to [scj-csj.divcourtmail@ontario.ca](mailto:scj-csj.divcourtmail@ontario.ca).

## **Ontario Court of Appeal**

Effective March 17, 2020, all scheduled appeals until April 3, 2020 have been suspended, subject to exceptions. During this period, urgent appeals will be heard either on written materials or remotely.

The Court of Appeal remains open to receive dropped off court materials only. Public service counters are closed until further notice. All clients are encouraged to send filings by mail or to drop them off below the digital display within the Court's Intake Office with a cheque or instructions attached regarding whom to contact for payment of court filing fees. For filings by mail or that have been dropped off, notifications will be made by phone, email, or regular mail when the filing has been accepted. Factums can continue to be filed electronically.

**Non-urgent matters:** parties on non-urgent matters can request that their appeal be heard based on written materials already filed. Parties with appeals scheduled between April 3, 2020 and April 30, 2020 are encouraged to consider and consent to adjournments.

**Urgent matters:** for anyone who wishes to have their matter heard on an urgent basis, a request should be sent to the attention of the Senior Legal Officer at [COA.SeniorLegalOfficer@ontario.ca](mailto:COA.SeniorLegalOfficer@ontario.ca) containing the following information:

1. Why the matter is urgent
2. Whether all parties consent to the hearing of the appeal on an urgent basis
3. Whether the parties consent to having the decision rendered based on the written materials already filed or whether they want the appeal heard remotely.



**Single Judge Motions:** During the week of March 16, 2020, scheduled single judge motions continued to be heard with the motion judge presiding remotely. As of March 20, 2020, these measures will continue to be in place, pending further notice. Parties are encouraged not to bring non-urgent motions and to request and consent to adjournments of motions that have been scheduled. Alternatively, on consent, a motion may proceed based on the written materials the parties have filed.

## Ontario Court of Justice

*Note: Some of our clients dealing with matters arising under the Occupational Health and Safety Act may be affected by the measures implemented at the Ontario Court of Justice. It is unlikely that matters arising under the Occupational Health and Safety Act would be considered urgent at this time.*

The Ontario Court of Justice advises that individuals should not attend Ontario Court of Justice courthouses unless they fall within an exception below.

All family trials, criminal trials and preliminary inquiries scheduled between March 20, 2020 and May 29, 2020 are suspended, subject to a judge seized with a continuing matter ordering otherwise. This applies to both in-custody and out-of-custody accused.

Urgent court filings can be made online via email.

**Urgent family and criminal matters:** As of March 28, 2020, all urgent criminal and all urgent family proceedings will be conducted by telephone and/or video conferencing, unless otherwise ordered by a judicial official. Attendance in courtrooms for those matters will be restricted to the judicial official and essential court staff, unless a judicial official orders otherwise.

**Non-urgent family and criminal matters:** Non-urgent criminal and family court appearances scheduled in the Ontario Court of Justice between March 16, 2020 and May 29, 2020 will be adjourned, without the parties being present, to another date eight (8) to twelve (12) weeks away.

For full details regarding the Ontario Court of Justice operations during this time, please visit <https://www.ontariocourts.ca/ocj/covid-19/>

Should you have any questions regarding the information in this *Raising the Bar*, please contact any member of our [Litigation practice group](#).