

Association Member issues for Justice Sector Check-in

	<u>Question</u>	<u>Answer</u>
	A. COURT ISSUES - PRACTICE SPECIFIC	
	Family Law:	
1.	Is the issue re: administrative dismissal deadline under the Rules of Civil Procedure being done for Family Law Rules as well?	<p>O. Reg. 73/20, issued on March 20, 2020 under the <i>Emergency Management and Civil Protection Act</i> suspends limitation periods and time periods within which steps in a proceeding are to be taken. The Court has asked the Ministry not to issue Notices of Approaching Dismissal in Family.</p> <p>The SCJ’s Notice to Profession indicates: “...where procedural rules or court orders require the regular filing of documents during this emergency period, and it becomes impossible to file at the courthouse 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.”</p>
2.	Families would benefit from some immediate guidance re: managing access/parenting time schedules under existing court orders and/or refusing to return children to other parent. Also concerns about parents taking advantage and attempting to establish a new status quo.	<p>We understand that it will be difficult for many families to manage the parenting arrangements during this time and that it may give rise to some emergency situations.</p> <p>Clients and lawyers should be encouraged to resolve these issues between themselves where possible and only engage the court where there are really pressing issues regarding a child’s safety or wellbeing, or the safety of a parent. We understand that virtual</p>

		<p>mediation services may also be available that could be considered, for appropriate cases, to address pressing child-related issues.</p>
<p>3.</p>	<p>If there is a specific Court Order imposing a serving and filing deadline on a party in a Family Litigation matter, will that party be able to file their documents with the Superior Court on March 20 or anytime in March, 2020? Further, if the party fails to comply with the specific Court Order by failing to serve and file documents by the deadline, is the opposing party allowed to file their Motion materials permitted by the same Court Order? The Motion material would be decided in writing and would not require a Court hearing or attendance. Further still, if the above type of documents can be filed, does that mean only electronically?</p>	<p>Parties are expected to comply with existing court orders, to the extent they are able. The Notice to the Profession indicates that the Court is expected to grant extensions of time where parties are unable to file, due to COVID-19.</p> <p>At this time, several courthouses remain open for “regular” filings. The direction from the Ministry suggests some courthouses may be closing due to COVID.</p> <p>Only “urgent” filings, as described in the Notice to the Profession from March 15, 2020 may be filed by e-mail to the listed trial coordinator.</p>
<p>4.</p>	<p>Determination of “Urgent Matters” is there a tool that can be used for lawyers to provide clients or to walk through with clients (or that could be posted for use by self-reps) to help them understand what are “urgent” matters such that they can be heard, in each of the different contexts. This is to expand on the general information being provided by the courts on what constitutes urgency, as there is also a basket clause in most cases. Given that the courts are all now essentially operating privately, through technology, it is difficult to see what is getting through in the urgent category.</p>	<p>At this time, the only guidance in determining what is “urgent” is the language contained in the Notice to the Profession.</p> <p>The SCJ Notice did not exhaustively list what is an urgent family law issue intentionally, because the urgency of the matter may depend on the circumstances. Counsel may wish to be guided by the definition of urgency under the Family Law Rules for some guidance.</p>

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		The SCJ is tracking the number and nature of “urgent” matters that are being brought. The court is also assessing its capacity to hear other matters.
5.	Question: Could a framework be created for simple Motions known as 14B Motions in Family Court, to still be dealt with in writing only?	Possibly. Some regions are seeking to deal with in-writing motions. At this time, the SCJ provincial policy is to only deal with “urgent” matters. An issue is the capacity to submit “in-writing” motion material via email given limited e-mail size capacity (10MB). We are seeking secure ways of transmission via tools like DropBox. 14B motions for urgent matters can still be brought.
6.	Question: Can proposed Orders submitted pursuant to a Justice’s Endorsement, after all parties have consented, still be filed with the Court electronically or otherwise?	For “urgent” matters, counsel are encouraged to file draft orders, which can be signed by the judge hearing the matter, and sent back to the parties signed electronically. The ability to have clerks sign orders will depend on the ability of court clerks to perform this function remotely, which is a Ministry issue. Counsel should seek direction from the judge to ensure the timely issuance of the order
	<u>Trusts & Estates Law:</u>	
7.	Are file applications such as an Application for Certificate of Appointment and “in chamber motions” still being processed? Have judges/clerks been set up to do any of this work remotely?	Possibly. Some regions are seeking to deal with in-writing motions/applications. At this time, the SCJ provincial policy is to only deal

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	<p>should clients be advised that they will have to be put on hold until at least June?</p>	<p>with “urgent” matters as set out in paras 3 and 4 of the Notice to the Profession (civil and family) dated March 15,2020. An issue is the capacity to submit “in-writing” motion material via email given limited email size capacity (10MB).</p> <p>The SCJ recognizes that this is an area where the court may be able to quickly expand the level of service it currently provides. We are seeking secure ways of transmission via tools like DropBox.</p>
<p>8.</p>	<p>Status of Certificates of Appointment of Estate Trustees. How are estates processed and to file applications – would like a regional breakdown of preferred processes. Issue: Wants the court system to give high priority to probate applications. Suggestion: Applications for appointment of estate trustee(s) with or without a will should be elevated to the same category of importance as, or just below, public health issues, child custody issues, on the grounds that certificates of appointment of estate trustees (issued probate in popular language) are the keys to unlocking frozen estate assets so that the estate trustee(s) can pay obligations and provide funds to needy spouses, children and other beneficiaries of the particular estate.</p>	<p>These matters must be considered urgent, as set out in paras 3 and 4 of the Notice to the Profession (civil and family) dated March 15, 2020.</p>
	<p>General Litigation:</p>	
<p>9.</p>	<p>Executions of unrelated parties that exceed \$250,000. In normal circumstances, a lawyer would need to obtain a statement from the Writ holder but with staff shortages and absences, this is not</p>	<p>Question for the Ministry of the Attorney General.</p>

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	possible. Question: how to deal with this circumstance? Are counsel being recommended to accept undertakings to provide post-closing?	
10	Can there be a central online hub where lawyers can view upcoming cases with court dates in local courthouses throughout Ontario? Such a service/portal would help reduce calls.	Question for the Ministry of the Attorney General. SCJ has no capacity to do this at this time.
11	Is there a tool that can be used for lawyers to provide clients or to walk through with clients (or that could be posted for use by self-reps) to help them understand what are “urgent” matters such that they can be heard, in each of the different contexts. This is to expand on the general information being provided by the courts on what constitutes urgency, as there is also a basket clause in most cases. Given that the courts are all now essentially operating privately, through technology, it is difficult to see what is getting through in the urgent category.	<p>The SCJ is tracking the number and nature of “urgent” matters that are being brought. The court is also assessing its capacity to hear other matters.</p> <p>The SCJ will endeavor to provide greater clarity in the days ahead.</p>
12	Can the court please issue a clear direction on basket motions – whether the court has capacity to address them and lawyers should be filing them?	<p>Some regions are seeking to deal with in-writing motions/applications. At this time, the SCJ provincial policy is to only deal with “urgent” matters, as set out in paras 3 and 4 of the Notice to the Profession (civil and family) dated March 15,2020. An issue is the capacity to submit “in-writing” motion material via email given limited email size capacity (10MB).</p> <p>The SCJ recognizes that this is an area where the court may be able to quickly expand the level of service it currently provides. We are seeking secure ways of transmission via tools like DropBox.</p>

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13	Asking Courts if they will agree not to delay scheduled pre-trials, motions, trials in the event that this is a longer term effect or if the need for social isolation waxes and wanes. Instead, I would be asking them to proceed by video-conference to avoid delaying/denying litigants their day in court and potentially overwhelming the court system later due to systemic delay (trials would almost certainly need to proceed on a non-jury basis in a video-conference scenario).	Cannot comment at this time.
B. COURT ISSUES - REGION SPECIFIC		
Thunder Bay Courthouse:		
14	Problem: Has a document box for all lawyers to pick up newly issued court orders and documents. Not Secure! Suggested solution: email the law office to advise court docs ready for pickup so lawyers' staff know when the court doc has been issued and is ready for pickup. Better still, scan and email the court order to the law office.	This is a responsibility of the Ministry of the Attorney General. The Court will pursue this with MAG, including the option of emailing the scanned order to the parties.
Niagara:		
15	Regarding a "NOTICE TO THE PROFESSION IN CENTRAL SOUTH REGION REGARDING FAMILY AND CHILD PROTECTION MATTERS" dated March 18th. In Niagara, matters are adjourned to the same June dates and times. How are counsel expected to be impossible for counsel to be at two places at once?	This has been brought to the attention of the Regional Senior Justice. Solutions are being explored, including staggering hearing dates between the two sites and virtual hearings. More information will be communicated to the local bar in the coming weeks.
Ottawa:		
16	In Ottawa, it is unclear if we should continue filing per the original deadlines for conferences and motions (especially those coming up in April) or if there is a procedure to adjourn. The only correspondence I received recently from the trial coordinator was that they were not scheduling any new dates (after requesting an adjournment of a conference late last week).	The Notice to Profession indicates that all currently scheduled matters are adjourned, until further notice. It also indicates that the Court expects to grant extensions where parties are unable to file documents.
17	Also would like to know if we should continue reaching out to case management judges re: case managed matters or not.	Will inquire.

	C. MAG ISSUES - PRACTICE SPECIFIC	
	Criminal Law:	
18	<p>With the increasingly limited availability of counsel other than through remote work arrangements, can e-disclosure be the standard in all cases? For urgent matters (and non-urgent matters that will continue to proceed through criminal courts in the coming months), there is some divergence in the availability of disclosure through e-transfer from Crown offices. Migrating production of disclosure to Ontario's existing portal (https://attachmail.ontario.ca/courier/web/1000@/wmLogin.html ?), for example, would be a significant improvement. There is no reason in principle why e-disclosure couldn't be the standard operating procedure in all cases involving counsel, particularly for Crown offices that already upload all disclosure to the SCOPE program. I understand this type of e-production has already been introduced in some Crown offices in Ontario. As far as I'm aware, Hamilton, Kitchener, and Oshawa have used this program (or a similar program).</p>	This is an issue for the Crown's office.
	D. LSO ISSUES	
19	<p>A local bank has demanded that all banking take place at the ABM, and not through a teller. This creates issues for their document requirements for their trust account, as mandated by the Law Society. Can FOLA get guidance from the LSO about whether the ABM slips will be sufficient at this time?</p>	
20	<p>What provisions are being made for clients (the public) who don't have access to technology to meet remotely and/or do not have access to print out documents that need signing (and they do not have e-signature set up)? Temporary solution that some lawyers are adopting is to make an outside mailbox available for document pick up which a client then signs. But this is not ideal at all. Note that the commissioning rules seem to have been amended for court matters but there are documents that need to be sworn for real estate.</p>	

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21	Should lawyers just use an undertaking to provide these after these emergency measures have passed (ie: indefinitely until told otherwise)? Side comment that I do not quite understand: It is understood that FCT has an electronic transfer system in place and we will use same. It's not available for all transactions though.	
22	Encouraging acceptance of electronic signatures on retainers, settlement documents etc.	Counsel should review the provisions of the <i>Electronic Commerce Act, 2000, S.O.c.17</i>
23	Asking Counsel and clients to adhere to electronic document transfers, without paper being sent by mail.	