

OUTREACH FOR REAL-TIME SOLUTIONS

Association Member Issues for Justice Sector Check-In
As of Tuesday, May 5, 2020 (new items highlighted)

CURRENT ISSUES

A. COURT ISSUES - PRACTICE SPECIFIC

General Litigation

1. Request that the Superior Court of Justice, in a Notice to the Profession, permit attendance at mandatory mediations under R. 24.1 and R. 75.1 by way of attendance by videoconference until further notice.

SCJ Response: This will be taken into consideration. Under normal circumstances, the SCJ does not have the authority to unilaterally alter the Rules of Civil Procedure. This issue has also been brought to the attention of the Ministry of the Attorney General for consideration as to whether a regulation can be introduced to address this scenario.

2. When can we expect that Judges will be able to deal with reserved decisions?

SCJ Response: CJ Morawetz has asked all SCJ judges and masters, during this pandemic, to release all decisions within the timeframe prescribed under the *Courts of Justice Act*. In some instances, however, the release of a decision may compel parties to take certain steps which may not be possible during the pandemic. Therefore, some decisions are being held back until it is possible for parties to comply with the terms of any decision.

3. Can the courts advise lawyers on the process for seeking a certificate of pending litigation given the court closures at this time?

SCJ Response: The matters that will be heard during the pandemic are set out in the Notices to the Profession issued by the SCJ.

4. Is it possible to deal with unopposed/consent motions for bankruptcy in Toronto?

SCJ Response: The matters that will be heard during the pandemic are set out in the Notices to the Profession issued by the SCJ.

5. Could the Small Claims Court be granted increased jurisdiction to a higher claim amount in order to assist with the backlog the court closures will cause for the Superior Court of Justice?

SCJ Response: The monetary jurisdiction of the Small Claims Court is fixed by an Ontario regulation. The Ministry of the Attorney General would need to amend this regulation.

6. At the beginning of each teleconference matter, can the Court address the issue of recording the teleconference with all parties?

SCJ Response: Even before the pandemic, not all SCJ proceedings were recorded. This remains the case during the pandemic. As a best practice for all teleconferences, lawyers and parties are advised to identify themselves by name at the outset of the hearing. This will assist a transcriptionist, should a transcript be required.

7. Can the courts provide an update on ability to provide an online booking tool for lawyers to use to book court appearances?

SCJ Response: The SCJ is looking at the availability of online scheduling tools and has been discussing them with the Ministry of the Attorney General. The Court is eager to implement an online scheduling tool that will be secure and will reduce the workload of trial coordinators.

Estates

1. Does the direction to file documents electronically to the specific email address indicated the region's Notice to the Profession (April 2) apply to a copy of a will, for filing a Probate Application that are urgent in nature (pending real estate transactions, financial hardship etc.)? We had previously been told at the Courthouse that we should send the will by regular mail, which we are not prepared to do. The Central-East Notice to the Profession has instructions on urgent estates matters that do not appear in some other regional notices. Is this the process (e.g. using a drop box) that should be adopted in those other regions too?

SCJ Response: The SCJ and the Ministry of the Attorney General hope to introduce a document sharing platform (like DropBox) imminently, that will allow for more documents to be received by the Court, and which should significantly increase the capacity of the SCJ to hear more matters.

2. Will signatures witnessed by video will be accepted for Probate applications?

Criminal

1. What is the solution to the fact that some sureties do not have access to the internet or a printer, which is required to fill out surety declaration forms for people who will be released on bail?

POA

1. Can you advise whether e-mail service applies to POA matters, specifically, service on a Ministry of Transportation prosecutor with respect to notice under s. 35 of the Evidence Act?

C. COURT ISSUES – REGION SPECIFIC

Durham

1. All child welfare matters in Durham have been adjourned to June 1, 2020. Can the court provide some clarification on the following:
 - Is counsel expected to attend court on that day?
 - Are clients expected to attend?
 - Will the court expect an update on that day?
 - Is the matter simply being adjourned to another court date for a specific event, such as a settlement conference etc?

SCJ Response: Chief Justice Morawetz will shortly issue an order that will deal with this issue. It will be supplemented by regional Notices to the Profession which will identify how child protection list events (often referred to as “to be spoken to”) are to be scheduled when the Court resumes operations.

D. MAG ISSUES

General

1. Can an OIC suspend and replace section 9 of the Commissioners for Taking Affidavits Act in keeping with the LSO’s interpretation that the provision “every oath and declaration shall be taken by the deponent in the presence of the commissioner or notary public” does not require a lawyer to be in the physical presence of the client.
2. Can MAG work to mandate that financial institutions are required to accept discharge funds for secured payouts on sales or refinances via wire transfer, if the originating solicitor is able to do so?
3. Can there be a way for lawyers file documents electronically in Estates Court?
4. Can e-filing be expanded for matters on consent, such as a supplemental record for unopposed judgment in a passing of accounts?
5. Can e-filing be expanded for to permit additional documents, such as Notice of Application, Notice of Appearance, family law forms.
6. Can the Rules be amended at least on a temporary basis to dispense with personal service and acknowledgement / prior consent for e-service?

7. Is there any way the SCJ database could be updated remotely by court staff and accessed by lawyers for litigation searches conducted in the context of pending transactions during the current operations closure?

8. Can Term #2 under the OIC suspending limitations periods and times for procedural steps be amended to provide that the provisions therein shall be suspended for the duration of the emergency, and the suspension shall be retroactive to Monday, March 16, 2020, unless the court, tribunal or other decision-maker responsible for such proceedings orders otherwise?

9. How will Ontario education going online be facilitated for children in custody?

10. If a court employee is experiencing flu-like symptoms and stops working, can court users be provided with information about who the individual would have recently come in contact with (without disclosing the individual's identity), in order for those people to take appropriate precautions, including self-isolating etc.?