

# OUTREACH FOR REAL-TIME SOLUTIONS

Association Member Issues for Justice Sector Check-In

As of Tuesday, June 9, 2020

## CURRENT ISSUES

### **A. COURT ISSUES - PRACTICE SPECIFIC**

#### General Litigation

1. Will parties be required to pay an additional filing fee for matters which have been rescheduled to be heard in writing/by teleconference, if they had already previously paid the filing fee prior to the court closures?
2. Can the Small Claims Court rules be temporarily amended, or a practice direction issued, to permit service of a claims on a corporation via email, given that many places of business are closed?

#### Estates

1. Will signatures witnessed by video will be accepted for Probate applications?
2. The materials usually accepted by the Toronto Estate Courts (pre-COVID) on an unopposed passing is not currently being accepted post-COVID. How is an unopposed passing of accounts to proceed in Toronto?

### **B. COURT ISSUES - PRACTICE SPECIFIC**

#### Central South

1. Can the Central South region (and elsewhere) permit counsel to drop off original wills to the courthouse for probate applications, rather than mailing them in? In the North, the RSJ appears to have amended the process and has allowed counsel to drop off the original to the courthouse. Alternatively, can counsel email a copy of the will as appears to be the case in the Central East? An alternative to mailing the original is required to avoid risking a claim.

### **C. 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.?
11. In Toronto, consent dismissal orders received by electronic motion are being obtained but they are not issued and entered. Is there now a procedure in place for issuing and entering the orders?

#### **D. LAW SOCIETY ISSUES**

1. Can the LSO communicate to lawyers that electronic wire transfers are permissible, and/or that lawyers should accept this method of payment in light of COVID19?
2. Is there any additional information on the LSO "exploring options to minimize the impact of filing and payment deadlines on candidates?"
3. Will the Law Society be issuing any office protocols for health and safety when offices are allowed to reopen?

# **RESPONSES**

## **COURT ISSUES - PRACTICE SPECIFIC**

### General Litigation

1. RE: 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 possible. Question: how to deal with this circumstance? Are counsel being recommended to accept undertakings to provide post-closing?
  - SCJ Response March 22: Question for the Ministry of the Attorney General.
2. 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.
  - SCJ Response March 22: Question for the Ministry of the Attorney General. SCJ has no capacity to do this at this time.
3. Is there a tool that can be used for lawyers to provide clients or to walkthrough 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.
  - SCJ Response March 22: 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. The SCJ will endeavor to provide greater clarity in the days ahead.
4. 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?
  - SCJ Response March 22: 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). 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.

5. 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).

- SCJ Response March 22: Cannot comment at this time.

6. Rule 4.05.1 - despite the coming into force March 23 2020 of O. Reg. 456/19, there does not seem to be an authority to file a Form 38A Notice of Appearance (Rule 38.07(1)). Why any difference between a Notice of Intent to Defend, and a Notice of Appearance, for such filings? Can there be an amendment to add that?

- SCJ Response March 30: Office of the Chief Justice response: The Ministry is expanding the Civil eFiling Service in small increments. At this time, only the documents set out in Rule 4.05.1 of the Rules of Civil Procedure can be filed using the e-filing service:  
<https://www.ontario.ca/laws/regulation/900194>.

7. The Notice from the CJO, dated March 15 2020 says that "For regular filings, that are not urgent as defined below, the Ministry of the Attorney General advises that courthouses will remain open. Those filings may continue to occur at courthouses". The Notice then states: "However, where procedural rules or court orders require the regular filing of documents during this emergency period...parties can expect the Court to grant extensions of time once the Court's normal operations resume." Which implies that regular filings do not need to occur. Does this mean that lawyers should try to file documents even though all regular operations are suspended (does regular operation include filing?), even though the matters are adjourned and despite the fact that we are advised not to attend the courthouse? Or should they simply wait and file later, with a request for extension of time?

- SCJ Response March 30: Office of the Chief Justice response: The COVID-19 landscape is changing rapidly. We understand that as of March 26, court offices are remaining open for filing of urgent matters only until filings can be handled remotely (by emailing them to a generic email address to be created by the Ministry). For the health and safety of court staff, process servers, and the public, it is recommended that non-urgent matters should not be filed at this time. See the Emergency Management and Civil Protection Act, R.S.O. 1990, c. E.9 for the impacts on limitation periods. <https://www.ontario.ca/laws/statute/90e09>. Note that this Act does not impact time limits established by court order. The notice from Chief Justice Morawetz indicates that we expect the Court to grant extensions of time when court resumes normal operations. If parties can comply with orders of the court without putting anyone's health and safety at risk then efforts should be made to do so. If this is not possible, parties should be prepared to explain why when court operations resume. *[Further note on above response from Mohan: The Order in Council does not impact orders of the Court. That is my own view from reading the OIC, which it is set out in the answer we provided. Lawyers will have to read the OIC and confirm for themselves, but I cannot give them legal advice. All I can say is I have no knowledge of the existence of a blanket order of the Court that extends timetables entered into by parties and endorsed by the courts.]*
8. Are May and June trial sittings still to be planned/prepared for if we are looking at isolation until May 29th, per the government.
- SCJ Response March 30: Office of the Chief Justice response: At this time, it is unclear whether May sittings will proceed. Matters are currently being adjourned to June sittings, so it is suggested that parties prepare for these hearings unless further updates indicate that the June sittings will also be postponed.
9. If an appeal is proceeding at the Court of Appeal by remote hearing or in writing, how will members of the public be made aware of the proceeding?
- Ontario Court of Appeal Website: As a result of the COVID-19 pandemic, the Court of Appeal for Ontario is hearing appeals and motions by videoconference, teleconference, or in writing. Members of the media or the public who wish to observe a scheduled matter being held by videoconference or teleconference should send a request in writing to

the Court's Registrar at [coa.registrar@ontario.ca](mailto:coa.registrar@ontario.ca). Right now hearings are posted as soon as they know including matters in writing.

10. 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 May 6: 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.
11. When can we expect that Judges will be able to deal with reserved decisions?
  - SCJ Response May 6: 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.
12. Can the courts advise lawyers on the process for seeking a certificate of pending litigation given the court closures at this time?
  - SCJ Response May 6: The matters that will be heard during the pandemic are set out in the Notices to the Profession issued by the SCJ.
13. Is it possible to deal with unopposed/consent motions for bankruptcy in Toronto?
  - SCJ Response May 6: The matters that will be heard during the pandemic are set out in the Notices to the Profession issued by the SCJ.
14. 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 May 6: 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.
15. At the beginning of each teleconference matter, can the Court address the issue of recording the teleconference with all parties?
  - SCJ Response May 6: 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.

16. Can the courts provide an update on ability to provide an online booking tool for lawyers to use to book court appearances?
  - SCJ Response May 6: 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.
17. Are counsel permitted to bring motions to remove themselves as lawyer of record under the new practice directions, and are these motions permitted to be heard by alternate means (i.e. in writing, virtually etc.)?
  - SCJ Response May 20: Please see each region's notice to profession regarding motions that are currently permitted. All motions are currently heard by alternate means. <https://www.ontariocourts.ca/scj/notices-and-orders-covid-19/consolidated-notice/>
18. Will the courts hear motions to dismiss for failure to appoint new counsel by alternate means (i.e. in writing, virtually etc.)?
  - SCJ Response May 20: Please see each region's notice to profession regarding motions that are currently permitted. All motions are currently heard by alternate means. <https://www.ontariocourts.ca/scj/notices-and-orders-covid-19/consolidated-notice/>
19. Counsel made a Motion to Amend (on consent) a previously issued Order in February 2020, but has not heard anything from the Court about the status of the Motion, given the suspension of in-court matters. How can they follow up in order to determine the timing of the finalized Order so they may ensure their client gets paid the settlement funds? Should the motion be filed again if the prior documents cannot be accessed during the emergency?
  - SCJ Response May 28: Materials would need to be re-filed electronically as directed in the regional notice to the profession (i.e. to the specified email address). Court staff are largely working from home and therefore cannot access the previously filed paper copies. Counsel should indicate that the matter was filed previously in hard copy so court staff can make a note of this.

### Criminal Law

1. What is the process for inmates making calls to counsel?



- MAG Response April 14: Below are some bullets on the new system, which went live on Friday April 10.
  - The Ministry of the Solicitor General has worked with its vendor to enhance the current Offender Management Telephone System (OTMS) to allow inmates to access both collect calls and “debit” calling.
  - The old system only allowed for collect calling, which does not allow for calls to cell phones.

Under the enhanced system, debit calling is enabled and funded by the ministry. Debit calling allows for calls to cell phones. The ministry will begin by providing inmates with \$20 of calls and will monitor to determine whether this is adequate. Inmates will be able to use their funds as they see fit. This funding will allow for:

- 50 local calls (no maximum length, however, the ministry’s policy currently limits phone calls at 20 minutes);
- A 52-minute long-distance call; or
- A combination of the above.

Finally, I would like to highlight that the phone system currently allows for organizations to register with the ministry to by-pass security features, such as three-way calling, call transfers and the use of the keypad. This exemption is provided for the purpose of facilitating the transfer of offender calls from a receptionist or automated telephone attendant system to the intended call recipient. To enable this feature, the ministry requires a form to be filled out and mailed to: MCS.TCS.OTMS@ontario.ca.

2. 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?
  - ii. The OCJ has outlined how to address challenges with completing surety documentation in the Ontario Court of Justice Protocol Re Bail Hearings.

### Family Law

1. Is the issue re: administrative dismissal deadline under the Rules of Civil Procedure being done for Family Law Rules as well?
  - SCJ Response March 22: O. Reg. 73/20, issued on March 20, 2020 under the Emergency Management and Civil Protection Act 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. 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."

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.
  - SCJ Response March 22: 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. 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 mediation services may also be available that could be considered, for appropriate cases, to address pressing child-related issues.
  - FOLA follow-up question: The does not take into consideration (i) lawyers dealing with self-reps on the other side who refuse to cooperate, for example, and have taken advantage of the situation for more access (not an "urgent" situation defined as "real and pressing issues regarding the child's safety and wellbeing"), (ii) issues where spousal abuse (control and verbal abuse) is a factor and mediation is not to be undertaken, or (iii) the fact that Children's Aid Societies are cancelling access arbitrarily despite court orders. Many of these self-representing parents have no idea about the new processes and rules, or their rights during this period. Follow up Question: Where and when is the information about the processes, issues that might arise and how to resolve them going to be posted for the general public in a manner that is uncomplicated, so that they have access to justice?

SCJ Response March 24: (i) we acknowledge that this is not an easy situation but lawyers will have to do their best to deal with difficult litigants, whether represented or not, to attempt to resolve issues

without the court's intervention.

SCJ Response March 24: (ii) the court is concerned about situations of spousal abuse and how that will impact well being and safety both before and after separation. Lawyers are encouraged to include any pertinent information in urgent requests. The court has been working with DV stakeholders and the OBA to maximize access to legal advice in these circumstances (more information to be shared shortly).

- SCJ Response March 24: (iii) we understand from MCCSS that supervised access may no longer be available through the societies for safety purposes and that societies have been encouraged to consider other safe alternatives. These situations can potentially be urgent, however lawyers should consider whether these requests are likely to be successful given the particular circumstances.
  - SCJ Response March 24: Generally – As noted above, we are working incredibly hard with the OBA and the LSO and others to facilitate access to legal advice for SRLs to determine what is urgent and how to proceed.
3. 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?
- SCJ Response March 22: 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. At this time, several courthouses remain open for “regular” filings. The direction from the Ministry suggests some courthouses may be closing due to COVID. 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.
4. 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.

- SCJ Response March 22: At this time, the only guidance in determining what is “urgent” is the language contained in the Notice to the Profession. 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. 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?

- SCJ Response March 22: 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?

- SCJ Response March 22: 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.

7. Question: Can lawyers still book conferences and motions this time when part of the court operation is suspended?

- SCJ Response March 24: Contact your local trial coordination office regarding scheduling protocols in their region.
8. Is the Registrar open for the purposes of filing and issuing documents? Will the judges accept remote phone calls, teleconferences, video conferences etc.
- SCJ Response March 24: Contact MAG re the availability of filing counters. SCJ has directed that all urgent matters be filed by email to the appropriate trial coordination office. Teleconferences and in some circumstances video conferences are being arranged for matters with approval of the local triage judge.
9. Question: How should family lawyers be addressing situations where access parents are relying on coronavirus as an excuse not to return children to the primary caregiver? Should lawyers/clients be proceeding through court with an emergency motion.
- SCJ Response March 24: See above. While these issues may meet the test of urgency, many likely will not given the court's direction at this time. Lawyers are encouraged to consider other appropriate alternatives, eg. Mediation and parenting coordination where an acceptable agreement cannot be reached between the parties.
10. Same issue as above (but specific to the Orangeville Superior Court) parents who are using this crisis to punish the other parent by withholding the child. They are not at all interested in mediation or listening to reason. These are high conflict cases. Steven has a pressing case is in Orangeville Superior Court and is wondering if someone can consult with Justice Miller who is currently in charge there.
- SCJ Response March 24: See above. The SCJ cannot comment on specific cases that are before the court, nor will this office reach out to judges regarding specific cases.
11. Will supervised access sites be closed? Is there any direction for parents/lawyers on how this should be handled if they close through until they re-open?
- SCJ Response March 24: We expect that this has already happened for domestic and child protection cases. Clients should be encouraged to consider safe alternative arrangements to supervised access and supervised access exchanges.

12. Must an existing order for access be strictly followed during the state of emergency, where families are being told to stay home? Whose home- both homes? Does one parent have the ability to refuse access if the other parent declines to self-isolate with the children during her or his access? Does one parent have the ability to refuse to allow daycare/babysitters untested for the virus to care for the children if the other parent must work? Is it in the best interests of the children to travel in public between homes during the pandemic and more so, when one of the parents must take public transportation with the children?

- SCJ Response March 30: As we have noted previously, 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. 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 mediation services may also be available that could be considered, for appropriate cases, to address pressing child-related issues. Counsel are encouraged to follow the caselaw to see how judges are applying the urgency threshold to these circumstances.

13. Could there be a directive or some form of guidance from the court regarding the fact that the CAS has suspended access to children in care by their family members who had ongoing unsupervised and supervised access? While each case may be different, some guidance from the court would be helpful in deciding whether to bring an emergency motion.

- SCJ Response March 30: We understand that supervised access has been cancelled by societies and expect that they will consider other safe alternatives to maintain contact, to the extent that they exist, in the circumstances. The extent to which these issues are urgent will depend upon the circumstances.

14. When an urgent motion or a case conference is being requested for a new matter where an Application has not yet been issued, should counsel email the Application, Form 35.1 and Financial Statement with the motion or case conference materials or do they still need to issue the Application at the courthouse first? Alternatively, can counsel undertake to issue the Application and other documents when Court operations resume?

- SCJ Response April 14: Where possible, counsel are encouraged to send the Application first to the court to be issued by use of MAG’s generic email address for the particular location. Materials relating to the urgent request should also be sent to the trial coordination email account with a notation that the application is in the process of being issued. Where truly necessary, counsel may send only the urgent materials via the TC email address with a request that the matter be heard on the undertaking that the application will be issued at the first available opportunity. Judges continue to have discretion to permit urgent requests to proceed on this basis.
- OCJ Response April 14: If there are no applications already before the court, 2 scenarios can occur:
  - either the moving party also wishes to bring an urgent motion; or
  - the moving party does not intend on bringing an urgent motion
 If an urgent motion is to be brought,
  - then the Application and supporting documents need to be filed by email as per the directive; or
  - in the 14B motion, an order could be requested asking for the Application and supporting documents to be filed at a later date and along with a proposed filing deadline.
 If an urgent motion is not to be brought, than the matter should not be filed at this time. Note that if a case conference request is not an urgent/priority matter, the Application and supporting documents should not be filed at this time.

15. Will uncontested divorces be processed? Many “consent” divorces are done on an uncontested basis because it is actually simpler than a consent divorce.

- SCJ Response April 14: Most regions are not processing uncontested or joint divorces at this time, subject to situations of urgency. Local law associations may wish to seek clarity on this issue from their RSJs. Even in the limited regions where the judges have the capacity to review these requests during the period of suspended normal activity, it is unclear to what extent MAG and the Federal government can ensure that all necessary steps are completed before these applications can be reviewed by the court.

16. For Central West specifically, the new practice direction requires parties to submit a 2 page letter requesting that an urgent matter be heard. For new

matters, should the Application and Form 35.1 be sent with the 2 page letter, or should counsel simply indicate in the letter that it is a new matter and await direction from the judge? Additionally, should the letter be served on the other side? If so, does the other side have an opportunity to provide a 2 page letter of their own in response?

- SCJ Response April 14: For new matters, it is recommended that counsel include a copy of the application with this request and that it be served on the other party, unless relief is being sought on an ex parte basis.

17. What does the expansion mean for conferences that were scheduled before the shutdown and have not yet been adjourned to a new date? If the parties consent, will the court proceed with the conference (including a Trial Management Conference) by phone/video? What is the process for rescheduling case conferences (as opposed to scheduling new ones as outlined in the practice directions)?

- SCJ Response April 14: All conferences in family matters (not necessarily child protection matters) that are scheduled before June 2nd have been automatically rescheduled and will not proceed during this period without a new request to the court that fits within the expanded scope of activities. Counsel should follow directions from each region regarding how those events will be rescheduled after regular operations resume. No direction has been provided yet for matters that have been scheduled from June 2nd onwards, although it is likely that at least some of the events that have been scheduled for early June will need to be rescheduled to facilitate rescheduling courts.

18. Does the OCJ anticipate taking additional matters, and if, is there an anticipated timing?

- OCJ Response April 14: The OCJ continues to monitor and assess its current COVID 19 directives and strives to ensure timely communication with the Bar.

19. With courts closed what is the process for obtaining a copy of a continuing record?

- OCJ Response April 15: At this time and due to the limited number of onsite staff, the continuing record is not available to be copied.

Trusts & Estates Law



1. 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? should clients be advised that they will have to be put on hold until at least June?
  - SCJ Response March 22: Possibly. 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). 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.
2. 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.
  - SCJ Response March 22: These matters must be considered urgent, asset out in paras 3 and 4 of the Notice to the Profession (civil and family) dated March 15, 2020.
3. What are the best practices for a client who is self-isolating or in quarantine and wishes to sign a will and powers of attorney?
  - SCJ Response March 30: Office of the Chief Justice Response: Please see the Law Society of Ontario’s COVID-19 practice management FAQs which directs lawyers to consider Ian Hull’s perspective as set out in his blog post Execution of Wills during COVID-19.
4. In the case of needed wills, is a holograph will an option? Would a written statement that acknowledging restrictions due to COVID 19 by the individual without being witnessed be deemed acceptable?

- SCJ Response March 30: Office of the Chief Justice: Holograph wills are valid in Ontario provided they meet the requirements set out in the Succession Law Reform Act. Lawyers may wish to consider Ian Hull's perspective as set out in his blog post:  
<https://hullandhull.com/tag/holograph-wills/>
5. Can lawyers file documents electronically in estates court? Could e-filing also be used for matters on consent, such as a supplemental record for unopposed judgment in a passing of accounts?
    - SCJ Response March 30: Office of the Chief Justice Response: At this time, only requests for urgent hearings may be emailed to the court and, if judicially approved to proceed, hearing materials may also be emailed. The Ministry is working toward providing additional court staff with remote access. When they are ready, consideration will be given to expanding the types of documents that can be emailed to the court for processing.
  6. Does the direction to file documents electronically to the specific email address indicated in 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 May 6: 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.

### Bankruptcy

1. How would a lawyer go about getting a discharge hearing before Master Jean in the bankruptcy court?
  - SCJ Response March 30: Office of the Chief Justice response: We understand that as of March 26, court offices are remaining open for filing of urgent matters only until filings can be handled remotely (by emailing them to a generic email address to be created by the Ministry).

At that time, consideration will be given to expanding the types of matter that may be heard remotely by teleconference or in writing. If a strong case can be made that the hearing is required urgently, a request may be filed with the court.

### 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?
  - SCJ Response May 28: The Court cannot advise what methods of communication a party to a proceeding will accept. The individual should ask MTO's prosecutorial services.

### **COURT ISSUES - REGION SPECIFIC**

#### Thunder Bay Courthouse

1. 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.
  - SCJ Response March 22: 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

1. Regarding a "NOTICE TO THE PROFESSION IN CENTRAL SOUTH REGION REGARDING FAMILY AND CHILD PROTECTION MATTERS" dated March 18<sup>th</sup>. 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?
  - SCJ Response March 22: 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

1. 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). Also would like to know if we should continue reaching out to case management judges re: case managed matters or not.
  - SCJ Response March 22: 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. Will enquire re continuing to reach out to case management judges.

### Newmarket and Barrie

1. Lawyers have expressed that their materials have been rejected from this court. Is it worth sending someone to file an Application or would that be rejected at this time?
  - SCJ Response March 30: Office of the Chief Justice response: See the response to 10 above. [The COVID-19 landscape is changing rapidly. We understand that as of March 26, court offices are remaining open for filing of urgent matters only until filings can be handled remotely (by emailing them to a generic email address to be created by the Ministry). For the health and safety of court staff, process servers, and the public, it is recommended that non-urgent matters should not be filed at this time. See the Emergency Management and Civil Protection Act, R.S.O. 1990, c. E.9 for the impacts on limitation periods. <https://www.ontario.ca/laws/statute/90e09>. Note that this Act does not impact time limits established by court order. The notice from Chief Justice Morawetz indicates that we expect the Court to grant extensions of time when court resumes normal operations. If parties can comply with orders of the court without putting anyone's health and safety at risk then efforts should be made to do so. If this is not possible, parties should be prepared to explain why when court operations resume.]
2. Does court staff have any estimation of the timeline for issuing Certificates of Appointment in Newmarket?
  - SCJ Response March 30: Office of the Chief Justice response: Not at this time. Also see the response to 10 above.

3. Are the courts in Barrie and Newmarket accepting over-the-counter motions for consent Judgments or Orders?
  - SCJ Response March 30: Office of the Chief Justice response: See the response to 10 above.
4. Are the same courts accepting over-the counter motions for orders to a Master (Newmarket) or a Judge (Barrie) for substituted service that involve extensions of the time to serve a pleading? The 6 months to serve a statement of claim is a rule, and is not automatically extended by Sunday's Regulation suspending statutory limitation periods.
  - SCJ Response March 30: Office of the Chief Justice response: An order was made under the Emergency Management and Civil Protection Act, which suspends, as of March 16, 2020, all court rule and legislative timelines requiring a step to be taken in a civil matter. See O.Reg 73/20 at <https://www.ontario.ca/laws/regulation/200073>
5. Will these two courts accept hard copy motion records for 1 and 2, or only electronic copies, and if the later, what happens if the material will exceed the 20 MG limit?
  - SCJ Response March 30: Office of the Chief Justice response: We understand that as of March 26, court offices are remaining open for filing of urgent matters only until filings can be handled remotely (by emailing them to a generic email address to be created by the Ministry). The Ministry is currently investigating issues related to file size.
6. If only electronic copies are required, will hard copies still have to be filed, and when?
  - SCJ Response March 30: Office of the Chief Justice response: This issue has not yet been addressed. Parties must retain originals until direction is provided.

### Toronto

1. Are Courts requiring Confirmations for what are scheduled (but not proceeding) court dates to be served/filed, and if not doing so may avoid the Court being unnecessarily inundated, or if the Rules as they require Confirmations would continue to apply?
  - SCJ Response March 30: Office of the Chief Justice response: An order was made under the Emergency Management and Civil Protection

Act, which suspends, as of March 16, 2020, all court rule and legislative timelines requiring a step to be taken in a civil matter. See O.Reg 73/20 at <https://www.ontario.ca/laws/regulation/200073>. As a result, Confirmations for matters that have been adjourned to a new date are not required to be filed at this time.

### Brampton

1. Apparently, Brampton judges are not dealing with non-emergency matters even in writing. Question: Is that a set policy? Is that province-wide? Possible Solution: Specifically, could a form 14-B motions (which are for procedural, uncomplicated and unopposed matters) be used during this period of closure. Follow up Question: Why can they not be doing more complicated stuff through facta exchange and telephone hearings if counsel agree?
  - SCJ Response March 30: Office of the Chief Justice response: At this time. the Court is focused on ensuring that teleconference lines and internet bandwidth are available for all urgent matters. When a decision is made to allow non-urgent matters to proceed, the legal community will be advised.

### Kitchener/Stratford

1. It appears that the registrar's offices at the courthouses are still open and should be issuing Applications, Motions to Change, accepting the filing of pleadings, and issuing Orders that have already been made. However, the Kitchener and Stratford courthouses are advising process servers that they will not "deal" with anything that is not urgent. Solution: Allow for lawyers to have their pleadings issued so that they can schedule court dates once the courts are operating as normal again, instead of having to wait three (3) months or more to even start the process. Further – the Courts should be able to have pleadings issued by sending them electronically to the courthouse, which would alleviate the concerns of the courthouse staff.
  - SCJ Response March 30: Office of the Chief Justice response: See the response to 10 above. Certain pleadings can be issued using the Superior Court's Civil eFiling Service

### 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 May 6: 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.

## **MAG ISSUES**

### General Litigation

1. Since the courts are not dealing with non-urgent matters at present, will the Ministry suspend the issuance of administrative dismissal notices and dismissal orders?
  - MAG Response March 27: MAG has issued a direction to suspend the issuance of administrative dismissal notices and dismissal orders for:
    - SCJ Civil proceedings
    - Small Claims Court matters
    - OCJ family court proceedings
    - SCJ family court proceedings

The suspension applies to all courts across all regions.
2. 11. Can MAG permit the issuance and filing of writs during this period of court closures?
  - MAG Response May 21: During the Superior Court of Justice (SCJ) suspension of normal court operations pursuant to SCJ notices, writs of seizure and sale may be issued at SCJ civil counters. While people are being discouraged from attending the courthouse where not urgent, court counter services with the exception of Small Claims court remain open on a reduced schedule. Staff continue to accept court filings in accordance with the applicable rules and interim procedures. Parties may also mail in requisition documents to the registrar to have their writs issued without having to attend at the courthouse. Alternatively, parties through their counsel may be able to issue and file writs of executions in

the Ontario Writs System (through Teranet) remotely pursuant to rules 60.07(1.1) and 60.20 of the Rules of Civil Procedure.

### Limitations

2. Re OIC order item #2 - Question: whether this applies to timetables entered into by the parties that have been endorsed by court order? For example, are such timetables intended to be covered, or are they suspended unless the court orders otherwise, presumably on motion by one of the parties, or are parties to agree on new timetables and the courts will later endorse? Also what is the application to other statutory provisions such as (1) Tarion deadlines (these are the statutory warranties to new home buyers and include 1, 2 and 7 year deadlines especially for claims by condo corps against condo developers); and (2) Lien deadlines under the Construction Act (and apparently also under the Condo Act).
  - SCJ Response March 30: Office of the Chief Justice response: An order was made under the Emergency Management and Civil Protection Act, which suspends, as of March 16, 2020, all court rule and legislative timelines requiring a step to be taken in a civil matter. See O.Reg 73/20 at <https://www.ontario.ca/laws/regulation/200073>.
3. Issue: suspension of procedural and limitation periods included in the government's EMCPA Order from last week. Question: Are Consents under the Planning Act with conditions that are set to expire in the next couple of weeks captured under the Order or not?
  - SCJ Response March 30: Office of the Chief Justice response: This office cannot provide legal advice respecting the application of the order made under the Emergency Management and Civil Protection Act. (See O.Reg 73/20 at <https://www.ontario.ca/laws/regulation/200073>.)
4. Does Regulation 73/20 regarding limitation periods and procedural time periods apply to the Planning Act? Specifically, are the time periods for consent applications affected by the emergency regulation?
  - SCJ Response March 30: Office of the Chief Justice response: This office cannot provide legal advice respecting the application of the order made under the Emergency Management and Civil Protection Act. (See O.Reg 73/20 at <https://www.ontario.ca/laws/regulation/200073>.)

### **LAW SOCIETY ISSUES**



1. 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. Does the LSO have guidance about whether the ABM slips will be sufficient at this time?

- LSO Response March 31: You can find the answer on our website, Corporate Statement regarding COVID 19 Response, FAQs regarding bookkeeping during COVID 19, specifically:

“Some local banks are requiring that banking take place through an ABM, not a teller.

Are ABM slips sufficient to comply with lawyers and paralegals record keeping obligations?”

“For deposits, yes. If lawyers or paralegals’ financial institutions offers ABM access to their trust accounts, it may be used for deposits only. If a lawyer or paralegal chooses to use this deposit method, they should:

- Ensure that the bank card is encoded for deposit only.
- Read the agreement carefully and make sure they understand the risks involved in using this method of deposit. In some agreements the depositor is responsible for the funds until they are received by a bank representative.
- Always print a receipt of an ABM deposit, write the source of the funds and the client reference on the receipt, and keep the receipts in date order with your deposit slips.

2. 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. Should lawyers just use an undertaking to provide these after these emergency measures have passed (ie: indefinitely until told otherwise)?

- LSO Response March 31: [FAQs have been posted on the use of technology](#) to facilitate virtual commissioning and witnessing, electronic signatures and best practices for serving clients remotely. These FAQs have been developed on the basis that the governing legislation does not require either a “wet” signature or one person (e.g. the affiant) to be in the physical presence of the other (e.g. the

commissioner). In the absence of specific statutory requirements, the Law Society is of the view that some flexibility is appropriate during the COVID 19 crisis. Where technology such as video conferencing is not available, other methods may be acceptable, provided:

- The licensee takes all appropriate steps to manage risks such as fraud, identify theft and undue influence;
- The licensee adopts measures to ensure that the clients:
  - Consent to the remote process
  - Understand the documents they are signing
  - Are signing without duress and undue influence
  - Will receive copies of the documents executed remotely
- The licensee takes appropriate steps to protect privilege and confidentiality
- The licensee maintains detailed records

Suggestions in the Law Society's FAQs with respect to virtual transactions can sometimes be adapted to other methods of completing transactions remotely.

3. Asking Counsel and clients to adhere to electronic document transfers, without paper being sent by mail.
  - LSO Response March 31: Although the Law Society is supporting the virtual conduct of business through its FAQs, there may be circumstances in which it would be preferable or even necessary to receive paper copies. Accordingly, this matter should be left to the individual judgment of each licensee.
4. Can the LSO and/or the Courts provide information on specific procedures for virtual commissioning, as the BC Courts have done?
  - LSO Response March 31: The Law Society is working to prepare a checklist of best practices for virtual commissioning. However, lawyers and paralegals should review their court or tribunal's website for practice directions about whether requirements for affidavits are being modified in the context of COVID-19. For links to Ontario's court and tribunal websites, see the Ontario Bar Association COVID-19 Action Plan pages: Status – Courts: <https://www.oba.org/COVID-19->

[Action-Plan/Status-of-Ontario-Courts](#) or Status – Tribunals:  
<https://www.oba.org/COVID-19-Action-Plan/Status-Tribunals>

5. What plan is the LSO putting in place for the June licensing examinations to proceed? Students are already raising concerns about needing to prepare for examinations and have them cancelled at the last minute.
  - LSO Response March 31: At this time, the June examinations remain as scheduled, however, the Law Society is actively monitoring the situation in light of health and safety considerations. We are aware of the students' concerns and will do everything possible to inform students of any rescheduling of the examinations well in advance of the June date?
  
6. What provisions are the LSO putting in place with respect to articling students who are being laid off?
  - LSO Response March 31: The Law Society encourages articling principals and candidates to work together to maintain positions wherever possible, recognizing that while these are challenging circumstances for all participants, candidates are in a particularly vulnerable position. Under the Law Society's existing processes, candidates whose articling placements end prematurely are able to apply for an abridgment based on compassionate grounds. Articling principals and candidates should also consult the Law Society's licensing process policies which address administrative obligations related to the termination of articles
  
7. When is the LSO rescheduling the June licensing examinations that were cancelled?
  - LSO Communication May 5: In response to the impacts of COVID-19, the Law Society of Ontario (LSO) has informed licensing candidates that the Solicitor examination will move to an online delivery model, beginning in early June. It is anticipated that the June Barrister and Solicitor examinations and the July Paralegal examination, which has been cancelled, will also move to online delivery over the summer months. This will allow the licensing process to move forward while protecting the health of candidates and employees while social distancing requirements remain in place. Information will be provided to candidates as arrangements are confirmed.

