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COVID-19 and the Courts: What You Need to Know

Authors: [Chantelle Cseh](#) and [Sarah Gorguos](#)

Across the globe, courts are rapidly adapting their practices and procedures in response to the COVID-19 pandemic. In a number of jurisdictions, hearings have been adjourned; procedures and timelines for filings have been amended; and limitation periods have been suspended. We have summarized below the need-to-know information about civil proceedings in a number of courts and tribunals in Ontario and Québec, as well as the Federal Courts and the Supreme Court of Canada. We will continue to monitor and update our clients and community members on applicable practices as events unfold.

Filings and Procedural Deadlines

Ontario Superior Court of Justice

- **Hearings.** Civil matters scheduled to be heard on or after March 17, 2020, are adjourned until July 6, 2020, at the earliest. Jury selection and jury trials are suspended until September 2020 at the earliest. In the meantime, the Court will remotely hear urgent and time-sensitive matters when immediate and significant financial repercussions may result if there is no hearing, including insolvency matters.
 - Since April 6, 2020, remote hearings have also included the following civil matters in most court locations:
 - Pre-Trial Conferences – Pre-trial conferences that were cancelled between March 16 and May 31, 2020, due to the court closure can be rescheduled at the request of the parties. The objective of any rescheduled pre-trial conferences will be settling the action.
 - Motions or applications to approve settlements where a party is under a disability, in writing.
 - Consent motions, in writing.
 - Each region's Notice may include other civil matters that may be heard in that region. The process to schedule a civil hearing is set out in each region's Notice, all of which can be found on the [Ontario Superior Court of Justice's website](#).
 - In Toronto, the Court is hearing remote case management conferences for class actions and precertification, certification and post-certification motions approved at such conferences.
 - Hearings may be conducted in writing, by teleconference or by videoconference unless the provincial Ministry of the Attorney General determines that a physical hearing is necessary.
- **Filings.** The Court will accept filings by email at the specific email addresses indicated in a region's Notice to the Profession only for urgent matters or those identified in a region's Notice to the Profession. Any materials filed via email must be filed in paper format, with the requisite filing fee, at the court counter when regular court operations resume.
 - Parties should file Claims or Statements of Claims through the [Civil Claims Online Portal](#). For matters that are not "urgent" or have not been identified to be dealt with in a region's Notice to Profession, counsel and parties are discouraged from physically attending courthouses to file documents in person.

- Time periods for steps in civil proceedings as established by statute, regulation, rule, bylaw or order of the Government of Ontario have been suspended.
- More generally, the Court has indicated that it will relieve compliance with procedural rules, regulations and statutes as necessary to manage matters before it during the emergency.

Ontario Superior Court of Justice – Commercial List

- **Hearings.** All regular, non-urgent matters are adjourned to after June 1, 2020. The Commercial List is remotely hearing urgent matters, as well as select motions and applications, case management conferences, pre-trial conferences and judicial settlement conferences.
- **Filings.** Commercial List judges are accepting materials via email. Filing hard copies is unnecessary provided the Commercial List office is copied on the email.

Ontario Superior Court of Justice – Divisional Court

- **Hearings.** All scheduled matters are suspended until further notice. The Divisional Court is remotely hearing urgent matters, requests for judicial review related to COVID-19, and non-urgent matters scheduled with the Court via email.
- **Filings.** All materials must be filed via email. Electronic documents are required for all hearings, even if parties have previously filed paper documents. Paper copies of all documents filed electronically will be required once ordinary court operations resume.

Ontario Court of Appeal

- **Hearings.** Appeals that were scheduled to be heard between March 17 and April 3, 2020, have been adjourned. The Court will contact parties with matters scheduled before it to determine whether they will proceed by remote hearing or in writing. Parties whose matters have been adjourned or are ready to be heard can request an expedited hearing.
- **Filings.** All documents must be filed either by email or through delivery of a USB key by mail or courier.

Superior Court of Québec

- **Hearings.** Hearings are adjourned, except for urgent matters.
- **Filings.** Filings can be mailed. Only urgent filings will be accepted at the Court office counter.

Québec Court of Appeal

- **Hearings.** Appeals scheduled to be heard between March 17 and May 15, 2020, are adjourned. The Court is currently hearing motions presentable to a single judge by videoconference. On May 25, 2020, the Court will begin hearing appeals and motions presentable before a panel, also by videoconference. The Court will contact parties whose appeals and motions will be heard remotely. Parties with urgent matters must apply to the registry in writing for special consideration. Parties may also request to have their appeal decided without a hearing.
- **Filings.** Only urgent filings will be accepted at the Court office counter. On April 9, 2020, the Court launched the Digital Office of the Court of Appeal, which is now accepting certain filings in civil matters.

Federal Court

- **Hearings.** Matters scheduled to be heard between March 17 and June 28, 2020 are adjourned. The Court is hearing urgent or exceptional matters, case management hearings, certain hearings by request, and select matters at the Court's initiative. Such

matters will be heard by telephone or video conference, unless the Court determines that an in-person hearing is required. The Court is also adjudicating certain motions and applications in writing.

- **Timelines.** The running of all timelines under Orders and Directions of the Court made prior to March 18, 2020, as well as under the *Federal Courts Rules*, subsection 18.1(2) of the *Federal Courts Act* and paragraph 72(2)(c) of the *Immigration and Refugee Protection Act* as well as timelines under the *Federal Courts Citizenship, Immigration and Refugee Protection Rules* and s. 22.1 of the *Citizenship Act* are suspended between March 17 and May 29, 2020.
 - Timelines for the filing of documents and the taking of other procedural steps will be extended by 14 days following the end of the Suspension Period on May 29, 2020 to June 12, 2020, except for matters under case management.
 - Deadlines for commencing matters under other statutes apply and cannot be extended or varied unless permitted under the terms of those statutes.
- **Filings.** Filings should be made electronically through the Court's e-filing portal.

Federal Court of Appeal

- **Hearings.** Most matters scheduled to be heard between March 16 and May 15, 2020 are adjourned. The Court is hearing select matters as described below.
 - On April 15, 2020, the Court of Appeal announced that it will begin hearing select cases. It also released procedures for determining both the cases it will hear and the method for hearing them.
 - Selected cases in which the parties have completed all necessary procedural steps for a hearing will be determined: (i) in writing; (ii) by teleconference or video conference; or, eventually, (iii) by an in-person hearing. The Court has indicated that in-person hearings are not available yet.
 - Selected cases that are not ready to be determined will be directed to move forward. Parties will receive a direction notifying them that normal deadlines will begin to apply to their matter as of a particular date. Once the parties complete any remaining procedural steps for the case to be ready for hearing, the Court will decide whether it should be heard and, if so, the mode of hearing among the options listed above.
 - Cases that are not selected to progress will remain adjourned. As before, the Court will consider any party's request for an urgent hearing as well as requests on consent for a case to be heard remotely.
- **Timelines.** The running of all timelines is suspended between March 16 and May 15, 2020, except for select matters as outlined above. Deadlines for commencing appeals or applications under the *Federal Courts Act* may be extended by request. Deadlines for commencing matters under other statutes apply and cannot be extended or varied unless permitted under the terms of those statutes.
- **Filings.** Parties are encouraged to file via email. Filings at locations designated for document drop-off at all Registry counters is permitted, but Registry staff will no longer be available to accept in-person filing of paper documents.

Supreme Court of Canada

- **Hearings.** The Court has rescheduled hearings that were scheduled for March, April and May 2020. Select appeals will be heard by videoconference in June and September, 2020, as [announced by the Court](#). All other hearings postponed due to COVID-19 will be heard during the Court's regular fall session, starting October 5, 2020.
- **Timelines.** Deadlines imposed by the Rules of the Supreme Court of Canada are suspended until further notice. Other deadlines prescribed by statute remain in force.

- **Filings.** Filings should be made by email, with original paper copies to be filed subsequently.

Tax Court of Canada

- **Hearings.** All matters scheduled to be heard between March 17 and May 29, 2020, are cancelled.
- **Filings.** The Court's registry offices are closed until further notice.

Ontario Securities Commission

- **Hearings.** The OSC will not be holding in-person hearings until further notice. The Office of the Secretary will contact parties with hearings scheduled up to and including August 31, 2020, to determine if a hearing may proceed remotely should an in-person hearing still not be possible on the scheduled hearing date.
- **Filings.** The Commission has not announced changes to its filing practices, but generally accepts electronic filings.

Autorité des marchés financiers and Tribunal administratif des marchés financiers (AMF Tribunal)

- **Hearings.** In-person hearings are adjourned, except for urgent matters, until the declaration of the public health emergency period expires.
- **Filings.** The Tribunal is accepting electronic submissions.

Limitation Periods

As of March 15, 2020, all prescription periods and procedural time periods in civil matters are suspended in Québec until the declaration of the public health emergency period expires. On March 21, 2020, certain time limits for administrative justice proceedings were suspended. On March 24, 2020, certain time limits for penal proceedings were suspended.

As of March 16, 2020, all limitation periods in Ontario are suspended until further notice. Further, any timelines created by the Government of Ontario requiring steps to be taken in a current or intended proceeding have been suspended, subject to the ultimate discretion of the court, tribunal or other decision-maker responsible for the proceeding.

Commissioning of Affidavits

Until further notice, the Law Society of Ontario has advised that lawyers are not required to be in the affiant's physical presence to commission an affidavit. Alternative means of commissioning, such as by video, will be permitted. Reasonable and appropriate measures must still be taken to confirm the identity of the affiant.

The Québec Ministry of Justice has advised that sworn declarations can be made remotely provided that certain form and identification requirements are met.

Remote Hearings and Discoveries

Davies remains committed to providing exceptional client service, and we are equipped to handle your urgent and other litigation matters during this time of disruption. Our team is positioned and prepared to operate remotely for both day-to-day matters as well as hearings, discoveries, witness preparation and other meetings using WebEx, Zoom and other technologies.

Key Contacts: [Chantelle Cseh](#), [Matthew Milne-Smith](#) and [Nick Rodrigo](#)

This information and comments herein are for the general information of the reader and are not intended as advice or opinions to be relied upon in relation to any particular circumstances. For particular applications of the law to specific situations the reader should seek professional advice.