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

Author: Chantelle Cseh

Across the globe, courts have rapidly adapted their practices and procedures in response to the COVID-19 pandemic. As waves of infections have spread throughout Canada, its courts have fluctuated between resuming activities and easing restrictions, then scaling back services and reintroducing restrictions, especially in light of outbreaks relating to the Omicron variant. In most jurisdictions, hearings that were adjourned have now resumed; limitation periods that were previously suspended have restarted; and procedures and timelines for filings have continued on an amended basis. However, the courts have modified their normal operations substantially, and continue to update and adjust them on an ongoing basis. 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

- **In-person hearings.** All civil matters will proceed virtually until February 7, 2022 at the earliest. The Court may direct that select, urgent matters proceed as hybrid hearings.
  - As of January 1, 2021, a party seeking a hearing or other step in a proceeding that permits or requires the parties to attend must propose whether the hearing should be heard (1) in person; (2) by telephone conference; or (3) by video conference.
    - Parties may object to the proposed method of hearing by delivering a notice of objection (Form 1A). If a party delivers such an objection, the Court will determine the method of hearing at a case conference.
    - Unreasonable objections to proceeding by telephone or video conference may be considered in awarding costs.
- **Remote hearings.** The Court has requested that parties abide by its Best Practices and Etiquette for Remote Hearings.
  - As of January 1, 2021, all case conferences will be held by telephone conference unless the court specifies otherwise.
  - Other matters that may be heard remotely include the following:
    - unopposed motions and applications;
    - opposed short motions and applications;
    - long motions and applications;
    - requests for chambers appointments and case conferences;
    - class action case management conferences as well as pre-certification, certification and post-certification motions.
- **CaseLines.** CaseLines is available for civil, family and criminal matters in Toronto, except for child protection cases or family cases subject to a sealing order. Parties will be notified by email that CaseLines will be used in their hearings. The Court has announced that it expects all judicial regions in Ontario will be using CaseLines by the end of 2021.

- **Jury.** The Court has announced that it will not commence any new jury selection in any court location until February 7, 2022. Presiding judges will determine whether any in-progress jury trials will continue.
- **Filings.** The Court will accept filings via 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 then 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 the Profession, counsel and parties are discouraged from physically attending courthouses to file documents in person.
  - Effective January 11, 2021, documents submitted electronically to the Court must follow a standard document naming protocol.
  - Time periods for steps in civil proceedings as established by statute, regulation, rule, bylaw or order of the Government of Ontario were suspended between March 16 and July 16, 2020.
  - The Court has relaxed procedures related to commissioning affidavits. As of January 1, 2021, remotely commissioned affidavits are generally acceptable in Ontario. If it is not possible to commission an affidavit by video, an unsworn affidavit may be delivered to the Court, but the deponent must be able to participate in any telephone or videoconference hearing to swear or affirm the affidavit.
  - 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 matters are proceeding virtually. Unless the Commercial List Office advises parties otherwise, matters scheduled on the Commercial List are generally proceeding as planned.
- The procedures set out in the Notice announced on March 16, 2020, remain in place.
- **Filings.** Documents must be filed with the court through the Civil Submissions Online portal (except for bankruptcy matters to be heard by a judge, which must be emailed to Toronto.Bankruptcy.Filings@ontario.ca).
- **CaseLines.** Upon receiving an email invitation from CaseLines, parties will upload documents into the CaseLines document sharing platform in accordance with the Supplementary Notice to the Profession and Litigants in Civil and Family Matters Including Electronic Filings and Document Sharing (CaseLines Pilot) and rule 4.05.3 of the Rules of Civil Procedure.

Ontario Superior Court of Justice – Divisional Court

- **Hearings.** The Court is hearing all matters remotely by teleconference or videoconference.
- **CaseLines.** CaseLines is now available for Divisional Court hearings. Parties will be notified by email that CaseLines will be used in their hearings.
- **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.
  - The Court's February 18, 2021, Notice to the Profession details submission guidelines, naming conventions and deadlines for all materials.

Ontario Court of Appeal

- **Hearings.** Until further notice, all appeal hearings will proceed virtually over Zoom.
  - In-person attendance will be limited to counsel and self-represented litigants. All others may observe over Zoom.
  - Motions before a single judge will continue to be heard remotely until further notice.
- **Filings.** All documents that are required for the hearing of any matter must be filed electronically. If hardcopy materials have already been filed, parties must file electronic copies as set out in the Consolidated Practice Direction Regarding Proceedings in the Court of Appeal During the COVID-19 Pandemic dated March 15, 2021. Among other things, the documents containing text must be filed in text-searchable PDF and must be filed electronically according to the Guidelines for Filing Electronic Documents at the Court of Appeal for Ontario.
  - Public counter services are not available.
- **Affidavits.** In the event that an affidavit of service cannot be commissioned due to COVID-19, the affidavit must still be completed, signed and e-filed, accompanied by an explanation as to why the acknowledgment could not be obtained.

Superior Court of Québec

- **Hearings.** Until further notice, any proceedings in civil matters scheduled to be heard at the Montréal Courthouse will be held virtually, unless the hearing involves testimony evidence or is otherwise authorized to proceed in person. Prior authorization from a judge is required in order to participate in an in-person hearing, except for applications for authorization of a care order. Further information regarding practices in the Court's various districts can be found here (in French).
  - As of June 14, 2021, if physical distancing can be respected or there are plexiglass barriers in place, wearing masks at in-person hearings is not obligatory in courtrooms in regions under green and yellow alert levels.
    - Mask-wearing continues to be obligatory in courtrooms in regions under orange and red alert levels, unless otherwise authorized by the Court.
    - More generally, mask-wearing remains obligatory in all common areas at courthouses in all regions.
  - As of March 15, 2021, the Request for a Hearing Form (available on the Court's website) will remain mandatory for uncontested claims and become optional for contested claims.
  - Since September 2020, the Montréal and Québec Districts have resumed scheduled hearings on the merits. Additionally, the Court is hearing:
    - urgent matters and certain uncontested requests,
    - settlement conferences and conciliation sessions; and
    - case management requests in civil, commercial and family matters, including in cases under special management.
- **Filings.** Filings can be mailed. Only urgent filings will be accepted at the Court office counter. Urgent requests for hearings in Commercial Chamber matters and any related documents must be submitted by email.
  - Documents that will be used in any matter proceeding on its merits before the Court's Civil Chamber in the Montréal Division must be delivered to the Bailiff's office, at the judge's attention, 15 days prior to the hearing.

Québec Court of Appeal

- **Hearings.** In-person hearings have resumed, at the choice of the parties. The Court office will contact the parties in order to inform them of the applicable arrangements for such purposes.
  - The Court allows a maximum of two pleaders per party or group of parties to attend an in-person hearing.
  - Appeals scheduled to be heard between March 17 and May 15, 2020, were adjourned.
- **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.
  - Documents filed at in-person hearings must be accompanied by electronic versions on a USB key.

Federal Court

- **Hearings.** The Court continues to conduct its regular operations by video conference, teleconference, and in writing. Otherwise, the Court's facilities in Ontario and Québec are closed to the public until further notice.
  - Matters scheduled to be heard between March 17 and July 10, 2020, were adjourned. The Court did not hold in-person hearings until July 13, 2020, and the Court did not hold general sittings or other hearings in Ontario and Québec before July 27, 2020.
- **Timelines.** The Court announced the resumption of the previously suspended timelines, beginning on June 29, 2020, in Ontario, Québec and the three territories. The timelines also began to run for the four provinces of Western Canada and the four provinces of Atlantic Canada, starting on June 15, 2020.
  - Previously, the Court had suspended the running of all timelines under Orders and Directions of the Court made prior to March 18, 2020, and 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 section 22.1 of the *Citizenship Act*.
- **Filings.** Filings should be made electronically through the Court's e-filing portal.
  - Parties in Ontario and Québec who are unable to file documents electronically may contact the Court's Registry to make arrangements to file physical documents.
  - In the rest of Canada, as of January 18, 2021, Registry counters will no longer accept documents until further notice. Drop boxes are available for physical documents instead.

Federal Court of Appeal

- **Hearings.** The Court will be conducting all hearings remotely until public health advice allows for in-person hearings.
  - Since June 22, 2020, the Court has been hearing select matters as posted on the Court's website every subsequent Monday. The Suspension Period will end on the first Monday after being added to the selected files list. A party may bring a motion to be either added or removed from the selected file list.
- **Timelines.**
  - Regular filing deadlines have resumed for all files as of June 28, 2021.
  - In the April 21, 2021, Notice to the Profession, the Court restored the Suspension Period for all new matters, as well as certain matters delisted from the selected files list. The Suspension Period applies to all time limits under the *Federal Courts Rules* as well

as time limits set out in orders and directions of the Court. Timelines set out in the *Federal Courts Act* or other legislation continue to apply.

  - Previously, in the Notice to the Profession on June 11, 2020, the Court announced that the running of timelines under the Federal Court Rules, first announced in March 2020, had been extended indefinitely for all files, except for select matters as outlined above. Time limits set out in federal legislation (other than the Rules) pursuant to which proceedings can be instituted in the Federal Court of Appeal were suspended for the period that starts on March 13, 2020, and that ends on September 13, 2020. The Court temporarily restored the suspension between April 21 and June 21, 2021.

- **Filings.** All documents should be filed by email. Parties submitting files exceeding 25 megabytes or confidential documents must contact the Court's Registry by email for specialized submission instructions.
  - In addition to electronic copies, one paper copy of appeal books and application records must be submitted no later than 5 business days after the date on which the Requisition for Hearing is filed.

Supreme Court of Canada

- **Hearings.** The Court has adopted hybrid hearings whereby counsel appear via videoconference while the Justices are present in the Courtroom.
- **Timelines.** The suspension period for deadlines imposed by the Rules of the Supreme Court of Canada expired at the end of the day on September 13, 2020.
- **Filings.** Filings should be made via email, with original paper copies to be filed subsequently.
  - After September 13, 2020, parties will be required to file paper copies of their appeal factum and any volume of the appeal record containing Part I.

Tax Court of Canada

- **Hearings.** The Court continues to conduct virtual hearings and conference calls.
  - All in-person Court sittings scheduled between August 16 and September 10, 2021, were cancelled.
  - The Court has introduced a fast-track settlement conference process to offer parties an additional avenue for resolving their appeals and alleviating the backlog caused by the COVID-19 pandemic.
- **Filings.** The Court and its Registry offices remain open, with the exception of the Hamilton office.
  - All Notices of Appeal filed during the period beginning on March 13 and ending on September 13, 2020, will be included in the suspension of time limits.
  - The period beginning on March 13 and ending on September 13, 2020, will be excluded from the computation of time.
  - The Court has indicated that it will accept remotely commissioned affidavits until December 31, 2021, with the possibility that this practice may be extended.

Ontario Securities Commission

- **Hearings.** The OSC will not be holding in-person hearings until further notice. Hearings are being held via videoconference, teleconference, or in writing.
- **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.
  - In its 2019-2020 Enforcement Report published on May 28, 2020, the AMF Tribunal stated it will step up enforcement efforts with respect to emerging risks, especially the potential increased risk of fraud resulting from the COVID-19 pandemic.
- **Filings.** The Tribunal is accepting electronic submissions.

Securities Regulators

The International Organization of Securities Commissions (IOSCO) published a statement on May 29, 2020, with guidance on providing investors with high-quality, reliable, timely and transparent financial information during COVID-19.

As a result of COVID-19, Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Saskatchewan and Yukon's securities regulatory authorities published temporary blanket relief from certain financial statement and information delivery requirements for registrants and unregistered capital markets participants.

- The blanket relief provided a 60-day extension for periodic filings normally required to be made between June 2 and September 30, 2020, by registrants and, in Ontario, unregistered capital markets participants that rely upon certain registration exemptions.
- If prior relief had been sought to extend deadlines for any financial statement or information delivery requirements occurring on or before June 1, 2020, it could not be used to seek a further extension.

Limitation Periods

On July 16, 2020, the Chief Justice of the Québec Court of Appeal and the Minister of Justice and Attorney General of Québec announced the lifting of the suspension of time limits in civil and criminal matters beginning September 1, 2020. This announcement effectively replaced previous announcements made on March 15 and on March 23, 2020, which suspended the time limits for civil and criminal matters due to the public health emergency.

The Government of Ontario has announced that all limitation and procedural time periods that were previously suspended have resumed running as of Monday, September 14, 2020. On March 16, 2020, all limitation periods in Ontario had been suspended until further notice. Further, any timelines created by the Government of Ontario requiring steps to be taken in a current or intended proceeding were suspended, subject to the ultimate discretion of the court, tribunal or other decision-maker responsible for the proceeding.

Commissioning of Affidavits

As of January 1, 2021, remotely commissioned affidavits are generally acceptable in Ontario. Prior to this official amendment to the *Rules of Civil Procedure*, the Law Society of Ontario had advised that lawyers were not required to be in the affiant's physical presence to commission an affidavit, until further notice. Alternative means of commissioning, such as by video, were permitted provided reasonable and appropriate measures were 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.

Reopening of the Courthouses

In Decree 689-2020 adopted on June 25, 2020, the Québec government reinstated free access to courthouses across the province. Lawyers are asked to meet and discuss with their clients outside the courthouse, clear the corridors and continue to maintain social distancing.

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.

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