

# KEEPING CURRENT

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## Ontario's courts are gradually getting back to business

By Gavin Tighe, Stephen Thiele, and Delila Bikic

Founded in the 1920s, Gardiner Roberts LLP has grown to become a strategically placed mid-sized business law firm with a diverse client base which includes several of Canada's largest banks, public companies including mining, high tech and software companies, real estate enterprises, lenders and investors.

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The COVID-19 pandemic has had a significant impact on our justice system. With the announcement of the state of emergency back in March of this year, courthouses were significantly shutdown. Over-the-counter services were suspended and courts were required to prioritize the cases that would be heard. In general, only urgent and time-sensitive matters were being heard.

As Ontario has moved to stage two of its economic re-opening plan, courthouses are now gradually re-opening for business too under a three-phase plan developed by the Ministry of the Attorney General.

The first phase of the province's plan for a gradual re-opening of its court system came into effect on July 6, 2020.

149 courtrooms in both Superior Court of Justice and Ontario Court of Justice across 44 locations have reopened their doors.

More courtrooms are expected to re-open in September, with the goal of the Ministry of the Attorney General to have the full roster resume operations by November 1, 2020.

Although this is a welcome sign for Ontario's path to recovery, the current gradual re-opening of the courts comes with restrictions.

Courts are required to abide by strict health and safety protocols to protect staff and the public from the risk of COVID-19 transmission. For instance:

- Plexiglass barriers have been installed in courtrooms, interview rooms, intake rooms, and public counters to ensure physical distancing;
- All visitors will be required to wear a face covering and will be screened for COVID-19 symptoms at courthouse entrances;
- Frequent cleaning will be taking place and access to hand sanitizer will be increased;
- Maximum occupancy levels in courtrooms will be decreased and seats will be marked to allow for physical distancing; and
- Hours of operation for over-the-counter services will be limited, but reviewed and adjusted to ensure adequate access.

Further information on the precautionary measures for resuming court operations are outlined in the [Ministry of the Attorney General's guidebook](#).

In developing its gradual justice system re-opening plan, the Ministry of the Attorney General worked with both public health experts and justice sector partners. The Ministry has emphasized that the goal is to ensure that justice services remain responsive, accessible, and resilient during this time. At the same time, however, the Ministry's main priority remains preserving the health and safety of Ontarians and all court participants.

During the COVID-19 pandemic, courts across the province have modified practices and procedures to keep the justice system moving. For example, in-person proceedings have been replaced by virtual hearings, and timelines and procedures for filings have been adjusted, including the development of procedures to permit materials to be filed electronically.

With the re-opening of the courts, some of the new practices that have been adopted over the past four months will continue, but some practices are also being changed.

Below we have summarized, as it impacts civil proceedings, the most up-to-date practical information for the gradual phased-in return of proceedings at the Ontario Court of Appeal, and the Ontario Superior Court of Justice.

With respect to the Ontario Court of Justice, the reader is directed to review the COVID-19 Notices and Updates which can be found at [www.ontariocourts.ca/ocj/](http://www.ontariocourts.ca/ocj/).

### **Ontario Court of Appeal**

With respect to civil proceedings in the Ontario

Court of Appeal, a practice direction dated June 25, 2020 contains some significant time period announcements.

For almost all civil matters in the Court of Appeal, the period from March 16, 2020 to July 15, 2020 will not be included in calculating the time prescribed to take any step in respect of any civil proceeding therein. Some of the exceptions to this suspension in the calculation of time are:

- urgent family law appeals;
- civil proceedings in which a notice of hearing was sent and which proceedings were not adjourned before or during the extension period; and
- civil proceedings that were being case managed during the extension period.

For a more complete list of the exceptions to the suspension in the calculation of the time, please consult paragraph 3 of the "[Practice Direction concerning the Reinstatement of Times Prescribed in Civil Proceedings in the Court of Appeal, June 25, 2020](#)."

As well, commencing July 16, 2020, the Court of Appeal has announced that the times prescribed to take any step in any civil proceeding therein will be reinstated.

Lastly, as of July 6, 2020, this Court will be using Zoom for remote hearings. The process for participants in Zoom appearances and best practices, among other things, can be found in the [Notice Regarding Videoconference Appearance Technology \(Zoom\) \(July 6, 2020\)](#).

For practitioners, gowning will not be required for Zoom hearings.

### **Ontario Superior Court of Justice – Divisional Court**



With respect to the Divisional Court, in person hearings have not resumed. Rather this court will continue to only hear matters remotely.

The court's schedule of cases as of the suspension of ordinary operations has been entirely suspended until September 4, 2020 and only matters set out in this court's Notice to the Profession dated June 29, 2020 (the "**Divisional Court Notice**") will be heard.

For parties wishing to schedule a matter, the court should be contacted via email at [scj-csj.divcourtmail@ontario.ca](mailto:scj-csj.divcourtmail@ontario.ca). However, matters will be scheduled at the discretion of a judge or designate.

Although the Divisional Court is able to hear more than urgent matters, this Court is still providing scheduling priority to urgent and time-sensitive matters.

We note as well that during the current suspension of operations, no documents will be issued by this Court or are to be filed except in accordance with the Divisional Court Notice or in accordance with a direction from a Divisional Court Administrative Judge or a designate. As an example, originating processes (notices of appeal, applications for judicial review) will not be issued by or accepted by the court unless they have been authorized.

Electronic documents are required for all hearings, even if parties have previously filed paper documents.

Where possible, all documents should be uploaded electronically by the parties to a drop box with a link and instructions on how to access the documents delivered to the court by email.

Under the Divisional Court Notice, parties are required, at least one day before a hearing, to:

(a) File a counsel sheet outlining the name(s) of counsel and the estimated time for counsel's submissions; and

(b) Advise the court whether they have reached agreement on costs or whether they will file costs outlines by email.

Once regular court operations resume, parties will be required to file paper copies of documents that might have been provided to the court electronically.

For motions in writing for leave to appeal, this Court will continue to accept requests that the Court proceed with such motions. The request must include information detailed in paragraph D.2.2 of the Divisional Court Notice.

### **Ontario Superior Court of Justice**

At the Ontario Superior Court of Justice, the Phase One re-opening saw 56 courtrooms being made available for use for in-person hearings on July 6, 2020. The list of courthouses with available courtrooms can be found [here](#).

However, with respect to civil matters, scheduling of in-person trials and hearings will be prioritized based on whether a trial or other hearing is urgent or whether a trial or hearing was scheduled to be heard during the suspension of the court's regular operations. But jury selection and jury trials are being deferred until September 2020 at the earliest.

For matters that will be heard in person, we note the following:

- Litigants and counsel are required to attend court at least 30 minutes in advance of the hearing due to extra screening requirements; and
- The requirement to gown remains suspended, until further notice. Counsel and parties may continue to wear business attire.

In addition to in-person hearings, this Court will continue to hear matters remotely.

The process to schedule a civil hearing is outlined in each region's Notice to the Profession found on the Ontario Superior Court of Justice's website.

In Toronto, the list of civil matters that can be heard in court during Phase one is found in part C.01 of the "Notice to Profession – Toronto".

For the sake of convenience these matters are pre-trial conferences and long motions and applications. These matters can be heard remotely as well.

For long motions and applications to a judge, those which have been scheduled for July and August will proceed on the scheduled date. For those which were adjourned between March 15, 2020 and June 26, 2020, they will be heard during the summer. Lawyers will be required to confirm that their motion will still be proceeding.

For long motions and applications to a master that were adjourned between March 15, 2020 and June 26, 2020, they will be heard in July and August, if possible. New long motions can be scheduled by via email.

The Superior Court of Justice in Toronto will also be hearing motions and applications made without notice, on consent of all parties and are confirmed as unopposed and opposed short motions and applications. These matters will be heard in writing or will be subject to review in writing.

For all hearings, whether heard in person or remotely, lawyers can wear business attire.

For long motions and applications, written materials are to be uploaded to an online documents storage folder and are to be named in accordance with Naming Rules.

For a complete list of Civil Matters and other Matters that are being dealt with by the Ontario Superior Court of Justice in Toronto, including commercial and estate list matters, Bankruptcy, Class Actions and Actions governed by the *Construction Act* and for all other pertinent information, please, again, see the "Notice to Profession – Toronto".

Additional information in connection with the notices and directions of the Ontario Court of Appeal and the Ontario Superior Court of Justice can be found on their respective websites.

### **Contact us**

If you have a litigation matter and are in need of legal advice, please do not hesitate to contact the Chair of our dispute resolution group, **Gavin Tighe**, at 416.865.6636 or via email at [gjtighe@grllp.com](mailto:gjtighe@grllp.com).

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