

LITIGATION DURING THE COVID-19 PANDEMIC: IS YOUR MATTER URGENT?

by [Alexander Evangelista](#)

On March 17, 2020, the Ontario Superior Court began restricting the matters that would be heard amidst COVID-19 concerns. For civil and commercial matters in Toronto, the Court will only be hearing matters related to outstanding warrants or urgent and time sensitive motions that pose a risk of immediate and significant financial repercussions if they are not dealt with. This leaves an important question unanswered: what is considered urgent?

What is Urgent?

Since the Superior Court implemented its restrictions, it has released decisions clarifying what is considered urgent during the COVID-19 pandemic.

In *Oppong v Desoro Holdings Inc.* 2020 ONSC 1689, a commercial tenant brought an application for relief from forfeiture of its lease by the respondent landlord. Justice Meyers scheduled the application for the following day, considering the matter urgent since the applicant had no property. The application was ultimately further adjourned, but due to concerns with the landlord's current tenant being absent from the hearing, rather than due to any concerns with COVID-19 (see: 2020 ONSC 1697).

In *Morris v Onca* 2020 ONSC 1690, a judgment creditor brought a motion to prevent judgment debtors from ignoring court orders and to order their repayment of funds obtained through fraud. The creditor was at risk of defaulting on her real estate transaction due to a lack of funds. She also provided evidence that the debtors were moving assets abroad. The Court considered the matter urgent and time sensitive, due to the creditor's impending need for funds, and scheduled the motion for the following week.

In *Hrvoic v Hrvoic* 2020 ONSC 1711, the respondent brought a motion for a stay of proceedings pending the hearing of her motion for leave to appeal the terms of an adjournment of an application. The underlying application was for an order requiring the respondent to sell her shares in a family business. When the application was adjourned, the respondent was ordered to repay \$500,000 of the \$600,000 that she had drawn from a line of credit. Although the application was not urgent, Justice Meyers noted that both parties had made the motion urgent through their actions: the applicant by terminating the respondent's employment in the business and the respondent by withdrawing funds and refusing to repay them. As such, the motion was scheduled.



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How Should Parties Serve and File Materials?

To address concerns with COVID-19, Justice Meyers has created a useful blueprint for the service and filing of materials, which he applied in both *Oppong* and *Morris*, specifying that:

1. Service of materials shall be effective electronically;
2. Hearings shall be conducted by telephone conference, with the option for videoconference;
3. Materials shall be filed by email as attachments to the Motions Coordinator in searchable PDF format, with hyperlinks in the factums;
4. Parties shall not send books of authorities or other statutory materials; and
5. Once courthouses have re-opened to the public, parties shall file physical copies of the materials previously filed electronically.

Although it is unclear how long the courts will be impacted by the COVID-19 pandemic, we now have some guidance on how the judicial system will continue to operate during this time. Fogler, Rubinoff LLP will continue to closely watch further developments on these operations.

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