

# Current Status of Court Access for Insolvency and Bankruptcy Matters in Light of COVID-19

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The global COVID-19 pandemic has resulted in widespread closures and suspension of operations, including within the justice system in Ontario. Ontario courts have issued a number of notices detailing the changes to regular court operations. In an effort to simplify the complicated situation already facing insolvency practitioners and their clients, we have summarized the current status of court operations germane to bankruptcy and insolvency matters.

## Superior Court of Justice

Effective March 17, 2020, the Superior Court of Justice (“**SCJ**”) suspended all regular operations until further notice. All civil matters scheduled to be heard after Tuesday, March 17, 2020 are adjourned, pending the establishment of a Return to Operations Scheduling Court, where matters that have been adjourned will be rescheduled.

As detailed in the Notice to the Profession issued March 15, 2020 by Chief Justice Morawetz (the “**March 15 Notice**”), during the suspension, the SCJ will hear (by teleconference) urgent and time-sensitive motions and applications in civil and Commercial List matters, where immediate and significant financial repercussions may result if there is no judicial hearing.

On April 2, 2020, the SCJ issued an update to the March 15 Notice (the “**April 2 Update**”), which provides that, starting on April 6, 2020, certain matters in addition to urgent matters will begin to be heard in the SCJ. The April 2 Update also provides that, during this time of emergency, the inherent jurisdiction of the Superior Court of Justice may be relied upon (“sparingly and with caution”) to relieve compliance with procedural rules, regulations and statutes when it is:

- just or equitable to do so;
- reasonable and necessary to control the Court’s own process during this time of emergency;
- required to render justice between litigants;
- essential to prevent obstruction and abuse of the Court; or
- necessary to secure convenience, expeditiousness and efficiency in the administration of justice.

## Commercial List

In accordance with the March 15 Notice, formal minutes summarizing the changes to Commercial List operations in light of COVID-19 were released on March 16, 2020. The Minutes provide that all regular Commercial List matters which have been scheduled and are not urgent or time sensitive will be adjourned to after June 1, 2020, subject to any further direction from the Court.

Commercial List Judges will continue to hear and decide urgent and time sensitive matters by teleconference and will also hear appropriate time sensitive matters in writing. The Commercial List encourages use of this process in appropriate cases. For example, the first stay extension motion in *Lydian International Limited (Re)*<sup>1</sup> was done in writing at Chief Justice Morawetz’s direction.

The Commercial List Court will hear matters where there are immediate and significant financial repercussions which may result if there is no judicial hearing. Commercial List Judges will use their discretion to determine whether a matter should be heard urgently. Any matters that fall into the following categories will likely be considered to be urgent or time-sensitive matters that will be heard:

- Initial Orders under the *Companies' Creditors Arrangement Act* (“**CCAA**”);<sup>2</sup>
- CCAA stay extensions (if parties agree, a draft order on consent can be forwarded to the Judge);
- Receivership Applications;
- Plans of Arrangements;
- Injunctions;
- Approval and Vesting Orders; and
- Urgent bankruptcy applications.

In addition to the foregoing, pursuant to the April 2 Update, Commercial List Judges will hear the following non-urgent matters, beginning on April 6, 2020:

- Consent motions, in writing;
- Select motions;
- Select applications;
- Case Management Conferences;
- Pre-Trial Conferences; and
- Judicial Settlement Conferences.

Further guidance on which types of motions and applications will be considered “select” is expected. The Commercial List Court cannot hear any matters of more than four hours’ duration, and all contested matters will be heard by teleconference using ZOOM or another teleconference facility.

### Bankruptcy Court

Due to the suspension of Court operations, parties cannot obtain Bankruptcy Court Searches from the Toronto Courts currently. However, as noted above, the Commercial List Court will continue to hear urgent bankruptcy applications by teleconference.

### **Court of Appeal**

Pursuant to a Notice to the Profession and the Public issued by the Court of Appeal for Ontario (“**COA**”) on March 17, 2020, except as provided below, the Court of Appeal suspended all scheduled appeals for a period of three weeks (until April 3, 2020). During this period, urgent appeals will be heard based on either the written materials or remotely.

Parties on non-urgent appeals that were scheduled between March 17 and April 3, 2020 can request that their appeal be heard in writing. Such requests should only be made if all parties consent to having the matter heard in writing.

The COA will provide further information once it has assessed the situation during this period, and encourages parties to appeals that are scheduled to proceed between April 3 and April 30 to consider and consent to adjournments.

CourtCall is a third-party remote appearance service being used to make telephone and video appearances at the Court of Appeal (as per the instructions in a Notice issued March 27, 2020).

Effective March 23, 2020 and until further notice, public counter services at the COA are closed. All filings can be mailed, sent via email to [coa.e-file@ontario.ca](mailto:coa.e-file@ontario.ca) or dropped off outside the Intake Office.

## Limitation Periods and Procedural Time Periods

On March 20, 2020, a regulation was passed under the *Emergency Management and Civil Protection Act* suspending all limitation periods and procedural time periods, retroactive to March 16, 2020.

<sup>1</sup> 2019 ONSC 7473.

<sup>2</sup> R.S.C., 1985 c. C-36.

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