

COVID-19 Related Information for SRLs: Adjournments, Legal Paperwork, & Urgent Cases

Julie Macfarlane (National Self-Represented Litigants
Project)

& Aisha Amjad (Amjad Law Offices)

COURT CLOSURES

Adjournments
“Urgent” cases
Video and
teleconferences
Filing deadlines
Affidavits
Limitation periods



Family and civil courts at all levels and in all provinces and territories are generally closed now

This means that your matter - whether a trial, a case management conference, a settlement conference, an application, a motion - is probably adjourned either to a tentative new date, or *sine die* (without a date)

Not every court is the same however...check NSRLP's Court Closures page

For example...

- ▶ BC Supreme Court: “until further notice”
- ▶ BC Court of Appeal: until after May 1 2020
- ▶ Ontario Court of Justice: until May 29 2020
- ▶ Ontario Superior Court: “until further notice”
- ▶ Ontario Court of Appeal: asking parties to consent to an adjournment until after April 30, 2020 or holding a hearing based on written materials

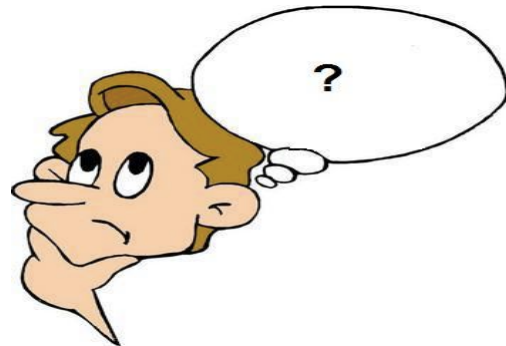
If your hearing is proceeding, it will be by teleconference or videoconference



Meantime, all existing court orders (eg parenting arrangements, support) will remain in effect

All courts are prioritizing
and making exceptions for
hearing “urgent” or
“emergency” cases

*But is my case going to be seen
as an urgent or emergency case?*



Court directives give lists of the types of cases which *might be* “urgent”

- ▶ For example, in the Ontario Superior Court, cases that concern:
 - ▶ the safety of a child or parent (e.g. restraining order, restrictions on contact between the parties)
 - ▶ the well-being of a child including essential medical decisions or the wrongful removal or retention of a child;
 - ▶ dire issues regarding the parties’ financial circumstances;
 - ▶ Initial hearing in a child protection case after a child has been brought to a place of safety
 - ▶ civil cases where immediate and significant financial repercussions may result if there is no hearing

If you think your case may be “urgent”, there are two steps

- ▶ Apply (by email) for consideration as “urgent” following the instructions on the court website (and see the NSRLP Court Closures page). Usually a 2-3 page letter emailed to a court officer
- ▶ IF your matter is considered urgent it will be scheduled for a video or teleconference.
- ▶ A judge will then decide whether or not to change your current order

Decisions by courts on urgent cases: what has been deemed urgent and changed as a result?

- ▶ **Smith v Sieger :2020 ONSC 1681** : father's request for son's relocation from a Utah (US) school and return to Canada approved due to imminent border closure
- ▶ **Skuce v .Skuce 2020 ONSC 1881** : father residing in sobriety home and mother stopped his access. Deemed urgent and father given access provided he moves to mother's home who can supervise access
- ▶ **Thomas v. Wohleber 2020 ONSC 1965** : one parent drained the parties joint line of credit (\$755,000) because he believed she was having an affair. Deemed urgent and funds ordered returned.

What has been deemed urgent and heard, but not changed?

- ▶ **Ribeiro v Wright, 2020 ONSC 1829:** mother concerned father would not observe social distancing (deemed not urgent; needed evidence that other parent violating social distancing protocols)

“Right now, families need more cooperation.

And less litigation.”

Justice Pazaratz

So what does “urgent” really mean?

Some things we are told it is *not*

Example from the Nova Scotia Supreme Court (Family Division)

“To date, the following types of issues have been deemed not to be an emergency:

- ▶ Unilateral interruptions of court-ordered parenting arrangements
- ▶ Disagreements as to a child’s activities while in the care of another parent
- ▶ Interruptions in the payment of child or spousal support, suspension and enforcement of child and spousal support
- ▶ Property issues flowing from a marriage or common law relationship

Deemed to be “not urgent”

- ▶ **Douglas v. Douglas 684-19 (SCJ)** : no access orders in place and mother withholding access because of COVID concerns (father works in Lowe’s). Deemed “important” but not urgent. Warning that mother withholding access may in future be seen as “inappropriate” by a court
- ▶ **Onuoha v Onuoha (2020) ONSC 1815**: father seeking childrens’ return from Ontario to Nigeria is deemed not urgent. Also such a complex hearing not possible under emergency procedures

What does this mean for the filing and procedural deadlines for my case?

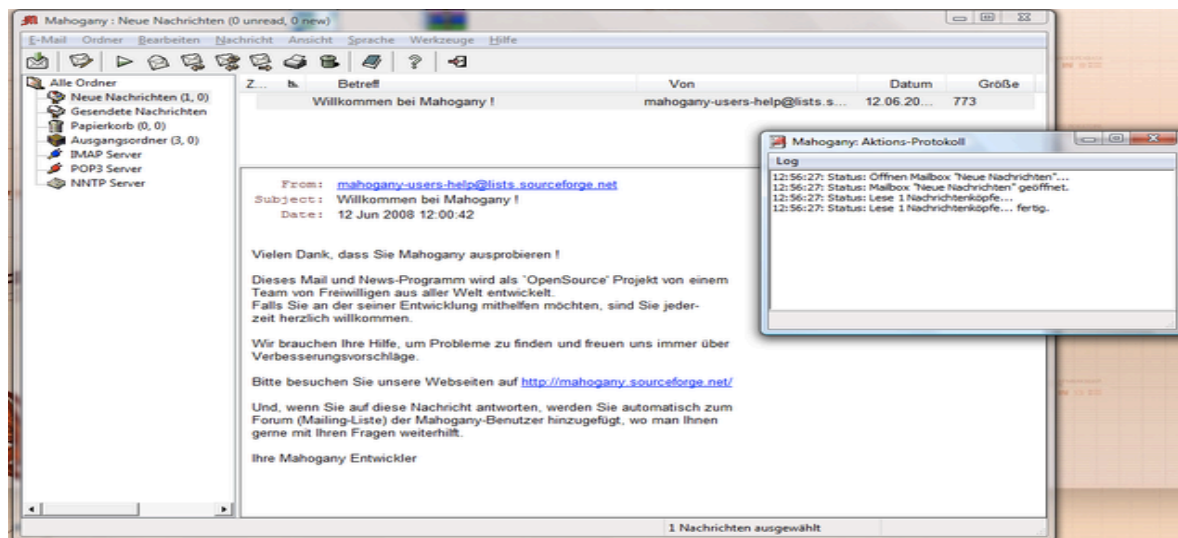


Your filing and procedural deadlines are either....

- ▶ Suspended
- ▶ Extended until a given date
- ▶ Still required (mostly just in Courts of Appeal) but judges will “exercise their discretion, mindful of the special circumstances arising from the COVID-19 situation when considering any extension of time requests or special accommodation requests”

If you do choose to still file, it will usually be electronically (EXCEPT for originating documents) or by dropping in a designated outside box and not in the court registry

► Details on the NSRLP Court Closures page



STATUTORY LIMITATION PERIODS

(the time you have to begin a claim)



...in almost every case remain, except in Ontario and British Columbia which have suspended them all

If you file an affidavit in your case at the moment, does it need to be sworn in front of a commissioner for oaths/ lawyer?



Depending on where you live, either....

- ▶ The requirement for notarizing is suspended and documents may be filed unsworn.
 - ▶ The Court may later confirm by video or teleconference that this is your signature
 - ▶ Or, at a future hearing you will be asked to swear or affirm your document
- ▶ “Virtual” notarizing is permitted
- ▶ In some provinces there is not yet any direction
- ▶ Check the NSRLP Affidavits page (updated regularly)

The National Self-Represented Litigants Project

representingyourselfcanada.com

**@SelfReps
Canada**



NationalSelfRepresentedLitigantsProject



Aisha Amjad Law Offices
aisha@amjadlaw.ca