Memo To: All Lawyers
File: Alexsei Research Memo (Public)
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Jurisdiction: Ontario, Canada
Date: April 9, 2020
Regarding: Urgent Civil Matters During COVID-19 Pandemic

Issue

What is considered to be an urgent civil matter that the court will hear when the court is otherwise closed due to the COVID-19 pandemic?

Facts

No additional facts were supplied.

Conclusion

On March 15, the Superior Court of Justice released a *Notice to the Profession, the Public and the Media Regarding Civil and Family Proceedings*, March 15, 2020. It provided that all criminal, family, and civil matters scheduled to be heard on or after March 17, 2020 were to be adjourned. The Notice also provided that urgent matters continue to be heard. The Notice to the Profession sets out which matters are to be considered urgent and emergency matters. This includes, in particular:

> applications by the Chief Medical Officer of Health for orders in relation to COVID-19;
>
> applications to restrain the contravention or continued contravention of an order made under the Health Protection and Promotion Act;
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> applications to enforce orders requiring the seizure of premises, medications or supplies under the Health Protection and Promotion Act;
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> appeals under subsection 35(16) of the Health Protection and Promotion Act;

urgent requests for injunctions related to COVID-19; and

urgent Divisional Court appeals and requests for judicial review related to COVID-19.

...

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.

outstanding warrants issued in relation to a Small Claims Court or Superior Court civil proceeding.

any other matter that the Court deems necessary and appropriate to hear on an urgent basis (although these matters will be strictly limited)

The Court has the discretion to decline to schedule for immediate hearing any particular matter described in the above list, if appropriate. Where a moving party/applicant has filed material to seek an urgent hearing, the trial coordinator will seek direction from a triage judge as to whether or not the matter is urgent and should be scheduled for a hearing.

The Oxford Canadian Dictionary defines the term "urgent" as demanding or requiring immediate action or attention; pressing; expressing a need for prompt action or attention; or, insistent. The Notice's test of urgency must be strictly enforced in order to ensure that the court's limited administrative resources are available to deal with the most serious and urgent of cases. Even some issues that may have been heard on an urgent basis previously due to a non-rigorous application of the test of urgency will not meet the high threshold set by the notice. There is a distinction between cases that are "very important to the parties" and even urgent to one or both of them, from cases which are "currently urgent" in accord with the Notice (*Thomas v. Wohleber*). Though decided in a family law context, *Thomas* remains helpful for its detailed discussion of the nature of urgency required.

On April 2, 2020, the Superior Court of Justice published an update supplement to the March 15, 2020 Notice to the Profession, found at *Notice to the Profession, the Public and the Media Regarding Civil and Family Proceedings – Update*, April 2, 2020. The April 2, 2020 update provided that matters in addition to "urgent" matters have begun to be heard on April 6, 2020. The notice links to each judicial region, where the complete list of civil and family matters that may be heard in each region is provided, as well as the process by which to seek a hearing in

each region. The Update Notice provides for certain further matters to be heard in addition to urgent civil matters as set out in the March 15th Notice to the Profession. In particular, remote hearings are expanded to include pre-trial conferences, Rule 7 motions or applications for approval of settlement, if done in writing, and consent motions, if done in writing. Furthermore, the Divisional Court has begun scheduling hearings of non-urgent matters arising throughout the province starting from April 6.

Once a civil proceeding is booked, there is no basis for further submissions to be delivered on the issue of urgency. Parties may seek adjournments and appropriate scheduling terms before a judge presiding at a hearing, but they ought not challenge the scheduling of the hearing itself. The scheduling of hearings is an administrative matter, and is not part of the lis between the parties (*Wang v 2426483 Ontario Limited*).

Examples of Urgency & Non-Urgency

In *York Condominium Corporation No. 419 v. Black*, the Court held that a suit for an injunction prohibiting certain condominium owners from proceeding with renovations was a matter of great urgency in light of the fact that a majority of the building's residents were seniors.

In *Baijnauth v. Baijnauth*, the Court found there was some urgency concerning efforts to enforce the terms of a judgment flowing from a family law trial. Deferring consideration of the matter until after COVID restrictions were lifted could've caused financial hardship to the moving party, including her ability to afford to keep her home, despite being owed enough money to do so. The order was granted without prejudice to the respondent's right to oppose hearing of the motion on the basis of urgency, due to a lack of valid proof of service upon the respondent.

In *Atkinson v. Lysak*, the Divisional Court considered a question arising out of an eviction order which was made prior to the COVID-19 situation. The landlord did not arrange for enforcement of the eviction order prior to the interruption of ordinary civil processes. The Court held that the tenant's motion for relief would not be "urgent" until the suspension of enforcement of eviction orders was over.

Law

On March 15, the Superior Court of Justice released a *Notice to the Profession, the Public and the Media Regarding Civil and Family Proceedings*, March 15, 2020. It provided that all criminal, family, and civil matters scheduled to be heard on or after March 17, 2020 were to be

adjourned, including telephone or videoconference appearances. Lawyers and litigants were advised not to attend the courthouse. Despite this, urgent matters continue to be heard:

> To protect the health and safety of all court users and to help contain the spread of the 2019 novel coronavirus (COVID-19), the Superior Court of Justice (SCJ) is suspending all regular operations, effective Tuesday, March 17, 2020, and until further notice.
>
> All criminal, family and civil matters scheduled to be heard on or after Tuesday March 17, 2020 are adjourned. This includes all telephone and videoconference appearances scheduled prior to March 17, 2020, unless the presiding judicial officer directs otherwise. Lawyers and litigants with matters scheduled on or after March 17, 2020 are advised not to attend the courthouse.
>
> The Court will continue to hear urgent matters during this emergency period. The Court plays a fundamental role in our constitutional democracy. Access to justice for the most urgent matters must always remain available. This Notice identifies the urgent civil and family matters that shall be heard during the suspension of operations, and the process for bringing such matters before the Court.

The Notice to the Profession sets out which matters are to be considered urgent and emergency matters. This includes, in particular, various matters related to public health and safety and COVID-19; certain family and child protection matters; certain civil and commercial list matters; and, any other matter that the Court deems necessary and appropriate to hear on an urgent basis:

> A. MATTERS TO BE HEARD DURING THE SUSPENSION
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> Until further notice, only the following urgent and emergency civil and family matters listed below shall be heard by the Superior Court of Justice.
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> The following matters related to PUBLIC HEALTH AND SAFETY and COVID-19:
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> applications by the Chief Medical Officer of Health for orders in relation to COVID-19;
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> applications to restrain the contravention or continued contravention of an order made under the Health Protection and Promotion Act;

applications to enforce orders requiring the seizure of premises, medications or supplies under the Health Protection and Promotion Act;

appeals under subsection 35(16) of the Health Protection and Promotion Act;

urgent requests for injunctions related to COVID-19; and

urgent Divisional Court appeals and requests for judicial review related to COVID-19.

The following FAMILY AND CHILD PROTECTION matters:

Only urgent family law events as determined by the presiding justice, or events that are required to be heard by statute will be heard during this emergency period, including:

requests for urgent relief relating to the safety of a child or parent (e.g., a restraining order, other restrictions on contact between the parties or a party and a child, or exclusive possession of the home);

urgent issues that must be determined relating to the well-being of a child including essential medical decisions or issues relating to the wrongful removal or retention of a child;

dire issues regarding the parties' financial circumstances including for example the need for a non-depletion order;

in a child protection case, all urgent or statutorily mandated events including the initial hearing after a child has been brought to a place of safety, and any other urgent motions or hearings.

The following CIVIL and COMMERCIAL LIST (Toronto) matters:

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.

Outstanding warrants issued in relation to a Small Claims Court or Superior Court civil proceeding.

> Any other matter that the Court deems necessary and appropriate to hear on an urgent basis. The Bar and the public are advised that these matters will be strictly limited.
>
> The Court has discretion to decline to schedule for immediate hearing any particular matter described in the above list, if appropriate.
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> A hearing may be conducted in writing, by teleconference or videoconference, unless the Court determines that an in-person hearing is necessary. If an in-person hearing is needed, coordination will occur between the Ministry of the Attorney General, the trial coordinator and the parties/counsel to find a safe and appropriate physical facility for the hearing.

The Notice to the Profession goes on to set out the procedure applicable to bringing an urgent matter. Whether a matter is urgent, and the procedure under which it is to be heard is decided by the triage judge:

> B. PROCEDURE TO BRING AN URGENT MATTER
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> Filing urgent documents
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> Moving parties/applicants shall file urgent motion and application materials by email to the appropriate courthouse. The list of email addresses for each court may be found here.
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> The Court expects parties will only submit brief materials to allow for a fair, timely and summary disposition. Emailed filings cannot exceed 10MB. If the size of electronically filed material exceeds 10MB, further emails may be sent within the 10MB maximum. Every effort must be made, however, to limit filed materials to 10MB.
>
> Unless a matter is proceeding ex parte (i.e. without notice to responding parties), filed materials must indicate when and how service on responding parties was made.
>
> Filed materials should also include any prior orders or endorsements that were issued and that are relevant to the urgent matter.
>
> Caselaw and other source materials referenced in factum should be hyperlinked. Where hyperlinks are provided, it will not be necessary to file a Book of Authority.

Where it is not possible to email a sworn affidavit, affidavits may be delivered unsworn but the affiant must be able to participate in any telephone or videoconference hearing to swear or affirm the affidavit.

Scheduling a hearing

Where a moving party/applicant has filed material to seek an urgent hearing, the trial coordinator will seek direction from a triage judge as to whether or not the matter is urgent and should be scheduled for a hearing. The triage judge will also determine a schedule for the service and filing of any responding material.

Responding material shall be filed in the same manner as a moving party/applicant. The trial coordinator will provide to the parties the triage judge's schedule for the service and filing of any responding material.

Once all written submissions have been received, the judge will determine the manner of hearing.

Matters may be heard and determined in writing, by telephone or video conference.

It is anticipated that most matters will be dealt with by telephone conference, although a judge may direct a videoconference hearing. In rare instances, and where necessary and safe, some matters may be heard in-person in facilities that are deemed safe with necessary precautions in place.

The trial coordinator will advise the parties/counsel of the date and time for the hearing, and the method of hearing. There will be strict limits for the duration of the hearing, and the trial coordinator will advise of the maximum allotted time for the hearing.

There will be dedicated telephone conference lines for urgent hearings. There is also limited capacity for videoconference hearings. If one or more parties in a matter is represented by counsel, counsel may be asked to provide a teleconference number for the hearing.

The Hearing

> Where a telephone or videoconference hearing is scheduled, there will be strict time limits imposed for oral submissions, to which parties and counsel are expected to adhere.
>
> Mechanisms will be in place to record a hearing. Counsel and parties may also record a proceeding for their own purposes if authorized by the judge, pursuant to section 136(3) of the Courts of Justice Act.
>
> C. SELF-REPRESENTED LITIGANTS
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> Self-represented litigants are expected to comply with the process set out in this Notice.
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> Pro Bono Ontario has a hotline (1-855-255-7256) for self-represented litigants with civil matters where they may obtain advice and assistance from dedicated pro bono lawyers.
>
> For family litigants, the Court seeks the assistance from the family bar and Legal Aid Ontario in providing necessary support.

The Notice to the Profession has already been referred to in Court decisions.

In *Baijnauth v. Baijnauth*, 2020 ONSC 1974 (CanLII), the applicant filed a request for an urgent motion pursuant to the Notice to the Profession:

> [1] The regular operations of the Superior Court of Justice have been suspended until further notice as a result of the serious health risks posed by COVID-19.
>
> [2] The Applicant Virgena Baijnauth filed a request for an urgent motion on March 25, 2020 pursuant to the Superior Court of Justice Notice to the Profession dated March 15, 2020.
>
> [3] The Notice can be found at https://www.ontariocourts.ca/scj/covid-19-suspension-fam/.

The alleged urgency arose following a family law trial, in which the applicant obtained judgment against the respondent. The applicant alleged the respondent had not paid judgment, and that she was unable to enforce against other property he owned because the respondent transferred title to their son in order frustrate her efforts to do so. As a result, the applicant would've been unable to

discharge a non-renewable, high-interest mortgage on the matrimonial home coming due on March 31. The applicant sought a vesting order to transfer the respondent's interest in the matrimonial home to her so she could obtain re-financing.

The Court held that there did appear to be some urgency. In so finding, the Court relied on the fact that deferring consideration of the matter until some unspecified time in future, after COVID restrictions are past, and the courts are reopened for business, could cause financial hardship to the moving party, including her ability to afford to keep her home, despite being owed enough money to do so. The Court convened a hearing by conference call in light of that. The order was granted without prejudice to the respondent's right to oppose hearing of the motion, and to take the position it should not be heard during the period of suspended activity. The without-prejudice aspect of the order was due to a lack of valid proof of service upon the respondent:

> [5] I have reviewed the Notice of Motion and the unsworn affidavit of the Applicant dated March 24, 2020. The Applicant states she obtained judgment against the Respondent in their family law trial. She contends that he has not paid the judgment, and that she has been unable to enforce against another property he owns because the Respondent transferred title to their son to frustrate her efforts to do so.
>
> [6] As a result, the Applicant states that she will not be able to discharge a high-interest mortgage on the matrimonial home, which is coming due March 31, 2020 and which cannot be renewed.
>
> [7] Therefore on this urgent motion the Applicant asks the court to grant a “vesting order” and transfer the Respondent’s interest in the matrimonial home free and clear so that she can obtain the needed re-financing to pay off the high- interest mortgage.
>
> [8] The urgency is that the Applicant states that the full amount of the high interest mortgage is coming due on March 31, 2020, the lender will not agree to any terms of extension. If the vesting order is granted, she states that she will be able to obtain re-financing and pay off the high-interest mortgage. She states that she has made extensive efforts to resolve this matter with the Respondent to no avail, and is now therefore required to bring this motion.
>
> [9] My view, based solely on the Applicant’s unsworn affidavit and exhibits, is that there does appear to be some urgency. That is, deferring consideration of this matter until some unspecified time in the future, after the COVID restrictions are past and the

courts are reopened for business, could cause significant financial hardship to the moving party including her ability to afford to keep her home, despite being owed enough money to do so. I am prepared for this reason to convene a hearing by conference call on the timeline described further below.

[10] I note that this preliminary determination is without prejudice to the Respondent's right to oppose the hearing of the motion as a matter of urgency and to take the position that it should not be heard in this period of suspended court activity.

...

[15] I am concerned with the Applicant's non-compliance with the court's direction that all filing, including under the current new protocols, be accompanied by proof of service, and that service precede filing.

[16] The court should not be put to the effort to "track down" whether service has been effected. Service on responding parties in order to ensure they have an opportunity to respond is not a procedural requirement to be dispensed with, or taken less lightly, while matters are proceeding in a new manner due to COVID safety protocols and concerns.

[17] While I appreciate that this matter is very important to the Applicant, she has not assisted herself in having it dealt with quickly by the manner and timing of Notice provided to the Respondent. The relief she seeks is of significance to the Respondent: she asks the court to take him off title to a home he currently co-owns.

[18] Balancing its preliminary view of the urgency of this matter and the Respondent's right to respond, the Court therefore provides the following information and timelines to the parties:

...

In *Atkinson v. Lysak*, 2020 ONSC 1878 (CanLII) the Divisional Court considered a question arising out of an eviction order which was made prior to the COVID-19 situation. The tenant's recourse to the Divisional Court had also been exhausted prior to suspension of the courts. The tenant was given a chance to remain in her unit and to pursue her appeal on terms. Those terms included payment into court of rent arrears. The tenant did not comply with the terms in question, and the appeal was dismissed. The landlord did not arrange for enforcement of the

eviction order prior to the interruption of ordinary civil processes. The tenant sought urgent relief against the landlord, alleging that she was unable to relocate during the current crisis.

The Court held that unless and until a motion was brought by the landlord to evict the tenant, enforcement of the order was suspended under the order of the Chief Justice. The Court also noted, however, that once the suspension of court operation ends, the landlord will be able to enforce the eviction notice, and the tenant may pursue a motion for further relief at the time. The Court held that the tenant's motion would not be "urgent" until the suspension of enforcement of eviction orders was over:

> [9] The situation of persons like Ms Atkinson has been addressed by Chief Justice Morawetz, who, on March 19, 2020, on motion by the Attorney General of Ontario, ordered as follows (among other things):
>
> 2. THIS COURT ORDERS that, during the suspension of regular court operations by the Chief Justice, the eviction of residents from their homes, pursuant to eviction orders issued by the Landlord and Tenant Board or writs of possession, are suspended unless the court orders otherwise upon leave being granted to a party by the court pursuant to the court's procedures for urgent motions.
>
> The order is posted on the internet web sites of the Attorney General of Ontario and the Ontario Superior Court of Justice.
>
> [10] No motion has been brought by the landlord for leave to evict Ms Atkinson. Unless and until such a motion is brought and is granted by the court, enforcement of the current eviction order is suspended by the order of the Chief Justice. Thus there is no urgent need for this court to intervene: the Chief Justice has done so already.
>
> [11] I wish to be clear with Ms Atkinson about her current situation, however. The Chief Justice's order suspending evictions continues only so long as regular court operations are suspended. Once that ends, the landlord will be able to enforce the eviction order. Ms Atkinson may pursue a motion for further relief at that time, if she is so minded, but her motion will not be "urgent" until the suspension of enforcement of eviction orders is over.

Of note, the Court considered the tenant's unreasonable behaviour, and held that if the situation at the premises could not settle into some state of normalcy and decency, the landlord may move for leave to carry out the eviction, which may or may not be granted:

> [13] There is another point of concern. In her materials, Ms Atkinson speaks of a deteriorating situation at her residence. She places the blame for this situation on others. Now is not the time to weigh in on the merits of these matters. However, the situation she describes in her materials is obviously unacceptable: she has called police 12 times since mid-February, and apparently called 9-1-1 because, in her view, the landlord failed to keep a carbon monoxide detector in proper working order. Ms Atkinson has to find a way to live peaceably in her unit for the time being, until she finds new accommodations or until the COVID-19 situation passes and evictions resume. If the situation at the premises cannot settle into some state of normalcy and decency in the interim, the landlord may move to this court for leave to carry out the eviction. This does not mean the court will grant such a request, but even on just reading Ms Atkinson's materials, she is not acting reasonably: calling 9-1-1 over a non-functioning carbon monoxide detector is, on its face, irresponsible and unreasonable conduct.
>
> ...
>
> [15] I appreciate that Ms Atkinson is self-represented and may not well understand the court process. The order of Justice Favreau authoritatively disposes of the matters decided by Her Honour. That order permitted Ms Atkinson an extension of time, but on conditions. Nothing filed by Ms Atkinson since the decision of Favreau J. raises any question about the reasonableness of those conditions: like every tenant, Ms Atkinson must pay her rent unless she has been relieved of that obligation by the LTB or the court. Requiring her to secure disputed rent is a standard and reasonable term. Since she purports to have withheld a portion of her rent on principle, she should still have it. If she does not, she has not put forward evidence of this fact, nor has she explained why she did not retain the rent she withheld unilaterally, "on principle". In short, nothing has changed altering the equities between the parties: what has changed is that the consequences for Ms Atkinson are suddenly and extraordinarily different. The order of the Chief Justice will give her some relief from the consequences of the situation, but when the immediate situation passes, she will

> still be subject to the eviction order she now faces as a result of her non-compliance with the order of Favreau J.

In *Thomas v. Wohleber*, 2020 ONSC 1965 (CanLII) the Court dealt with a motion for urgent financial relief. The requested relief arose from the removal of approximately $0.75M from a joint line of credit, which was secured on the parties' primary matrimonial home. The applicant sought an order for the return of the funds, freezing of the LOC account, a non-dissipation order, and certain disclosure. Although the decision involved a family law matter, and was based on the family law provisions of the Notice to the Profession, it remains helpful for its discussion of the test of urgency.

The Oxford Canadian Dictionary defines the term "urgent" as demanding or requiring immediate action or attention; pressing; expressing a need for prompt action or attention; or, insistent. The Court also held that at the present time, the Notice's test of urgency must be strictly enforced in order to ensure that the court's limited administrative resources are available to deal with the most serious and urgent of cases. The Court held that even some issues that may have been heard on an urgent basis previously due to a non-rigorous application of the test of urgency will not meet the high threshold set by the notice:

> [27] The Oxford Canadian Dictionary defines the term “urgent” as:
>
> 1.demanding or requiring immediate action or attention; pressing (an urgent need for help). 2. expressing a need for prompt action or attention; insistent (an urgent call for help).
>
> [28] The test of urgency that allows a party to avoid a case conference before bringing a motion is set out in *Rosen v Rosen*, 2005 CanLII 480 (ON SC), [2005] O.J. No 62 (S.C.J.). There, Wildman J. adopted this description of urgency set out by Belch J. in *Hood v. Hood*, 2001 CanLII 28129 (ON SC), [2001] O.J. No. 2918 (S.C.J.):
>
> … an urgent motion within a court proceeding contemplates issues such as abduction, threats of harm, dire financial circumstances and these can be addressed prior to a case conference." [Emphasis added]
>
> ...
>
> [30] The Notice’s recitation of situations of urgency builds on Belch J.’s description of urgent situations but offers greater detail. Only the most serious of cases meet the

> Notice's test. That test of urgency is, as set out below, a large step removed from simple importance to the parties.
>
> [31] At the present time, the Notice's test of urgency must be strictly enforced in order to ensure that the court's limited administrative resources are available to deal with the most serious and urgent of cases. Without rigorous enforcement of the Notice, even extremely urgent cases; those that call for immediate court involvement to protect children, the safety of vulnerable spouses or extreme financial need, will have to queue up behind less urgent matters. This raises the considerable risk of harm by delay.
>
> [32] At the same time, our court's limited resources, tethered to a limited number of overworked administrators, runs the risk of being overwhelmed and becoming unable to offer necessary judicial services to those most in need.
>
> [33] Rather than speculate whether the present test of urgency is even higher than the one already set out in Hood and Rosen, it is important to emphasize the scrupulousness with which the urgency standard must presently be enforced. That may even mean that some issues that may have been heard on an urgent basis because the test of urgency was not strictly applied in a non-pandemic world will not meet the high threshold set by the Notice. It may mean that some issues in a motion are urgent while others are not.

Although held with respect to the family law context, the Court held that there is a distinction between cases that are "very important to the parties" and even urgent to one or both of them, from cases which are "currently urgent" in accord with the Notice. At least in a family law context, in order to meet the Notice's requirement of urgency, the concern must be immediate in that it cannot await resolution at a later date; the concern must be serious in the sense that it significantly affects the health or safety or economic well-being of the parties; the concern must be a definite and material rather than a speculative one in that it must relate to something tangible rather than theoretical; and, it must be a concern that has been clearly particularized in evidence and examples that describe how the concern reaches the requisite level of urgency:

> [35] In *Onuoha v. Onuoha*, 2020 ONSC 1815 (S.C.J.), Madsen J. dealt with a Hague Convention case where a parent from Nigeria had unilaterally removed the parties' children to Canada. Despite the obvious concern raised by the international kidnapping, and the potentially unfair status quo that may arise from a lengthy

adjournment with the children in Canada, Madsen J. found that the case failed to meet the test of urgency. Her reasons were both practical and principled.

[36] Looking practically, Madsen J. noted that international travel was not possible at a time that borders are closed. Even if the father were successful, the children would not be returned to him for months. Further, sending the children home through potentially infected airports at this time is "foolhardy", as it runs the risk of exposing them to the virus. On the other hand, the children are in the care of their mother, which presumably assured Madsen J. about their present safety.

[37] On a principled basis, Madsen J. distinguished between cases that are "very important to the parties" and even urgent to one or both of them, from those that are "currently 'urgent'" in accord with the Notice. Even the prejudice to the father that may arise from the delay was not found sufficient to meet the Notice's test of urgency.

[38] In considering the dictionary definition of the term, urgent, the circumstances of urgency set out in the Notice, the examples of urgency offered in *Hood* and *Rosen*, and the cases cited above that apply the Notice's test of urgency, I find that the following factors are necessary in order to meet the Notice's requirement of urgency:

1. The concern must be immediate; that is one that cannot await resolution at a later date;

2. The concern must be serious in the sense that it significantly affects the health or safety or economic well-being of parties and/or their children;

3. The concern must be a definite and material rather than a speculative one. It must relate to something tangible (a spouse or child's health, welfare, or dire financial circumstances) rather than theoretical;

4. It must be one that has been clearly particularized in evidence and examples that describes the manner in which the concern reaches the level of urgency.

[39] The court's adoption of the test of urgency in this time of pandemic requires all participants in the justice system, judges, lawyers and spouses/parents, to shoulder greater responsibility than they usually are required to assume in family litigation. They must assume this mantle of responsibility in order to ensure that the most urgent

> cases can continue be adjudicated by the court in these days of crisis. As Pazaratz J. pointed out in *Ribeiro v. Wright*, 2020 ONSC 1829 (Ont. S.C.J.):
>
> Right now, families need more cooperation. And less litigation.

On the facts before the Court, the Court held that the high test of urgency was met. However, the test was not met with respect to the financial disclosure, which the Court ordered could take place in the ordinary course of the litigation.

On April 2, 2020, the Superior Court of Justice published an update supplement to the March 15, 2020 Notice to the Profession, found at *Notice to the Profession, the Public and the Media Regarding Civil and Family Proceedings – Update*, April 2, 2020.

The April 2, 2020 update provided that matters in addition to "urgent" matters have begun to be heard on April 6, 2020. The notice links to each judicial region, and provides that the complete list of civil and family matters that may be heard in each region, as well as the process by which to seek a hearing in each region.

Of note, the Update Notice provides that the Superior Court may rely upon its inherent jurisdiction to dispense with strict compliance with the rules of the court, procedural rules, regulations, and statutes. The power may be used when it is just and equitable to do so, when it is reasonable and necessary to control the Court's own process during the emergency, where it is required to render justice between litigants, where it is essential to prevent obstruction and abuse of the Court, or when necessary to secure convenience, expeditiousness, and efficiency in the administration of justice:

> B. Compliance with Existing Procedures & the Inherent Jurisdiction of the Superior Court of Justice
>
> The emergency created by COVID-19 may, in some instances, render strict compliance with the rules of court impossible or impractical. The rules were drafted without contemplation of how virtual court hearings would be conducted in a pandemic. These functional gaps cannot be an impediment to the timely, fair and just adjudication of matters heard by the Court.
>
> In this time of emergency, the inherent jurisdiction of the Superior Court of Justice may be relied upon, as it is entrenched in s. 96 of the Constitution Act, 1867 and as confirmed in s. 11(2) of the Courts of Justice Act. This unique power shall 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.

Accordingly, and relying upon the inherent jurisdiction of the Superior Court of Justice, the processes set out in this Notice, or the process directed by a judge in a case, may deviate from established processes.

The Update Notice provides for certain further matters to be heard in addition to urgent civil matters as set out in the March 15th Notice to the Profession. In particular, remote hearings are expanded to include pre-trial conferences, Rule 7 motions or applications for approval of settlement, if done in writing, and consent motions, if done in writing:

I. Expanded Civil Matters

In addition to the urgent civil matters set out in the March 15th Notice to the Profession, and subject to each region's Notice, remote hearings will be expanding to include the following civil matters in most court locations, effective April 6, 2020:

Pre-Trial Conferences – Pre-trial conferences that were cancelled between March 16 and May 31, 2020 due to the court closure can be rescheduled at the request of the parties. The objective of the pre-trials will be settlement of the action. Parties must certify that case is capable of settlement with the assistance of a pre-trial judge.

Rule 7 motions or applications for approval of settlement, in writing.

Consent motions, in writing.

> Each region's Notice may include other civil matters that may be heard in that region. The process to schedule a civil hearing is set out in each region's Notice.

Furthermore, the Divisional Court has begun scheduling hearings of non-urgent matters arising throughout the province starting from April 6:

> J. Expanded Divisional Court Hearings
>
> Starting on April 6, 2020, Divisional Court will begin to schedule hearings of non-urgent matters arising throughout the Province of Ontario.
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> The process to schedule Divisional Court matters anywhere in Ontario is set out in the Divisional Court Practice Advisory.

In *Wang v 2426483 Ontario Limited*, 2020 ONSC 2040 (CanLII) the Court held that once a matter has been scheduled pursuant to the Notice submissions on the merits and e-mails arguing about urgency should not be sent to the court unless invited. Once a civil proceeding is booked, there is no basis for further submissions to be delivered on the issue of urgency. Parties may seek adjournments and appropriate scheduling terms before a judge presiding at a hearing, but they ought not challenge the scheduling of the hearing itself. The scheduling of hearings is an administrative matter, and is not part of the lis between the parties:

> [11] The Notice to the Profession provides guidelines for those who nevertheless need to access the courts while they are not in full operation. People needed to be told the kinds of matters that could be accommodated, the types of materials that they should file, and the email addresses to contact to reach court personnel. This is all important information for the purposes of explaining to the public and the legal profession the processes put in place to maintain operations by the extraordinary efforts of the Superior Court of Justice.
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> [12] However, none of this affects the court's jurisdiction or the applicable rules of law. All court proceedings continue although only a very few are being scheduled for hearing at this time. Scheduling is an administrative function of the court. Normally, in the civil division in Toronto, hearings are scheduled by administrators over the telephone or by email and by judges in Civil Practice Court. Many factors go into scheduling that are not the subject of discussion with or among the litigants. The availability of judges for the type of hearing proposed, the availability of courtrooms, of staff, and numerous other administrative inputs may be brought to bear.

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> [17] Submissions on the merits and emails arguing back and forth among counsel about urgency should not be sent to the court unless invited. Once a civil proceeding is booked in Toronto under the Notice to the Profession, there is no basis for further submissions to be delivered on the issue of urgency. Nor is the issue before the motion judge. Parties are always free to seek adjournments and appropriate scheduling terms before a judge presiding at a hearing. But they do not challenge the scheduling of the hearing itself. The court's administrative process is not part of the lis or the dispute between the parties.

In *York Condominium Corporation No. 419 v. Black*, 2020 ONSC 2066 (CanLII) the Court held that a suit for an injunction prohibiting certain condominium owners from proceeding with renovations was a matter of great urgency in light of the fact that a majority of the building's residents were seniors:

> [1] The applicant condominium corporation sues for an order requiring the respondents to stop renovating their condominium unit. The condominium corporation asks for an urgent injunction prohibiting the respondents from having third party trades people attending in the building on an interim basis during the global COVID-19 pandemic. There is also an issue as to whether the renovations are being properly conducted in accordance with the condominium's declaration, by-laws, and the applicable law.
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> [2] This is a matter of great urgency. A majority of the condominium building's residents are seniors.

Authorities

Baijnauth v. Baijnauth, 2020 ONSC 1974 (CanLII)
Notice to the Profession, the Public and the Media Regarding Civil and Family Proceedings, March 15, 2020
Atkinson v. Lysak, 2020 ONSC 1878 (CanLII)
Notice to the Profession, the Public and the Media Regarding Civil and Family Proceedings – Update, April 2, 2020
Wang v 2426483 Ontario Limited, 2020 ONSC 2040 (CanLII)
York Condominium Corporation No. 419 v. Black, 2020 ONSC 2066 (CanLII)
Thomas v. Wohleber, 2020 ONSC 1965 (CanLII)