

A Litigation Update: The Small Claims Court and Short Motions or Applications

Litigation | Litigation & Dispute Resolution | Rules of Professional Conduct | Small Claims Court

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As we near the three month anniversary date of Ontario's state of emergency, our court system continues to re-emerge from its suspension and to evolve.

The Small Claims Court

In the Small Claims Court, a new Notice was issued to announce that this court would, on 2 June 2020, begin scheduling select settlement conferences in non-urgent matters, which would be conducted remotely.

In order for a settlement conference in a non-urgent matter to be scheduled, the following three conditions must be met:

1. All parties to the action must agree to proceed with a remote settlement conference;
2. Each defendant must have filed a defence or been noted in default in the matter before 16 March 2020; and
3. All parties must agree to rely solely on the pleadings as filed and served.

There is no requirement that the court must have previously scheduled a settlement conference before the suspension of the court in order to schedule a settlement conference now.

To schedule a settlement conference, one party to the litigation must submit a request form to a specified email address. Both the request form and email address can be found on the "Notice Regarding the Suspension of Small Claims Court Operations (2 June 2020)" (the "**Notice**").

All parties are required to agree to the method of hearing that is indicated on the form and all parties or their respective representatives must sign the form.

Most settlement conferences are expected to be held by video conference. However, a limited number may be held by telephone conferencing.

The Small Claims Court is also hearing urgent motions and urgent garnishment hearings during the current state of emergency. These hearings are also taking place through video conference or by telephone.

The urgent cases that are being heard by the Small Claims Court include:

1. Cases in which a judgment debtor has an outstanding warrant for arrest issued in relation to a Small Claims Court proceeding; or
2. Time-sensitive cases that would result in immediate and serious financial hardship if there were no hearing.

Similar to the process for requesting a settlement conference, a specific request form must be completed and emailed to the Small Claims Court.

Short Motions or Applications

On 2 June 2020, Justice Myers released his decision in ***Mann v. Chac-Wei*, 2020 ONSC 3428**.

This is the first case dealing with a motion in writing under Part C.1(4) of the *Toronto Region Notice to the Profession* dated 13 May 2020. Within this decision Justice Myers explains how this Part works.

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In general, all motions and applications that are on consent of all parties, and are confirmed as unopposed will be heard in writing. On the other hand, opposed short motions or applications will be heard in writing, unless a triage judge orders a different procedure or the parties provide reasons to support a request for other hearing formats, such as a case conference.

Justice Myers explains that the process begins with the Short Motion or Application Request Form being completed by the parties for the purposes of bringing a short, opposed motion or application. Certain information on the form must be completed and lawyers for the parties are urged to consult with one another in order to fill-in the form completely.

Justice Myers then further explains that lawyers for the parties must agree in advance on a schedule for the exchange of materials in support of a proposed motion or application and that during this process the lawyers are expected to co-operate in accordance with their ethical duties under the *Rules of Professional Conduct*.

Upon receipt of a request form, a triage judge will make an endorsement that contains directions for the holding of a written (or other) hearing, which provides a schedule for the exchange of materials. Lawyers and the parties must provide their material to the court in the following two separate ways:

1. Material must be filed with the Civil Intake branch of the court at a specific generic email address that will be set out in Schedule "A" to the trial judge's directions.
2. Lawyers and the parties must also upload their material to a folder that they create on Sync.com.

There should only be one Sync.com folder per motion or application.

The party who will be responsible for creating the Sync.com folder will be named in the triage judge's directions. Each folder on Sync.com is expected to contain a separate sub-folder to store the materials of each participating party. Justice Myers explains that each document filed is to be named in accordance with naming rules that will also be set out in the triage judge's directions.

One week before the motion is scheduled to be read, the parties are required to send the link to the Sync.com folder and their Motion Confirmation Forms to the email address specified in the triage judge's directions.

By following the foregoing, the material for a short motion or application will be organized in one place and the court will be able to easily access it, particularly at a time when there are severe personnel limitations due to the current health emergency.

If you require any litigation assistance, our Dispute Resolution Group lawyers are available to assist you. Please contact Gavin Tighe at [416.865.6664](tel:416.865.6664).

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