

# WHAT IS “URGENT” ENOUGH? UPDATE ON PROCEDURAL PRIORITIES DURING THE COVID-19 LOCKDOWN

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The coronavirus has proven infectious to court dockets too. With no precedent for a disruption of this scale, a unique and uncertain strain of jurisprudence has emerged. Most, if not all, COVID-19 case law to date is procedural: will matters move forward at all and, if so, how? In this unfamiliar context, words like "urgent" and "time-sensitive" have taken on a new and evolving meaning.

Building on [previous updates](#) by Gowling WLG lawyers, we look at how judges in civil courts are prioritizing matters, and defining degrees of "urgency" (standards of "urgency" are different in criminal and family courts, neither of which we discuss in this article).

Even if restrictions lift in the coming weeks, this jurisprudence is likely to remain relevant as the pandemic unfolds and the world responds to further potential outbreaks.

## "Notices to the profession" are now the procedural road-map

On [March 15](#), and again on [April 2](#), the Ontario Superior Court issued Notices to the Profession. While these notices carry no legislative force, they have become the legal backbone for judge's procedural decisions and endorsements.

According to the March 15 Notice, civil motions and applications may be heard if they are "related to public health and safety and COVID-19". Matters that are not public health or COVID-19 related can still be heard only if they are "urgent and time-sensitive", or the

court considers it "necessary and appropriate" in the circumstances. The Notices provide a procedure for bringing an "urgent" matter.

The April 2 Notice expands these exemptions to include "select" Pre-trial Conferences and motions made on consent.

The Divisional Court has also opened its doors to hear "more than" just urgent matters, starting Monday April 6, 2020, subject to available resources. The court has drawn a distinction between three tiers of matters: "urgent", "time-sensitive" and "other" matters, under D.2 Scheduling Divisional Court Matters, paragraph 6:

a. Where a matter is considered **urgent** by the Administrative Judge or his designate, the matter will be scheduled to proceed as soon as reasonably possible on a schedule to be fixed by the court.

b. Where a matter is **not urgent, but is time sensitive**, in the opinion of the Administrative Judge or his designate, the matter will proceed on a schedule to be fixed by the court, taking account the time sensitivity.

b. **Other matters** will be scheduled to be heard in due course, bearing in mind the demand for urgent and time-sensitive matters and the technological and staffing limitations under which the court is operating. To the extent that it is possible to do so, the length of time the matter has been awaiting a hearing, and the likely delay if the matter is not heard until in-person hearings resume, will be taken into account in prioritizing hearings.

## Is there a difference between "urgency" and "time-sensitivity"?

So far, there is no explicit judicial analysis on the Divisional Court's distinction between "urgent", "time-sensitive" and "other" matters as referenced in the Notice. To confirm this, we have reviewed all Ontario decisions on "urgency" released from March 15<sup>th</sup> to April 30<sup>th</sup> and summarized them in the table below. The Divisional Court has applied the term "urgent" but not "time sensitive". The Ontario Superior Court has applied both terms, sometimes separately, and sometimes together (seemingly interchangeably).

When determining both urgency or time-sensitivity, judges tend to apply a "necessary and appropriate" test. The Divisional Court in *Chalich* suggested that an "irreparable harm" or "compelling circumstances" are required to establish urgency.

Courts have repeatedly applied the language of "immediate and significant financial repercussions" written in the Notices. According to the Ontario Superior Court in Weidenfeld, eligible "financial repercussions" could arise where a delay in proceedings could put a business, business venture, or construction project in serious jeopardy.

Financial consequences are not always necessary for an affirmative finding of urgency or time-sensitivity. Imminent violations of privacy, and ongoing sexual misconduct unsurprisingly warrant urgent judicial intervention. (See, for instance Karahalios, Morguard and Rogerson in the table below).

As mentioned above, jurisprudence on this topic is rapidly evolving and novel issues will likely be open to argument. For more details, see the table below.

## **Summary of COVID-19 decisions and endorsements on "urgency" and "time-sensitivity" from March 15<sup>th</sup> to April 30<sup>th</sup>**

The table below summarizes, in chronological order, all available civil jurisprudence since March 15<sup>th</sup> from the Ontario Divisional Court and the Ontario Superior Court which interprets the terms "urgency" and "time-sensitivity" from the two Notices to the Profession.

Courts have found both "urgency" and "time-sensitivity" where:

- A judgement debtor had defrauded a creditor, was ignoring the terms of the judgement against them, was surreptitiously moving assets overseas, and the creditor risked defaulting on an imminent real estate transaction (Morris v Onca, 2020 ONSC 1690)
- A long-separated husband and wife were in an ongoing fight about ownership interest in the former family business. Ex-wife had been ignoring court order to repay ex-husband for surreptitiously and unilaterally sold corporate shares, and she made a motion to stay that court order (Hrvoic v Hrvoic, 2020 ONSC 1711)

Courts have found only "time-sensitivity" where:

- There were implications for an imminent federal political leadership process, in a case where a candidate for federal Conservative Party leadership challenged the party's disqualification decision. A leadership vote was scheduled for June 2020, with several interim dates in April and May (Karahalios v Conservative Party of Canada, 2020 ONSC 1820)

Courts have found only "urgency" where:

- A motion sought relief for a wrongful disclosure of identifying information of a minor, whose privacy was protected by a prior court order (Rogerson v Havergal College, 2020 ONSC 1940)
- A residential landlord resisted a tenant's motion to reinstate their tenancy despite an eviction order (Young v CRC Self-Help, 2020 ONSC 1874)

Note that most of the available case law interprets the March 15 Notice to the Profession, prior to the issuance of the April 2nd Notice. The few decisions released after April 2 are flagged with one asterisk (\*). Cases with affirmative findings for "**urgency**" and/or "**time-sensitivity**" are indicated with two asterisks (\*\*).

Case	Date of Decision	Nature of Proceeding	"Urgent" or "time-sensitive"?
<b>Ontario Divisional Court</b>			
Atkinson v Lysak, 2020 ONSC 1878	March 26 2020	<p>Motion for relief from eviction order</p> <p>Applicant sought relief from residential eviction order of Landlord Tenant Board.</p> <p>Eviction order was made well before COVID-19 restrictions, and was already the subject of failed Div Court challenges made by the applicant in February/March.</p> <p>Applicant had already been failing to comply</p>	<p><b>Not "urgent"</b>. Issues were resolved prior to pandemic, and landlord is not seeking to enforce the order under the circumstances (paras 10, 14)</p> <p>Court did not consider whether it was "time-sensitive".</p>

		with order despite court rulings.	
Young v CRC Self-Help, 2020 ONSC 1874,	March 26, 2020	Motion to reinstate tenancy  Applicant sought to reinstate residential tenancy. Eviction order was stayed pending appeal, but landlord had already enforced the eviction order.	<b>** "Urgent"</b> (para 20)  Court did not consider whether it was "time-sensitive"
Ontario v Ontario Association of Midwives, 2020 CanLII 25862	* April 6, 2020	Case management endorsement, with motion to stay for lack of urgency  Ontario, as respondents, move to stay because provincial health-care resources are overwhelmed	Motion re urgency adjourned to panel, at beginning of scheduled three-day hearing on April 21-23 (para 7).
Chalich v Alhatam, 2020 ONSC 2569	* April 25, 2020	Motion seeking order to enforce eviction order.  Landlord argues motion is urgent because tenancy may jeopardize a real estate closing	<b>Motion not urgent.</b>  Decision suggests that "irreparable harm" or "compelling circumstances" are required to establish urgency. Landlord's evidence was too speculative (paras 18-20)

## Ontario Superior Court

<p>Hrvoic v Hrvoic, 2020 ONSC 1711, 2020 ONSC 1703</p>	<p>March 19, 2020</p>	<p>Motion at case conference to stay court order.</p> <p>Dispute between ex- spouses about extend of share ownership in family business. Spouses continue to unilaterally maneuver against each other. Ex-wife refuses to pay money owed, despite being ordered to in interim court decision. She seeks to urgently stay the decision.</p>	<p><b>** Matter is both "time sensitive" and "urgent"</b> (citing March 15<sup>th</sup> Notice) because the moving party's non-compliance with the order has made the issue of a stay "both time-sensitive and important", even though the underlying issues under litigation are not urgent or important (para 9).</p> <p>Court does not distinguish between time sensitivity and urgency.</p>
<p>Morris v Onca, 2020 ONSC 1690</p>	<p>March 19, 2020</p>	<p>Motion to schedule case conference to prevent judgement debtors from ignoring court orders, from moving assets overseas, and compelling debtors to repay creditor, who is at risk of defaulting on an imminent real estate transaction.</p>	<p><b>** Matter is both "time sensitive" and "urgent"</b> (citing March 15 2020 Notice to the Profession) due to the risk of defaulting on a debt, due to potentially fraudulent behavior of the defendant (para 1).</p> <p>Court does not analyze distinction between urgent and time-sensitive.</p>
<p>Karahalios v Conservative Party of Canada, 2020 ONSC 1820,</p>	<p>March 24 2020</p>	<p>Hearing to determine procedure</p> <p>Applicant challenged disqualification from leadership race for</p>	<p><b>** "Time-sensitive"</b> (citing March 15 2020 Notice to the Profession) due to implications for national political process (Even though no financial</p>

<p>(with later motion decision, dated April 13: 2020 ONSC 1947)</p>		<p>Conservative Party of Canada. Leadership vote scheduled for June 27 2020. Formal candidate list finalized March 25 2020. Formal events, such as debates, scheduled in interceding weeks.</p>	<p>implications were pled). Court does not analyze distinction between urgency and time-sensitivity</p>
<p>Rogerson v Havergal College, 2020 ONSC 1940,  (with later motion decision dated April 14: 2020 ONSC 2227)</p>	<p>March 30, 2020</p>	<p>Hearing to determine procedure, under Rule 77 Case Management  Applicant applied on behalf of a minor child, concerning Havergal College (Defendant) decision to terminate child's enrolment. Case management judge ordered confidentiality of third party student "Q". Recent filing revealed identifying information about student "Q"  Defendants request urgent relief to protect student "Q"'s privacy.</p>	<p><b>** "Urgent"</b> (citing March 15 2020 Notice to the Profession) due to privacy interests of children ,which are of "superordinate importance" (para 6-7).  Court does not analyze distinction between urgency and time-sensitivity</p>
<p>2676547 Ontario Inc., v Elle Mortgage Corporation, 2020 ONSC 2041</p>	<p>* April 3, 2020</p>	<p>Hearing to determine schedule/procedure  Plaintiff appeals decision dismissing certificate of pending litigation. CPL related to action against defendant for breach of</p>	<p>Not <b>"time sensitive"</b>, because parties came to an agreement and court sees no other basis for it being "necessary and appropriate" to hear during pandemic (para 11).</p>

		<p>agreement of purchase and sale.</p> <p>Plaintiff sought urgent stay of CPL dismissal pending appeal, and pandemic.</p>	
<p>Wang v 2426483 Ontario Limited, 2020 ONSC 2040</p>	<p>* April 2, 2020</p>	<p>Ancillary statement by court about COVID-19 and urgency arguments.</p> <p>Following an endorsement that scheduled case conference, litigants immediately begin arguing about urgency of matter. Court issued another statement requesting them to stop litigating that issue until invited to.</p>	<p>No determination on urgency or time-sensitivity, but <b>court urges litigants not to bog down courts with excessive and uninvited arguments about urgency</b> (para 17).</p>
<p>Morguard Corporation v Corredor, 2020 ONSC 2166</p>	<p>* April 8, 2020</p>	<p>Endorsement making determination of urgency for scheduling motion</p> <p>Residential landlord seeks to lift eviction order moratorium to evict tenant who is allegedly sexually assaulting and harassing other tenants.</p>	<p><b>** Motion is urgent.</b> Important interests of potentially vulnerable third parties is at stake.</p>
<p>Sibyl Investment Holding Inc. v Vlachich,</p>	<p>* April 14, 2020</p>	<p>Decision on motion for injunction - urgency was preliminary issue</p>	<p><b>Motion "might" have been urgent but court dismissed the motion on its merits.</b> If defendant</p>

<p>2020 ONSC 2191</p>		<p>Defendant allegedly defaulted on mortgage held by plaintiff. Defendant made a motion for injunction against plaintiff for trying to sell property.</p>	<p>was going to forever lose substantive right to property, it could have been urgent.  Motion dismissed on merit</p>
<p>Chaly v Ontario, 2020 ONSC 2470</p>	<p>* April 21, 2020</p>	<p>Endorsement making determination of urgency for scheduling motion  Claimant says that enforcing order to use ignition interlock device (breathalyzer) due to driving offences is a Charter violation.</p>	<p><b>Not urgent.</b> The pandemic is not affecting the issues under litigation, and claimant has been able to share car with their mother.</p>
<p>Charbonneau v Stewart, 2020 ONSC 2622</p>	<p>* April 23, 2020</p>	<p>Endorsement decision on urgency of defendant's motion for summary judgment.  Self-represented plaintiff brought a claim that, because of the defendant, he will endure another season of losses (estimate of \$4500)</p>	<p><b>Not urgent.</b>  Court finds that financial repercussions are not "significant" and matter has been in courts since 2015 (para 7)</p>
<p>Weidenfeld v Parish-Shah et al. 2020 ONSC 2401</p>	<p>* April 24, 2020</p>	<p>Endorsement ruling on urgency of motion to pay out monies from court, and motion opposing.  The defendants, the estate of a deceased, the executor and several</p>	<p><b>None of the motions were urgent.</b>  Court elaborates on the meaning of "immediate and significant financial repercussions", including instances where a</p>

		beneficiaries moved to order monies paid out from court, and the plaintiffs, an aggrieved family member, moved to prohibit the payment.	business, venture or project would be in jeopardy.  Court says urgency can't found based on speculative or theoretical evidence (paras 6-7)
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