

Limitation and Procedural Time Periods “Freeze” during COVID-19 State of Emergency

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By Jasmine Chung and Daria (Dasha) Peregoudova

On March 20, 2020, days after Premier Doug Ford declared a state of emergency pursuant to the *Emergency Management and Civil Protection Act*, Ontario took the significant step of ordering the suspension of all limitation periods and procedural time periods with respect to ongoing and contemplated litigation within the province during the COVID-19 emergency (the “Order”).

We provide a brief recap of the events that led to the Order:

- **March 15:** The Ontario Superior Court of Justice (the “Court”) notified members of the legal profession and the public engaged in non-urgent criminal proceedings and civil and family proceedings that the Court will be suspending all regular operations starting March 17, 2020 (until further notice).
- **March 16:** The Court issued a further notice that all sittings of the Ontario Small Claims Court will be suspended starting March 16, 2020 (until further notice).
- **March 17:** Premier Ford declared a state of emergency across Ontario as a result of the COVID-19 pandemic.
- **March 20:** The Lieutenant Governor in Council made the Order to suspend all limitation periods and procedural time periods with respect to ongoing and contemplated litigation in Ontario during the state of emergency.

The Order

The Order was made pursuant to O. Reg. 73/20 and provides that any provision of any statute, regulation, rule, by-law or order of the Government of Ontario establishing *any limitation period or any period of time within which any step must be taken in any proceeding in Ontario, including any intended proceeding*, is suspended for the duration of the emergency. The latter (the suspension of procedural time periods) is, however, subject to the discretion of the court, tribunal or other decision maker responsible for the proceeding. Both suspensions are retroactive to March 16, 2020.

Implications of the Order

Limitation Periods in Ontario

The Order suspends the basic two-year limitation period stipulated by the Ontario *Limitations Act, 2002*, which is applicable to most proceedings in Ontario. Ordinarily, the party commencing the proceeding has two years from the date the cause of action was discovered to commence litigation against another party. The Order freezes or stops the running of the two-year limitation period until the end of the emergency is formally announced.

As an illustration, the following scenarios demonstrate the impact of the retroactive suspension, depending on when a claim was discovered and assuming the suspension will end in May or June 2020:

Note that in addition to the basic two-year limitation period, other statutes, regulations, rules, by-laws and orders of the Government of Ontario have their own limitation periods (for example, the Ontario Human Rights Tribunal has a one-year limitation period to bring an application under the Ontario *Human Rights Code*). The above suspension also applies to those limitation periods.

Procedural Time Periods for Ontario Lawsuits

The Order also suspends procedural time periods relative to litigation set out in any statute, regulation, rule, by-law or order of the Government of Ontario, subject to the discretion of the court, tribunal or other decision maker. A procedural time period is any period of time within which any step must be taken in any proceeding in Ontario, including any intended proceeding. This includes, but is not limited to, any time periods set out in the below rules of procedure:

By way of example, if a party was served with a Statement of Claim on March 5, 2020, the Statement of Defence would normally be due twenty days later. However, the required twenty-day period is deemed to have stopped running on March 16, 2020. Presumably, once the suspension is lifted, the defendant will have the remaining nine days they would have had to serve their Statement of Defence.

Another example includes suspending the period of time for the parties to agree on a discovery plan, which must be done within sixty days after the close of pleadings.

When the Order does not apply

The above-referenced suspension of limitation and procedural time periods, however, does not apply to contractual limitation periods (e.g. those stipulated in insurance agreements), Canadian federal laws or the laws of other provinces.

Likewise, the suspension of procedural time periods does not appear to apply to timetables agreed to by parties, such as a written discovery plan, since this is not a period of time prescribed by statute, regulation, rule, by-law or order of the Government of Ontario. In any event, parties would face the practical problem of enforcing a discovery plan timetable if they are unable to attend court.

Implications and staying prepared

As the legal profession adapts, like the rest of the world, to the challenges of COVID-19, counsel, as well as administrative and judicial professionals, are being encouraged to be civil and reasonable in their requests and demands regarding procedural timelines and deadlines. Notwithstanding, given that the end of the declared state of emergency is unknown, it is incumbent upon current and prospective litigants and their counsel to continue to closely monitor their ongoing and prospective matters to avoid missing a key date when the emergency ceases. Preparing materials sooner rather than later will no doubt make fulfilling any procedural obligations easier at that time.

If you are uncertain whether an applicable limitation period or procedural timeline is suspended by the Order and the deadline is approaching, we recommend that you speak to your Aird & Berlis lawyer. Immediate steps, such as filing electronic claims at the Ontario Superior Court of Justice, remain possible at the date of this article.

Authors



Jasmine Chung
Student-at-Law



Daria (Dasha) Peregoudova
Associate
T 416.865.3417
dperegoudova@airdberlis.com

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