

Limitation Periods and COVID-19: Where Do Things Stand?

January 6, 2021

By Marie-Pier Nadeau

Courts across Canada shut down for a period of time in 2020 to respond to the COVID-19 pandemic. Several provinces and one territory suspended limitation periods in civil matters during that time and, in some cases, for some time after courts resumed their operations. The suspension orders have since been lifted across the country (except in Yukon), and you may be left wondering how to compute the “new” limitation periods. This article presents an overview of the situation for all provinces and territories.

It is anticipated that the various suspension orders’ effects will be felt for many years. Many issues will certainly arise regarding time limit calculations. As such, the preferable course of conduct would be to abide by any “original” limitation period, if possible.

Ontario

Limitation periods in civil matters were suspended from March 16, 2020 to September 13, 2020, inclusively, except those under the *Construction Act* (notably for matters such as construction liens and holdback deadlines). Limitation periods started to run again on September 14, 2020. The suspension lasted for a total of **26 weeks**.

The regulation that prescribed the suspension, [O. Reg. 73/20](#), provided that “the temporary suspension period shall not be counted” toward the limitation period. Therefore, any limitation period that started running before March 16, 2020 should be extended by exactly 26 weeks. For example:

- If a limitation period was originally set to expire on Monday, March 23, 2020, then the plaintiff was required to file the claim on or before Monday, September 21, 2020.
- If a limitation period was originally set to expire on Friday, August 7, 2020, then the plaintiff is now required to file the claim by no later than Friday, February 5, 2021.
- If a two-year limitation period began running during the suspension period, then it would have begun to run on September 14, 2020 and would expire on September 14, 2022.

That said, [O. Reg. 73/20](#) has since been revoked. The Attorney General for Ontario recently brought an application to the court seeking a declaration that the period of temporary suspension was not to be counted in the calculation of limitation periods. The Attorney General submitted that there was confusion in the justice community as to whether the six-month period of the regulation was to be counted because [O. Reg. 73/20](#) has been revoked. LAWPRO, the lawyers’ insurance company, intervened.

On November 16, 2020, Justice Myers heard the Attorney General’s application and refused to intervene. His decision is reported at: [Attorney General for Ontario v Persons Unknown, 2020 ONSC 6974](#). Justice Myers noted that there was no real dispute at issue, but rather “a worry by LAWPRO expressed to justice sector participants that as a result of the revocation of [O. Reg. 73/20](#), people will sue lawyers in future.” He further wrote: “In my view, a fear that people will sue lawyers, rightly or wrongly, and will cost

LAWPRO money is not a dispute that is real today.”

While Justice Myers did not rule on the issue, he summarized the relevant legislation as follows:

(iii) Relevant Legislation

[6] [Section 7.1 \(6\)](#) of the [Emergency Management and Civil Protection Act](#) provides that where limitation periods are suspended under the statute, the limitation period resumes running on the date on which the temporary suspension ends “**and the temporary suspension period shall not be counted.**” [Emphasis in the original]

[7] [Section 6](#) of [O. Reg. 73/20](#) itself provided that, “any limitation period [...] that is temporarily suspended ... resumes running on the date on which the temporary suspension ends **and the temporary suspension period shall not be counted**”. [Emphasis in the original]

[8] In addition, [s. 51](#) (f) of the [Legislation Act, 2006, SO 2006, c 21, Sch F](#), says:

51 (1) The...revocation of a regulation does not,

(a) affect the previous operation of the repealed or revoked...regulation.”

Based on the above, it is likely that the suspension period should not be counted toward the limitation period, despite the fact that [O. Reg. 73/20](#) has been revoked. However, given the confusion created by the Attorney General himself, and as stated above, it would be prudent to abide by the original limitation period, if possible, so that it is unnecessary to rely on the suspension period.

Quebec

Deadlines for extinctive prescription in civil matters were suspended on March 15, 2020, pursuant to [Order No. 2020-4251](#) dated March 15, 2020. Deadlines started to run again on September 1, 2020, pursuant to [Order No. 2020-4303](#) dated August 31, 2020. The suspension lasted a total of **170 days**.

To calculate a time limit that was set to expire after March 15, 2020, the total length of the suspension must be added to the original expiration date. For example:

- A limitation period which would have expired on March 25, 2020, was suspended on March 15, 2020, and started running again on September 1, 2020. There were 10 days remaining and, therefore, it expired on September 10, 2020.
- A limitation period which would have expired on August 2, 2020, was suspended on March 15, 2020, and started running again on September 1, 2020. There were 140 days remaining and, therefore, the limitation period will expire on January 18, 2021.
- If a three-year limitation period began running during the suspension period, then it began to run on September 1, 2020 and will expire on September 1, 2023.

Further information can be found directly on the [Quebec Ministry of Justice webpage](#).

Alberta

Limitation periods set forth in the *Limitations Act* were suspended from March 17, 2020 to May 31, 2020, inclusively, per [Ministerial Order M.O. 27/2020](#) issued on March 30, 2020. Limitation periods resumed running on June 1, 2020. The Order provides that, for

greater clarity, “the temporary suspension period shall not be counted.”

Essentially, the Ministerial Order stopped the clock from running for **75 days** following March 17, 2020, until May 31, 2020, and time began to run again on June 1, 2020. Therefore:

- If a limitation period was originally set to expire on March 18, 2020, then the plaintiff would have been required to file the claim by June 1, 2020.
- If a limitation period was originally set to expire on May 31, 2020, then the plaintiff had until August 14, 2020 to file the claim.
- If a two-year limitation period was originally set to expire on November 1, 2021, then a plaintiff will have until January 15, 2022 to file the claim.
- If a two-year limitation period began running during the suspension period, then it began to run on June 1, 2020 and will expire on June 1, 2022.

It should be noted that limitation periods set forth under the *Insurance Act* were not suspended.

British Columbia

Limitation periods to commence court proceedings were suspended on March 26, 2020 pursuant to [Ministerial Order No. M086](#). Effective April 15, 2020, Ministerial Order No. M086 was repealed and replaced by [Ministerial Order No. M098](#), which suspends limitation periods and mandatory time periods in British Columbia enactments or laws for the commencement of a civil or family action, proceeding, claim or appeal, except those established under the *Builders Lien Act* and Division 5 of Part 5 of the *Strata Property Act* (which also deals with builder liens).

On December 21, 2020, the Provincial Government announced that the suspension of limitation periods will end on March 25, 2021, pursuant to [Order in Council 655/2020](#). This means that the suspension will have lasted **a full year**. Therefore, the following should apply:

- If a limitation period was originally set to expire on March 31, 2020, then the plaintiff will have until March 31, 2021 to file the claim.
- If a limitation period was originally set to expire on August 31, 2020, then the plaintiff will have until August 31, 2021 to file the claim.
- If a two-year limitation period began running during the suspension period, then it will begin to run on March 25, 2021 and will expire on March 25, 2023.

Manitoba

Limitation periods were not suspended and remain unaffected.

Saskatchewan

Limitation periods were not suspended and remain unaffected.

Newfoundland and Labrador

Limitation periods were suspended between March 14, 2020 and September 14, 2020, for **six months**. However, the effect of the suspension was dealt with differently than in other provinces. Order O,C, 2020-070, made on April 24, 2020, provides that where the limitation period expired on or after March 14, 2020 and before September 14, 2020, then a person could bring an action on or

before September 14, 2020. This means that all limitation periods which were to expire between March 14, 2020 and September 14, 2020 have now effectively expired, unless a claim was already filed by no later than September 14, 2020.

New Brunswick

Limitation periods were suspended between March 19, 2020 and September 18, 2020, inclusively. The suspension lasted for a total of **six months**. The limitation periods have since resumed running on September 19, 2020.

The Renewed and Revised Mandatory Order: COVID-19 provides that “the period from March 19, 2020 to September 18, 2020 shall not be counted in calculating the limitation period” (at para. 23). As a result, it appears that in order to calculate a limitation period that was set to expire after March 19, 2020, a period of six months must be added to the original expiration date.

Nova Scotia

Limitation periods were not suspended and remain unaffected.

Prince Edward Island

Limitation periods were not suspended and remain unaffected.

Northwest Territories

Limitation periods were not suspended and remain unaffected.

Nunavut

Limitation periods were not suspended and remain unaffected.

Yukon

On March 27, 2020, a state of emergency was declared in Yukon because of the COVID-19 pandemic. On May 1, 2020, statutory limitation periods that would have expired during the COVID-19 state of emergency or within 30 days after the emergency ends were suspended. Any limitation period that would have expired during this period was extended and now expires 90 days after the termination of the state of emergency. See [Civil Emergency Measures Limitations and Legislated Time Periods \(COVID-19\) Order, Ministerial Order 2020/25, May 1, 2020](#).

On [December 8, 2020](#), Yukon extended the state of emergency for another 90 days, such that the suspension of limitation periods is still currently in effect.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

For more information or inquiries:



Marie-Pier Nadeau

Toronto
416.947.5055

Email:
mnadeau@weirfoulds.com

Marie-Pier Nadeau is a partner in the Subrogation & Recovery Practice Group at WeirFoulds LLP. Marie-Pier has a thorough understanding of the insurance industry and regularly provides her clients with clear and practical advice.

WeirFoulds^{LLP}

www.weirfoulds.com

Toronto Office

4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110
Fax: 416.365.1876

Oakville Office

1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110
Fax: 905.829.2035