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What's My (Action's) Age Again? Don't Blink, 182-day Statutory Timeline and Limitation Period Freeze Ends September 14

August 21, 2020

The Limitation Period Roller Coaster

As described in our [article of March 23, 2020](#), the Ontario government suspended time-limiting provisions in all statutes, regulations, rules, bylaws and orders in the Province of Ontario (the Suspension Order) on March 20, 2020.¹ The Suspension Order was made retroactive to March 16, 2020, meaning that the "time freeze" took effect as of March 16, 2020.

On April 9, 2020, the Ontario government amended the Suspension Order to exempt several pieces of legislation including the *Construction Act*.² This change was effective as of April 16, 2020. As was partly explained in [our article of April 13, 2020](#), the effect of the "unfreezing" of the *Construction Act* meant that lien expiry periods began to run again while lien actions and court proceedings were held in abeyance by the Suspension Order.

Over the course of the summer, the Ontario government extended the Suspension Order such that it was ultimately scheduled to expire on September 11, 2020.³ To avoid unnecessary confusion with September 11 falling on a Friday and timing provisions beginning to run again immediately before a weekend, the Ontario government announced on August 20, 2020, that all time-limiting provisions would begin to run again on Monday, September 14, 2020.⁴

Don't Tell Me It's Over

When time periods re-start on September 14, 2020, the Suspension Order will have lasted a total of 182 days (the Blackout).

Parties considering the impacts of the Blackout on limitation/procedural time periods will want to carefully consider situations where a limitation or procedural time period:

- ended during the Blackout;
- commenced during the Blackout; or

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- ran through the Blackout.

In the first scenario, the simplest way to address the situation is to consider the applicable time period, subtract the number of days that elapsed before the Blackout, and then add the balance to September 14, 2020. For example: if a statement of claim was served three days before the Blackout started and a statement of defence would, but for the Blackout, have been required to be served by Thursday, April 2, 2020 (pursuant to the 20 days provided by the *Rules of Civil Procedure*), the defendant would now have until Thursday, October 1, 2020 to serve the statement of defence because of the Blackout. In other words: only the three days before the Blackout started would count against the 20-day time period to serve a defence, while the 17 days frozen within the Blackout would begin to run again on September 14.

In the second scenario, where a claim was discovered during the Blackout, the limitation period for that claim will be extended by the number of days between the date of discovery and the end of the Blackout. For example: if a claim was discovered on May 25, 2020, and a proceeding in respect of that claim would, but for the Blackout, have been required to be commenced by Wednesday, May 25, 2022, the Blackout-revised date for that claim would be Wednesday, September 14, 2022.

In the third scenario, the easy way to think about the situation is that any time period running through the Blackout is now extended by 182 days. For example: if a claim was discovered on January 15, 2020 and the limitation period would otherwise have expired on January 15, 2022, the effect of the Blackout is that the new expiry of the limitation period would be 182 days later, being July 18, 2022. In other words: the Blackout does not get counted against any time period running through it.⁵

In all instances, to ensure accurate applicability to individual scenarios, we recommend that legal counsel be consulted to discuss the Blackout's impact on limitation or procedural time periods.

Consider All the Small Things

As litigation returns to normal, litigants will need to pay careful attention to how the Blackout impacts proceedings that they may be involved in. Parties that were served with claims, demands or other litigation documents that are usually subject to timing demands will want to ensure that they are prepared to respond once time periods resume. In the case of limitation periods in particular, Courts are not sympathetic to errors in calculation and parties will want to ensure that they carefully consider how the Blackout is going to affect their case.

1 [Order Under Subsection 7.1\(2\)](#) dated March 20, 2020 of Ontario Regulation 73/20 made under the *Emergency Management and Civil Protection Act*.

2 [Order Under Subsection 7.1\(2\)](#) dated April 9, 2020 amending Ontario Regulation 73/20 made under the *Emergency Management and Civil Protection Act*.

3 [Order Under Subsection 7.1\(2\)](#) dated June 5, 2020 amending Ontario Regulation 106/20 made under the *Emergency Management and Civil Protection Act*.

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4 [Letter](#) from Doug Downey to Katie Robinette, Executive Director of the Federation of Ontario Law Associations.

5 [Section 6](#) of Ontario Regulation 73/20 of *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* (formerly under *Emergency Management and Civil Protection Act*) confirms that the Blackout period shall not be counted.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.