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PUBLICATION

Limitation Periods in Ontario Are Suspended: What Does This Mean?

Date: March 25, 2020
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Original Newsletter(s) this article was published in: Commercial Litigation Update: March 2020

On March 16, 2020, the Ontario government made the unprecedented decision to largely close the court system in Ontario in response to the COVID-19 pandemic.

On March 20, 2020, the Ontario government made a second unprecedented decision to suspend all limitation periods in Ontario retroactive to March 16, 2020.

Likewise, the timelines for any steps that must be taken in a court proceeding are also suspended. Many of these timelines are found in the *Rules of Civil Procedure*. For example, a litigant normally has 20 days to file a Statement of Defence when served with a lawsuit. This deadline, like many others in the *Rules*, have been suspended and is no longer in force for the time being.

The regulation is worded quite broadly and there is currently debate in the legal community as to whether the suspension extends to all Ontario statutes that include timelines, such as the strict deadlines to register and perfect claims for lien pursuant to the *Condominium Act* and the *Construction Act*. As of the date of this article, the government has not provided clarity on this specific issue. Nonetheless, when in doubt, the safe thing to do is to meet the deadline. It should also be noted that this regulation has no effect on Federal statutes or Court ordered timelines.

The Ontario government has not clearly indicated when the suspensions will end. As per the regulation, the suspensions will last for the duration of the “emergency” – the COVID-19 pandemic.[1] The government has not provided further information in this regard such as: (1) whether the suspensions will be phased out; or (2) if there will be advance warning before the suspensions period ends.

In a time that feels so uncertain, these new measures actually bring some certainty to the public and industry. Generally, a party in Ontario has two years to start a lawsuit from the date they

knew or ought to have known that they have been wronged in such a way as to justify legal action.

For example, if a company issued an invoice to a customer that was payable on March 21, 2018, and the customer failed to pay, then in normal circumstances, the company would have until March 21, 2020, to commence a lawsuit to collect the debt.

If the company commenced the lawsuit after the two-year period had expired, then the debtor could avoid ever having to pay the debt if she were to assert a limitation period defence. However, because the government has suspended limitation periods retroactively to March 16, 2020, the hypothetical plaintiff no longer faces the March 21, 2020 deadline to commence the lawsuit. Let's imagine that the "emergency" lasts until May 21, 2020. In the above scenario, the company would have until May 26, 2020 to start its lawsuit, or put another way, the delta between the date of the suspension and the original limitation deadline. The suspension occurred with 5 days remaining to issue the claim.

With the closure of the courts, creditors (or any other would-be plaintiff) may have been getting nervous about missing a potential limitation period to start a lawsuit. These new measures should bring a bit of certainty (and perhaps a sigh of relief) to potential litigants. They can hold off on starting a lawsuit until this emergency comes to an end without a potential limitation period deadline looming over their heads. Although it should be noted, that a Plaintiff can still issue their claims on-line.

Likewise, debtors (or any other potential defendant to a lawsuit), will not be able to wait out the emergency in the hopes that a potential plaintiff misses a limitation period.

The province is signaling that folks involved in litigation ought to put their guns down for now, and if they can, resolve their disputes out of court. There are good arguments on both defendant and plaintiff sides to resolve their disputes out of Court at this time. Blaney McMurtry LLP will be releasing an article shortly providing more information with respect to access to justice and the courts during the pandemic.

From a defendant's perspective, the problem is not going away. It is only being deferred. Moreover, if the lawsuit arises from a contractual debt, there is no indication that debts will stop accruing interest during the "emergency" period. In other words, if the problem is not resolved now, it may only get worse.

For many plaintiffs, cash flow will become incredibly important in the months to come. If a plaintiff can get funds immediately, then it may be sensible to try to settle an already commenced lawsuit or pending lawsuit out of court.

The big takeaway is that potential (and already active) lawsuits are not going away. Like many aspects of life right now, they are only being kicked down the road. If you can resolve a dispute now to avoid it rearing its head in the future, then it may be worthwhile to explore that option.

Copy of the Regulation:

https://lawsocietyontario.azureedge.net/media/lso/media/news-events/emcpa-order-eng.pdf

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[1] Emergency is defined under the *Emergency Management and Civil Protection Act* as: a situation or an impending situation that constitutes a danger of major proportions that could result in serious harm to persons or substantial damage to property and that is caused by the forces of nature, a disease or other health risk, an accident or an act whether intentional or otherwise.

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