



May 11, 2020

Craig Ferris, QC  
Email: [president@lsbc.org](mailto:president@lsbc.org)

**Attention: Craig Ferris, QC**

***Emergency Program Act and Ministerial Orders M094 and M098***

As you are aware, on March 18, 2020, the Minister of Public Safety and Solicitor General issued Ministerial Order M073 under the *Emergency Program Act*, RSBC 1996, c 111, declaring that a state of emergency exists throughout the whole of the Province of British Columbia.

Since then, the Minister has used the powers under the *Emergency Program Act* to make a number of orders, including Ministerial Order M094, the Protection Against Liability (COVID-19) Order; and Ministerial Order M098, the Limitation Periods (COVID-19) Order No. 2.

The Ministerial Orders are available on BC Laws through the following link:  
<https://www2.gov.bc.ca/gov/content/justice/covid-19#emergency-orders>.

I am attaching two documents dated May 7, 2020, that provide an explanation of the purpose and intent of these orders: "Purpose and Effect of M094 – Liability Order", and "Purpose and Effect of M098 – Limitation Order". I am hopeful that these documents will be helpful, and I would be pleased if the Law Society saw fit to distribute these broadly to the profession.

I look forward to continuing to work together in the days and weeks ahead.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Fyfe".

Richard J. M. Fyfe, QC  
Deputy Attorney General

Attachments

# **Purpose and Effect of M094 – Liability Order**

**May 7, 2020**

## **Purpose**

On April 2, 2020 the Minister of Public Safety and Solicitor General made an order under s. 10 of the *Emergency Program Act*, R.S.B.C. 1996, c. 111, entitled “Protection Against Liability (COVID-19) Order” (MO 94/2020). The purpose of M094 is to ensure that those who are providing essential services, as long as they do it in accordance with directions of the Provincial Health Officer and other relevant authorities, will not be held liable for exposure to COVID-19 caused by their operations.

## **Who is Covered?**

The list of essential services that is included as a schedule to M094 was originally created as a guidance for the public and not as a legislative instrument. The order is intended to cover all persons, businesses, volunteers, non-profits, etc. providing the essential services listed. The key feature is the type of service being provided, not the nature of the person or organization providing it or the economic relationship between service provider and client/patient/recipient.

## **Duration of Effect**

The order will remain in effect for as long as the state of emergency remains in place, and any immunity created by the order will attach to actions taken during the state of emergency. The immunity will then last until such time as either the limitation period expires or there is a determination of liability. In other words, just because the order will expire with the end of the state of emergency does not mean that the immunity will expire at that time.

## **Types of Damages**

The order is intended to protect against claims for all types of damages including damages for personal injury or death as well as economic losses, caused by exposure to the pathogen SARS-CoV2. Exposure is defined as including risk of exposure. The order does not protect against liability for other causes of loss such as negligent driving or slip and falls.

## **Guidance**

Service providers will be required to comply with all guidance given by the Provincial Health Officer (link here: <https://www2.gov.bc.ca/gov/content/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/current-health-topics/covid-19-novel-coronavirus>) as well as applicable regulatory bodies such as professional colleges, WorkSafe BC and others.

Service providers will not be immunized by the order if their actions were grossly negligent. This provision is intended to cover circumstances that are not anticipated by PHO or regulatory guidance made before the circumstances arise.

## **Purpose and Effect of M098 – Limitation Order**

**May 7, 2020**

### **Purpose**

The purposes of Ministerial Order M098, the Limitation Periods (COVID-19) Order No. 2 (“Limitations Order #2”) are to

- (a) protect public health by suspending or enabling the suspension of time periods in legal and administrative proceedings, as it may not be possible for a person involved to take steps required by legislation;
- (b) avoid the problems that a delay of proceedings may cause to a person seeking to enforce their legal rights as a result of the COVID-19 pandemic and necessary public health measures taken in response to it during the provincial state of emergency; and
- (c) address unintended consequences to the construction industry as a result of the suspension of time periods to commence a court proceeding.

### **History**

On March 18, 2020, in response to the global COVID-19 pandemic, the Minister of Public Safety and Solicitor General (“Minister”) issued Ministerial Order M073 under the *Emergency Program Act*, RSBC 1996, c 111, declaring that a state of emergency exists throughout the whole of the Province of British Columbia. A public health emergency was declared under the *Public Health Act*, SBC 2008, c 28 on March 17, 2020.

On March 26, 2020, the Minister issued Ministerial Order M086, the Limitation Periods (COVID-19) Order (“Limitations Order #1”), regarding mandatory limitation periods and mandatory time periods.

On April 8, 2020, the Minister issued Ministerial Order M098, the Limitations Order #2, effective on April 15, 2020, which repealed and replaced the Limitations Order #1.

### **Effect of the Limitations Order #2 on Court Proceedings**

Subsection 2(1) of the Limitations Order #2 suspends every mandatory limitation period and mandatory time period established in a British Columbia enactment or law, within which a civil or family action, proceeding, claim or appeal must be commenced in the Provincial Court, Supreme Court, or Court of Appeal.

Subsection 2(2) of the Limitations Order #2 excludes the *Builders Lien Act*, SBC 1997, c 45, and Division 5 of Part 5 of the *Strata Property Act*, SBC 1998, c 43, from the operation of subsection 2(1).

The effect of subsection 2(2) is that all mandatory limitation periods and mandatory time periods suspended under section 2 of the Limitations Order #1 on March 26, 2020 began to run again on April 15, 2020 for all builders liens actions, proceedings, claims or appeals.

For all other mandatory limitation periods and mandatory time periods suspended under section 2 of Limitations Order #1 on March 26, 2020, the mandatory limitation periods and mandatory time periods continued to be suspended on April 15, 2020, the effective date the Limitations Order #2, and remain suspended until the provincial state of emergency expires or is cancelled.

### **Effect of Limitations Order #2 on Statutory Decisions**

Effective April 15, 2020, section 3 of the Limitations Order #2 continues to provide statutory decision makers with the power to waive, suspend, or extend a mandatory time period related to the exercise of their statutory power of decision. This means there was no change to section 3 of the Limitations Order #1, effective March 26, 2020.

No timeline is waived, suspended or extended under a statute in British Columbia unless a statutory decision maker has exercised its power to do so, either under statute or under section 3 of the Limitations Order #2.

#### **1. What is not covered by Limitations Order #2?**

Limitations Order #2 is not intended to cover:

- mandatory limitation periods and mandatory time periods under the *Builders Lien Act* and Division 5 of Part 5 of the *Strata Property Act* to commence a proceeding in court;
- time limits to lay an information or prosecute an offence; or
- time limits to serve a ticket for a provincial offence or bylaw offence.

There may be other examples that are not captured here.

#### **2. When does Limitations Order #2 apply?**

Limitations Order #2 applies from April 15, 2020 (the effective date) until the date on which the provincial state of emergency (including any extensions) expires or is cancelled.

Lawyers, statutory decision makers and the public are encouraged to monitor the date on which the provincial state of emergency or extension is due to expire or is cancelled.

#### **3. What happens when the provincial state of emergency expires or is cancelled?**

Court proceedings: mandatory limitation periods and mandatory time periods to commence a civil or family action, proceeding, claim or appeal begin to run again.

Statutory decisions: there is no general rule about what will happen when the state of emergency expires or is cancelled. Reference must be made to the decision (if any) of a statutory decision maker who has exercised their discretion under section 3 of the Limitations Order #1 or Limitations Order #2.

**4. Why were builders liens specifically excluded from the suspension of mandatory limitation periods or mandatory time periods under subsection 2(2) of the Limitations Order #2?**

The Limitations Order #1 created uncertainty under the *Builders Lien Act* and Division 5 of Part 5 of the *Strata Property Act*, affecting the flow of money and payment of workers in the construction industry.

**5. How are mandatory limitation periods and mandatory time periods that were suspended under section 2 of the Limitations Order #1 affected by section 2 of the Limitations Order #2?**

With the exception of mandatory limitation periods and mandatory time periods under the *Builders Lien Act* and Division 5 of Part 5 of the *Strata Property Act* to commence an action, proceeding, claim or appeal in court, all suspensions of time periods effected by Limitations Order #1 continue under Limitations Order #2.

All mandatory limitation periods and mandatory time periods under the *Builders Lien Act* and Division 5 of Part 5 of the *Strata Property Act* to commence an action, proceeding, claim or appeal in court that were suspended by Limitations Order #1 on March 26, 2020 began to run again on April 15, 2020 under Limitations Order #2.