

## INFORMATION BULLETIN:

### ***COVID-19 RELATED MEASURES ACT – LIMITATION PERIODS***

On July 8, 2020, the Legislature passed the *COVID-19 Related Measures Act* (CRMA). Part 2 of the CRMA (COVID-19 Provisions) provides a temporary legal framework to enact and extend the duration of ministerial orders made under the *Emergency Program Act* (EPA) in response to the COVID-19 pandemic.

The CRMA came into force on July 10, 2020.

#### **Background**

On March 26, 2020, the Minister of Public Safety and Solicitor General (“Solicitor General”) issued Ministerial Order MO86 under the EPA, the Limitation Periods (COVID-19) Order (“Limitations Order #1”), regarding mandatory limitation periods and mandatory time periods.

On April 8, 2020, the Solicitor General made Ministerial Order M098, the Limitation Periods (COVID-19) Order No. 2 (“Limitations Order #2”), which repealed and replaced Limitations Order #1 on April 15, 2020.

#### **Purpose of Limitation Order #2**

As with the now-repealed Limitations Order #1, the purposes of Limitations Order #2 were to:

- 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; and
- 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 public state of emergency.

Limitations Order #2 also addressed unintended consequences to the construction industry as a result of the suspension of time periods to commence a court proceeding.

#### **Effect of Part 2 of the CRMA on Limitation Orders #1 and #2**

##### **Limitations Order #1**

The CRMA:

- enacts Limitations Order #1 as a provision of the CRMA, effective March 26, 2020;
- repeals Limitations Order #1 as a ministerial order under the EPA; and repeals the enactment of Limitation Order #1 as a provision of the CRMA, effective April 14, 2020 by OIC 391/2020, made July 10, 2020.

## **Limitations Order #2**

The CRMA:

- enacts Limitations Order #2 as a provision of the CRMA effective April 8, 2020 and extends its application for a further period of 90 days from the coming into force of the CRMA; and
- repeals Limitations Order #2 as a ministerial order under the EPA.

### **Therefore, under the CRMA:**

Limitations Order #1, enacted as a provision of the CRMA, is in effect from March 26, 2020 to April 14, 2020; and

Limitations Order #2, enacted as a provision of the CRMA:

- is in effect from April 15, 2020, until 90 days after the last extension of the declaration of the COVID-19-related state of emergency expires or is cancelled;
- can be further extended by regulation; and
- is identical in purpose to Limitations Order #2.

### **BC Reg. 199/2020 – COVID-19 (Limitation Periods in Court Proceedings) Regulation:**

On August 4, 2020, the *COVID-19 (Limitation Periods in Court Proceedings) Regulation*, BC Reg. 199/2020 was made under the EPA and the CRMA. The regulation does as follows:

- Under the authority of s. 3 (8) (a) of the CRMA, repeals section 2 of Item 7 in Schedule 2 to the CRMA (Limitations Order #2). The remainder of that item is unaffected.
- Creates a new regulation under s. 10.1 of the EPA that replicates the section repealed above but separates each level of court into its own paragraph.
- Breaking each level of court into a separate paragraph in the new regulation, as opposed to listing them all in the same sentence, will allow flexibility to set unique end dates for the suspension for each level of court, as appropriate in the circumstances.
- Under the authority of s. 3 (8) (b) of the CRMA, adds this new regulation made under s. 10.1 of the EPA to Schedule 2 of the CRMA.
- Under the authority of s. 3 (5) (c) of the CRMA, extends the effects of the new EPA regulation for 45 days beyond the end of the state of emergency in respect of the Court of Appeal, and for 90 days beyond the end of the state of emergency in respect of the Provincial Court and Supreme Court.
- There are no changes to the breadth of the suspension of limitation periods and other mandatory time periods from Limitations Order #2. There is also no change to the exemption of the *Builders Lien Act* and Division 5 [*Builders Liens and Other Charges*] of Part 5 [*Property*] of the *Strata Property Act*. The only net effect is a change to the end

date for the suspension in respect of the Court of Appeal, from 90 to 45 days beyond the end of the state of emergency

### **How is your limitation period or other mandatory time period affected?**

Limitations Order #1 and Limitations Order #2 (including when enacted as COVID-19 provisions) and the *COVID-19 (Limitation Periods in Court Proceedings) Regulation* (including when enacted as a COVID-19 provision) serve to suspend the limitation periods and other mandatory time periods to which they apply. Accordingly, in calculating the end date of your limitation period or other time period, you do not count the days on which the applicable provisions were in force.

For example, if you had five days remaining in your limitation period before Limitations Order #1 came into force, then you would still have five days remaining, starting on the day after the applicable paragraph of subsection 1 (1) of the *COVID-19 (Limitation Periods in Court Proceedings) Regulation* (as enacted as a COVID-19 provision) is repealed. The repeal dates for the provisions in that regulation that apply to each level of court are specified in OIC 453/2020 (BC Reg. 199/2020).

As of August 4, 2020, OIC 453/2020 (BC Reg. 199/2020) extends periods for commencing proceedings in the Court of Appeal for 45 days beyond the end of the state of emergency, and periods for commencing proceedings in the Supreme Court or Provincial Court for 90 days beyond the end of the state of emergency.