

## PURPOSE AND EFFECT:

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

**AMENDED DECEMBER 21, 2020**

#### KEY MESSAGES

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- Mandatory limitation periods and other mandatory time periods established in BC laws for commencing a civil or family action, proceeding, claim, or appeal in BC courts were first suspended on March 26, 2020.
- Up to this point, that suspension has been linked to the duration of the state of emergency declared under the *Emergency Program Act* (EPA).
- On December 21, 2020, Order in Council 655/2020 (OIC 655/2020) was made under the *COVID-19 Related Measures Act* (CRMA). OIC 655/2020 has de-linked the suspension of limitation periods from the duration of the state of provincial emergency.
- **Per OIC 655/2020, the suspension will end on March 25, 2021. This will result in the suspension having been in place for exactly one year.**

#### BACKGROUND

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On July 8, 2020, the Legislature passed the CRMA. Part 2 of the CRMA (COVID-19 Provisions) provides a temporary legal framework to enact and extend the duration of ministerial orders and regulations made under the EPA in response to the COVID-19 pandemic. The CRMA came into force on July 10, 2020.

Two ministerial orders and one regulation have been made under the EPA in relation to the suspension of limitation periods during the COVID-19 pandemic. Those instruments were each, at different times, added to the schedules to the CRMA to allow their effects to endure beyond the end of the state of emergency that was declared on March 18, 2020 under the EPA.

On December 21, 2020, OIC 655/2020 was made. **This OIC provides that, effective March 25, 2021, the suspension of every mandatory limitation period and any other mandatory time period that is established in an enactment or law of British Columbia within which a civil or family action, proceeding, claim, or appeal must be commenced in the Provincial Court, Supreme Court, or Court of Appeal will end.** The suspension of these mandatory limitation periods and other mandatory time periods is no longer linked to the duration of the state of emergency declared under the EPA and will instead end on March 25, 2021.

However, no change has been made to the repeal timing for the temporary discretionary power provided to a person, tribunal, or other body that has a statutory power of decision to waive,

suspend, or extend a mandatory time period relating to the exercise of that power.<sup>1</sup> That power does not apply to a court, but only to tribunals and other statutory decision makers. That power is set to remain in force until 90 day after the end of the state of emergency in recognition of the fact that there is such a diversity of statutory decision-making processes across tribunals and governments that discretion is required to allow this wide range of decision-makers to adapt to their unique circumstances.

The balance of this document provides background information regarding the two ministerial orders and one regulation made under the EPA in relation to limitation periods, as well as OIC 655/2020.

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## **TIMELINE AND EFFECTS OF LIMITATION PERIOD SUSPENSION**

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### **Effective Periods of Instruments Suspending Limitation Periods**

This table provides a timeline of the effective periods of the instruments suspending limitation periods that are discussed in this document. Further background is provided in the Appendix.

<b>Instrument</b>	<b>Section(s)</b>	<b>Effective Period<sup>2</sup></b>
<b>Item 3 of Schedule 2 to CRMA:</b> M086/2020 – <i>Limitation Periods (COVID-19) Order</i>	All	March 26, 2020 to April 14, 2020
<b>Item 7 of Schedule 2 to CRMA:</b> M098/2020 – <i>Limitation Periods (COVID-19) Order No. 2</i>	1 and 3	April 15, 2020 to 90 days after the end of the EPA state of emergency
	2	April 15, 2020 to August 3, 2020
<b>Item 27 of Schedule 2 to CRMA:</b> <i>COVID-19 (Limitation Periods in Court Proceedings) Regulation, BC Reg 199/2020</i>	All	August 4, 2020 to March 25, 2021

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<sup>1</sup> Sections 1 and 3 of Item 7 of Schedule 2 to the CRMA – *Limitation Periods (COVID-19) Order No. 2* – are currently set to remain in force until the date that is 90 days after the date on which the last extension of the declaration of a state of emergency made March 18, 2020 under section 9 (1) of the EPA expires or is cancelled.

<sup>2</sup> Effective dates of EPA instruments that have been added to the schedules to the CRMA are determined by referring to s. 3 of the CRMA and relevant regulations and Orders in Council, including OIC 391/2020, the *COVID-19 (Limitation Periods in Court Proceedings) Regulation, BC Reg 199/2020* (OIC 453/2020), and OIC 655/2020.

Ultimately, every mandatory limitation period and any other mandatory time period that is established in an enactment or law of British Columbia within which a civil or family action, proceeding, claim, or appeal must be commenced in the Provincial Court, Supreme Court, or Court of Appeal was suspended for a one-year period from March 26, 2020 to March 25, 2021, inclusive.<sup>3</sup> The sole exception is for affected periods relating to builders' liens, which were only suspended until April 14, 2020 under Item 3 in the above table.

From March 26, 2020 until the date that is 90 days after the date on which the last extension of the declaration of a state of emergency made March 18, 2020 under section 9 (1) of the EPA expires or is cancelled, a person, tribunal, or other body that has a statutory power of decision has an explicit authority to waive, suspend, or extend a mandatory time period relating to the exercise of that power.<sup>4</sup> This does not include courts.

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

The EPA and CRMA instruments outlined in the table above served to suspend the mandatory limitation periods and other mandatory time periods to which they applied. 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. Taking all of those EPA and CRMA instruments together, affected mandatory limitation dates and other mandatory time periods were suspended for exactly one year, from the beginning of the day on March 26, 2020 to the end of the day on March 25, 2021.<sup>5</sup> This applies regardless of the level of court in which the action, proceeding, claim, or appeal must be commenced.

## **BACKGROUND ON EPA AND CRMA INSTRUMENTS**

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### **Background – Ministerial Orders under the EPA**

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, effective April 15, 2020.

The purposes of Limitations Orders #1 and #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

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<sup>3</sup> See ss. 4 (1) and (3) of the *Interpretation Act* regarding the time of commencement or repeal of enactments.

<sup>4</sup> See s. 3 of Ministerial Orders M086/2020 and M098/2020, which are Items 3 and 7 of Schedule 2 to the CRMA, respectively.

<sup>5</sup> See ss. 4 (1) and (3) of the *Interpretation Act* regarding the time of commencement or repeal of enactments.

- 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.

By including exceptions for builders' liens, 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.

## **Background – Ministerial Orders and the CRMA**

Limitations Orders #1 and #2 were both included in Schedule 2 to the CRMA at the time it was brought into force by OIC 391/2020 on July 10, 2020, as Items 3 and 7, respectively. When the CRMA came into force, Limitations Orders #1 and #2 were repealed as ministerial orders under the EPA and became “COVID-19 provisions” under the CRMA.<sup>6</sup> Converting these ministerial orders to “COVID-19 provisions” did not affect the dates on which they became effective.<sup>7</sup>

However, converting these ministerial orders into “COVID-19 provisions” provided authority to allow their effects to extend beyond the end of the state of provincial emergency declared under the EPA, if necessary. Initially, Limitations Order #2 was set to remain in force as a COVID-19 provision under the CRMA for 90 days beyond the end of the EPA state of emergency.

## **Background – 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. The regulation did the following things:

- Under the authority of s. 3 (8) (a) of the CRMA, repealed section 2 of Item 7 in Schedule 2 to the CRMA (Limitations Order #2). The remainder of that item is unaffected, meaning that ss. 1 and 3 of Limitations Order #2 are still set to remain in force as a COVID-19 provision for 90 days beyond the end of the EPA state of emergency.
- Created a new regulation under s. 10.1 of the EPA that replicated the section repealed above but separated 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, was intended to 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, added 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, extended 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.

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<sup>6</sup> See CRMA ss. 3 (1) and (2) and the definition of “COVID-19 provision” in s. 1.

<sup>7</sup> See CRMA s. 3 (3) (b).

There were no changes to the breadth of the suspension of limitation periods and other mandatory time periods from Limitations Order #2. There was 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 was 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

### **OIC 655/2020 – Ends Suspension of Limitation Periods Effective March 25, 2021:**

On December 21, 2020, OIC 655/2020 was made. Effective March 25, 2021, this OIC repeals Item 27 in Schedule 2 to the CRMA, which is the *COVID-19 (Limitation Periods in Court Proceedings) Regulation*. Through that repeal, March 25, 2021 is set as the end date for the suspension of every mandatory limitation period and any other mandatory time period that is established in an enactment or law of British Columbia within which a civil or family action, proceeding, claim, or appeal must be commenced in the Court of Appeal, the Supreme Court, or the Provincial Court.

This change was made after consultation with the courts and key justice system stakeholders, including the Law Society, the Trial Lawyers Association of British Columbia, and the Canadian Bar Association, BC Branch. The change is made in recognition of the fact that while the COVID-19 pandemic is ongoing, the justice system has adapted sufficiently to allow for new claims and appeals to be filed.