

Court Declines to Rule on Effect of Suspension of Limitation Periods

Brian Sunohara
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Most limitation periods in Ontario were suspended for close to six months, from March 16, 2020 to September 14, 2020, in light of the COVID-19 pandemic.

The regulation that provided for the suspension, Ontario Regulation 73/20, indicated that “the temporary suspension period shall not be counted” toward the limitation period.

The Attorney General for Ontario recently brought an application to the court seeking a declaration that the period of temporary suspension is not to be counted in the calculation of limitation periods. The Attorney General submitted that there is confusion in the legal community on this issue because Ontario Regulation 73/20 has been revoked.

The application was supported by LawPro, which stated that the revocation of the regulation has led to confusion on the part of many lawyers and that there will be claims against lawyers regarding the ongoing effect of the temporary suspension of limitation periods.

On November 16, 2020, in Attorney General for Ontario v. Persons Unknown, 2020 ONSC 6974, Justice Myers released a decision on the application.

Justice Myers dismissed the application, stating that it is inappropriate for the court to provide a declaration in the circumstances. His Honour indicated:

A declaration would not have any real-world effect or serve any practical purpose. There is no one here with an interest in the issue brought and no one before the court with an interest in opposing. There are no facts in issue and no real dispute.

Justice Myers further stated:

There are many ways that the Attorney General can avoid the confusion which LAWPRO and others have raised with it. The Government has the ability to give regulatory or legislative responses. It routinely makes regulatory impact statements

when it regulates. If the Government would like an opinion of the judicial branch on an interpretation issue, it can refer the question to the Court of Appeal. It is not for me to usurp the role of the Court of Appeal in a reference, the regulatory role of the Attorney General, or the legislative role of the Legislature.

Therefore, Justice Myers declined to provide an opinion on the issue.

It remains to be seen whether the government will refer the question to the Court of Appeal for an opinion.

As it stands, if parties to a proceeding have a dispute on whether a limitation period was missed in the context of the temporary suspension, they can seek a determination from the court.

That being said, Justice Myers was not satisfied that there is any dispute at all. His Honour noted that, despite widespread dissemination of the Attorney General's application, no one came forward to oppose the requested declaration.

Justice Myers also referred to section 51(1)(a) of the Legislation Act, 2006, which states that the repeal of an Act or the revocation of a regulation does not affect the previous operation of the repealed or revoked Act or regulation.

In summary, although the court did not rule on the issue, it is most likely that the temporary suspension period does not count toward the limitation period.

For example, if, on March 16, 2020, you had three months to commence a claim (June 16, 2020), you will likely now have three months from September 14, 2020 to commence the claim (December 14, 2020).

As another example, suppose an accident took place on January 1, 2020. A claim would normally need to be commenced by January 1, 2022. However, as a result of the temporary suspension, there will likely be close to an additional six months to commence a claim.

Nevertheless, to the extent possible, counsel and parties should attempt to commence proceedings within the regular limitation period and not rely on the temporary suspension period. This will prevent disputes on whether or not the limitation period was missed.