

BRIEFING NOTE

Covid-19 Related Measures Act Updated with Two New Regulations

This is an update to our [Briefing Note](#) following passage of the *COVID-19 Related Measures Act*, (SBC 2020, Ch.8 - the “Act”) last month.

Earlier this month, the *Covid-19 (Limitation Periods in Court Proceedings) Regulation*, BC Reg. 199/2020 and *Covid-19 (Limits on Actions and Proceedings) Regulation*, BC Reg. 204/2020 were passed under the *Act*.

1. *Covid-19 (Limitation Periods in Court Proceedings) Regulation, BC Reg. 199/2020*

This Regulation was made on August 4th and added into Schedule 2 of the *Act* pursuant to s.3(8)(b). The Regulation repeals and amends what was previous to the *Act*, s. 2 of Ministerial Order 098. The material effect of the Regulation is to differentiate suspension of limitation periods between the Court of Appeal, and the Supreme & Provincial Courts. In particular:

- Pursuant to s.3(5)(c) of the *Act*, s. 1(1)(a) of the Regulation (related to Court of Appeal actions) is repealed 45 days after the expiration of the last extension of the state of emergency, and
- s.1(1)(b-c) of the Regulation (related to Provincial and Supreme Court actions) is repealed 90 days after the expiration of the last extension of the state of emergency.

2. *Covid-19 (Limits on Actions and Proceedings) Regulation, BC Reg. 204/2020*

This Regulation was made on August 6th, and repealed Ministerial Orders 120 and 183 (“protection against liability” & “protection against liability for sports”). In our previous Briefing Note, we recorded that in addition to these Ministerial Orders, there appeared to be duplication in that the *Act* also enacted s.5 (“*Limits on Actions and Proceedings*”), in terms that appeared wider than the Ministerial Orders. Also, we had not seen any Regulations that defined what damages, persons, classes of persons, or acts or omissions, are “prescribed” under s.5 of the *Act*. The duplication issue is addressed by the repeal of the Ministerial Orders, and the new Regulation also addresses our second concern.

S.3(1) describes prescribed damages as those resulting, directly or indirectly, from an individual being, or likely being, infected with or exposed to COVID-19.

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Prescribed persons and classes of persons are defined in s.3(2) as anyone engaged in a prescribed act set out in s.3(3).

The main difference between the new Regulation and the Ministerial Orders is that the list of activities covered by the Regulation is broader. While Ministerial Order 120 only covered essential services and Ministerial Order 183 covered disability sport, local sport, provincial sport and multi-sport organizations, the s. 3(3) states that the new regulation covers:

- a) *the operation or provision of an essential service;*
- b) *an activity that has the purpose of benefiting the community or any aspect of the community, including in relation to*
 - i. *the relief of poverty,*
 - ii. *the advancement of education or religion,*
 - iii. *the promotion of health,*
 - iv. *the protection of the environment,*
 - v. *the provision of services to a vulnerable or disadvantaged person or group, or*
 - vi. *the provision of community recreation or leisure activities;*
- c) *an activity, including a business, that is carried on for direct or indirect gain or profit.*

The requirement of compliance with all applicable emergency and public health guidance (or a reasonably held belief of such compliance) is still required.

BC appears to be leading the way in protection from liability flowing from the pandemic. However, like other Provinces, insurers in industries where there is any doubt as to qualification under s.3(3) of the Regulation, may well still need to grapple with waivers for potential COVID-19 related liability.

One last difference between the Ministerial Orders prescribed in the Act and the new Regulation is that under the s. 3(5)(a-b) of the Act, Ministerial Order 120 and 183 is repealed 45 and 90 days, respectively, after the state of emergency expires. The new Regulation, on the other hand, remains in force until the Act is repealed (currently on its 1 year anniversary - July 20, 2021).



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