

BRIEFING NOTE

I. Introduction

This Briefing Note is further to our three previous ones addressing British Columbia’s measures to suspend limitation periods and provide protections against liability in the context of the Province’s response to the COVID-19 pandemic. British Columbia’s COVID-19 legislation has been amended in response to the changing conditions of the pandemic, to provide an end date for the suspension of limitation periods. Accordingly, we thought this was an appropriate juncture at which to provide an overview of the measures enacted in British Columbia and how those compare with the other Provinces and Territories across Canada. For clarity, British Columbia and several other jurisdictions have also made changes to court procedures, including the suspension of certain time periods, however those measures are not included below.

II. Summary of Provincial Measures

British Columbia	Limitation Period
	<ul style="list-style-type: none"> <li data-bbox="346 956 1545 1219">• Limitation periods in BC were suspended by Ministerial Order MO86 on March 26, 2020, until 90 days after the end of the provincial state of emergency. This was amended by MO98 on April 8, 2020 which provided a ‘carve out’ for claims under the Builders Lien Act and certain claims under the Strata Property Act. In July, the <i>COVID-19 Related Measures Act</i> was passed. Following that, Regulation 199/2020 amended the expiration dates of the suspension in that the suspension of limitation periods for Supreme & Provincial Court matters would expire 90 days after the end of the provincial state of emergency, and the suspension of limitation periods for Court of Appeal matters would expire 45 days after the end of the provincial state of emergency.¹ <li data-bbox="346 1260 1545 1321">• In December, Order in Council #655 repealed Regulation 199/2020, and provided that the suspension of limitation periods will end on March 25, 2021.² <li data-bbox="346 1362 1545 1393">• The running of time will have been suspended for one year on March 25, 2021. The effect of the

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¹ <https://www.lawsociety.bc.ca/Website/media/Shared/docs/about/covid/Limitations.pdf>

² https://news.gov.bc.ca/files/12-21-20_AG_OIC.pdf

suspension provision is to add one year to causes of action that had accrued, but had not yet expired prior to the suspension. For causes of action that accrue during the suspension; the effect is to freeze the running of time until March 26, 2021.

Protection from Liability

- Under the *COVID-19 Related Measures Act*, Section 5, and Regulation 204/2020, no action lies from an individual's exposure to, or infection with COVID-19 (or likely occurrence of the same) as against a person engaged in the activities prescribed in Section 3(3) of the Regulation.^{3 4}
- The prescribed activities in Section 3(3) are broad, including, *inter alia*, provision of essential services, advancement of education or religion, and provision of community recreation or leisure services.
- The protections in Section 3 of the Regulation and Section 5 of the *Act* are only available where the persons and activities in question were in accord with all available emergency and public health guidance (or a reasonable belief of the same).

Alberta

Limitation Period⁵

- Ministerial Order 27/2020 suspended limitation periods under a number of statutes including the Limitations Act, from March 17, 2020 to June 1, 2020 (75 days).⁶ When the Order expired on June 1, 2020, limitations began to run.
- The effect of the suspension provision is to add 75 days to causes of action that had accrued, but had not yet expired prior to the suspension. For causes of action that accrued during the suspension; the effect was to freeze the running of time until June 1, 2020. This effect is consistent with the measures taken in British Columbia.

Protection from Liability

- No pandemic-specific protections have been enacted.

³ <https://www.canlii.org/en/bc/laws/stat/sbc-2020-c-8/latest/sbc-2020-c-8.html?autocompleteStr=SBC%202020&autocompletePos=2>

⁴ <https://www.canlii.org/en/bc/laws/regu/bc-reg-204-2020/latest/bc-reg-204-2020.html>

⁵ <https://www.lawsociety.ab.ca/post-pandemic-limitation-periods-in-alberta/>

⁶ <https://files.constantcontact.com/3744a7b8601/78bca1d4-f437-415e-963b-24c04525b329.pdf>

Saskatchewan	Limitation Period <ul style="list-style-type: none"> • Limitation periods have not been suspended.⁷
	Protection from Liability⁸ <ul style="list-style-type: none"> • Bill 23, An Act to amend <i>The Emergency Planning Act</i>, proposes to add Section 24.3(1) to address protections against liability. • The Bill had its first reading on December 10, 2020, but has not yet received assent or come into force. • Section 24.3(1) stipulates that no action will lie against any person as a result of an individual being (or potentially being) infected with COVID-19 on or after March 18, 2020, where the person acted in good faith and in accordance with COVID-19 public health orders or enactments. • A person who is vicariously liable for the acts or omissions of another person is protected from liability if Section 24.3(1) applies to that other person. • Section 24.3 will not apply if a person's operations were required to close at the time that the cause of action occurred. • Section 24.3 will not apply if a cause of action arose out of a worker's course of employment under <i>The Worker's Compensation Act, 2013</i>
Manitoba	Limitation Period <ul style="list-style-type: none"> • Limitation periods have not been suspended.
	Protection from Liability <ul style="list-style-type: none"> • No pandemic-specific protections have been enacted.

⁷ <https://www.lawsociety.sk.ca/uncategorized/managing-litigation-matters-during-covid-19/>

⁸ *Bill 23, An Act to amend The Emergency Planning Act*, Sections 24.3-24.5

<p>Ontario</p>	<p>Limitation Period^{9 10}</p> <ul style="list-style-type: none"> • Under the <i>Reopening Ontario (A Flexible Response to COVID-19) Act, 2020</i>, Regulation 73/20 suspended limitation periods on March 16, 2020. By an amendment made April 9, <i>inter alia</i> the suspension was lifted on April 16 for claims under the Construction Act. • Regulation 378/20 clarified that any suspended limitation period resumes running on the date that the suspension ends and the period of suspension is not counted in the running of time. • Regulation 457/20 revoked Regulation 73/20 effective September 14, 2020. As such, the suspension of limitation periods ended on September 13, 2020. September 14, 2020 is counted as a day in the running of time. • The effect of the suspension provision was to add 26 weeks to causes of action that had accrued, but had not yet expired prior to the suspension. For causes of action that accrued during the suspension; the effect was to freeze the running of time until September 14, 2020. This effect is consistent with the measures taken in British Columbia.
	<p>Protection from Liability^{11 12}</p> <ul style="list-style-type: none"> • Under Section 2(1) of the <i>Supporting Ontario's Reopening Act, 2020</i>, no action lies against any person as a direct or indirect result of an individual being infected with or exposed to COVID-19 on or after March 17, 2020. • Under Section 2(8), the protections extend to a person who is vicariously liable for the acts or omissions of another person to whom Section 2(1) applies. • Section 2 will not apply if a person's operations were required to close at the time that the act or omission occurred. • Section 2 will not apply if a cause of action arose out of a worker's course of employment under the <i>Workplace Safety and Insurance Act, 1997</i>.

⁹ <https://lso.ca/covid-19-response/faqs/practice-management#what-is-the-current-status-with-respect-to-limitation-periods-and-procedural-time-periods--5>

¹⁰ O. Reg. 73/20, 378/20, 457/20

¹¹ <https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-218>

¹² *Supporting Ontario's Recovery Act, 2020*, SO 2020, C 26, ss 2-4

Quebec	<p>Limitation Period</p> <ul style="list-style-type: none"> • A joint order of the Chief Justice of Quebec and the Minister of Justice, Order 2020-4251, suspended extinctive prescription (limitation) on March 15, 2020, until the expiry of the declaration of the public health emergency.¹³ This was amended by Order 2020-4282 in July to provide a ‘carve out’ for certain tenancy related matters. • Order 2020-4303 lifted the suspension effective September 1, 2020.¹⁴ • The effect of the suspension provision ought to be to add 170 days to causes of action that had accrued, but had not yet expired prior to the suspension. For causes of action that accrued during the suspension; the effect was to freeze the running of time until September 1, 2020. This effect would be consistent with the measures taken in British Columbia. <p>Protection from Liability</p> <ul style="list-style-type: none"> • No pandemic-specific protections have been enacted.
Nova Scotia	<p>Limitation Period</p> <ul style="list-style-type: none"> • Limitation periods have not been suspended.¹⁵ <p>Protection from Liability</p> <ul style="list-style-type: none"> • Under Direction 20-012 pursuant to the <i>Emergency Management Act</i>, homes licensed under the <i>Homes for Special Care Act</i>, their directors, officers, and employees are not liable for damages as a result of an individual being infected or put at risk of contracting COVID-19 while operating, or providing services under the <i>Homes for Special Care Act</i>.¹⁶ • Nova Scotia does not appear to have enacted broader liability protections beyond the context of long-term care.

¹³ https://www.justice.gouv.qc.ca/fileadmin/user_upload/contenu/documents/En_Anglais/centredoc/covid-19/Arrete_ministeriel_art_27_cpc-a.pdf

¹⁴ https://www.justice.gouv.qc.ca/fileadmin/user_upload/contenu/documents/En_Anglais/centredoc/covid-19/Arrete_27-CPC-2020-4303_VA.pdf

¹⁵ <https://nsbs.org/covid-19-questions/covid-19-legalfaqs/> (See: Courts)

¹⁶ <https://novascotia.ca/coronavirus/docs/Ministers-Direction-Long-term-Care-Liability.pdf>

Newfoundland and Labrador	<p>Limitation Period¹⁷</p> <ul style="list-style-type: none"> • Under the <i>Temporary Variation of Statutory Deadlines Order (2020-070)</i>, limitations were extended effective March 14, 2020, with the extension ending on September 14, 2020. • We have not located an explanatory note pertaining to the <i>Order</i>. On our reading of it, the extension operated differently than the suspensions of other Provinces, in that rather than adding time, it only applied to extend time to those causes of action with a limitation period expiring between March 14 and September 14, 2020, to allow the action to be brought at any time up to September 14, 2020. • As such, any proceeding with a limitation period expiring within the 6-month extension period has now expired, unless action was taken on or before September 14, 2020. Further, the provision does not appear to have affected any actions where the cause of action accrued prior to March 14, 2020, but would not expire until after September 14, 2020, or those where the cause of action accrued between March 14 and September 14, 2020. <p>Protection from Liability:</p> <ul style="list-style-type: none"> • No pandemic-specific protections have been enacted.
New Brunswick	<p>Limitation Period¹⁸</p> <ul style="list-style-type: none"> • Under the <i>Renewed and Revised Mandatory Order: COVID-19</i>, Sections 18-21, limitation periods were suspended effective March 19, 2020 until September 18, 2020. • Limitation time began to run on September 19, 2020. • Section 21 states that the period from March 19 to September 18, 2020, will not be counted in calculating the limitation period. • The effect of the suspension provision was to add 26 weeks to causes of action that had accrued, but had not yet expired prior to the suspension. For causes of action that accrued during the suspension; the effect was to freeze the running of time until September 18, 2020. This effect is consistent with the measures taken in British Columbia.

¹⁷ *Temporary Variation of Statutory Deadlines Act*, OC 2020-070, s 2

¹⁸ <https://www2.gnb.ca/content/dam/gnb/Corporate/pdf/EmergencyUrgence19.pdf>

	<p>Protection from Liability</p> <ul style="list-style-type: none"> No pandemic-specific protections have been enacted.
Prince Edward Island	<p>Limitation Period</p> <ul style="list-style-type: none"> Limitation periods have not been suspended.
	<p>Protection from Liability</p> <ul style="list-style-type: none"> No pandemic-specific protections have been enacted.
Yukon	<p>Limitation Period</p> <ul style="list-style-type: none"> Under the <i>Civil Emergency Measures Limitation Periods and Legislated Time Periods (COVID-19) Order</i> (Ministerial Order 2020/25) made May 1, 2020, Section 2(1), no limitation period will expire during the period commencing March 27, 2020, and ending 30 days after the expiry of the provincial state of emergency. Per Section 2(2), a limitation period that would have expired but for Section 2(1), will be extended until 90 days after the termination of a state of emergency.¹⁹ As of the date of this Briefing Note, the provincial state of emergency remains in force (having just been renewed to expire June 1, 2021). This effect of this extension appears to be consistent with the measures taken in Newfoundland and Labrador in approach, although of significantly longer duration.
	<p>Protection from Liability</p> <ul style="list-style-type: none"> No pandemic-specific protections have been enacted.
Northwest Territories	<p>Limitation Period</p> <ul style="list-style-type: none"> Limitation periods have not been suspended.
	<p>Protection from Liability</p> <ul style="list-style-type: none"> No pandemic-specific protections have been enacted.

¹⁹ https://legislation.yukon.ca/reggs/mo2020_025.pdf

Nunavut	Limitation Period
	<ul style="list-style-type: none"> • Limitation periods have not been suspended.
	Protection from Liability
	<ul style="list-style-type: none"> • No pandemic-specific protections have been enacted.

III. Closing

As is laid out above, while there are a number of consistencies in how the Provinces and Territories have dealt with the effects of their individual responses to the Covid 19 pandemic, but there are also differences – some subtle and some less so. In addition, the landscape is constantly changing, as there is no particular coordination between the Provinces and Territories over what measures are enacted, and when. Therefore, while this Briefing Note is useful as a general overview and a “point in time” review, specialist legal advice on any particular limitations or liability issue relating to responses to the Covid 19 pandemic, will always be required.

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