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## Ontario courts are expanding remote hearings and operations. What does this mean for suspended limitation periods and time limits?

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In Ontario, limitation periods and certain procedural timelines have been suspended in response to the COVID-19 pandemic. On March 20, 2020, following the declaration of a provincial state of emergency, the Ontario government made an [order under subsection 7.1\(2\)](#) of the *Emergency Management and Civil Protection Act* temporarily suspending limitations periods and “any period[s] of time within which any step must be taken in any proceeding in Ontario” established by statute, regulation, rule, by-law, or government order. The suspension order is retroactive to March 16, 2020. While the order applies to time periods set out in legislative acts, such as the *Rules of Civil Procedure* and the *Limitations Act, 2002*, it does not suspend time limits established by contract.

Now that the Ontario courts are moving to expand remote hearings and operations, parties need to assess the impact of suspended limitation periods on their claims.

### Suspension of Court Operations in March 2020

In tandem with this order, Ontario courts suspended certain operations in mid-March. The Ontario Superior Court of Justice suspended its regular operations as of March 17, 2020, adjourning non-urgent matters scheduled on or after that date. Similarly, the Ontario Court of Appeal suspended scheduled appeals between March 17 and April 3, 2020, though urgent appeals were still heard during this period.

### Expansion of Virtual Hearings for Non-Urgent Matters

Since the beginning of April, however, Ontario courts have resumed some of their regular operations. As of April 6, 2020, the Superior Court of Justice has

been hearing certain non-urgent matters remotely via teleconference, videoconference, or writing. [The types of non-urgent matters being heard vary according to region](#). The Court of Appeal has also been hearing remote appeals since April 6, and it now requires all documents to be filed electronically. Similarly, the Divisional Court has been hearing remote proceedings.

## Status of Suspended Time Limits

Now that Ontario courts are resuming more of their operations, what effect does this have on suspended time limits?

The short answer is that most limitation periods and procedural timelines are still suspended – for now. Under the suspension order, time limits are suspended “for the duration of the emergency.” Since the Ontario legislature has extended the state of emergency to May 12, limitation periods and timelines currently remain suspended until then. Under the *Emergency Management and Civil Protection Act*, the legislature may extend the declaration of emergency for additional periods of 28 days, and there is no limit to how many extensions the legislature can pass. Accordingly, if the emergency extends beyond May 12<sup>th</sup>, the suspension will also extend beyond that date.

Two caveats are worth mentioning. First, procedural timelines are suspended “subject to the discretion of the court, tribunal or decision-maker responsible for the proceeding.” Given that Ontario courts and tribunals are expanding their virtual hearings, adjudicators may decide to exercise their discretion and lift the suspension of time limits in some cases.

Second, the Ontario government can amend its suspension order to allow certain timelines to run during the state of emergency. For instance, Ontario [amended its suspension order](#) on April 9, 2020 so that limitation periods and procedural timelines under the Construction Act and Niagara Escarpment Planning and Development Act would run again as of April 16, 2020. As Ontario courts increasingly conduct virtual hearings and accept electronic filings, Ontario may amend the suspension order further to exempt time limits established by other acts, regulations, by-laws, or orders.

## Calculating Timelines Once the Suspension is Lifted

Once the suspension of a time limit has been lifted, parties will be tasked with determining their new deadlines for filing claims or taking steps in a proceeding.

In Ontario, the basic limitation period is two years from the day on which a claim is discovered. To calculate limitation periods post suspension order, parties will need to add the number of days that the order was in effect to the two-year time period.

Assuming that the suspension continues until May 12 and is lifted on May 13, the order will have been in effect for 58 days. If a party discovered a claim on March 1, 2020, they would normally have had until March 1, 2022 to issue a claim in the Ontario courts. With the suspension order, the party will now have until April 28, 2022 to issue a claim.

In the case of claims discovered during the period of suspension, the limitation period would not start running until the state of emergency has ended. Accordingly, assuming that the emergency ends on May 12, 2020, a party would have until May 12, 2022 to file a claim with the Ontario courts.

The same analysis applies to procedural timelines in legislation such as the *Rules of Civil Procedure*.

Parties will therefore have to ensure that they carefully calculate limitation periods and time limits applicable to their proceedings once the state of emergency has ended. In addition, even while the suspension of time limits continues, parties may choose to advance their disputes as courts move increasingly towards virtual operations.