

Ministry of Government and
Consumer Services

Ministère des Services gouvernementaux
et des Services aux consommateurs



ServiceOntario
Regulatory Services Branch

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VIA EMAIL

April 17, 2020

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Dear Odysseas and Merredith:

RE: The Treatment of Certain Timelines under the Land Titles Act During the Covid-19 Pandemic

I am the Director of Titles for the Province of Ontario and I am responding to recent queries received regarding the application of certain time lines to cautions under the Land Titles Act during the Covid-19 Pandemic.

The Land Titles Act provides for the issuance of cautions under Sections 71 and 128 of the Land Titles Act (collectively, “**Cautions**”). Greatly paraphrased, these Cautions all have natural expiry dates. In the case of a caution-land under Section 128 of the Land Titles Act, that expiry date is sixty (60) days after the date of registration. In the case of a caution-agreement of purchase and sale under Section 71 of the Land Titles Act, that expiry date is 60 days after the date of closing. In both cases, the Caution is automatically deleted after the relevant expiry date.

Cautions are intended to provide cautioners with an opportunity to obtain more permanent interim interlocutory relief (typically, a certificate of pending litigation (a “**CPL**”) but sometimes also an injunction order), which can then be registered on title. With the effective closure of the Superior Courts for all but urgent matters, however, it is now difficult if not impossible for cautioners to get the requisite CPL or like judicial relief before the expiration of the relevant expiry dates.

I do not believe that the suspension of limitation periods pursuant to the Order in Council dated March 20, 2020, retroactive to March 16, 2020 (see <https://www.ontario.ca/laws/regulation/200073>) (the “**Order in Council**”) applies to Cautions. Cautions do not establish “any period of time within which any step must be taken” [emphasis added]. There is no step to be taken in connection with a Caution – Cautions simply expire naturally by effluxion of time. They expressly cannot be renewed.

That said, Section 130 of the Land Titles Act allows for the issuance of second cautions by the same cautioner in respect of the same matter with the permission of the land registrar. In ordinary times, such permission is available only where the cautioner can demonstrate that bona fide efforts have been made then to date to obtain a CPL or other judicial relief. For so long as the courts remain effectively closed, it will be practically impossible for the cautioner to demonstrate bona fide efforts to obtain a CPL or other judicial relief. Accordingly, I am prepared to consider granting permission for second

Cautions, and thereafter for successive Cautions until some reasonable time after the courts re-open, without requiring the cautioner to demonstrate bona fide efforts to obtain a CPL or other judicial relief. The cautioner will, however, still be required to seek permission for each Caution after the initial one. The land registrar will, with each such request, still consider the bona fides of the Caution itself. If, for whatever reason, the land registrar determines that the Caution is not a proper cautionable interest, then permission to register a second (or successive) Caution will be denied, even if previous Caution(s) have been successfully registered.

Although this has not historically been the case, the aforesaid policy of second (and successive) Cautions will also apply to Cautions issued in connection with agreements of purchase and sale issued under Section 71 of the Land Titles Act.

I will be communicating these decisions broadly throughout land registry office staff to ensure a uniform response across the province. I would be grateful if you would share this with our colleagues in the Ontario Bar Association, the Federation of Ontario Law Associations, and other stakeholders who may be inclined to make similar inquiries.

Yours very truly,

A handwritten signature in black ink that reads "Jeffrey W. Lem". The signature is written in a cursive, flowing style.

Jeffrey W. Lem
Director of Titles