

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**ATTORNEY GENERAL FOR ONTARIO**

**Applicant**

**- and -**

**PERSONS UNKNOWN**

**Respondents**

APPLICATION UNDER Rule 14.05(3)(h) of the Rules of Civil Procedure

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**FACTUM  
OF THE ATTORNEY GENERAL FOR ONTARIO**

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October 2, 2020

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**TO:** [ex parte]

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## **PART I – NATURE OF THE APPLICATION**

1. In response to the COVID-19 pandemic, the Lieutenant Government in Council (“LGIC”) temporarily suspended limitation periods in Ontario from March 16, 2020 to September 13, 2020, inclusive, through Ontario Regulation 73/20, as amended, made under section 7.1 of the *Emergency Management and Civil Protection Act*, RSO 1990 cE9 (“EMCPA”).

2. Regulation 73/20, as amended, explicitly provided that any limitation period would resume running on the date that the temporary suspension ends and that “*the temporary suspension period shall not be counted.*”

3. Regulation 73/20, as amended, was revoked effective September 14, 2020. As a result, all limitation periods that were temporarily suspended resumed running on that date.

4. However, the Attorney General has received inquiries from several stakeholders expressing uncertainty about the effect of the revocation. Some practitioners assume that since the Regulation has been revoked, it is of no effect – as if it had never been issued. In other words, it’s assumed that the suspension period must now be counted against all applicable limitation periods.

5. The Attorney General seeks an urgent declaration that any provision of any statute, regulation, rule by-law or order of the Government of Ontario establishing any limitation period that was temporarily suspended on March 16, 2020, by Regulation 73/20, as amended, now revoked, resumed running on September 14, 2020, and that the temporary suspension period shall not be counted.

6. The declaration sought by the Attorney General is consistent with the plain language and intent of the now revoked Regulation and the *EMCPA*. Further, in respect of limitation periods and consistent with subsections 51(1)(a) and (b) of the *Legislation Act, 2006*, SO 2006 c 21 Sch

F, the revocation of Regulation 73/20, as amended, does not affect its previous operation or any right, privilege, obligation or liability that came into existence under it.

7. Finally, this Honourable Court should grant an order dispensing with service and exercise its discretion to make the declaration sought. There are no facts in dispute, and it is necessary and in the interests of justice and all current and future litigants in Ontario that the effect of the revocation of Regulation 73/20, as amended, on all applicable limitation periods be determined by this Honourable Court as soon as possible. The Attorney General's intention would be to post the declaration, if issued by this Honourable Court, on the Ministry's website and advise key stakeholders of the decision of first impression.

## **PART II – FACTS**

### **Suspension and Resumption of Limitation Periods**

8. As part of the Ontario Government's response to the COVID-19 pandemic, on March 17, 2020, the LGIC declared a state of emergency,<sup>1</sup> pursuant to section 7.0.1 of the *EMCPA*.<sup>2</sup>

9. Section 7.1 of the *EMCPA* authorizes the LGIC to make certain orders when persons affected by the emergency need greater services, benefits or compensation than the law of Ontario provides or may be prejudiced by the operation of the law of Ontario.

10. Subsection 7.1(2) of the *EMCPA* permits temporary suspension orders which temporarily suspend the operation of a provision of a statute, regulation, rule, by-law or order of the Government of Ontario.<sup>3</sup>

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<sup>1</sup> [O Reg 50/20](#)

<sup>2</sup> [Emergency Management and Civil Protection Act, RSO 1990 c E 9, s 7.0.1](#) [*“EMPCA”*]

<sup>3</sup> [Ibid, s 7.1\(2\)](#)

11. In respect of a limitation period, subsection 7.1(6) of the *EMCPA* also specifies that the temporary suspension period shall not be counted when the limitation period resumes running:

**Effect of temporary suspension: time period**

(6) If a provision establishing a limitation period or a period of time within which a step must be taken in a proceeding is temporarily suspended by the order and the order does not provide for a replacement limitation period or period of time, the limitation period or period of time resumes running on the date on which the temporary suspension ends *and the temporary suspension period shall not be counted.*<sup>4</sup> [emphasis added]

12. On March 20, 2020, the LGIC issued an Order pursuant to subsection 7.1(2) of the *EMCPA*, which indefinitely suspended all provisions of any statute, regulation, rule, by-law, or order of the Government of Ontario establishing a limitation period, retroactive to Monday, March 16, 2020. The Order was issued as Ontario Regulation 73/20.<sup>5</sup>

13. Effective July 15, 2020, Regulation 73/20 was amended to provide greater certainty concerning how limitation periods would be counted when the suspension period ended. Section 6 of the Regulation provided as follows:

**End of temporary suspension**

6. For greater certainty, any limitation period or period of time within which a step must be taken in a proceeding that is temporarily suspended under this Regulation resumes running on the date on which the temporary suspension ends *and the temporary suspension period shall not be counted.*<sup>6</sup> [emphasis added]

14. On July 24, 2020, the *Reopening Ontario (A flexible Response to Covid-19) Act 2020* (“*ROA*”) came into force. The *ROA* provides that all orders made under section 7.1 of the *EMCPA* are continued as valid and effective orders under the *ROA*, and ceased to be orders

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<sup>4</sup> *EMCPA*, *supra* note 1, ss [7.1\(6\)](#)

<sup>5</sup> [O Reg 73/20, \(version: March 20, 2020-April 8, 2020\) s 1.](#)

<sup>6</sup> [O Reg. 73/20, s 6](#) was added through O Reg [378/20](#).

under the *EMCPA*.<sup>7</sup> Accordingly, Regulation 73/20, as amended, formerly a Regulation under the *EMCPA*, continued and became a Regulation under the *ROA*.<sup>8</sup>

15. Subsequently, the LGIC revoked Regulation 73/20, as amended, effective September 14, 2020.<sup>9</sup> Accordingly, the temporarily suspended limitation periods resumed running on September 14, 2020. The suspension period at issue was 26 weeks in total - from March 16, 2020 to September 13, 2020, inclusive.

### **The Notice of Application**

16. Notwithstanding the Attorney General's position set out below, there is some uncertainty as to the effect of the revocation of Regulation 73/20, as amended, on limitation periods in Ontario. Despite the intent and language of the aforementioned Regulations, some litigants may now believe that section 6 of Regulation 73/20, as amended, has no effect on limitation periods because it has been revoked and that some limitation periods may now have expired as a result. This uncertainty may potentially relate to an indeterminate number of both current and future litigants across Ontario, as reflected in correspondence received by the Ministry of the Attorney General expressing concerns.<sup>10</sup>

17. Best efforts by the Ministry of the Attorney General to locate a current proceeding where Ontario is a named party in which to seek the declaration sought have not been successful.<sup>11</sup>

18. Many key stakeholders within the legal profession have been given notice of this application.<sup>12</sup>

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<sup>7</sup> [Reopening Ontario \(A flexible Response to Covid-19\) Act 2020, SO 2020 c 17, s 2.](#)

<sup>8</sup> [O Reg 73/20 \(version July 15, 2020 to August 19, 2020\).](#)

<sup>9</sup> [O Reg 457/20, s 1.](#)

<sup>10</sup> Affidavit of John Lee, sworn September 30, 2020, at paras 3 and 4 [*“Lee Affidavit”*] **Application Record Tab 2.**

<sup>11</sup> *Ibid*, para 5, **AR Tab 2.**

### **PART III – ISSUES AND LAW**

19. There are three issues in this application:

- (a) Whether the suspension period for limitation periods, brought into effect by Regulation 73/20, as amended, shall be counted, now that the Regulation is revoked and the applicable limitation periods have resumed;
- (b) Whether this Honourable Court should make an order dispensing with service of this application on all persons who may be affected by the suspension period for limitation periods, brought into effect by Regulation 73/20, as amended, now revoked; and
- (c) Whether this Honourable Court should exercise its discretion to make the declaration sought.

#### **Issue 1: The Temporary Suspension Period Shall Not Be Counted, Despite the Revocation of Regulation 73/20**

20. Despite the revocation of Regulation 73/20, as amended, the suspension period shall not be counted for any applicable limitation period. This interpretation is consistent with the plain reading of the Regulation, subsections 51(1)(a) and (b) of the *Legislation Act 2006*, section 7.1 of the *EMCPA* and the intention of the Legislature.

##### **a. Regulation 73/20 and the Effect of Revocation**

21. Section 6 of Regulation 73/20, as amended, clarified the affect of the suspension period on all applicable limitation periods. It expressly provided that “any limitation period [...] that is

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<sup>12</sup> *Lee Affidavit*, *supra* note 10 at paras 6 and 7, and Exhibits A and B, **AR Tab 2**.

temporarily suspended ... resumes running on the date on which the temporary suspension ends *and the temporary suspension period shall not be counted*' [emphasis added].<sup>13</sup>

22. Regulation 73/20, as amended, was revoked in its entirety effective September 14, 2020.<sup>14</sup> However, that revocation has no effect on its previous operation or a right, privilege, obligation or liability that came into existence under it. Subsections 51(1)(a) and (b) of the *Legislation Act 2006*, read as follows:

**Effect of repeal and revocation**

51 (1) The repeal of an Act or the revocation of a regulation does not,

(a) affect the previous operation of the repealed or revoked Act or regulation;

(b) affect a right, privilege, obligation or liability that came into existence under the repealed or revoked Act or regulation; [...]<sup>15</sup>

23. By operation of section 6 of Regulation 73/20, as amended, persons subject to a limitation period were granted a right to have it suspended during the suspension period. This was a substantive right, and the revocation of the Regulation does not abrogate that right.

**b. Consistency With Section 7.1 of the EMCPA**

24. In addition, Regulation 73/20, as amended, was originally issued under the *EMCPA* which authorizes the LGIC to make certain orders when persons affected by the emergency need greater services, benefits or compensation than the law of Ontario provides or may be prejudiced by the operation of the law of Ontario.

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<sup>13</sup> [O Reg. 73/20, s 6.](#)

<sup>14</sup> [O Reg 457/20, s 1.](#)

<sup>15</sup> [Legislation Act, 2006, SO 2006 c 21 Sch F s 51\(1\)\(b\).](#) The interpretive principles set out in part VI of the *Legislation Act* are presumptive, and may be overcome by the express contrary intention of the Legislature – see section 47. There is no express contrary intent found in Regulation [O Reg 457/20](#) or otherwise.

25. Consistent with the aforementioned purpose, subsection 7.1(6) of the *EMCPA* specifies that the affect of a temporary suspension on a limitation period is that the temporary suspension period is not counted:

**Effect of temporary suspension: time period**

(6) If a provision establishing a limitation period or a period of time within which a step must be taken in a proceeding is temporarily suspended by the order and the order does not provide for a replacement limitation period or period of time, the limitation period or period of time resumes running on the date on which the temporary suspension ends *and the temporary suspension period shall not be counted*.<sup>16</sup> [emphasis added]

26. This wording in subsection 7.1(6) of the *EMCPA* is identical to that of section 6 of Regulation 73/20, as amended. Subsection 7.1(6) of the *EMCPA* remains in effect.

27. It is not reasonable to interpret section 6 of Regulation 73/20, as amended, as having no effect simply because the Regulation has been revoked. This would be contrary to the purpose of the *EMCPA* and Regulation 73/20, as amended - to assist those persons prejudiced by operation of law in Ontario during the state of emergency.<sup>17</sup>

**Issue 2: It is Necessary and in the Interests of Justice to Dispense with Service**

28. The Attorney General seeks an order dispensing with service of the within notice of application on all persons who may be affected by the suspension of limitation periods brought into effect by Regulation 73/20, as amended, now revoked.

29. Rule 16.04 of the *Rules of Civil Procedure* permits this Honourable Court to make an order for substituted service or, where necessary in the interests of justice, may dispense with service of an originating process where service is impractical.<sup>18</sup> A finding that service is

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<sup>16</sup> *EMPCA*, *supra* note 1, ss [7.1\(6\)](#)

<sup>17</sup> *EMPCA*, *supra* note 1, ss [7.1\(1\)](#).

<sup>18</sup> *Rules of Civil Procedure*, RRO 1990 O Reg 194, r [16.04](#)

impractical (within the meaning of Rule 16.04) may be made where, for any reason, “service is unable to be carried out or done” promptly, particularly if there is some urgency to the matter.<sup>19</sup>

30. The temporary suspension of the limitation period may have a potential impact on an indeterminate number of persons – both current and future litigants in Ontario. It is impractical and impossible to serve advanced notice on all persons who may be affected by the suspension of limitation periods brought into effect by Regulation 73/20, as amended, now revoked, or bring individual motions in each current or future proceedings where this issue will arise. It is necessary and in the interests of justice and all current and future litigants in Ontario that the effect of the revocation of Regulation 73/20, as amended, on all applicable limitation periods, be determined by this Honourable Court, as soon as possible. For the same reasons, should the declaration sought be ordered by this Honourable Court, it should be publicly posted.

31. On March 19, 2020, Chief Justice Morawetz of this Honourable Court permitted the Attorney General to bring an application without service of the notice of application on all persons who are parties to residential eviction proceedings. In that case, the Attorney General sought an order suspending evictions of residents from their homes, pursuant to eviction orders issued by the Landlord and Tenant Board or writs of possession, for the duration of the suspension of regular court operations. Similar to this case, it was impractical to serve all persons in Ontario who may be affected by such an order.<sup>20</sup>

32. Notwithstanding the aforementioned relief sought, many key stakeholders within the legal profession have been notified of this application.<sup>21</sup>

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<sup>19</sup> *Laframboise v Woodward* (2002), 59 OR (3d) 338 (SCJ), at para 8.

<sup>20</sup> [Attorney General for Ontario v Unknown Persons, CV-20-00638480, Order of Chief Justice Morawetz, dated March 19, 2020.](#)

<sup>21</sup> *Lee Affidavit*, *supra* note 10 paras 6 and 7, and Exhibits A and B, **AR Tab 2**.

### **Issue 3: This Honourable Court Should Exercise its Discretion to Grant the Declaration**

33. The Attorney General seeks a declaration that any provision of any statute, regulation, rule, by-law or order of the Government of Ontario establishing any limitation period that was temporarily suspended on March 16, 2020 by Regulation 73/20, as amended, now revoked, resumed running on September 14, 2020, and the suspension period shall not be counted against any applicable limitation period. Declaratory orders are discretionary and may be issued if the Court has jurisdiction over the issue, the issues before the Court are real, and not theoretical, and the person raising the issues has a real interest in it.<sup>22</sup>

34. With respect to the first factor, pursuant to Section 97 of the *Courts of Justice Act*, and this Honourable Court's inherent jurisdiction, this Court has broad jurisdiction to grant declaratory relief, whether or not any consequential relief is or could be claimed.<sup>23</sup>

35. As it concerns the second factor, the issue before this Honourable Court is real, and not hypothetical or theoretical; there are no material facts in dispute; and its determination at the earliest opportunity has significant practical utility. The suspension and resumption of limitation periods during the suspension period will impact the limitation periods in current and future proceedings throughout Ontario - this Court can take judicial notice that this issue will arise. This issue can also be decided in the absence of any underlying facts specific to any particular case - the date and fact of the suspension of limitation periods and the revocation of Regulation 73/20, as amended, cannot be disputed. A determination of this issue by this Honourable Court will be of significant utility to litigants across the province – providing urgent certainty and clarity as limitation periods have resumed.

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<sup>22</sup> *Glaspell v Ontario*, 2015 ONSC 3965 at paras 27-28; *Canada (Prime Minister) v Khadr*, 2010 SCC 3, para 46; *Daniels v Canada (Indian Affairs and Northern Development)*, 2016 SCC 12, at para 11.

<sup>23</sup> *Courts of Justice Act*, RSO 1990 c C43, s 97; *Grain Farmers of Ontario v Ontario (Environment and Climate Change)* 2016 ONCA 283 at paras 15-16 [*Grain Farmers*].

36. Finally, the Attorney General has a genuine interest in the declaratory relief sought and a determination of the issue. The Attorney General has ministerial responsibility over the administration of the *Limitation Act, 2002*, SO 2002 c 24 Sch B; conducts and regulates all litigation for and against the Crown or any ministry or agency of Government;<sup>24</sup> and superintends all matters connected with the administration of justice in Ontario.<sup>25</sup> The Attorney General has a genuine interest in the affect of the revocation of Regulation 73/20, as amended, on limitation periods in future cases against the Crown<sup>26</sup> and all limitation periods in Ontario. In addition, the Attorney General has an interest in ensuring that the interpretation of the revocation is in the public interest, and consistent with the purpose of the *EMCPA* and Regulation 73/20, as amended.

#### **PART IV – ORDER REQUESTED**

37. Ontario seeks the following:

- (a) a declaration that any provision of any statute, regulation, rule, by-law or order of the Government of Ontario establishing any limitation period that was temporarily suspended on March 16, 2020, by Regulation 73/20, as amended, now revoked, resumed running on September 14, 2020, and the temporary suspension period shall not be counted against any applicable limitation period;
- (b) an order dispensing with service of the notice of application on all persons who may be affected by the suspension of limitation periods brought into effect by Regulation 73/20, as amended, now revoked; and

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<sup>24</sup> *Ministry of the Attorney General Act*, RSO 1990, c M17, s.5(h) [“MAGA”]

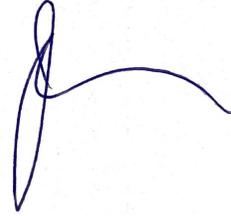
<sup>25</sup> *MAGA*, s. 5(c)

<sup>26</sup> *Lee Affidavit*, *supra* note 10 at para 5, **AR Tab 2**.

(c) should the declaration sought be ordered by this Honourable Court, an order that it be served on the public by posting it on the website of the Ministry of the Attorney General.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

October 1, 2020



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Judie Im, LSO #44577V



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Jeffrey Claydon, LSO #65453P

**SCHEDULE “A” – TABLE OF AUTHORITIES**

<b>TAB</b>	<b>AUTHORITY</b>
1.	<a href="#"><i>Laframboise v Woodward</i>, [2002] OJ No 1590 (SCJ)</a>
2.	<a href="#"><i>Glaspell v Ontario</i>, [2015] OJ No 3246 (SCJ)</a>
3.	<a href="#"><i>Canada (Prime Minister) v Khadr</i>, 2010 SCC 3</a>
4.	<a href="#"><i>Daniels v Canada (Indian Affairs and Northern Development)</i>, 2016 SCC 12</a>
5.	<a href="#"><i>Grain Farmers of Ontario v Ontario (Environment and Climate Change)</i>, 2016 ONCA 283</a>

## SCHEDULE “B” – LIST OF STATUTES

1. **O. Reg. 73/20: Limitation Periods, s. 1, s. 2 and s. 6 (revoked effective September 14, 2020)**

### **Limitation periods**

1. Any provision of any statute, regulation, rule, by-law or order of the Government of Ontario establishing any limitation period shall be suspended, and the suspension shall be retroactive to Monday, March 16, 2020. O. Reg. 73/20, s. 1; O. Reg. 258/20, s. 1.

### **Period of time, steps in a proceeding**

2. Any provision of any statute, regulation, rule, by-law or order of the Government of Ontario establishing any period of time within which any step must be taken in any proceeding in Ontario, including any intended proceeding, shall, subject to the discretion of the court, tribunal or other decision-maker responsible for the proceeding, be suspended, and the suspension shall be retroactive to Monday, March 16, 2020. O. Reg. 73/20, s. 2; O. Reg. 258/20, s. 2.

### **End of temporary suspension**

6. For greater certainty, any limitation period or period of time within which a step must be taken in a proceeding that is temporarily suspended under this Regulation resumes running on the date on which the temporary suspension ends and the temporary suspension period shall not be counted. O. Reg. 378/20, s. 5.

2. **Emergency Management and Civil Protection Act, R.S.O. 1990, c. E.9, s. 7.01 and s. 7.1**

### **Declaration of emergency**

7.0.1 (1) Subject to subsection (3), the Lieutenant Governor in Council or the Premier, if in the Premier’s opinion the urgency of the situation requires that an order be made immediately, may by order declare that an emergency exists throughout Ontario or in any part of Ontario. 2006, c. 13, s. 1 (4).

### **Confirmation of urgent declaration**

(2) An order of the Premier that declares an emergency is terminated after 72 hours unless the order is confirmed by order of the Lieutenant Governor in Council before it terminates. 2006, c. 13, s. 1 (4).

### **Criteria for declaration**

(3) An order declaring that an emergency exists throughout Ontario or any part of it may be made under this section if, in the opinion of the Lieutenant Governor in Council or the Premier, as the case may be, the following criteria are satisfied:

1. There is an emergency that requires immediate action to prevent, reduce or mitigate a danger of major proportions that could result in serious harm to persons or substantial damage to property.

2. One of the following circumstances exists:

i. The resources normally available to a ministry of the Government of Ontario or an agency, board or commission or other branch of the government, including existing legislation, cannot be relied upon without the risk of serious delay.

ii. The resources referred to in subparagraph i may be insufficiently effective to address the emergency.

iii. It is not possible, without the risk of serious delay, to ascertain whether the resources referred to in subparagraph i can be relied upon. 2006, c. 13, s. 1 (4).

### **Orders in emergency**

#### **Purpose**

7.1 (1) The purpose of this section is to authorize the Lieutenant Governor in Council to make appropriate orders when, in the opinion of the Lieutenant Governor in Council, victims of an emergency or other persons affected by an emergency need greater services, benefits or compensation than the law of Ontario provides or may be prejudiced by the operation of the law of Ontario. 2006, c. 13, s. 1 (5).

#### **Order**

(2) If the conditions set out in subsection (3) are satisfied, the Lieutenant Governor in Council may, by order made on the recommendation of the Attorney General, but only if the Lieutenant Governor in Council is of the opinion described in subsection (1),

(a) temporarily suspend the operation of a provision of a statute, regulation, rule, by-law or order of the Government of Ontario; and

(b) if it is appropriate to do so, set out a replacement provision to be in effect during the temporary suspension period only. 2006, c. 13, s. 1 (5).

#### **Conditions**

(3) The conditions referred to in subsection (2) are:

1. A declaration has been made under section 7.0.1.

2. The provision,

i. governs services, benefits or compensation, including,

A. fixing maximum amounts,

B. establishing eligibility requirements,

- C. requiring that something be proved or supplied before services, benefits or compensation become available,
- D. restricting how often a service or benefit may be provided or a payment may be made in a given time period,
- E. restricting the duration of services, benefits or compensation or the time period during which they may be provided,
- ii. establishes a limitation period or a period of time within which a step must be taken in a proceeding, or
- iii. requires the payment of fees in respect of a proceeding or in connection with anything done in the administration of justice.

3. In the opinion of the Lieutenant Governor in Council, the order would facilitate providing assistance to victims of the emergency or would otherwise help victims or other persons to deal with the emergency and its aftermath. 2006, c. 13, s. 1 (5).

**Maximum period, renewals and new orders**

(4) The period of temporary suspension under an order shall not exceed 90 days, but the Lieutenant Governor in Council may,

(a) before the end of the period of temporary suspension, review the order and, if the conditions set out in subsection (3) continue to apply, make an order renewing the original order for a further period of temporary suspension not exceeding 90 days;

(b) at any time, make a new order under subsection (2) for a further period of temporary suspension not exceeding 90 days. 2006, c. 13, s. 1 (5).

**Further renewals**

(5) An order that has previously been renewed under clause (4) (a) may be renewed again, and in that case clause (4) (a) applies with necessary modifications. 2006, c. 13, s. 1 (5).

**Effect of temporary suspension: time period**

(6) If a provision establishing a limitation period or a period of time within which a step must be taken in a proceeding is temporarily suspended by the order and the order does not provide for a replacement limitation period or period of time, the limitation period or period of time resumes running on the date on which the temporary suspension ends and the temporary suspension period shall not be counted. 2006, c. 13, s. 1 (5).

**Effect of temporary suspension: fee**

(7) If a provision requiring the payment of a fee is temporarily suspended by the order and the order does not provide for a replacement fee, no fee is payable at any time with respect to things done during the temporary suspension period. 2006, c. 13, s. 1 (5).

**Restriction**

(8) This section does not authorize,

- (a) making any reduction in respect of services, benefits or compensation;

- (b) shortening a limitation period or a period of time within which a step must be taken in a proceeding; or
- (c) increasing the amount of a fee. 2006, c. 13, s. 1 (5).

**3. Legislation Act, 2006, S.O. 2006, c. 21, Sched. F, s. 51.**

**Effect of repeal and revocation**

**51** (1) The repeal of an Act or the revocation of a regulation does not,

- (a) affect the previous operation of the repealed or revoked Act or regulation;
- (b) affect a right, privilege, obligation or liability that came into existence under the repealed or revoked Act or regulation;
- (c) affect an offence committed against the repealed or revoked Act or regulation, or any penalty, forfeiture or punishment incurred in connection with the offence;
- (d) affect an investigation, proceeding or remedy in respect of,
  - (i) a right, privilege, obligation or liability described in clause (b), or
  - (ii) a penalty, forfeiture or punishment described in clause (c). 2006, c. 21, Sched. F, s. 51 (1).

**4. Ontario Reg 50/20 under the Emergency Management and Civil Protection Act, R.S.O 1990, c.E.9**

WHEREAS the outbreak of a communicable disease namely COVID-19 coronavirus disease constitutes a danger of major proportions that could result in serious harm to persons;

AND WHEREAS the criteria set out in subsection 7.0.1(3) of the *Emergency Management and Civil Protection Act*, R.S.O. 1990, chapter E.9 (the “Act”) have been satisfied;

NOW THEREFORE, an emergency is hereby declared pursuant to section 7.0.1 of the Act in the whole of the Province of Ontario.

5. **Reopening Ontario (A Flexible Response to COVID-19) Act, 2020, S.O. 2020, c. 17, s. 2.**

**Orders continued**

2 (1) The orders made under section 7.0.2 or 7.1 of the *Emergency Management and Civil Protection Act* that have not been revoked as of the day this subsection comes into force are continued as valid and effective orders under this Act and cease to be orders under the *Emergency Management and Civil Protection Act*.

**Exception**

(2) Subsection (1) does not apply to the order filed as Ontario Regulation 106/20 (Order Made Under the Act — Extensions and Renewals of Orders).

**Clarification**

(3) For greater certainty, an order that is in force is continued under subsection (1) even if, on the day that subsection comes into force, the order does not apply to any area of the Province.

6. **Ontario Regulation 457/20 made under the Reopening Ontario (A Flexible Response to COVID-19) Act, 2020**

Revocation

1. Ontario Regulation 73/20 is revoked.

Commencement

2. This Regulation comes into force on the later of September 14, 2020 and the day it is filed.

7. **Ontario Regulation 378/20 made under the Emergency management and Civil Protection Act, s. 5.**

Amending O.Reg 73/20 (Order under subsection 7.1(2) of the Act-Limitation Periods)

**5. The Regulation is amended by adding the following section:**

**End of temporary suspension**

**6.** For greater certainty, any limitation period or period of time within which a step must be taken in a proceeding that is temporarily suspended under this Regulation resumes running on the date on which the temporary suspension ends and the temporary suspension period shall not be counted.

**8. Rules of Civil Procedure under the Courts of Justice Act, R.S.O. 1990, c. C.43, rule 16.04**

*Substituted service or dispensing with service*

*Where Order May be Made*

**16.04** (1) Where it appears to the court that it is impractical for any reason to effect prompt service of an originating process or any other document required to be served personally or by an alternative to personal service under these rules, the court may make an order for substituted service or, where necessary in the interest of justice, may dispense with service. R.R.O. 1990, Reg. 194, r. 16.04 (1).

*Effective Date of Service*

(2) In an order for substituted service, the court shall specify when service in accordance with the order is effective. R.R.O. 1990, Reg. 194, r. 16.04 (2).

(3) Where an order is made dispensing with service of a document, the document shall be deemed to have been served on the date of the order for the purpose of the computation of time under these rules. R.R.O. 1990, Reg. 194, r. 16.04 (3).

**9. Courts of Justice Act, R.S.O. 1990, c. C.43, s. 97.**

**Declaratory orders**

**97** The Court of Appeal and the Superior Court of Justice, exclusive of the Small Claims Court, may make binding declarations of right, whether or not any consequential relief is or could be claimed. 1994, c. 12, s. 39; 1996, c. 25, s. 9 (17).

**10. Ministry of the Attorney General Act, RSO 1990, c M.17, s. 5(c), (h)**

**Functions**

**5** The Attorney General,..

(c) shall superintend all matters connected with the administration of justice in Ontario;...

(h) shall conduct and regulate all litigation for and against the Crown or any ministry or agency of Government in respect of any subject within the authority or jurisdiction of the Legislature;...

ATTORNEY GENERAL FOR ONTARIO

- and -

PERSONS UNKNOWN

Applicant

Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at TORONTO

**FACTUM  
OF THE ATTORNEY GENERAL FOR ONTARIO**

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