

**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*

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will be heard in writing.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least two days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: October 1, 2020

Issued by

Local Registrar

Address of
court office: 330 University Avenue
Toronto, Ontario
M5G 1R8

TO: [ex parte]

APPLICATION

1. The applicant makes application for:
 - 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 this 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;
 - c. Should the declaration sought be ordered by this Honourable Court, an order that it be served on the public by posting notice of it on the website of the Ministry of the Attorney General; and
 - d. Such further order as the Honourable Court deems just.

2. The grounds for the application are:
 - a. As part of Ontario's response to the COVID-19 pandemic, on March 17, 2020, a state of emergency was declared under the *Emergency Management and Civil Protection Act*, RSO 1990 c E9 ("*EMCPA*").
 - b. Section 7.1 of the *EMCPA* authorizes the Lieutenant Governor in Council 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.

- c. Specifically, 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.
- d. In respect of temporary suspension orders of limitation periods, subsection 7.1(6) of the *EMCPA* specifies that the limitation period resumes running on the date on which the temporary suspension ends and “the temporary suspension period shall not be counted.”
- e. On March 20, 2020, an Order pursuant to section 7.1 of the *EMCPA* was issued as Ontario Regulation 73/20 that suspended any provision of any statute, regulation, by-law, or order of the Government of Ontario establishing any limitation period, retroactive to Monday, March 16, 2020.
- f. Consistent with subsection 7.1(6) of the *EMCPA*, section 6 of Regulation 73/20 as amended, provided that any limitation period that is temporarily suspended under the Regulation resumes running on the date on which the temporary suspension period ends, and the temporary suspension period shall not be counted.
- g. On July 24, 2020, the *Reopening Ontario (A flexible Response to Covid-19) Act 2020* (“*ROA*”) came into force. The *ROA* provided that all orders made under section 7.1 of the *EMCPA*, like Regulation 73/20, as amended, are continued as valid and effective orders under the *ROA* and cease to be orders under the *EMCPA*.

- h. Effective September 14, 2020, pursuant to Regulation 457/20, made under the *ROA*, Regulation 73/20, as amended, was revoked. As such, all limitation periods temporarily suspended resumed running on September 14, 2020.
- i. Subsections 51(1)(a) and (b) of the *Legislation Act, 2006*, SO 2006 c 21 Sch F, provides that the revocation of a regulation does not affect the previous operation of the revoked regulation or a right, privilege, obligation or liability that came into existence under the revoked regulation.
- j. Consistent with the *EMCPA*, the *Legislation Act, 2006*, and Regulation 73/20, revoked, the temporary suspension period of March 16, 2020 to September 13, 2020, inclusive, should not be counted in respect of any limitation period temporarily suspended and which resumed running on September 14, 2020.
- k. The Attorney General seeks an order dispensing with service of this Notice of Application pursuant to Rule 16.04 of the *Rules of Civil Procedure*. 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. It is impractical to serve advanced notice on all current and future litigants who may have an interest in this application and be impacted by the suspension of a limitation period by Regulation 73/20, as amended, now revoked. However, key stakeholders within the legal profession have been given notice of this application. For the same reasons, should the declaration sought be ordered by this Honourable Court, it should be publicly posted.

1. This Honourable Court should exercise its' discretion to grant the declaratory relief sought because the issue is real, not hypothetical; there are no material facts in dispute; and its determination at the earliest opportunity is necessary and in the interests of justice and current and future litigants. Limitation periods have resumed and are currently running and the Attorney General has a genuine interest in the relief sought and a determination of the issue in the public interest.

 - m. Rules 14.05(3)(h) and 16.04 of the *Rules of Civil Procedure*; section 97 of the *Courts of Justice Act*, RSO 1990 c C43; and the inherent jurisdiction of the Superior Court.
3. The following documentary evidence will be used at the hearing of the application:
- a. Affidavit of John Lee, sworn September 30, 2020.

Date: October 1, 2020

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Counsel for the Applicant

ATTORNEY GENERAL FOR ONTARIO

PERSONS UNKNOWN

-and-

Applicant

Respondent

Court File No.:

ONTARIO
SUPERIOR COURT OF JUSTICE

(Proceedings commenced at Toronto)

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