



Tips for calculating limitations deadlines accounting for the COVID-19 emergency suspension period

As we noted in [this article](#), there appears to be some questioning whether limitation periods were suspended during the pandemic. LAWPRO believes these concerns are unwarranted. Further to the provisions of the original Emergency Order, and the subsequent actions and circumstances springing from it, LAWPRO believes that limitation periods and procedural deadlines were suspended.

As a result of the original and subsequent Emergency Orders, the provincial government suspended provincial limitation periods and procedural time periods for 26 weeks, from Monday, March 16, 2020 to Monday September 14, 2020 ("Emergency Suspension Period") subject to certain exceptions described below.* At its simplest, the lifting of the suspension means that the clock restarted on September 14, 2020 and as of that date lawyers have same time to meet deadlines as there had been on March 16, 2020.

Follow these tips and sample calculations for assistance with properly considering the Emergency Suspension Period when calculating limitation periods.

1. Check your limitation period

Recall that not all limitation periods are 2 years from discovery of the claim. See practicePRO's [Limitations and Notice Periods](#) to determine the limitation period from which to start your calculations.

2. Calculate your limitation deadline taking the COVID-19 Emergency Suspension Period into account

a. Start counting on September 14, 2020

For all matters, start counting on September 14, 2020, not September 15, with the same time to meet deadlines as there had been on March 16, 2020.

b. Weekends and Holidays – First calculate the limitation deadline, including accounting for the Emergency Suspension Period, then consider the deadline if the new date falls on a weekend or holiday

If the deadline, but for the Emergency Suspension Period, would fall on a weekend or holiday, start from that date. Do *not* start by moving this initial date to the next date on which the Court is open before then considering the Emergency Suspension Period.

With this in mind, carefully review limitation deadlines already in your calendar to determine whether the date reflects the limitations deadline, or whether it became the deadline because the limitation deadline would have fallen on a weekend or holiday, and you applied s.89(1) of the *Legislation Act, 2006* to set the deadline as the next date on which the Court would be open. If the latter, determine the weekend or holiday deadline. Start with that date to calculate the new limitation deadline taking the COVID-19 Emergency Suspension Period into account as per the calculations below.

If the new date falls on a weekend or holiday, set the deadline as the next date on which the Court is open, as per s. 89(1) of the *Legislation Act, 2006*.

Here are some sample calculations for the most common scenarios you will come across:

Scenario 1: The limitation deadline would have expired during the Emergency Suspension Period (but for the extension of limitation periods)

Calculation:

Start at September 14, 2020, and add the number of days beginning with March 16, 2020, including to the day before the former deadline.

If the new date falls on a weekend or holiday, set the deadline as the next date on which the Court is open.

- **Example 1a:** If the deadline would have been March 17, 2020, but for the extension of limitation periods:

Deadline = September 14, 2020 + (Days remaining from March 16, 2020 to day before the former deadline)

Deadline = September 14, 2020 + 1 day

Deadline = September 15, 2020

- **Example 1b:** If the deadline would have been May 1, 2020 but for the Emergency Suspension Period, the new deadline would be calculated as follows:

Deadline = September 14, 2020 + (Days from March 16, 2020 to April 30)

Deadline = September 14, 2020 + 46 days

Deadline = October 30, 2020

- **Example 1c:** If the deadline would have been Sunday, August 30, 2020, moved to the next weekday, do not calculate from the weekday. Rather, calculate from the initial deadline based on the date of discoverability (in this case Sunday, August 30, 2020).

Deadline = September 14, 2020 + (Days from March 16, 2020 to August 29, 2020)

Deadline = September 14, 2020 + 167 days

Deadline = Saturday, February 27, 2021, to next weekday

Deadline = Monday, March 1, 2021

Scenario 2: The date which triggered the commencement of the limitation period is before the Emergency Suspension Period, and the limitation period falls after the end of the Emergency Suspension Period (after September 14, 2020)

Calculation:

Add the 182 day Emergency Suspension Period to the previously calculated limitation deadline. If the new date falls on a weekend or holiday, set the deadline as the next date on which the Court is open.

- **Example 2a:** A civil claim was discovered on September 15, 2018, and normally would be subject to a 2 year limitation deadline of September 15, 2020
 - Deadline = September 15, 2020 + (March 16, 2020 to September 13, 2020)
 - Deadline = September 15, 2020 + 182 days
 - Deadline = Wednesday, March 16 2021

- **Example 2a:** A civil claim was discovered on March 15, 2020, and normally would be subject to a 2 year limitation deadline of March 15, 2022
 - Deadline = March 15, 2022 + (March 16, 2020 to September 13, 2020)
 - Deadline = March 15, 2022 + 182 days
 - Deadline = Tuesday, September 13, 2022

Scenario 3: A matter was discoverable during the Emergency Suspension Period.

**Time stands still until September 14, 2020, and then runs.
 Calculation: Start at September 14, 2020, and add the limitation period that would normally apply.
 If the new date falls on a weekend or holiday, set the deadline as the next date on which the Court is open.**

- **Example 3a:** If the date of discoverability would have been March 16, 2020, for a matter which normally would have a two year limitation period, the deadline would be two years from September 14, 2020, or Wednesday, September 14, 2022.

- **Example 3b:** If the date of discoverability would have been September 13, 2020, for a matter which normally would have a two year limitation period, the deadline would be two years from September 14, 2020, or Wednesday, September 14, 2022.

When to report a claim to LAWPRO or you excess insurer

If you think you may have made an error, notify LAWPRO immediately. You can do so [online here](#). Providing early notice of a claim or existing circumstance in which a claim may arise gives us the best chance to help put things right. Late notice often allows small problems to become big ones and can jeopardize coverage. Don't try to take steps on your own to try to repair a potential claim. Let us know immediately, and we will help you determine how to move forward.

This resource is provided by Lawyers' Professional Indemnity Company (LAWPRO®). The material presented does not establish, report, or create the standard of care for lawyers. The material is not a complete analysis of any of the topics covered, and readers should conduct their own appropriate legal research.



lawpro.ca
 Tel: 416-598-5800 or 1-800-410-1013
 Fax: 416-599-8341 or 1-800-286-7639
 Email: practicepro@lawpro.ca

© 2020 Lawyers' Professional Indemnity Company (LAWPRO). All rights reserved.
 ® Registered trademark of Lawyers' Professional Indemnity Company