

STOP THE CLOCKS! WHAT DOES THE SUSPENSION OF CIVIL DELAYS IN QUÉBEC MEAN FOR YOU?

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On March 13, the Province of Québec [declared](#) a public health emergency due to the COVID-19 pandemic pursuant to article 118 of Québec's Public Health Act. On March 15, the Justice Ministry followed suit with [Order 2020-4251 of the Chief Justice of Québec and the Minister of Justice](#) (the "**Order**"). This order suspended delays "in civil matters", save for urgent proceedings. Subsequent orders have refined and extended this measure. Courthouses across the province have been functioning at a reduced capacity ever since. But what does the suspension of delays "in civil matters" ultimately mean? And what practical consequences does it have on imminent and ongoing litigation?

Context

The Minister of Justice and Chief Justice of Québec can jointly suspend prescription or procedural delays in civil matters by virtue of article 27 of the Code of Civil Procedure. This includes almost any delay related to civil litigation, including delays for the filing of pre-trial motions agreed upon by the parties, as well as most delays to accomplish certain acts as established by law. Note that this order only applies to delays governed by Québec provincial statutes.

Article 27 allows the Minister and Chief Justice to suspend or extend these delays. In the present case, they chose to suspend delays for as long as the public health emergency lasts. In simple terms, "suspension" means that the "countdown timer" for any non-urgent civil matter stops until the emergency period ends. For example, if a party had a deadline to file a pre-trial motion by March 20, it therefore had a week left to file it when the suspension took effect on March 13. Said party will still have a week to file its motion starting on the day that the health emergency ends.

The Order affects both ongoing and imminent litigation. We will address two important consequences below. First, the suspension of civil delays affects prescription delays. These delays, often referred to as time limitations outside of Québec, are the delays in which a party must assert a right, usually by instituting an action against another. Second, the suspension affects inscription delays. Inscription delays are the delays in which parties to an ongoing litigation must prepare their dispute for trial.

Prescription Delays

In most (but not all) civil matters, the prescription/limitations delay is 3 years from the day that a party became aware of a wrongdoing that gave rise to its right of action. A lapsed prescription delay extinguishes a party's right of action. As of March 13, prescription delays governed by provincial statutes were suspended. This means that the countdown timers are stopped and the prescription is "dormant", to borrow a term from the case law.

By way of example, imagine that on April 22, 2017 the CFO of ABC Corporation realized that a supplier breached an essential term in their contract. The time limit for ABC Corp. to institute an action would normally expire three years later, on April 22, 2020. However, prescription was suspended and the timer stopped running on March 13, when ABC Corp. still had 40 days left to file its action. ABC Corp. now has a new deadline to institute an action: 40 days from when the health emergency ends.

This calculation is simple if, as in the example above, the prescription period ends during the health emergency. But what if the prescription period extends far past it? Take, for example, XYZ Corporation, which found out about a wrongdoing on June 5, 2019. Normally, its claim would expire by June 5, 2022. But given the Order's suspension, the timer is not running during the emergency period. As such, XYZ Corp. could argue that its deadline was extended by however long the health emergency lasted. If the health emergency lasts 3 months, then the prescription timer would be stopped for those 3 months, and the deadline will be pushed from June 5 to September 5, 2022.

Cases such as these may become an issue several years from now, when parties will try to use the emergency period to justify filing otherwise time-barred claims.

Inscription Delays

Once a civil lawsuit is filed, parties usually have 6 months to complete all pre-trial procedural steps. In Québec, this is called the inscription delay, and before it expires parties must file all evidence, conduct pre-trial examinations, and complete all expert reports. Normally, this delay is "strict", in that it can only be extended with leave of the court following a request of one or several parties.

In the current situation, the 6-month timer has stopped. This suspension is more straightforward. Since courts are closed for all non-urgent matters and most trials aren't going ahead, parties should not be penalized for failing to complete all pre-trial steps with the 6-month delay. Certain Québec courts have indicated that once the health emergency ends, they will adjust the inscription deadlines for all ongoing matters and communicate the new deadlines to the parties. Courts have encouraged parties to complete, if possible, the pre-trial steps they agreed to in their case protocols, but there is no consequences for missing the deadlines for these steps during the emergency period.

Conclusion – What Should I Expect?

Throughout the COVID-19 pandemic, there has been a common refrain that the crisis will affect our daily lives even after it ends. In Québec, your “legal” life is no exception. Businesses should be prepared for their ongoing litigious files to stretch on for longer than anticipated. More importantly, parties should anticipate that, even years after the pandemic is over, they may receive claims that appear time-barred but which may benefit, as claimants will argue, from a suspension of prescription.

by Simon Paransky

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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