

When Are the COVID-19 Related Changes and Suspensions to Albertan Law Scheduled to End?

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Decision Commented On: [COVID-19 orders and legislation](#)

A recurring theme of recent ABlawg posts is the difficulty in determining what legal authority is being used to make emergency-based changes to Alberta law due to COVID-19, and precisely what the changes are. This post is a variation on that theme, setting out the end dates set for a selection of COVID-19 related legal changes, and discussing how the end dates should be re-thought soon.

Ministerial Orders

Section 52.1(2) of the *Public Health Act*, [RSA 2000, c P-37](#) enables Ministers, while an order declaring a public health emergency is in effect and for up to 60 days after, to make orders that “(a) suspend or modify the application or operation of all or part of an enactment, subject to the terms and conditions that person may prescribe, or (b) specify or set out provisions that apply in addition to, or instead of, any provision of an enactment, if the person is satisfied that doing so is in the public interest.” Section 52.811(1) of the *Public Health Act* specifies when orders enabled by a public health emergency lapse: the earliest of (a) 60 days after the end of the declared public health emergency, (b) when the particular order is terminated by the Minister who made it, or (c) when the order is terminated by the Lieutenant Governor in Council. The COVID-19 related Ministerial Orders overwhelmingly set their end dates using variations on that statutory language.

[Order in Council 80/2020](#) declared a state of public health emergency under the *Public Health Act*. Order 80/2020 was made on March 17, 2020 and lapses after 90 days (which would be June 15, 2020) unless continued by a resolution of the Legislative Assembly. The state of public health emergency can also be terminated early by the Lieutenant Governor in Council. So unless the Legislative Assembly passes a resolution extending the public health emergency (which may happen), or the Lieutenant Governor in Council ends the public health emergency early (which does not seem likely), the state of public health emergency will end on June 15, 2020, and the period of special law making in Alberta will end August 14, 2020. However, it should be noted that section 52.811(3) allows the Governor in Council to extend an order changing or suspending a law for up to 180 days beyond the end of the public health emergency (180 days after June 15, 2020 would take us to December 12, 2020). It is too early to tell if that power will see any use.

Orders From the Chief Medical Officer of Health

An order from a Medical Officer of Health, in contrast to a Ministerial Order, has a different time restriction set by section 29 of the *Public Health Act*. Such an order can remain in effect “for any period and subject to any conditions that the medical officer of health considers appropriate, where the medical officer of health determines that the person’s engaging in that activity could transmit an infectious agent.” Subsection 29(2) and (4) limit the jurisdiction and types of orders a Medical Officer of Health can make, but the powers remain fairly expansive. For example, [CMOH Order 07-2020](#) closes non-essential health services and restaurants. CMOH orders have thus far been drafted to “remain in effect until rescinded by the Chief Medical Officer of Health.”

Discussion of Some Particular Orders

Ministerial Orders made pursuant to COVID-19 emergency powers have overwhelmingly been drafted to be in effect as long as permitted by the *Public Health Act*, so almost all of them lapse on August 14, 2020 unless cancelled earlier. Given that it is unclear when the actual health emergency will end, this approach of making the orders coincide with the maximum statutory emergency period makes sense. The remainder of this post describes a few exceptions to that approach.

[Ministerial Order 27/2020](#), made by the Minister of Justice and the Solicitor General, suspends limitation periods and the time periods for taking any step in a legal proceeding or intended proceeding (subject to the discretion of the court, tribunal, or other decision maker) included on the list of enactments in the appendix to the Ministerial Order. Since the list is a copy of the list of enactments the Minister of Justice and Solicitor General is responsible for under the *Designation and Transfer of Responsibility Regulation*, [Alta Reg 44/2019](#), the Ministerial Order is a suspension of all timelines the Minister of Justice and the Solicitor General has the power to suspend. The suspension period runs from March 17, 2020 (13 days before the Ministerial Order was signed) until the earlier of June 1, 2020, or when terminated earlier by the Minister of Justice and the Solicitor General or the Governor in Council. The Ministerial Order does not explain why it was drafted to run only until June 1, 2020 instead of August 14, 2020, but the ongoing limitation date and filing suspensions are causing a backlog at the courts, so it may have been an attempt to be cautious about the size of that impact.

On the environmental monitoring and reporting front, [Ministerial Order 219/2020](#) suspends a variety of environmental reporting obligations under the *Coal Conservation Act*, [RSA 2000, c C-17](#), *Oil and Gas Conservation Act*, [RSA 2000, c O-6](#), and *Oil Sands Conservation Act*, [RSA 2000, c O-7](#). (See Shaun Fluker’s detailed post on the order [here](#).) It was drafted to remain in effect as long as permissible (without an extension from the governor in council) under the *Public Health Act*, and so is expected to be in effect until August 14, 2020. The suspension of environmental monitoring impacts for oilsands operators was done through Alberta Energy Regulator amendments to approvals, which were drafted simply to remain “in effect until otherwise directed by the Alberta Energy Regulator”. (See Shaun Fluker’s detailed post on the order [here](#).)

The COVID-19 related changes to residential tenancies law were discussed in detail by Jonnette Watson Hamilton [here](#). Two changes to residential tenancy laws were made by [Ministerial Order](#)

[SA:005/2020](#), which requires landlords to make reasonable efforts to enter into a meaningful payment plan before terminating a tenancy for failure to pay, and [Ministerial Order SA:006/2020](#) which prevents rent increases during the public health emergency. Both of those orders were drafted to run as long as currently permitted: until August 14, 2020. However, the most important order relating to residential tenancies was the suspension of all evictions by [Ministerial Order 20/2020](#), which was allowed to end as originally drafted on April 30, 2020. Why that protection for tenants was provided for such a short time compared to all other changes is unclear. Perhaps the provincial government hopes the changes to Ministerial Orders SA:005/2020 and SA:006/2020 will be enough to prevent a wave of evictions for inability to pay. That is a risky bet. Interpretation and implementation difficulties with order 005/2020 are likely to make that protection ineffective, and likely require complex litigation in the middle of a public health emergency. The risk of evictions for failure to pay rent seems like it will go up the longer COVID-19 interrupts employment and wages and people have no choice but to dig into their savings. The decision to end the suspension on evictions during the emergency period is hard to understand.

The Looming Tangle of Extensions or Replacement Orders

One issue that may be caused by the current drafting for when the COVID-19 orders end is that they will all lapse on August 14, 2020, whether or not the public health emergency is continued by resolution of the Legislative Assembly. If the Legislative Assembly ultimately needs to continue the public health emergency, new orders will be needed to keep them from lapsing. Either all the current orders will need to be replaced with new versions to keep them from lapsing, or a general order extending all the other orders will need to be made. Either option will make the tangle of COVID-19 ministerial orders worse by requiring more cross-referencing between different versions of orders.

A solution appears to have been drafted in [Ministerial Order No. 2020-26](#) from the Minister of Labour and Immigration, which does not mention August 14, 2020 and instead is drafted to lapse “60 days after Order in Council 080/2020 lapses under section 52.8(1) of the PHA.” Future Ministerial Orders should consider adopting this language to avoid the need for extension and replacement orders.

An Ancillary Issue of Naming and Numbering of Ministerial Orders

One other issue with Ministerial Orders is the confusing naming and numbering system. Each Ministry uses their own numbering, but many use only the abbreviation “M.O, number/year”. This means there is an [M.O. 20/2020](#) from the Minister of Environment and Parks and an [M.O. 20/2020](#) from the Minister of Justice. The situation is confusing enough that the Alberta Government website wrongly lists M.O. 20/2020 [Environment and Parks] as an “alternative title” for Ministerial Order 20/2020 [Justice and Solicitor General]. Either all the Ministers should share one consistent numbering, in the manner of neutral citations for all court decisions (this is [the approach that B.C. has taken](#)), or each should establish a consistent short citation system for these orders. Some Albertan Ministries have already adopted such a system: Service Alberta labels each of their orders in the style “M.O. No. SA:number/year”. This might sound like an academic complaint, but accessibility and clarity in Ministerial Orders is especially important now that many Ministerial Orders are making major changes to the law that seriously impact the lives of

Albertans. It is an accepted aspect of the rule of law that the law should be knowable and clear, and part of that is adopting a consistent set of naming conventions.

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