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Ombudsperson

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Via email: Diana.Juricevic@gov.bc.ca

Diana Juricevic
Chair
Circle of Chairs, BC Mental Health Review Board, and
BC Human Rights Tribunal
Suite 1170 - 605 Robson Street
Vancouver BC V6B 5J3

Dear Chair,

RE: Ministerial Order 98

I am writing to you in your capacity as Chair of the Circle of Chairs and would request that you bring this letter to the attention of tribunal Chairs.

I write to tribunal Chairs concerning Ministerial Order M098, entitled “Limitation Periods (COVID-19) Order No. 2”, issued today (the Ministerial Order). Section 3 of the Ministerial Order provides:

3. A person, tribunal or other body that has a statutory power of decision may waive, suspend or extend a mandatory time period relating to the exercise of that power.

The order repeals and replaces Ministerial Order 86 issued March 26, 2020 which contained an identical provision.

In reliance on the Ministerial Order, many tribunals will likely be actively considering whether to waive, suspend or extend mandatory time periods for the purpose of allowing parties to a proceeding before the tribunal more time, in light of the pandemic, to accomplish various steps. I note as well that, for matters before tribunals (as opposed to other kinds of statutory decision-makers), there is authority under the *Administrative Tribunals Act* (ATA) to modify or extend non-statutory time periods even without relying on the Ministerial Order. In addition, for appeal and review tribunals, the ATA or the tribunal’s enabling statute will frequently grant authority to extension of time to commence a particular appeal or review in exceptional circumstances.

My office may receive complaints from members of the public about individual tribunal decisions to extend time, or to decline to do so, whether that is done – or not done - under the ATA or the Ministerial Order.

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My focused concern in this letter is to ensure that extensions of mandatory timelines under either the Ministerial Order or the *Administrative Tribunals Act* are approached with appropriate caution and fair consideration of the interests of all parties, including the public interest. This recognizes that because power may exist does not determine whether and how it should be exercised.

Section 23 of the *Ombudsperson Act* continues to charge this office with assessing whether a matter has been the subject of, among other things, unreasonable delay. Obviously, what is unreasonable delay is contextual and will take into account the realities facing a tribunal. At the same time, the disposition of a complaint alleging undue delay by a tribunal would be greatly assisted by that tribunal having set out a clear and documented rationale for any decision to waive, suspend or modify one or more mandatory time periods – or similarly, any decision to refuse a request by a party for an extension. These decisions will, in many instances, require a complex balancing of interests.

Accordingly, please consider this as my suggestion to tribunals to ensure that all waivers, suspension or modifications of mandatory time periods are carefully considered, with rationale set out in a formal record of the tribunal, in respect of any waivers, suspensions or extensions exercised since the date of the order.

I trust that these suggestions are received in the spirit in which they are made - to assist public authorities to act prudently, reasonably and with appropriate legal authority during the provincial emergency.

Yours sincerely,



Jay Chalke
Ombudsperson
Province of British Columbia