



PRACTICE

REFERENCES

Attorney General of Canada contacting Court in September 2020 stating its position concerning meaning, application of Time Limits and Other Periods Act (COVID-19), S.C. 2020, c. 11 (Act), s. 6 — Attorney General’s position requiring immediate response since that position contradicting premise on which Court has been managing ongoing matters since beginning of pandemic; creating uncertainty — Act, s. 6 providing, inter alia, that specified time limits, if established by or under Act of Parliament, suspended for period starting March 13, 2020, ending September 13, 2020 or any earlier day set — Attorney General’s position is that Act, s. 6 suspending retroactively all “time limits...established by or under an Act of Parliament” during March 13-September 13 period; that “orders and directives issued” by courts, including Court herein, concerning time limits or setting deadlines for procedural steps ousted by s. 6 — Logic behind Attorney General’s position would make it applicable to Court’s Practice Direction¹ that allowed certain proceedings to progress towards hearing on merits — According to Attorney General’s position, Practice Direction, later Practice Direction dated September 1, 2020, concerning time limits, decisions made thereunder them in specific cases no longer valid, with retroactive effect — Necessary for Court to provide clarity under *Federal Courts Rules*, SOR 98/106 (Rules), r. 54 to applicable time limits in pending proceedings before it — Court having power to provide directions under rule 54 in response to party’s unilaterally asserted position; also having jurisdiction to do so under its plenary power to regulate, address any threat to its practices, proceedings — Issuance of direction under rule 54, pursuant to Court’s plenary power required in present case — Uncertainty, confusion created by Attorney General’s position affecting core administration of matters coming before Court, many of its decisions — No doubt Act, s. 6 effectively amending statutory time periods in federal legislation for starting proceedings in Court — Act, s. 6 also covering other provisions in any Act of Parliament that speak to time limits respecting steps to be taken or things to be done within proceedings — Such statutory provisions rare — Purpose, context of s. 6 examined to determine its authentic meaning — Parliament’s purpose not to interfere with Rules passed under explicit, special, separate procedure in *Federal Courts Act*, R.S.C., 1985, c. F-7, s. 46; purpose not to invalidate, alter time limits set in all judgments, orders, directions, Practice Directions, Registry actions — Otherwise, confusion, potential harm (surely not desired by Parliament) would result — Were it otherwise, s. 6 would have to contain clearest of legislative language but not containing such language — Rules not made “under an Act of Parliament” in usual way in which term understood — Rules made by statutory committee (*Federal Courts Act*, s. 45.1(1)) made up of majority of judges in consultation with major stakeholders, including Attorney General of Canada — Proper course for changing Rules is through Rules Committee — Construing s. 6 as allowing Parliament to unilaterally interfere with management, governance of ongoing proceedings would invade core judicial function — Where possible, possible here, s. 6 should be given meaning that is respectful of judicial independence, obeys constitutional imperatives — Moreover, Court orders or directions, when made, are law until set aside — Such rule absolute: orders, directions have full legal effect unless specifically amended, ousted or invalidated by later specific court order or direction or by specific legislation (assuming such legislation is constitutional) — Section 6 not providing for specific ouster, amendment or invalidation of court orders or orders in council that have already been made — Thus, time limits under all Court orders, directions still standing; have not been ousted by s. 6 — As well, Rules that

¹ Notice to the Parties and the Profession: *Gradual Phase-out of Suspension Period: COVID-19* (June 11, 2020)

set time limits still standing, have not been ousted by s. 6 — Section 6 not affecting Practice Directions made by Court or actions taken by Registry under those Practice Directions — Court thus issuing Direction that Attorney General's position concerning interpretation, effect of s. 6, in so far as extending to time limits under Rules, orders made thereunder, is incorrect in law, should not be followed — Rules, Court's Practice Directions, judgments, orders, directions remaining in full force, effect.

REFERENCE RE SECTION 6 OF THE TIME LIMITS AND OTHER PERIODS ACT (COVID 19) (A-212-20, 2020 FCA 137, Noël C.J., reasons for direction dated September 3, 2020, 8 pp.)