

Goodmans^{LLP} Update

COVID-19: Further Developments in Ontario Construction Law

Two significant construction developments occurred over the long weekend and since our last [Construction Law Update](#). First, limitation periods and procedural time periods under the *Construction Act* that were suspended as of March 16, 2020, will be reinstated as of April 16, 2020. Second, the list of “essential” construction projects was expanded to include projects due to be completed before October 4, 2020 and that would provide additional capacity in the production, processing, manufacturing or distribution of food, beverages or agricultural products.

Limitation Periods and Procedural Time Periods

As stated in our last [Construction Law Update](#), the Ontario government suspended limitation periods and procedural time periods in Ontario proceedings as part of its emergency orders made under the *Emergency Management and Civil Protection Act* (the “**Suspension Order**”). We noted the Suspension Order likely suspended, as of March 16, 2020, the deadlines for preserving and perfecting liens and releasing statutory holdback, which had the potential to impact the flow of funds through the construction pyramid. We also noted certain trade and legal associations were seeking direction from the Ontario government regarding the effect of this suspension on construction projects, including whether modifications needed to be made to allow timelines under the *Construction Act* to be reinstated.

The Ontario government considered the construction industry’s concerns, and amended the Suspension Order to provide that, from April 16, 2020, the suspensions do not apply to provisions of the *Construction Act*. The actual order has not been made publically available, but is expected to be posted shortly to the Regulations under the *Emergency Management and Civil Protection Act* [here](#).

The result is that deadlines under the *Construction Act*, including for preserving and perfecting liens (and, thus, releasing statutory holdback), will be reinstated, but will have been suspended for the 31-day period of March 16, 2020 to April 16, 2020.

A [similar order](#) was made in British Columbia on Friday, exempting the *Builders Lien Act* from British Columbia’s emergency order suspending “every mandatory limitation period and any other mandatory time period that is established in an enactment or law of British Columbia within which a civil or family action, proceeding, claim or appeal must be commenced”. The BC suspension of the *Builders Lien Act* time periods runs from March 26, 2020 to April 15, 2020.

Expansion of Essential Construction Projects

As noted in our last [Construction Law Update](#), although the majority of construction projects were initially classified as “essential” businesses, the list was later significantly reduced. However, on April 9, 2020, the list was [expanded](#) by deeming essential “construction projects that are due to be completed before October 4, 2020 and that would provide additional capacity in the production, processing, manufacturing or distribution of food, beverages or agricultural products.”

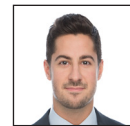
Authors



Howard Wise
hwise@goodmans.ca
416.597.4281



Tamryn Jacobson
tjacobson@goodmans.ca
416.597.4293



Max Mandel
mmandel@goodmans.ca
416.849.6981

The list of construction projects now deemed to be essential businesses and allowed to remain open are:

1. Construction projects and services associated with the healthcare sector, including new facilities, expansions, renovations and conversion of spaces that could be repurposed for health care space.
2. Construction projects and services required to ensure safe and reliable operations of, or to provide new capacity in, critical provincial infrastructure, including transit, transportation, energy and justice sectors beyond the day-to-day maintenance.
3. Critical industrial construction activities required for:
 - a. the maintenance and operations of petrochemical plants and refineries;
 - b. significant industrial petrochemical projects where preliminary work has already commenced; or
 - c. industrial construction and modifications to existing industrial structures limited solely to work necessary for the production, maintenance, and/or enhancement of Personal Protective Equipment, medical devices (such as ventilators), and other identified products directly related to combatting the COVID-19 pandemic.
4. Construction projects that are due to be completed before October 4, 2020 and that would provide additional capacity in the production, processing, manufacturing or distribution of food, beverages or agricultural products.
5. Residential construction projects where:
 - a. a footing permit has been granted for single family, semi-detached and townhomes;
 - b. an above grade structural permit has been granted for condominiums, mixed use and other buildings; or
 - c. the project involves renovations to residential properties and construction work was started before April 4, 2020.
6. Construction and maintenance activities necessary to temporarily close construction sites that have paused or are not active and to ensure ongoing public safety.

For the requirements that must be met on continuing construction projects, as well as activities that can continue at construction projects not deemed essential, please see our previous [Construction Law Update](#).

Goodmans will continue to monitor developments, and will provide further updates as information becomes known. To discuss these developments, or other ways in which COVID-19 may affect your construction project, please contact any member of our [Construction and Infrastructure Group](#).

All Updates are available at www.goodmans.ca. This Update is intended as a general summary for educational purposes only and should not be relied upon as legal advice with respect to any particular set of circumstances. If you require advice as to your circumstances, please contact any member of our Construction and Infrastructure Group.

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