

Ontario Declares Second State of Emergency – Only "Essential" Construction Projects Permitted

January 13, 2021

On January 12, 2021, for the second time in the past 10 months, the Province of Ontario (the Government) declared a state of emergency under the *Emergency Management and Civil Protection Act* (the EMCPA). Effective Thursday January 14, 2021 at 12:01am enhanced measures (through orders made under the EMCPA and amendments to the *Reopening Ontario (A Flexible Response to COVID-19 Act)*) will be implemented during the province-wide shutdown (the Shutdown) that commenced on December 26, 2020.

As a part of these enhanced measures, construction projects, activities, and related services will be restricted to "essential" projects.

Until, at least, February 11, 2021, the following construction activities or projects and related services, including land surveying and demolition services, **ARE PERMITTED ACTIVITIES** that may remain open during the Shutdown:

1. Construction projects and services associated with the healthcare sector and long-term care, 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, provincial and municipal infrastructure, including transit, transportation, energy, mining and justice sectors beyond the day to day maintenance.
3. Construction projects and services that support the operations of, and provide new capacity in schools, colleges, universities, municipal infrastructure and child care centres within the meaning of the *Child Care and Early Years Act*, 2014.
4. Construction projects under the Investing in Canada Infrastructure Program.
5. Construction projects and services that support the operations of Broadband internet and cellular technologies and services.
6. Critical industrial construction activities required for,
 - i. the maintenance and operations of petrochemical plants and refineries,
 - ii. significant industrial petrochemical projects where preliminary work has already commenced,
 - iii. industrial construction and modifications to existing industrial structures limited solely to work necessary for the production, maintenance, and/or
 - iv. enhancement of Personal Protective Equipment, medical devices (such as ventilators), and other identified products directly related to combatting the COVID 19 pandemic.

7. Construction projects that are due to be completed before July 2021 and that would provide additional capacity in the production, processing, manufacturing or distribution of food, beverages or agricultural products.
8. Construction projects that were commenced before January 12, 2021, and that would
 - i. provide additional capacity for businesses that provide logistical support, distribution services, warehousing, storage or shipping and
 - ii. delivery services, or
 - iii. provide additional capacity in the operation and delivery of Information Technology (IT) services or telecommunications services.
9. Residential construction projects where,
 - i. a footing permit has been granted for single family, semi detached and townhomes,
 - ii. the project is a condominium, mixed use or other residential building, or
 - iii. the project involves renovations to residential properties and construction work was started before January 12, 2021.
10. Construction to prepare a site for an institutional, commercial, industrial or residential development, including any necessary excavation, grading, roads or utilities infrastructure.
11. Construction and maintenance activities necessary to temporarily close construction sites that have paused or are not active and to ensure ongoing public safety.
12. Below grade multi unit residential construction projects, such as apartments and condominiums.
13. Construction on any project intended to provide either, affordable housing, or shelter or supports for vulnerable persons.
14. If the project is being funded in whole or in part by, or is being undertaken by, any of the following:
 - i. the Crown in right of Canada or in right of Ontario,
 - ii. an agency of the Crown in right of Canada or in right of Ontario,
 - iii. a municipality,
 - iv. a service manager as defined in the *Housing Services Act*, 2011, or
 - v. a registered charity and not for profit within the meaning of the *Income Tax Act* (Canada).

Additionally, the Government will be ramping up requirements for workplace COVID-19 testing and providing additional enforcement measures to ensure compliance.

[A copy of Regulation 10/21 amending the Reopening Ontario \(A Flexible Response to COVID-19\) Act and setting out the list of permitted construction projects can be accessed here.](#)

As with all the construction projects and other essential businesses permitted to continue during the

Cassels

Shutdown, it is important for owners, contractors and other operators of such projects to follow all provincial rules, directives, and health and safety protocols for the safety of those on site. The Government's guidelines and the *Occupational Health and Safety Act* are clear about what the constructor must do for COVID-19 health and safety at project sites. It is imperative for project owners, contractors and workers, alike, to ensure they are following the latest health and safety guidelines and to continue to review the latest guidelines and recommendations from public health authorities.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.