Cassels

Construction Industry Update

04/13/2020

Construction Act NOW Exempted from the Suspended Limitation Periods Order

On March 20, 2020, the Lieutenant Governor in Council of Ontario made an order under s. 7.1 of the *Emergency Management and Civil Protection Act* suspending limitation periods and procedural time periods (the Suspension Order). The suspension was retroactive to March 16, 2020, and continues for the "duration of the emergency," for a maximum of 90 days, unless extended by further order (the Suspension Period). The effect of the Suspension Order was to halt any limitation period that would have come due on and after March 16, 2020.

Sections 31 and 36 of the *Construction Act* and its predecessor legislation establish the time periods to preserve and perfect liens respectively. Those sections are limitation periods listed in the Schedule to the *Limitations Act, 2002*. Accordingly, the Suspension Order suspended the time to preserve and perfect construction liens in Ontario.

An apparent unintended consequence of the Suspension Order was its impact on the timing of the release of statutory holdback on construction projects across Ontario. Since the expiration dates for liens was suspended, holdback that would otherwise have become due and payable during the Suspension Period could be expected to not be released by owners until potential lien claims had expired, after the Suspension Period had been lifted. This, in turn, would have significant cash flow implications for an already suffering construction industry.

The Government of Ontario has recognized the financial impact suspended lien periods would have on contractors and subcontractors due to the inability of owners to release holdback and has, accordingly, decided to order that the *Construction Act* be exempted from the Suspension Order. Effective April 16, 2020, the suspension of the limitation periods to preserve and perfect construction liens will be lifted. The one-month pause (from March 16th to April 16th) will effectively re-start, so that lien claimants have the same amount of time to preserve and perfect liens as was remaining before the Suspension Period began.

UPDATE: Construction Projects that are Deemed Essential

Further to our article of April 3, 2020 regarding the reduced Ontario essential workplaces list, which

removed many construction projects from the list, the Province of Ontario has again amended the list, adding additional construction projects. The amended list can be accessed here.

The additional construction projects now deemed essential include:

29.1 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.

This added category of essential construction projects is intended to keep key supply chains running and to avoid food and beverage shortages.

As with all the construction projects and other essential businesses permitted to continue during the COVID-19 pandemic, 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 Province's guidelines, which can be accessed here, 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.