



Novel Coronavirus (COVID-19)

Construction Law

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COVID-19 Update: Suspension of Limitation and Procedural Periods in Ontario and the *Construction Act*

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With recent changes implemented in response to the COVID-19 pandemic, construction liens in Ontario no longer expire in the ordinary course. This will have significant implications for owners of a property on which a construction project is taking place, financial institutions and mortgagees financing construction projects, general contractors and subcontractors.

On March 20, 2020, the Lieutenant Governor in Council made an order under s. 7.1 of the *Emergency Management and Civil Protection Act* (the “EMCPA”) **suspending limitation periods and procedural time periods** in Ontario (the “Suspension Order”). The suspension is retroactive to March 16, 2020 and will last “for the duration of the emergency”. Section 7.1(4) of the EMCPA provides that the maximum suspension period is 90 days. However, the suspension can be further renewed in certain circumstances.

Sections 31 and 36 of the *Construction Act* and the *Construction Lien Act* establish time periods within which construction liens must be preserved and perfected. The sections are referred to as limitation periods “set out in or under another Act”, and are listed in the Schedule to the *Limitations Act, 2002*. Prior to the Suspension Order, a lien would expire if not properly preserved and perfected in accordance with the requirements set out in these sections. The Suspension Order extends the time within which construction liens can be preserved and perfected, and prevents their expiry.

Notwithstanding the operation of the Suspension Order, as liens can be preserved electronically and remotely via Teraview, and Statements of Claim and Certificates of Action can be issued by the Court and then registered against title electronically, it is recommended that claimants continue to preserve and perfect their liens in the ordinary course.

Under the *Construction Lien Act*, “payers” are required to retain a holdback “*until all liens that may be claimed against the holdback have expired or been satisfied, discharged or otherwise provided for under this Act*” (emphasis added). Similarly, under the new *Construction Act*, all “payers” are required to release

the holdback they have retained “*where all liens that may be claimed against that holdback have expired or been satisfied, discharged or otherwise provided for under this Act*” (emphasis added). As liens will now not expire “for the duration of the emergency”, holdbacks should not be released. Any release of holdback after March 16, 2020 may result in the payer having to make the payment again if a suspended lien is subsequently preserved and perfected.

This is undoubtedly an unintended consequence of the Suspension Order. Its effect on the construction industry is likely to be considerable, particularly if the “emergency” continues for a significant period of time.

If you have any questions about how this may affect you or your project, please do not hesitate to contact your **Torkin Manes Lawyer**.

For more information about dealing with COVID-19, please visit our COVID-19 Resource Center.

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