

# The COVID-19 Pandemic and Construction Issues

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As the recent COVID-19 pandemic continues to wreak havoc on many aspects of businesses across sectors, including for those in the construction industry such as owners, developers, builders, contractors, lenders and others involved in construction projects, we have identified several challenges and issues that businesses should be mindful of, including:

- Reduced workforces, unavailable labour and labour-related friction due to illness, self-isolation and social-distancing measures;
- Project delays due to labour shortages and late or no deliveries from material suppliers;
- Project delays due to delayed inspections, and difficulties obtaining permits and other approvals, certifications and payments; and
- Uncertainty surrounding requests and approvals for extras and change orders.

## **Construction Liens, Disputes & Litigation**

Recently, the Ontario government enacted regulations under Ontario's *Emergency Management and Civil Protection Act*, which temporarily suspends all Ontario statutory limitation periods and procedural deadlines (such as timetable Orders by Masters and Judges). This suspension, which is effective retroactive to March 16, 2020, raises a number of potential issues including, for example, expiring lien registration deadlines, mandatory release of holdback funds and the impact on the new prompt payment and adjudication provisions of the *Construction Act*.

In addition, the Ontario Superior Court of Justice, where construction lien matters are adjudicated, has announced the closure of courthouses and offices. All existing scheduled court attendances, except for urgent matters, in the immediate future have or are being adjourned indefinitely. While some matters can proceed virtually notwithstanding the above measures, each case will be assessed on its own facts and merits.

## **CCDC Contracts & Contract Management**

From a contract management perspective, we have been working with many clients to determine:

- which delay provisions apply to their projects in these circumstances;
- what notices and other communications need to be sent;
- what obligations the parties have during the delay period and what mechanisms will govern the return to work after the delay.

In some cases, clients are seeking to amend (i.e. re-negotiate) their construction arrangements to facilitate continued partial performance.

## **Additional Impacts**

The Ontario government has recently released a list of essential services, which can be found here, designating many construction-related projects essential, therefore permitting them to remain operational. Notwithstanding this list, as the situation worsens, some construction projects that may otherwise be

permitted to continue to operate, have or are contemplating voluntarily shutting down their construction sites. Such voluntary shutdowns may lead to further legal issues that we are here to help you with.

We will continue to monitor updates and changes as they arise, and are available remotely to answer any questions from you or your clients about the above and other related matters. In the meantime, we encourage our clients to be proactive in identifying issues as they arise, and seek guidance in a timely manner so that proper steps can be taken to document and/or address those issues. For instance, it would be prudent to review construction contracts and identify any notification periods that require notices to be sent out in light of the COVID-19 pandemic.

Aird & Berlis offers a wide range of services to help businesses of all kinds navigate through the above and other issues. A number of other COVID-19-related resources can also be found on our COVID-19 resource page.

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