

June 9, 2020

## Construction through COVID-19 in Canada: A Guideline for what each Province and Territory is Doing [Current as at June 9, 2020]

COVID-19 continues to have a profound impact on construction activity in Canada. Governments have limited what construction activities can continue during the shutdown, issued emergency orders affecting construction litigation, and changed health and safety protocols at site.

The impacts to construction projects, litigation, and health and safety vary across provinces and territories. Below is a guideline resource for how each province and territory is managing COVID-19's impact on the construction industry. For each province and territory we have assembled and laid out,

1. the list of permitted construction and related services that can continue;
2. the impact of emergency orders on limitation periods and procedural deadlines for construction litigation; and
3. the recommended guidelines for increased health and safety practices for construction sites.

Should you have any questions about whether your construction project can continue during the pandemic, or how these orders may affect your existing or future litigation, please feel free to contact us. We will keep this bulletin updated on a weekly basis.

To locate a particular province or territory in the list, please click it in the list below:

- A) Ontario**
- B) Quebec**
- C) British Columbia**
- D) Alberta**
- E) Saskatchewan**
- F) Manitoba**
- G) New Brunswick**
- H) Nova Scotia**
- I) Prince Edward Island**
- J) Newfoundland**
- K) Yukon**
- L) Northwest Territories**
- M) Nunavut**

## **A) Ontario**

### **1. *List of Permitted Construction and Related Services***

The list of construction and related activities that may continue in Ontario during the pandemic are listed below. Ontario's complete list of essential services can be found [here](#).

#### Construction Services

1. Construction activities or projects and related services that support construction activities or projects, including demolition services.
2. Land surveyors.

#### Construction Related Services

3. Lawn care services and landscaping services.
4. Maintenance, repair and property management services strictly necessary to manage and maintain the safety, security, sanitation and essential operation of institutional, commercial, industrial and residential properties and buildings.
5. Businesses that supply other essential businesses or essential services within Ontario, or that supply businesses or services that have been declared essential in a jurisdiction outside of Ontario, with the support, products, supplies, systems, or services, including processing, packaging, warehousing, distribution, delivery, and maintenance necessary to operate.

6. Hardware stores.
7. Garden centres and plant nurseries, including greenhouses that engage in retail sales to the public.
8. Business that provide land registration services.
9. Businesses that deliver or support the delivery of services including:
  - (a) Sewage treatment and disposal.
  - (b) Collecting, transporting, storing, processing, disposing or recycling of any type of waste.
  - (c) Potable drinking water.
  - (d) Critical infrastructure repair and maintenance including roads, dams, bridges etc.
  - (e) Environmental rehabilitation, management and monitoring, and spill clean up and response.
  - (f) Administrative authorities that regulate and inspect businesses.
  - (g) Professional and social services that support the legal and justice system.
  - (h) Government services including but not limited to policing and law enforcement, fire and emergency services, paramedics, coroner and pathology services, corrections and court services, licences and permits.
  - (i) Allotment gardens or community gardens.

## **2. *Impact on Limitation Periods and Procedural Deadlines in Litigation***

On March 16, 2020, the Ontario Government issued an emergency order suspending all limitation periods and procedural deadlines in litigation. However, effective April 16, the Ontario Government exempted the limitation periods and procedural deadlines in the *Construction Act* from the emergency order. For more details on these changes and the impact on liens, holdbacks and construction litigation generally, please see our prior bulletin on this topic here: [Show Me the Money Government of Ontario to Amend Emergency Order to Allow Release of Holdbacks.](#)

The complete regulation exempting the *Construction Act* that took effect April 16 can be found [here](#).

### **3. *Guideline for Increased Health and Safety Practices***

See here for [the Chief Prevention Officer's guidance](#) to the construction sector in Ontario on health and safety related to COVID-19.

## **B) Quebec**

### **1. *List of Permitted Construction and Related Services***

Starting May 11, 2020, all construction industry worksites from all sectors of the construction industry including residential, civil engineering and roads, institutional, commercial and industrial can resume their activities (however, admin staff must continue teleworking). Quebec's notice in this regard can be found [here](#).

Quebec's complete list of essential workplaces can be found [here](#).

### **2. *Impact on Limitation Periods and Procedural Deadlines in Litigation***

By Order number 2020-4251, the Chief Justice of Québec and the Minister of Justice suspended prescription periods (limitation periods), forfeiture periods and procedural deadlines until the public health emergency is lifted or otherwise amended by further order. The [joint ministerial decree](#) can be found here.

Construction hypothec periods are forfeiture periods and are therefore suspended under the Order. However, contractors are being advised to act as if the deadlines still apply and to register their notice of hypothec, and notice of intention to exercise a hypothecary right within the requisite time periods (the land registrar is still open to receive notices).

Additional guidance on how to calculate delays is expected from the Government once the suspension is lifted.

### **3. *Guideline for Increased Health and Safety Practices***

The COVID-19 Guides for Construction sites (French Only) published by the Safety of Labour Board (CNESST) on health and safety can be found [here](#) and [here](#).

## C) British Columbia

### 1. **List of Permitted Construction and Related Services**

A summary of construction and related activities that may continue in British Columbia during the pandemic are listed below. British Columbia's complete list of essential workplaces can be found [here](#).

#### Construction and Related Activities

- (1) Construction work, construction firms, skilled trades, and professionals, and; construction and light industrial machinery and equipment rental
- (2) Plumbers, electricians, elevator maintenance providers, exterminators, property management services, building systems maintenance and repair technicians, engineers, fire safety and sprinkler systems, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and daily essential operation of residences, commercial buildings, and ski area infrastructure and facilities
- (3) Land registration services
- (4) Workers who provide or support inspections to ensure worksites are safe for workers; and who investigate, process and manage claims for workplace accidents, including services related to the care, treatment and provision of workers' compensation benefits to those impacted.

NOTE: Unlike some other provinces, which have mandated the closure of any type of business not deemed "essential" or "allowable", British Columbia does not mandate such closures across-the-board. A business or service that is not an "essential service" may remain open in British Columbia provided that such business or service can comply with the recommendations of the PHO. However, such businesses may be ordered to close by a specific order of the PHO.

### 2. **Impact on Limitation Periods and Procedural Deadlines in Litigation**

[Ministerial Order 86/2020](#) suspended limitation periods and procedural time periods from March 26, 2020 until the state of emergency is over (which as of June 10, 2020 is scheduled to end on June 23, 2020 [here](#)).

On April 15, 2020, [Ministerial Order 98/2020](#) amended MO 86/2020, lifting the suspension of limitation and procedural time periods under the *Builders Lien Act* (as well as those under Division 5 of Part 5 of the *Strata Property Act*) effective April 15, 2020. Once lifted, it appears that parties will have the same amount of time to meet a deadline that had been remaining before the suspension began on March 26, 2020.

### **3. *Guideline for Increased Health and Safety Practices***

Please see here for the health and safety measures the British Columbian Government has indicated all construction sites should follow: [Guidance for Construction Sites Operating during COVID-19 Pandemic](#).

#### **D) Alberta**

##### **1. *List of Permitted Construction and Related Services***

A summary of construction and related activities that may continue in Alberta during the pandemic are listed below. Alberta's list of essential workplaces can be found [here](#).

##### Construction Activities

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 critical provincial and municipal infrastructure, including transit, transportation, energy and justice sectors beyond day-to-day maintenance.
3. Construction work and services, including demolition services, in the industrial, commercial, institutional and residential sectors.
4. Construction work and services that supports health and safety environmental rehabilitation projects.
5. Construction projects to repair or render operable / safe any public conveyance, including elevators, escalators and ski lifts.
6. Construction projects and services that are required to ensure safe and reliable operations of critical energy infrastructure or support supply chains.
7. Any other construction project that can safely abide by the CMOH Public Health guidelines/directives.

##### Construction Related Activities

8. Land registration services.

9. Businesses that support the safe operations of residences and essential businesses.
10. Road and transportation construction and maintenance
11. The operation, maintenance and repair of critical infrastructure (railways, dams, bridges, highways, flood control structures, irrigation and water management structures, etc.).
12. Motor vehicle, auto-supply, auto and motor-vehicle-repair, including bicycle repair, aircraft repair, heavy equipment repair, watercraft/marine craft repairs, car and truck dealerships and related facilities.
13. Hardware stores and stores that provide hardware products necessary to the essential operations of residences and businesses.
14. Safety supply stores (safety gear and Personal Protective Equipment).

NOTE: If a business is not listed here as an essential service, it can still continue to operate if: (i) it is not specifically prohibited from offering services in a location accessible to the public; and (ii) the business doesn't fall under [previous business, workplace and facility closures](#).

A business must still follow all other public health orders and [guidelines for workplaces](#), including: (i) maintaining physical distancing; and (ii) prohibiting people from coming to work sick. Workplaces that are not otherwise restricted or ordered to cease offering close-contact services or services accessible by the public can have more than 15 workers on a work site as long as they follow all public health guidelines, including physical distancing measures.

## **2. Impact on Limitation Periods and Procedural Deadlines in Litigation**

Limitation periods under the *Builder's Lien Act* are not suspended. Parties should meet the deadlines in the *Builders' Lien Act*.

## **3. Guideline for Increased Health and Safety Practices**

Alberta's Workplace Guidance for Business Owners can be found [here](#).

## **E) Saskatchewan**

### **1. List of Permitted Construction and Related Services**

A summary of construction and related activities that may continue in Saskatchewan during the pandemic are listed below. Saskatchewan's list of essential services can be found [here](#).

#### Construction and Related Activities

1. Construction firms.
2. Services performed by trades people, residential and commercial installation and landscaping services.
3. Rental equipment.
4. Building maintenance, repair and housekeeping.
5. Building inspection services.
6. Land registration services.
7. Hardware, and work equipment (safety and protection) services.
8. Road construction and maintenance.

### **2. Impact on Limitation Periods and Procedural Deadlines in Litigation**

At this time, there are no suspensions of limitation or procedural time periods in Saskatchewan under the *Builders' Lien Act* or statutes generally.

Updates in this regard are likely to be found [here](#).

### **3. Guideline for Increased Health and Safety Practices**

Saskatchewan's resources with respect to workplace health and safety guidance during the pandemic can be found [here](#).

**F) Manitoba****1. *List of Permitted Construction and Related Services***

A summary of construction and related activities that may continue in Manitoba during the pandemic are listed below. Manitoba's list of essential services can be found [here](#).

Construction and Related Activities

1. A business engaged in construction work or services in the industrial, commercial, institutional and residential sectors, including demolition services and expanding, renovating, converting or repurposing existing spaces.
2. A business engaged in construction work or services that are required to ensure safe and reliable operations of provincial and municipal infrastructure.
3. A business engaged in construction work or services that supports environmental rehabilitation projects.
4. A business that provides support and maintenance services, including urgent repair, to maintain the safety, security, sanitation and essential operation of institutional, residential, commercial and industrial properties, and includes
  - (a) property management services,
  - (b) services provided by skilled trades such as plumbers, electricians and HVAC technicians,
  - (c) custodial or janitorial services and cleaning services,
  - (d) fire safety and sprinkler systems installation and monitoring, and
  - (e) similar services provided by other service providers.
5. A business engaged in or supporting the operation, maintenance or repair of provincial or municipal infrastructure, such as railways, dams, bridges, highways, erosion control structures and water control works.
6. A business that operates a land registration service.

## **2. *Impact on Limitation Periods and Procedural Deadlines in Litigation***

At this time, there are no suspensions of limitation or procedural time periods in Manitoba under the *Builders' Lien Act* or statutes generally.

Updates in this regard will likely be found [here](#).

## **3. *Guideline for Increased Health and Safety Practices***

The collaborating group of Construction Labour Relations Association of Manitoba (CLRAM), the Mechanical Contractors Association of Manitoba (MCAM), and Manitoba Building Trades (MBT) have partnered with OHS Global Risk Solutions LTD, leading infection control experts in the industrial environment, to produce a guidance document and safety and prevention measures for construction workplaces during the pandemic, found [here](#).

## **G) New Brunswick**

### **1. *List of Permitted Construction and Related Services***

New Brunswick issued an order declaring a state of emergency on March 19 and updated March 25 which can be found [here](#).

Some restrictions were issued for certain retail establishments and other public places. However, no order regarding a list of essential services has been issued. Currently there are no restrictions on construction or maintenance & repair activities.

Indeed, the Premier reiterated that construction activities continue and are not prohibited under New Brunswick's declaration of a state of emergency. This release from the Premier's office can be found [here](#).

### **2. *Impact on Limitation Periods and Procedural Deadlines in Litigation***

Retroactive to March 19, 2020, New Brunswick has suspended all limitation periods for commencing any proceeding before a court, administrative tribunal or other decision-maker, and limitation periods for taking steps in any proceeding before a court, administrative tribunal or other decision-maker deadlines, in all acts, regulations, rules, municipal by-laws and ministerial orders.

The language of this suspension can be found at nos. 25 and 26 of the Order attached [here](#).

Updates in this regard may be posted [here](#).

### **3. Guideline for Increased Health and Safety Practices**

Workplace Guidelines for Reducing Exposure to COVID-19 can be found [here](#).

## **H) Nova Scotia**

### **1. List of Permitted Construction and Related Services**

Nova Scotia issued an order declaring a state of emergency on March 16 and has ordered restrictions on certain personal services and restaurants.

There are currently no restrictions on construction or maintenance & repair activities. Nova Scotia explicitly listed construction sites as exempt from gathering limits.

Nova Scotia has also indicated that any workplace or business can remain open as long as a two-metre distance can be maintained.

A summary of orders made by Nova Scotia can be found [here](#).

### **2. Impact on Limitation Periods and Procedural Deadlines in Litigation**

Nova Scotia suspended all procedural deadlines contained in the Rules of Civil Procedure for active or intended proceedings effective March 19, 2020 until the Court resumes normal operations.

However, this suspension does not apply to certain statutes, including the *Builders' Lien Act*.

Updates in this regard will likely be posted [here](#).

### **3. Guideline for Increased Health and Safety Practices**

Construction Safety Nova Scotia issued the following guideline to ensure safe construction workplaces during the pandemic: [Construction Safety Nova Scotia](#).

The Province also released a health & safety tip sheet for trades workers (which includes links to additional resources on the last page), which can be found [here](#).

## I) Prince Edward Island

### 1. *List of Permitted Construction and Related Services*

A summary of construction and related activities that may continue in Prince Edward Island during the pandemic are listed below. Prince Edward Island's complete list of essential and non-essential services can be found [here](#).

#### Construction and Related Activities

1. Current construction services and projects (industrial, commercial, institutional and residential); only those that have been issued a building permit.
2. Landscaping services;
3. New construction (e.g. for building permits issued after May 1, 2020);
4. Outdoor construction (e.g. decks, roofing, fencing);
5. Repair services (construction, electrical, plumbing and heating; emergency services only);
6. Household maintenance and repair (critical to integrity and preservation of the building – e.g., eaves trough cleaning);
7. Indoor construction projects;
8. Pool maintenance and construction;
9. Road maintenance and construction; and
10. Outdoor painting.

According to PEI's "Renew PEI Together" plan, the following activities will be able to resume starting May 22, 2020: all remaining construction, maintenance and repair services, and cleaning and restoration services. The plan can be accessed [here](#). This should be confirmed prior to relying on this provision for any construction activity.

### 2. *Impact on Limitation Periods and Procedural Deadlines in Litigation*

At this time, there are no suspensions of limitation or procedural time periods in PEI under the *Mechanics Lien Act* (PEI's equivalent *Construction/Builders Lien Act*) or statutes generally.

Updates in this regard are likely to be found [here](#).

### **3. *Guideline for Increased Health and Safety Practices***

Information on guidelines for workplace health and safety can be found [here](#) and [here](#).

## **J) Newfoundland**

### **1. *List of Permitted Construction and Related Services***

Further to the declaration of a public health emergency on March 18, 2020, the Chief Medical Officer issued a Special Measures Order pursuant to section 28 of the *Public Health Protection and Promotion Act* containing a list of businesses ordered to close immediately. No construction or maintenance & repair activities were included in the order. Newfoundland's list of businesses ordered to close can be found [here](#).

A bulletin released by Newfoundland with respect to COVID-19 closures confirms that:

1. Non-retail businesses may remain open as long as works maintain physical distancing – they may not be within six feet of each other or the clients they serve; and
2. Repair services can continue, including repairs to telecommunication devices, plumbing, electrical, construction, heating, appliances, vehicles, emergency household cleaning and restoration and medical devices and equipment.

This bulletin can be found [here](#).

A separate bulletin entitled "Construction and COVID-19" released by Newfoundland indicated that "construction is expected to continue in many communities and regions." This bulletin can be found [here](#).

### **2. *Impact on Limitation Periods and Procedural Deadlines in Litigation***

Newfoundland extended all procedural deadlines contained in the Rules of Supreme Court for active or intended proceedings effective March 18, 2020 until the Court resumes normal operations.

However, this extension does not apply to other statutes, including the *Mechanics Lien Act* (Newfoundland's equivalent *Construction/Builders Lien Act*).

Notices to the Profession and the Public in this regard can be found [here](#).

### **3. *Guideline for Increased Health and Safety Practices***

Guidelines for working safely in the construction industry can be found [here](#) and [here](#).

## **K) Yukon**

### **1. *List of Permitted Construction and Related Activities***

A summary of construction and related activities that may continue in the Yukon during the pandemic are listed below. The Yukon's complete list of essential and non-essential services can be found [here](#):

#### Construction and Related Activities

1. Workers on construction projects related to the healthcare sector including new facilities, expansions, renovations and conversion of spaces that could be re-purposed for health care space.
2. Workers on construction projects required to ensure safe and reliable operations of critical territorial infrastructure, including transit, transportation, energy and justice sectors beyond the day-to day maintenance.
3. Workers engaged in construction or demolition in the industrial, commercial, institutional and residential sectors.
4. Workers engaged in the construction of health and safety and environmental rehabilitation projects.
5. Engineers, technicians and associated personnel responsible for construction and restoration, including contractors and sub-contractors for construction.
6. Workers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of institutional, commercial, residential and industrial buildings, such as plumbers, electricians, exterminators, security, property management, custodial or janitorial, fire safety and sprinkler systems and building systems maintenance and repair technicians (for example, HVAC and elevator technicians).
7. Workers in hardware stores and construction material suppliers who provide hardware products necessary to the essential operations of residences and

- businesses as well as safety supplies (for example, work clothes) and personal protective equipment.
8. Workers who supply those providing essential services with support, supplies, systems or services including processing, packaging, distribution, delivery and maintenance necessary to operate.
  9. Workers in land registration services.

**2. *Impact on Limitation Periods and Procedural Deadlines in Litigation***

At this time, there are no suspensions of limitation or procedural time periods in the Yukon under the *Builders Lien Act* or statutes generally.

**3. *Guideline for Increased Health and Safety Practices***

Direction and guidelines for the delivery of critical, essential and other services in the Yukon in response to COVID-19 can be found [here](#).

**L) Northwest Territories**

**1. *List of Permitted Construction and Related Activities***

Further to NWT's declaration of a public health emergency on March 18, 2020, NWT's public health officer issued an order for the closure of a number of retail businesses. No construction or maintenance & repair activities were included in the order.

NWT's list of businesses that must close can be found [here](#).

**2. *Impact on Limitation Periods and Procedural Deadlines in Litigation***

At this time, there are no suspensions of limitation or procedural time periods in the NWT under the *Mechanics Lien Act* (NWT's equivalent *Construction/Builders Lien Act*) or statutes generally.

**3. *Guideline for Increased Health and Safety Practices***

Chief Public Health Officer's Guidelines to Reduce Risk of Exposure to COVID-19 in the Workplace can be found [here](#).

**M) Nunavut****1. List of Permitted Construction and Related Activities**

Further to Nunavut's declaration of a public health emergency on March 19, 2020, it has issued an order for the closure of a number of retail businesses including bars. No construction or maintenance & repair activities were included in the order.

**2. Impact on Limitation Periods and Procedural Deadlines in Litigation**

At this time, there are no suspensions of limitation or procedural time periods in Nunavut under the *Mechanics Lien Act* or statutes generally.

**3. Guideline for Increased Health and Safety Practices**

Workers' Safety and Compensation Commission has issued a safety bulletin for preventing exposure to COVID-19 in the workplace, which can be found [here](#).

by [Jeremy Rankin](#) and [Jason J. Annibale](#)

For more information on this topic, please contact:

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**a cautionary note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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