

CONSTRUCTION LAW UPDATE – SUSPENSION PERIOD LIFTED FOR CONSTRUCTION LIENS AND THE RELEASE OF HOLDBACK

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On March 20, 2020, the Province of Ontario filed an order in council under the Emergency Management and Civil Protection Act effectively suspending until further notice all statutory limitation periods, including the limitation periods to preserve and perfect construction liens retroactive to March 16, 2020. However, the inclusion of construction liens in the suspension order proved highly problematic. Under the Construction Act, statutory holdback cannot be released until the time to preserve liens has expired. Thus, construction industry stakeholders soon concluded that statutory holdbacks could not be paid out during the suspension period. This was a likely unintended consequence of the suspension order, one which threatened the survival of many businesses facing an indeterminate delay to the payment of earned holdback.

Thankfully, the Province has made an about face on this issue. On April 9, 2020, the Ford government made a further order in council specifically providing that, on and after April 16, 2020, the suspension order no longer applies to the limitation periods under the *Construction Act*. What this means is that, where the lien “clock” begins to run on or after April 16, 2020, the ordinary Construction Act lien periods apply (being 45 days or 60 days, depending on whether the old act or the new act applies). However, where the lien period was set to expire between March 16 and April 15, one must add the number days of the suspension period to determine the expiry date to preserve or perfect a lien. By way of illustration, this means that if the time period to preserve liens ordinarily expired on March 23, 2020 (7 days after the beginning of the suspension period), lien claimants will have until April 22, 2020 to preserve their liens (being 7 days following the last day of the suspension period). As a result, while payment of holdback ordinarily due and owing between March 16 and April 15 has effectively been suspended by a month, the indeterminate suspension on the release of holdback has ended.

Should you require any advice or assistance on this or any other issue affecting your specific business, please do not hesitate to contact the author. To read our perspective on the unprecedented challenges the constructions sector is facing read our article [Ontario's Construction Industry – Still Open for Business?](#)

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