

CLIENT ALERT

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ONTARIO LIFTING SUSPENSION OF LIEN PERIODS

by Robert Farmer

On March 20, 2020, the Ontario government introduced an emergency order under the *Emergency Management and Civil Protection Act* which suspended the running of limitation periods, including those under the *Construction Act* (the “**Order**”). The suspension was retroactive to March 16, 2020.

One of the perhaps, unintended consequences of this order was the suspension of the deadline for suppliers of goods and services on construction projects to register / perfect a lien (“**Lien Periods**”). By suspending the Lien Periods, owners could no longer release holdbacks on construction projects without the risk of having a supplier of goods or services lien the subject property after release of the holdback – resulting in adverse consequences to the owner who may have to pay additional amounts for the same supply of goods and or services.

Although lenders who fund draw requests during the suspension of the Lien Periods maintain their priority relative to future liens (assuming the lender conducts a lien search at the time of funding the advance), there could still be adverse consequences to the lenders related to potentially inaccurate determination of project lien holdbacks in the calculation of the “costs to date” margin and the extended period during which a lien could be registered against the project lands.

As expected, the Ontario government has addressed these issues by introducing an amendment to the Order which lifts the suspension of limitation periods and procedural time periods under the *Construction Act*.

In a letter dated April 9, 2020, the Attorney General of Ontario stated, “The suspension will be lifted on April 16, 2020, to give the industry time to prepare for these changes. Once lifted, parties will have the same amount of time to meet a deadline that had been remaining before the suspension began on March 16, 2020.”

This is welcome news to lenders, developers, construction trades, and suppliers.

In these circumstances, we recommend that care be taken to ensure that all draw requests properly calculate the project lien holdback amount factoring in (i) the period remaining prior to the beginning of the suspension on March 16, 2020 and (ii) resumption of the running of the limitation period commencing on April 16, 2020.

In addition to the above guidance, lenders and developers should remain prudent and continue to follow the rules for holdbacks under the *Construction Act*.

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