

The Uncertainty is Over: It is Time to Register Your Liens and Allow Holdback to be Released

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By ,

From the moment the Government of Ontario declared a state of emergency—closing all non-essential business and suspending limitation periods and the timelines for taking steps in legal proceedings—there has been some uncertainty as to how, exactly, these measures would affect the construction industry. Thankfully, clarity appears to be arriving in the near future as the Government of Ontario has announced plans to update these measures to reinstate the timelines and limitation periods contained in the *Construction Act*.

On April 9, 2020, Ontario's Attorney General announced that O. Reg. 73/20 (the regulation suspending limitation periods and timelines for taking steps in legal proceedings) would be amended to lift the suspension of limitation periods and procedural time periods under the *Construction Act*, effective April 16, 2020. Although the exact language of the amendments has not yet been released at the time of publishing this article, this change will likely reinstate the timelines for preserving and perfecting construction liens.

Although this amendment is not effective until April 16, it is essential that owners, contractors, and subcontractors start preparing now, and determine which projects have timelines that will need to be complied with once the suspension is lifted. Once the amendment comes into effect, timelines will not be restarted and interested parties may have to move quickly to preserve and perfect their liens under the *Construction Act*. In practice, this means that a contractor who had 10 days remaining to register a lien when the suspension of timelines started (March 16, 2020) will be left with those same 10 days starting April 16. In short—contractors and others who may have lien rights against a project will not be granted a new 60-day period within which to preserve their liens, and will have to act within whatever time they had remaining to register as of March 16.

Bearing this in mind, individuals with lien rights should not wait until April 16 to act. Although timelines under the *Construction Act* remain suspended until that day, the ability to register a lien is currently unaffected. Parties with lien rights should consider taking advantage of the suspension period to register liens early to avoid any potential issues which may result from the late registration of a lien.

Beginning April 16, once the timelines for preserving liens have been reinstated, statutory holdback payments can again be released in the normal course once lien periods expire. This change should resolve one of the significant complaints associated with the suspension of *Construction Act* timelines, as the indefinite suspension of lien periods meant that lien rights were not expiring and, as a result, holdback could not be released. These amendments will hopefully result in a much-needed infusion of cash for many contractors, subcontractors, and suppliers waiting on holdback payments.

Once enacted, the updates to O. Reg. 73/20 will be available [here](#). If you have any questions as to how these changes will affect your business moving forward, or how to comply with any impending deadlines that you may soon be faced with, please contact [Faren Bogach](#) or [Paul Conrod](#).

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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