

April 20-24, 2020  
Online only [Learn More](#) 

GOVERNMENT

# Ontario relents on emergency holdback provisions

Don Wall April 13, 2020



Ontario construction firms are breathing a sigh of relief after the provincial government rescinded emergency pandemic provisions that restricted the release of holdback payments to contractors and subs.

The government announced the change April 9 in response to concerted advocacy efforts by the Ontario General Contractors Association (OGCA), the Construction and Design Alliance of Ontario and others

"Money can now flow to contractors," said OGCA president Clive Thurston.

"Together we were able to get the message across that this was an industry-wide issue that was very damaging. (Labour Minister) Monte McNaughton told us, 'give me some language,' we got the language written and gave it to him the next day and he went up to the attorney general."

An advisory statement from McMillan LLP explained that as of April 16, all procedural time periods and limitation periods under the Construction Act will be restored. The restoration of lien expiry periods means payors can again safely release holdback.

The memo released by the office of Attorney General Don Downey said the revision will help "resolve a potentially significant cash flow problem as a result of the order for the construction industry."

O. Reg. 73/20, which suspended all statutory limitation and procedural time periods, took effect March 16.

The provincial decision essentially reintroduces all time periods and limitations contained in the Construction Act, explained lawyer Jason J. Annibale, national co-chair, construction with McMillan. The government had moved on Reg. 73/20 with very good intentions, he said, as a means of providing relief to payors as the pandemic intensified, but it became immediately clear there were too many negative consequences for contractors.

Under the emergency order, construction liens arguably did not expire, he explained.

"I think it was an unintended consequence to capture the holdback within that initial order," said Annibale.





Owners and payors also found themselves in uncomfortable positions under 73/20, the lawyer explained.

"We have been advising clients on this very issue and drafting notices on behalf of owner clients explaining to their contractors and subs, we wish we could pay you without incurring jeopardy," remarked Annibale.

"Owners and payors in the pyramid can only release remaining holdback funds when the time to asserts liens has expired," he added, offering an example of the jeopardy issue. "If payors or owners proceed to release those funds before the expiry of lien periods, that holdback amount, they are liable to pay twice."

Parties involved in construction lien actions or adjudications must now make sure they are meeting procedural deadlines outlined in the Construction Act, the McMillan report explained, including the two-year deadline to set an action down for trial, and all deadlines in the prompt payment and adjudication regime. On the second point, it was

Related Feature Articles

-  **The Economy Under COVID-19: Notes From the Trenches - April 13, 2020**  
ECONOMIC April 13, 2020
-  **Ontario relents on emergency holdback provisions**  
GOVERNMENT April 13, 2020
-  **Construction of health care facilities can run 24 hours a day: Ford**  
GOVERNMENT , INFRASTRUCTURE April 8, 2020
-  **OGCA, OSPE partner to deliver surgical masks**  
ASSOCIATIONS April 14, 2020





Our insight in every decision



[Learn more](#)



Most Recent Editorial Features

-  **COVID-19**  
April 13, 2020
-  **Mechanical and Electrical Contracting**  
March 30, 2020
-  **Sewer and Watermain/Water and Wastewater**  
March 30, 2020
-  **Occupational Health and Safety**  
March 30, 2020

Most Read Articles

-  **Ontario slashes essential construction sector list**  
GOVERNMENT April 3, 2020
-  **OCC renews call for temporary shut down of non-essential construction**  
LABOUR , OH&S March 31, 2020
-  **Calgary construction companies on front lines of pandemic fight**  
PROJECTS April 2, 2020
-  **Joseph Brant Hospital begins building temporary COVID-19 unit**  
INFRASTRUCTURE , PROJECTS April 1, 2020

 **COVID-19**

SEE SPECIAL COVERAGE 

Explore the issues, trends, obstacles and resources you need to tackle the

unclear whether the emergency order applied.

Problems still remain in the lien system created by the disruption of the virus, Annibale said. For example, vacating a lien requires a motion, and right now the court is generally only hearing urgent motions where "immediate and significant financial repercussions may result" or that are otherwise deemed necessary and appropriate to be heard.

Parties will have to convince a judge that their vacating motion should be heard, he said.



and resources you need to tackle the ongoing crisis.

### Recent Comments

April 13, 2020

<b>Email</b>	<b>Name</b>
<input type="text" value="Email Address"/>	<input type="text" value="Comment Author Name"/>
<input type="text" value="comment text"/>	

Your comment will appear after review by the site.

[Post your comment](#)

### You might also like



**Ontario relents on emergency holdback provisions**  
GOVERNMENT April 13, 2020



**Survey Timing Means Canada's March Jobs Plunge Worse than America's**  
ECONOMIC April 13, 2020



**Oil and gas producers 'expect the unexpected' while facing pandemic**  
ECONOMIC , OH&S , RESOURCE April 13, 2020



**Safety consultant crafts COVID-19 training for B.C. builders**  
LABOUR , OH&S April 13, 2020



**CCA call for cost-relief program widely supported**  
ASSOCIATIONS April 13, 2020



**Canadian oilpatch cutbacks expected to continue despite OPEC agreement**  
RESOURCE April 13, 2020



**The Economy Under COVID-19: Notes From the Trenches - April 13, 2020**  
ECONOMIC April 13, 2020



**Your Top JOC Headlines: April 6 to April 10**  
ASSOCIATIONS , GOVERNMENT , OH&S April 10, 2020



## Daily Commercial News

### The Company

- About Daily Commercial News
- About ConstructConnect
- Careers
- Press Releases
- Contact Us

### Products/Services

- Advertise with us
- Project Leads
- Media
- Analytics

### Resources

- Editorial Advisory Board
- Infographics
- RSS Feeds



© 2020 ConstructConnect Canada, Inc. All rights reserved.

[Terms of Sale](#), [Terms of Use](#), [Copyright Notice](#), [Accessibility and Privacy Statement](#)