

Ontario Declares Second State of Emergency: What Construction Sector Activities Can Continue?

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On January 12, 2021, the Government of Ontario declared a second state of emergency in response to COVID-19 under s. 7.0.1 (1) of the *Emergency Management and Civil Protection Act* (EMPCA).

As of 12:01 a.m. on January 14, 2021, Ontario residents are required to stay-at-home with exceptions for permitted purposes or activities, such as going to the grocery store or pharmacy, accessing health care services, for exercise or for work where work cannot be done remotely. Also, every person responsible for a business or organization that is *permitted to open* must ensure that anyone who performs work for that business or organization conducts their work remotely, except where the nature of their work requires them to be on-site at the workplace.

It is anticipated that the stay-at-home order and enhanced public health and workplace safety measures will be mandatory for all of Ontario until at least February 11, 2021.

Impact on the Construction Industry

The new restrictions appear to return the construction industry back to operating requirements similar to those imposed in April, 2020 during the first provincial emergency. Non-essential construction is restricted.

The following is an official list of the construction activities that fall within the category of “essential” and may continue [\[1\]](#):

Construction activities or projects and related services, including land surveying and demolition services, that,

- (a) are associated with the health care sector or long-term care, including new facilities, expansions, renovations and conversion of spaces that could be repurposed for health care space;
- (b) ensure safe and reliable operations of, or provide new capacity in, provincial infrastructure, including the transit, transportation, resource, energy and justice sectors beyond day-to-day maintenance;
- (c) support the operations of, or provide new capacity in, electricity generation, transmission, distribution and storage, natural gas distribution, transmission and storage or in the supply of resources;
- (d) support the operations of, or provide new capacity in, schools, colleges, universities, municipal infrastructure or child care centres within the meaning of the *Child Care and Early Years Act, 2014*;
- (e) are required for,
 - (i) the maintenance and operations of petrochemical plants and refineries,
 - (ii) significant industrial petrochemical projects where preliminary work commenced before January 12, 2021, or
 - (iii) industrial construction and modifications to existing industrial structures limited solely to work necessary for the production, maintenance or enhancement of personal protective equipment, medical devices such as ventilators and other identified products directly related to combatting the COVID-19 pandemic;
- (f) would provide additional capacity in the production, processing, manufacturing or distribution of food, beverages or agricultural products;
- (g) were commenced before January 12, 2021 and that would,
 - (i) provide additional capacity for businesses that provide logistical support, distribution services, warehousing, storage or shipping and delivery services, or
 - (ii) provide additional capacity in the operation and delivery of Information Technology (IT) services or telecommunications services;
- (h) support the operations of broadband internet and cellular technologies and services;
- (i) are related to residential construction projects where,
 - (i) a building permit has been granted for a single family, semi-detached and townhomes,
 - (ii) the project is a condominium, mixed-use or other residential building, or

(iii) the project involves renovations to residential properties and construction work that was started before January 12, 2021;

(j) prepare a site for an institutional, commercial, industrial or residential development, including any necessary excavation, grading, roads or utilities infrastructure;

(k) are necessary to temporarily close construction sites that have paused, or that are not active, to ensure ongoing public safety;

(l) are funded in whole or in part by the Investing in Canada Infrastructure Program;

(m) are,

(a) intended to provide shelter or supports for vulnerable persons or affordable housing; and

(b) being funded in whole or in part by, or are being undertaken by,

(A) the Crown in right of Canada or in right of Ontario,

(B) an agency of the Crown in right of Canada or in right of Ontario,

(C) a municipality,

(D) a service manager as defined the *Housing Services Act, 2011*, or

(E) a registered charity within the meaning of the *Income Tax Act (Canada)*, or

(F) a not-for-profit corporation.

Enforcement of COVID-19 Measures

The Government of Ontario has also authorized the police and provincial offences officers to order that premises be temporarily closed if they have reasonable grounds to believe that an organized public event or gathering is occurring at the premises and the number of people in attendance exceeds the number permitted, and to disperse crowds indoors and outdoors.

Additionally, enforcement personnel have the authority to issue tickets to individuals, employees and corporations who do not comply with orders issued under the EMPCA and the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* (for example, failing to comply with the stay-at-home order, failing to wear a mask or face covering in an indoor area of a business or organization, or opening a business that is not permitted to open etc.). Individuals and corporations may be prosecuted and, if found guilty, required to pay a fine of up to \$100,000 for individuals, up to \$10,000,000 for corporations, and up to \$500,000 for an officer or director of a corporation. Individuals, including officers and directors, also risk a term of imprisonment of not more than one year.

Should you require assistance or have any questions regarding the new measures or permitted construction activities, please contact our [Construction Law Group](#).

[1] O. Reg. 10/21: RULES FOR AREAS IN STAGE 1 under [Reopening Ontario \(A Flexible Response to COVID-19\) Act, 2020, S.O. 2020, c. 17](#)

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