

Chapter 1

Environmental Obligations and Compliance During the COVID-19 Pandemic: a Canadian Comparison

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Introduction²

On January 30, 2020, the World Health Organization (“**WHO**”) declared 2019-nCoV infection (“**COVID-19**”) a Public Health Emergency of International Concern (“**PHEIC**”),³ which meant that it was considered “an extraordinary event which is determined to constitute a public health risk to other States through the international spread of disease and to potentially require a coordinated international response.”

Less than two months later, as of March 11, 2020,⁴ the WHO characterized COVID-19 as a pandemic. The WHO declared six PHEIC in the last ten years, but the current pandemic is the only one that has heavily impacted so many countries. We have analyzed Canada’s response to the pandemic by conducting a comparison of the environmental measures taken by Alberta, British Columbia, Ontario and Québec (the “**Reviewed Provinces**”) and, to a certain extent, by the federal government of Canada (the “**federal government**”).

Our initial observation is that, up to the time of writing this article, the federal government has relied on each of the provinces to impose their own emergency measures. Even if the federal government had used its powers under the *Quarantine Act*,⁵ the *Aeronautics Act*,⁶ and other federal legislation, it has not done so under the *Emergencies Act*.⁷ The federal

¹ Respectively Counsel and partners at BLG. This article would not have been possible without the help of Julie-Anne Pariseau, Senior Associate, Barbora Grochalova and Marlena McMurtry, associates.

² This article presents information available as of August 31, 2020.

³ Statement on the second meeting of the International Health Regulations (2005) Emergency Committee regarding the outbreak of novel coronavirus (2019-nCoV), World Health Organisation, January 31, 2020.

⁴ WHO Director-General’s opening remarks at the media briefing on COVID-19—11 March 2020, World Health Organization, March 11, 2020.

⁵ S.C. 2005, c. 20.

⁶ R.S.C. 1985, c. A-2.

⁷ R.S.C. 1985, c. 22 (4th Supp.).

government could have used this latest act to ensure consistency in each province's emergency measures. We believe that the decision not to interfere with provincial emergency powers recognizes the importance of respecting the unique character of each province, even in a crisis.

Québec declared a state of public health emergency due to the pandemic on March 13, 2020,⁸ while Alberta, Ontario and British Columbia, respectively, declared states of emergency a few days later, on March 17 and 18, 2020.⁹ We will specifically discuss the approaches taken by the federal government and the provinces toward enforcing environmental laws and regulations, including orders, permits, licences, and approvals, which are meant to protect the environment.

In the interest of conciseness, certain environmental measures and extension of regulatory deadlines for each of the Reviewed Provinces are included in a table at the end of this article.

General Commentary

While the United States Environmental Protection Agency suspension of enforcement of some obligations in many industries has gained attention, Canadian businesses are facing a different reality, whereby the environmental monitoring, reporting and emissions control conditions generally remain enforceable. Requesting that regulators exercise discretion on a case-by-case basis is an option for businesses that anticipate they may be unable to comply with conditions of their approvals; however, relief from obligations cannot be presumed.

Businesses may also have obligations arising from agreements with third parties or governmental authorities such as rehabilitation plans, remediation agreements, financial guarantees, representations and warranties arising from a transaction or condition precedents. The extent to which parties are able to fulfill their obligations depends on factors that may not be within their control, including external consultant availability or operational shutdown.

The available remedies may differ in each circumstance, and should be assessed on a case-by-case basis. In a state of emergency, a *force majeure* clause may assist when an unexpected and extraordinary situation renders compliance with terms of the contract impossible; however, contractual obligations should be approached with caution. In particular, relief from

⁸ *Order in Council Concerning the declaration of a public health emergency in accordance with section 118 of the Public Health Act*, O.C. 177-2020, (March 13, 2020) GOQ II, 763A. Online (pdf): www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=1&file=104301.pdf [Declaration of public health emergency].

⁹ Alberta: O.C. 80/2020, pursuant to *Public Health Act*, R.S.A. 2000, c. P-37, s. 52.1; British Columbia: Ministerial Order 73/2020, pursuant to the *Emergency Program Act*, R.S.B.C. 1996, c. 111, s. 9(1); Ontario: *Declaration of Emergency*, O. Reg. 50/20, pursuant to the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, s. 7.0.1.

limitation periods created by statute will not apply to those created by agreement. Note that environmental rehabilitation plans or remediation agreements rarely include a *force majeure* clause, or the clause itself is not always effective.

As businesses become more experienced in adapting to the timelines and breadth of the measures intended to limit the impact of the COVID-19 pandemic, they will be able to better navigate meeting their environmental obligations. Businesses should assess their contractual and regulatory obligations as soon as possible, anticipate and mitigate any risk of non-compliance, and consider alternatives, including negotiating extensions to their environmental agreements.

One of the first questions for businesses to solve back in March 2020 was their essential services designation by the province. Each regulator drafted its list of essential services promptly to determine which businesses would be closing or shutting down their operations. Workplaces considered essential varied by province or territory, forcing national businesses to adapt to each and every one of them. Most tribunals and government offices were operating with reduced capacity and in-person hearings were postponed entirely.

In the first months of the pandemic, new emergency measures were enacted daily and the circumstances of essential services and governmental agencies evolved quickly. Even if, at the time of writing, the situation achieves a certain stability, it is still necessary to keep up to date with these emergency measures, in order to be in a position to set the priorities of your own businesses and clients.

Provincial Environmental Measures and Their Evolution

Québec

Deadlines Management and Other Adjustments

On March 13, 2020, the Québec government declared a state of public health emergency and decided to implement measures to protect public health, including closing schools.¹⁰ This state of emergency was renewed multiple times and, as of August 31, 2020, is still ongoing as per the latest Order in Council, which extended the state of emergency until September 2, 2020.¹¹

¹⁰ Declaration of public health emergency, *supra* note 7.

¹¹ *Order in Council concerning the renewal of the public health emergency pursuant to section 119 of the Public Health Act*, O.C. 895-2020, (Aug. 26, 2020) GOQ II, 2303A. Online (pdf): www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=1&file=104599.pdf.

On March 15, 2020, Québec suspended limitation periods and timelines for court proceedings for the duration of the declared state of emergency. In Ministerial Order No. 2020-4521 dated March 15, 2020,¹² the Chief Justice of Québec and the Minister of Justice ordered the suspension of all extinctive prescription periods, the terms for forfeiture in civil matters and procedural periods in civil matters, except for matters deemed to be urgent by the courts.¹³ Such time limit suspension is permitted by s. 27 of the *Québec Code of Civil Procedure* in the case of a state of emergency declared by the Québec government.

Regarding penal matters, the Ministry of Health and Social Services announced, in Order in Council No. 2020-009 dated March 23, 2020, the suspension of certain time limits of the *Code of Penal Procedure* for penal matters.¹⁴

In an order dated July 6, 2020, the Chief Justice of Québec and the Minister of Justice announced the lifting of the suspension of deadlines in civil and penal matters as of September 1, 2020.¹⁵ Specifications regarding the lifting of the suspension were published in Order No. 2020-4303 from the Chief Justice of Québec and the Minister of Justice dated August 31, 2020.¹⁶

Concurrently with these time limit suspensions, in-person activities in Québec courthouses were also put on hold, except for urgent matters. On March 13, 2020, the Minister of Justice and Attorney General of Québec, in conjunction with the Québec Superior Court and the Québec Court, announced a series of measures to be implemented in all Québec courthouses due to the declared state of emergency, including suspending all regular activities, except for urgent matters.¹⁷ On May 28, 2020, the

¹² *Ministerial Order concerning the suspension of prescription and procedural periods and the use of another means of communication by reason of the public health emergency declared on 13 March 2020*, M.O. No. 2020-4251 (March 15, 2020) GOQ II, 767A. Online (pdf): www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=1&file=104304.pdf.

¹³ *Ibid.* See also the following link for a list of all judicial matters considered urgent as of March 13, 2020, consult Services Québec, *Mise en place de mesures dans les palais de justice en raison de la COVID-19*. Online: www.fil-information.gouv.qc.ca/Pages/Article.aspx?idArticle=2803139851.

¹⁴ *Ministerial Order concerning the ordering of measures to protect the health of the population during the COVID-19 pandemic*, M.O. No. 2020-009 (March 23, 2020) GOQ II, 782A. Online (pdf): www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=1&file=104321.pdf.

¹⁵ *Ministerial Order concerning the lifting of the suspension of certain time limits for extinctive prescription, forfeiture and civil proceedings*, M.O. No. 2020-4282 (July 6, 2020) GOQ II, 1992A. Online (pdf): www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=1&file=104552.pdf.

¹⁶ *Ministerial Order concerning the lifting of the suspension of certain time limits for extinctive prescription and civil procedure and the prolongation of certain civil procedures time limits due to the public health emergency declared on 13 March 2020*, M.O. 2020-4303, (August 31, 2020).

¹⁷ Services Québec, *Mise en place de mesures dans les palais de justice en raison de la COVID-19*. Online: www.fil-information.gouv.qc.ca/Pages/Article.aspx?idArticle=2803139851. See also the release by the Québec Superior Court and the Québec Court entitled COVID-

Minister of Justice and Attorney General of Québec confirmed that, starting on June 1, 2020, judicial activities would resume gradually while complying with public health guidelines.¹⁸ On June 10, 2020, Order in Council No. 615-2020 was adopted to allow in-person judicial activities for all matters.¹⁹

A similar time limit suspension was ordered by Order in Council No. 222-2020, dated March 20, 2020, regarding administrative justice proceedings.²⁰ While this announcement included proceedings before the Administrative Tribunal of Québec, it did not include the *Régie de l'Énergie* du Québec. The *Régie de l'Énergie* posted on its website its own announcements regarding postponing all in-person hearings, preparatory meetings and working sessions.²¹ In May, activities at the *Régie de l'Énergie* gradually resumed by videoconference.²² In order to innovate further and to fully respect the principle of publicity of debates, the *Régie de l'Énergie* decided to broadcast hearings and preparatory meetings via YouTube.²³

What is important to understand is that litigated environmental matters were impacted by the governmental measures imposed on Québec judicial activities.

¹⁹ – *Arrêt partiel des activités judiciaires*. Online: www.tribunaux.qc.ca/c-superieure/avis/covid-19qc.html.

¹⁸ Ministry of Justice, Press Releases, “A stronger justice system emerges as Québec courthouses gradually resume activities” (May 28, 2020). Online: www.justice.gouv.qc.ca/en/press-releases/a-stronger-justice-system-emerges-as-quebec-courthouses-gradually-resume-activities.

¹⁹ *Order in Council concerning the ordering of measures to protect the health of the population amid the COVID-19 pandemic situation*, O.C. 615-2020, (June 10, 2020) GOQ II, 1698A. Online (pdf): www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=1&file=104479.pdf.

²⁰ *Order in Council Ord concerning the renewal of the public health emergency under section 119 of Public Health Act and certain measures to protect the health of the population*, O.C. 222-2020, (March 20, 2020), 771A. Online (pdf): www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=1&file=104318.pdf. It was also confirmed that administrative tribunals activities would resume gradually while complying with public health guidelines starting on June 1, 2020, see Justice Québec, Press Release, “A stronger justice system emerges as Québec courthouses gradually resume activities” (May 28, 2020). Online: www.justice.gouv.qc.ca/en/press-releases/a-stronger-justice-system-emerges-as-quebec-courthouses-gradually-resume-activities.

²¹ Régie de l'énergie, News Release (only available in French), March 16, 2020. Online: www.regie-energie.qc.ca/documents/communiqués/Communiqu%C3%A9%20-%20RDE%20-%20COVID-19-20200316.pdf; Régie de l'énergie, News Release (only available in French), dated April 6, 2020, online: www.regie-energie.qc.ca/documents/communiqués/Communiqu%C3%A9-RDE-COVID-19-20200406.docx.

²² Régie de l'énergie, News Release (only available in French), dated May 7, 2020. Online: www.regie-energie.qc.ca/documents/communiqués/Communiqu%C3%A9-RDE-COVID-19-20200507.docx.

²³ Régie de l'énergie, News Release (only available in French), dated June 4, 2020. Online: www.regie-energie.qc.ca/documents/communiqués/Lettre%20à%20tous%20participants%20-%20diffusion%20audiences%20virtuelles%20en%20audio%20final%2020200604.pdf.

Another governmental organization with activities impacted by the state of emergency that is of interest in environmental law is the *Bureau d'audiences publiques sur l'environnement* (“BAPE”). On May 28, 2020, temporary measures, that will cease to have effect 60 days after the end of the state of emergency, came into force.²⁴ The goals of the temporary measures are to allow the BAPE to fulfill its mandates while complying with protective measures to be taken during the state of emergency. This order also provided alternative modalities to ensure public participation, notably through technological means. However, they will continue to apply to mandates which began during the state of emergency and which were still in progress at the end date of the state of emergency.²⁵

The “Essential” Services Determination

In Spring 2020, each Canadian province announced its own list of essential services. On March 23, 2020, *Order in Council 223-2020* listed Québec’s essential services and ordered that all non-essential businesses and services be closed due to the public health emergency.²⁶ On the Revenu Québec website, there is a list of non-essential businesses, updated as soon as new ones are added by the government.²⁷ On environmental matters, Québec’s definition was much narrower than Ontario’s,²⁸ limiting environmental essential services to “businesses associated with environmental emergencies.”²⁹

However, other items on the current list³⁰ of essential workplaces may be relevant for the environmental sector:

- Public security services, including wildlife protection officers and enterprises involved in environmental emergencies;
- Government services and other priority activities, including food inspection and food quality, waste collection and residual

²⁴ *Order in Council concerning the Rules of procedure applying temporarily for the period during which a public health emergency is declared to protect the health of the population*, O.C. 551-2020, (May 27, 2020) GOQ II, 1655A. Online (pdf): www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=1&file=104449.pdf.

²⁵ *Ibid.*, at s. 9.

²⁶ *Order in Council concerning the ordering of measures to protect the health of the population during the COVID-19 pandemic*, OC 223-2020, (March 24, 2020) GOQ II, 772A. Online (pdf): www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?file=104322.pdf&type=1 [OC 223-2020].

²⁷ Revenu Québec, “Essential Services”. Online: www.revenuquebec.ca/en/definitions/essential-services/?refrq=online-services.

²⁸ *Rules for Areas in Stage 1*, O. Reg. 82/20, s. 34(v): “Environmental rehabilitation, management and monitoring, and spill clean-up and response.”

²⁹ *O.C. 223-2020*, *supra* note 25.

³⁰ Revenu Québec, “Essential Services”. Online: www.revenuquebec.ca/en/definitions/essential-services/?refrq=online-services.

materials management, services deemed essential by municipal organizations (administration, public works, etc.);

- Maintenance and operation of strategic infrastructure, including energy production, supply, transmission, transportation and distribution (hydroelectricity, fossil fuels and wind energy, biomass energy), maintenance of essential public infrastructures in proper working order (bridges, municipal buildings, etc.), construction, maintenance and upkeep of essential activities in connection with public and private infrastructure that may create a risk for public health and safety (private dams, management of hazardous and radioactive waste, etc.) and sanitary services and supply chains (such as water treatment plants);
- Priority manufacturing activities, including food production, production of inputs necessary for priority sectors, chemicals, sanitary products, etc.;
- Priority commercial enterprises, including businesses supplying agricultural operations (machinery, fertilizer, etc.); and
- Construction sector services, including construction firms, for emergency repairs or to ensure safety.

Québec has gradually resumed its economic activities. On May 25, 2020, a reopening plan was published for both the private and the public sectors.³¹ The Québec government unveiled a phased approach to reopening businesses and workplaces that were shut down during the peak of the COVID-19 confinement. This plan refers to the Workplace Sanitary Standards Guide created by *Commission des normes, de l'équité, de la santé et de la sécurité du travail* in order for all types of workplaces to safely resume their activities in the current state of emergency. Guidelines are proposed for all types of industry (manufacturing, construction, mining, etc.), institutions (childcare, schools, etc.), public services (transportation), activities (day camps, museums, libraries, etc.), listing the requirements to operate or conduct activities in compliance with the recommendations and instructions of public health officials.

³¹ Government of Québec, "Deconfinement Planning, Subject to Changes in the Pandemic" (May 25, 2020). Online (pdf): cdn-contentu.quebec.ca/cdn-contentu/sante/documents/Problemes_de_sante/covid-19/Plan_deconfinement/Deconfinement_planning_pandemic_covid-19.pdf?1590430413.

Specific Legislative Changes

On June 3, 2020, the Québec government introduced Bill 61, *An Act to restart Québec's economy and to mitigate the consequences of the public health emergency declared on 13 March 2020 because of the COVID-19 pandemic* in order to provide economic acceleration measures to encourage resumption of economic activities in the province, including facilitating the completion of major projects.³² Different measures were identified to expedite administrative procedures, including a simplified expropriation procedure, expediting processes in relation to the *Environmental Quality Act*, financial compensation for natural habitat destruction, a presumption of governmental authorization, extension or suspension of certain deadlines, and modifying terms and conditions normally applicable to public contracts.³³

Following its introduction, Bill 61 has been subject to much opposition from the other political parties at the National Assembly, as well as criticism from civil rights groups and environmental activists. Major issues were raised during parliamentary debates and, despite a few amendments, Bill 61 was still not deemed acceptable by opposition political parties. Thus, Bill 61 was not adopted before the adjournment of the National Assembly on June 12, 2020³⁴ and was officially abandoned in August 2020.

A new bill is expected to be tabled at the beginning of the new parliamentary session on September 15, 2020, in order to put forward measures to facilitate implementing infrastructure projects and accelerating Québec's economic recovery. This bill should respond to the concerns raised in June regarding the risks of corruption and collusion in the attribution of public contracts, as well as the concerns raised about environmental acceleration measures.

³² Bill 61, *An Act to restart Québec's economy and to mitigate the consequences of the public health emergency declared on 13 March 2020 because of the COVID-19 pandemic*, 1st Sess., 42nd Leg., Québec, 2020 (first reading June 3, 2020). Online (pdf): www.assnat.qc.ca/Media/Process.aspx?MediaId=ANQ.Vigie.Bll.DocumentGenerique_159143en&process=Default&token=ZyMoxNwUn8ikQ+TRKYwPCjWrKwg+vIv9r-jij7p3xLGTZDmLVSmJLoqe/vG7/YWzz [Bill 61]. Note that Schedule 1 of this Bill lists 200 projects conducive to restarting Québec's economy.

³³ *Ibid.*

³⁴ Québec National Assembly, *Hansard*, 42-1, No. 120 (June 12, 2020). Online: www.assnat.qc.ca/fr/travaux-parlementaires/assemblee-nationale/42-1/journal-debats/20200612/272135.html.

Ontario

Deadlines Management and Other Adjustments

The Ontario government suspended limitation periods by an Order in Council of March 20, 2020, which applied retroactively to March 16, 2020, and was set to last for the duration of the state of emergency.³⁵ The Order was filed as Limitation Periods regulation (“**Limitation Periods Suspension Regulation**”), suspending limitation periods and timelines as follows:

- All limitation periods, established by any statute, regulation, rule, bylaw or order of the Government of Ontario, were suspended.³⁶ This included limitation periods for prosecution of offences under the *Provincial Offences Act*, as well as limitation periods established under the *Environmental Protection Act* and the *Ontario Water Resources Act*.
- Any provision of any statute, regulation, rule, bylaw, or order establishing a period of time within which a step must be taken in any proceeding in Ontario was suspended. This suspension, however, was subject to the discretion of the court, the tribunal, or the decision maker responsible for the proceeding.³⁷ The Environmental Review Tribunal, therefore, retained discretion over whether to delay procedural time periods relevant to tribunal proceedings.

The Limitation Periods Suspension Regulation had the effect of suspending statutory limitation periods, but it did not address timelines of other decisions made in the context of regulatory enforcement. For example, the limitation period for a director to serve an order requiring payment of an environmental penalty was suspended.³⁸ The timeline for an orderee to request that a director review an order for a penalty is not considered a “step in a proceeding,” and therefore was not automatically suspended during the state of emergency.³⁹

Moreover, any deadlines to comply with steps issued in provincial officers’ or directors’ orders were also not suspended. Parties that were subject to orders which required compliance with certain steps had the option to request an extension on an individual basis, if the work could not be completed due to COVID-19 restrictions.

³⁵ *Limitation Periods*, O. Reg. 73/20.

³⁶ *Ibid.*, s. 1.

³⁷ *Ibid.*, s. 2.

³⁸ See e.g. *Environmental Protection Act*, R.S.O. 1990, c. E.19, s. 182.1(8).

³⁹ See e.g. *Environmental Penalties*, O. Reg. 222/07, s. 6.

The Limitation Periods Suspension Regulation was originally enacted under s. 7.1 of the *Emergency Management and Civil Protection Act*, and subject to the renewal timelines pursuant to the Act.⁴⁰ The continued extensions of the suspension of limitation periods caused considerable uncertainty in the legal system. The Ontario government responded by setting an end date to the application of the limitation periods suspension of September 11, 2020, later amended to September 14, 2020, for a total suspension of 183 days.⁴¹

Ontario's declared state of emergency under the *Emergency Management and Civil Protection Act* ended on July 24, 2020 with the coming into force of the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* (“ROA”).⁴² Most of the orders made under the *Emergency Management and Civil Protection Act* continued under the ROA, allowing the Ontario government to exercise powers with respect to the COVID-19 pandemic without continuing the state of emergency. Under the ROA, the government retained some authority to amend existing orders that were previously made under the *Emergency Management and Civil Protection Act*, but removed the ability to make new orders. Enforcement measures and penalties continue identical to the provisions under the state of emergency.⁴³ The orders continued under the ROA may be extended by the Lieutenant Governor in Council (or a delegated Minister) for additional periods of 30 days, while the broader power to extend and amend orders under the ROA expires after one year, unless further extended by the Legislative Assembly.⁴⁴

Other Impacts of the Provincial State of Emergency

Suspension of Public Participation Rights Under the Environmental Bill of Rights

Effective April 1, 2020, Ontario suspended the public engagement requirements under the *Environmental Bill of Rights* (EBR).⁴⁵ The EBR mandates 14 of Ontario's ministries to provide proposals for policies, acts, regulations and instruments online for public comment, and to consider the ministerial statements of environmental values when making decisions that

⁴⁰ *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, s. 7.1(4).

⁴¹ *Extension of Orders*, O. Reg. 458/20, s. 2. This regulation was enacted under *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*, S.O. 2020, c. 17 [“ROA”]. A further regulation, *Limitation Periods*, O. Reg. 457/20, was filed on August 20, 2020, to revoke O. Reg. 73/20, effective September 14, 2020.

⁴² *ROA*, *supra* note 40, s. 17.

⁴³ *Ibid.*, s. 10.

⁴⁴ *Ibid.*, s. 8.

⁴⁵ *Temporary Exemptions Relating to Declared Emergency*, O Reg 115/20, enacted under the *Environmental Bill of Rights*, 1993, S.O. 1993, c. 28.

might significantly affect the environment. During the suspension, ministries continued to post new acts, regulations, policies and instruments on the environmental registry for information purposes, but did not provide the opportunity to comment. The requirement to consider the ministerial statements of environmental values was also temporarily suspended. The suspension was lifted effective on June 15, 2020.⁴⁶

The “Essential” Services Determination

Ontario ordered the closure of all non-essential workplaces effective midnight March 24, 2020 and released the initial list of essential workplaces and businesses on March 23.⁴⁷ The initial list included “environmental services,” which was defined quite expansively to include “businesses that support environmental management/monitoring and spill clean-up and response, including environmental consulting firms, professional engineers and geoscientists, septic haulers, well drillers, pesticides applicators and exterminators, management of industrial sewage/effluent (*e.g.* for mining operations), and environmental laboratories.”⁴⁸

Other items on the initial list of essential workplaces that may be relevant for the environmental sector are:

- Retail and wholesale, including gas stations, diesel, propane and heating fuel providers including providers of motor vehicle, aircraft and water/marine craft fuels;
- Manufacturing and production, including businesses that extract, manufacture, process and distribute goods, products, equipment and materials, including businesses that manufacture inputs to other manufacturers (*e.g.* primary metal/ steel, blow molding, component manufacturers, chemicals, etc. that feed the end-product manufacturer);
- Agriculture and food production, including businesses that help to ensure safe and effective waste management including deadstock, rendering, nutrient management, biohazardous materials, green waste, packaging recycling;

⁴⁶ *Temporary Exemptions Relating to Declared Emergency*, O. Reg. 277/20.

⁴⁷ Government of Ontario, News Release, “Ontario Orders the Mandatory Closure of All Non-Essential Workplaces to Fight Spread of COVID-19: New Measures to Further Protect the Health and Safety of the People of Ontario” (March 23, 2020). Online: news.ontario.ca/opo/en/2020/03/ontario-orders-the-mandatory-closure-of-all-non-essential-workplaces-to-fight-spread-of-covid-19.html.

⁴⁸ Government of Ontario, “List of Essential Workplace” (March 23, 2020). Online: s3.amazonaws.com/files.news.ontario.ca/opo/en/2020/03/list-of-essential-workplaces-2.html.

- Construction work and services, including demolition services, in the industrial, commercial, institutional and residential sectors;
- Construction work and services that supports health and safety environmental rehabilitation projects;
- The resource sector, including businesses that ensure global continuity of supply of mining materials and products (*e.g.* metals such as copper, nickel and gold) and that support supply chains in Northern Ontario, including;
 - a. Mining operations, production and processing;
 - b. Mineral exploration and development;
 - c. Mining supply and services that support supply chains in the mining industry, including maintenance of operations, health and safety;
- Businesses that provide chemicals and gases to support the natural resource sector analytical labs and drinking water and wastewater sectors and other essential businesses;
- Businesses that ensure global continuity of supply of forestry products, aggregates to support critical infrastructure, and supply of petroleum and petroleum by-products;
- Utilities and community services, including provision of services and providing products and materials necessary for the delivery of community services, such as, waste collection, sewage treatment and disposal, operation of landfills, and hazardous waste disposal, drinking water, electricity and natural gas;
- Other government services including licenses and permits; and
- Engineers and other professional services.

The initial list of essential workplaces was criticized by some as too broad to effectively curtail the spread of COVID-19. Effective midnight on April 4, 2020, the Ontario government released a more restrictive list of essential workplaces, which limited environmental services to businesses

that deliver or support the delivery of “environmental rehabilitation, management and monitoring, and spill clean up and response.”⁴⁹ This amended definition allowed limited fieldwork to continue; however, physical distancing and other practical constraints would be expected to have some impact on the timing and delivery of projects.

Other items on the revised list of essential workplaces are:

- Manufacturing, including businesses that extract, manufacture, process and distribute goods, products, equipment and materials, including businesses that manufacture inputs to other manufacturers, (*e.g.* primary metal/steel, blow molding, component manufacturers, chemicals, etc., that feed the end-product manufacturer), regardless of whether those other manufacturers are inside or outside of Ontario;
- Limited list of construction activities;
- Resources and energy, including businesses that provide and ensure the domestic and global continuity of supply of resources, such as, mining, forestry, aggregates, petroleum, petroleum by-products and chemicals, as well as electricity generation, transmission, distribution and storage and natural gas distribution, transmission and storage; and
- Community services, including the delivery or support of delivery of services such as sewage treatment and disposal, collecting, transporting, storing, processing, disposing or recycling of any type of waste, as well as potable drinking water.

The same amendment also imposed a requirement on business owners to operate in compliance with the recommendations and instructions of public health officials, and included the requirement to comply with “any advice, recommendations or instructions on physical distancing, cleaning or disinfecting.”⁵⁰

By the end of April 2020, Ontario unveiled a phased approach to reopening workplaces that were forced to close, and gradually easing restrictions. “A Framework for Reopening our Province” sets out three

⁴⁹ *Order under Subsection 7.0.2(4) – Closure of Places of Non-essential Businesses*, O Reg 82/20, as amended by O. Reg. 119/20. See also Government of Ontario, News Release, “Ontario Extends Business Closures to Stop the Spread of COVID-19: Additional Measures Necessary to Protect the Health and Safety of the People of Ontario” (April 3, 2020). Online: news.ontario.ca/opo/en/2020/04/ontario-extends-business-closures-to-stop-the-spread-of-covid-19.html.

⁵⁰ O. Reg. 119/20, Schedule 3, s. 1(2).

phases, where “Phase 1: Protect and Support” refers to the initial phase of the emergency orders, where all non-essential workplaces were closed and other restrictions were in place to limit community spread of COVID-19.⁵¹ “Phase 2: Restart” refers to gradually reopening the economy, to be undertaken in three stages, and applied regionally based on infection results of each public health unit.

Stage 1 of the second phase of reopening allowed businesses that were on the list of essential workplaces included in O. Reg. 82/20, to remain open. The list of essential workplaces created on April 4, 2020, was updated frequently. The types of businesses and activities that were allowed to reopen gradually expanded throughout May and up until June 12, 2020, when the regulation was renamed “Stage 1 Closures” to implement the staged approach.⁵²

Stage 2 of the second phase of reopening allowed for more consumer services, food and entertainment businesses to reopen, and allowed some larger public gatherings.⁵³

Stage 3 of the reopening phase allows for most businesses to reopen, subject to capacity limits, distancing and other public health precautions.⁵⁴

Following the successful implementation of the three stages of Phase 2, the final Phase 3 of the Ontario Framework for Reopening will focus on recovery and creating economic opportunity in the province.

Specific Legislative Changes

COVID-19 Economic Recovery Act – Changes to the Environmental Assessment Act

In April 2019, the Ministry of the Environment, Conservation and Parks started consultations on modernizing Ontario’s environmental assessment regime, with the publication of a discussion paper.⁵⁵ Several piecemeal changes were enacted in June 2019, such as exempting certain undertakings from Class Environmental Assessments (“EAs”), and limiting the circumstances under which a Part II Order may be requested.⁵⁶

⁵¹ Government of Ontario, “A Framework for Reopening our Province” (April 27, 2020). Online (pdf): files.ontario.ca/mof-framework-for-reopening-our-province-en-2020-04-27.pdf, at 4.

⁵² On June 12, 2020, O. Reg. 82/20, *Order under Subsection 7.0.2 (4) – Closure of Places of Non-essential Businesses*, was amended by O. Reg. 262/20 and re-named *Order under Subsection 7.0.2 (4) of the Act – Stage 1 Closures*.

⁵³ *Rules for Areas in Stage 2*, O. Reg. 263/20.

⁵⁴ *Rules for Areas in Stage 3*, O. Reg. 364/20.

⁵⁵ Ministry of the Environment, Conservation and Parks, “Discussion paper: modernizing Ontario’s environmental assessment program” (April 25, 2019). Online: ero.ontario.ca/notice/013-5101.

⁵⁶ Rick Coburn and Barbora Grochalova, “Bill 108 to Enact First of Many Changes

The modernization of the environmental assessment regime continued as part of the *COVID-19 Economic Recovery Act* (“**CERA**”), which overhauled the *Environmental Assessment Act* and paved the way for future regulatory changes to be implemented gradually. CERA was tabled as Bill 197 on July 8, 2020, and received Royal Assent on July 21, 2020, bypassing committee debates. Schedule 6, which amends the *Environmental Assessment Act*, as well as other schedules that propose environmentally significant legislative amendments, are the subjects of a Judicial Review Application on the basis that the passing of Bill 197 did not comply with the mandatory public notice and comment process under s. 15(1) of the *Environmental Bill of Rights*.⁵⁷

The amendments under CERA change the application of the Act from previously capturing all public and select high-risk private undertakings, to establishing a project list that will require projects to be explicitly designated to be subject to an environmental assessment.⁵⁸ The move from a mandatory to permissive project designation is intended to align with how the federal *Impact Assessment Act* functions. Unlike the federal regime, however, the amended *Environmental Assessment Act* does not provide for the minister to designate projects on a case-by-case basis.⁵⁹

The new *Environmental Assessment Act* will see projects considered under either the “comprehensive environmental assessment” stream set out in the new Part II.3, or under the “streamlined environmental assessment” stream set out in Part II.4. The principles behind these two streams appear to be substantially the same as for individual EAs and Class EAs under the previous provisions of the Act. CERA amendments provide for regulations to be enacted to govern the timelines within which the minister will be required to make procedural decisions, such as approval of terms of reference, as well as final decisions on project approvals.⁶⁰ If deadlines are not met, the minister is required to provide reasons for the delay. The proponents are also held to stricter timelines.⁶¹ The Act is also amended to impose a default ten-year expiration date on completed EAs.

Previously under the *Environmental Assessment Act*, affected members of the public had the opportunity to request a Part II Order, also known as a “bump-up” request, which, if granted by the minister, would require a

Proposed to Ontario’s Environmental Assessment Act” (May 17, 2019). Online: www.blg.com/en/insights/2019/05/bill-108-to-enact-first-of-many-changes-proposed-to-ontario.

⁵⁷ Notice of Application, see online: ecojustice.ca/wp-content/uploads/2020/08/Notice-of-Application-Greenpeace-and-Wilderness-Committee-v-Ontario.pdf.

⁵⁸ CERA, Sched. 6, s. 3 (1).

⁵⁹ Environmental Registry of Ontario, bulletin: “Proposed Environmental Assessment Act (EAA) Amendments in the COVID-19 Economic Recovery Act” ERO No.: 019-2051 (July 8, 2020), online: ero.ontario.ca/notice/019-2051.

⁶⁰ CERA, Sched. 6, s. 29; amending s. 14.4(13), (14) of the EAA.

⁶¹ CERA, Sched. 6, s. 29; amending s. 14.7 of the EAA.

Class EA undertaking to undergo the individual environmental assessment process. In practice, Part II Orders were almost never granted. The recent amendments limit the availability of the Part II Order request process only to issues of potential adverse impacts of a project on existing Aboriginal and treaty rights.

As part of the broader update of the *Environmental Assessment Act*, the Ontario government is revising the existing Class EAs, with a view to enacting consistent streamlined environmental assessment processes set out in regulation.⁶² Further changes to the environmental assessment regime include the creation of standardized, sectoral terms of reference for proponents to use where projects do not vary significantly within a sector, as well as a specific requirement for developers of landfills to demonstrate approval of the host municipalities.

The most immediate impacts of the amendments to the EA regime may be felt in the transportation sector, where the Ontario government proposed to exempt various Ministry of Transportation projects from the EA regime altogether,⁶³ and proposed a regulation for a streamlined EA for a new 400-series highway development project in the west Greater Toronto Area region.⁶⁴

Ontario's New Excess Soil Management Regime Delayed

Ontario's comprehensive *On-Site and Excess Soil Management Regulation*⁶⁵ ("**Excess Soil Regulation**") was set to be phased in beginning on July 1, 2020. Currently excess soil is considered "waste" under the General: *Waste Management* (Regulation 347) and often disposed of at landfill sites, reused under uncertain conditions, or illegally dumped. The Excess Soil Regulation will allow excess soil to avoid being designated as waste. Excess soil will be permitted to be reused for a beneficial purpose if certain conditions, including quality and quantity of the soil, are met. The new regime will seek to enhance certainty by establishing testing requirements and a shipment tracking system. The first phase of the implementation of the Excess Soil Regulation includes the designation of excess soil,

⁶² Environmental Registry of Ontario, Bulletin: "Environmental assessment modernization: amendment proposals for Class Environmental Assessments" ERO No: 019-1712 (July 8, 2020). Online: ero.ontario.ca/notice/019-1712.

⁶³ Environmental Registry of Ontario, Regulation Proposal: "Proposal to exempt various Ministry of Transportation projects from the requirements of the Environmental Assessment Act" ERO No: 019-1883 (July 8, 2020). Online: ero.ontario.ca/notice/019-1883.

⁶⁴ Environmental Registry of Ontario, Regulation Proposal: "Proposed regulation for a streamlined environmental assessment process for the Ministry of Transportation's Greater Toronto Area West Transportation Corridor project" ERO No: 019-1882 (July 8, 2020). Online: ero.ontario.ca/notice/019-1882.

⁶⁵ O. Reg. 406/19.

and has been delayed until January 1, 2021.⁶⁶ As of the time of writing, the timing of the next phases of the implementation of the Excess Soil Regulation remain unchanged.

Alberta

Deadlines Management and Other Adjustments

On March 30, 2020, the Minister of Justice and Solicitor General of Alberta suspended limitation periods by executing a Ministerial Order,⁶⁷ which applied retroactively to March 17, 2020. It ordered:

1. Limitation periods are suspended in the enactments under Appendix A from March 17, 2020 to June 1, 2020.
2. Any period of time within which any step must be taken in any proceeding or intended proceeding is suspended subject to the direction of the court, tribunal, or other decision-maker from March 17, 2020 to June 1, 2020.
3. For clarity, the limitation period or period of time resumes running on June 1, 2020 and the temporary suspension period shall not be counted.

Therefore, such Ministerial Order lapsed on June 1, 2020 and suspended limitation periods for a total of 75 days, but applied specifically to limitation periods and did not change the deadlines for regulatory enforcement.

On March 12, 2020, the Alberta Utilities Commission (the “AUC”) deferred all public hearings, consultations and information sessions until further notice.⁶⁸ They stated that if there were “essential economic requirements to proceed with a hearing or other normally public proceeding, written or remote-participation options will be explored with parties.” On March 17, 2020 the AUC closed its buildings but continued to operate remotely.⁶⁹

⁶⁶ Environmental Registry of Ontario, “Delayed commencement of the new Excess Soil Regulation and exemption from Record of Site Condition for temporary hospitals and residences” ERO No: 019-1853 (June 12, 2020). Online: <https://www.ontario.ca/laws/regulation/r19406>.

⁶⁷ MO 27/2020 (JSG).

⁶⁸ AUC, Bulletin, 2020-06, “AUC defers live proceedings to reduce COVID-19 risk” (March 12, 2020). Online: www.auc.ab.ca/News/2020/Bulletin%202020-06.pdf

⁶⁹ AUC, Bulletin 2020-07, “AUC announces two measures in response to COVID-19 threat” (March 17, 2020). Online: www.auc.ab.ca/News/2020/Bulletin%202020-07.pdf.

Generally, for developments of power plants, substations, transmission lines, industrial system designations, hydro, or gas utility pipelines, the AUC requires Participant Involvement Participation (the “**PIP**”).⁷⁰ Due to COVID-19, the AUC issued Bulletin 2020-13, which gave direction on how PIP could continue to apply during the COVID-19 pandemic.⁷¹

First they increased the time that stakeholders have to respond to the project notification, from 14 to 30 days. Next, they acknowledged that the rules promote, but do not require, face-to-face consultations. Given the COVID-19 pandemic, the AUC encouraged consultation via phone, email or video. They confirmed the rules do not require a public open house or town hall meeting.

In Bulletin 2020-13, the AUC reminded applicants that Indigenous groups may have varying access to technology and the internet, and therefore encouraged applicants to budget extra time to complete consultation with Indigenous groups and be “sensitive to [their] capacity challenges” while trying to complete consultation virtually, as their offices may be closed or operating with reduced staff.

Lastly, the “AUC has so far delayed publication of the AUC 2020-2021 Operational Plan pending resetting of priorities and realignment of employees’ individual work plans.”⁷²

The AUC announced on their website that applications in record development with categories one to three will continue to be processed as normal. For categories four to five, the AUC will continue with written processes. In June and July 2020, the AUC held one virtual hearing for the East Strathmore Solar Project and one virtual meeting for the Distribution System Inquiry.

Effective March 17, 2020 the Alberta Energy Regulator (“**AER**”) stated that meetings with stakeholders would be virtual and that the oral portions of AER hearings would not be held. They stated “[w]e are reviewing our current and future adjudicative functions to ensure they remain fair and transparent, while protecting the health of everyone involved.”⁷³

⁷⁰ AUC, *Rule 020 Rules Respecting Gas Utility Pipelines*, s 2; AUC, *Rule 007: Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations and Hydro Developments*, Appendix A1.

⁷¹ AUC, Bulletin, 2020-13, “Interim changes to AUC participation involvement program and related information Requirements” (April 7, 2020). Online: www.auc.ab.ca/News/2020/Bulletin%202020-13.pdf.

⁷² AUC, “COVID-19 impacts: How the AUC is mitigating the risk of COVID-19 and continuing its essential work”. Online: www.auc.ab.ca/Pages/COVID-19-impacts.aspx.

⁷³ AER, News and Resources, “AER response to COVID-19” (March 17, 2020). Online: www.aer.ca/providing-information/news-and-resources/news-and-announcements/announcements/announcement-covid-19.html.

Their offices remained open, though staff were encouraged to work from home where possible. The AER continued to respond to energy-related incidents 24 hours a day.

The AER determined that it was necessary, in order to comply with the Alberta government's public health orders, to temporarily relieve reporting requirements for the Alberta energy industry, while maintaining monitoring requirements to the greatest extent possible. The physical distancing requirements in Alberta resulted in challenges to conducting daily activities relating to reporting and monitoring requirements.

The AER's decisions were made in furtherance of the modification of Alberta legislation affecting the energy industry under s. 6 of Ministerial Order 219/2020. The modifications and decisions were guided by two principles: (1) a demonstration that the public health orders pose a challenge in completing the monitoring activity; and (2) any deferral of monitoring must have a low risk of potential short and long term impacts. The temporary measures had to be supported by technical experts and still enable the AER to fulfil its mandate.

Some of these temporary measures required decisions to be issued in order to relieve industry participants of formalized requirements within orders and plans. During the temporary suspensions, industry participants were required to continue recording and retaining documentation relating to reporting and make it available upon request. The ongoing requirement to report in compliance and enforcement orders was maintained, as well as the obligation to report emergencies, including incidents, notifications, contraventions and releases that have or may have the potential to impact the environment or public safety.

The "Essential" Services Determination

On March 27, 2020 the Chief Medical Office of Health signed Order 07-2020⁷⁴ pursuant to section 29(2.1) of the *Public Health Act*,⁷⁵ which prevented services from being rendered by the following non-essential businesses:

- (a) any place of business offering or providing non-essential health services;
- (b) any place of business offering or providing personal services;

⁷⁴ CMOH Order 07-2020. Online: open.alberta.ca/dataset/c02f3b06-9c37-4845-98ee-d07d805fdce1/resource/32f3367d-9a15-4aef-af6e-4e960891c14e/download/health-cmoh-record-of-decision-cmoh-07-2020.pdf [CMOH Order]

⁷⁵ R.S.A. 2000, c. P-37.

- (c) any place of business offering or providing wellness services, including but not limited to massage therapy services and reflexology services; and
- (d) any retail store, including a retail store located in a shopping centre, or other similar place of business offering or providing only non-essential goods or services.

However, as in most of the provinces, restaurants and cafes were allowed to continue to offer takeout, drive-thru, and delivery.

Among the designated essential services were energy utilities and petroleum, natural gas and coal sector and that latter was broadly defined to include most of the activities of such sector.⁷⁶ For example, even if the Alberta government prohibited gatherings of more than 15 people,⁷⁷ Alberta's energy sector was still operating and an exemption was issued for industrial work camps, specifically allowing dining facilities to continue operating subject to conditions.⁷⁸ As of June 30, 2020, Alberta made an exception for essential employees, contractors and subcontractors of the petroleum, natural gas and coal industries who travel to or from Canada to provide essential services.⁷⁹

Environmental services for agriculture, mining and oil and gas were also deemed essential.

British Columbia

Deadlines Management and Other Adjustments

Through MO86/2020,⁸⁰ issued March 26, 2020, the B.C. government suspended mandatory limitation periods relating to court proceedings and allowed statutory decision makers to waive, suspend, or extend a mandatory time limit relating to their powers. MO86/2020 was made under

⁷⁶ Government of Alberta, "Restricted and non-restricted services"(2020) *COVID-19 info for Albertans*. Online: www.alberta.ca/restricted-and-non-restricted-services.aspx.

⁷⁷ CMOH Order, *supra* note 73.

⁷⁸ Alberta Health, *Request for Exemption: Industrial Work Camps*, (March 30, 2020). Online: open.alberta.ca/dataset/aaeabbd6-332a-475c-b40a-4333cdc96912/resource/d9c276d9-ffe1-41ba-99ce-cac0d65a8765/download/health-cmoh-exemption-industrial-work-camps-2020-03-30.pdf.

⁷⁹ Alberta Health, *Sector Exemption: Petroleum, Natural gas, and Coal*, (June 30, 2020). Online: open.alberta.ca/dataset/09253204-bd55-4d91-b565-20bbd3d7af6d/resource/0c3bed39-832c-42f5-b7bc-34333140bf8f/download/health-cmoh-exemption-petroleum-natural-gas-and-coal-2020-06-30.pdf.

⁸⁰ Ministerial Order No. MO86, Province of British Columbia. Online: www.bclaws.ca/civix/document/id/mo/mo/2020_m086.

the *Emergency Program Act*⁸¹ to protect public health and recognize that during the pandemic, British Columbians involved in legal or administrative proceedings may be unable to take steps required by legislation.

Effective April 15, 2020, MO98/2020⁸² repealed and replaced MO86/2020. Under the new order, every mandatory limitation period and any other mandatory time period established in an enactment or law of B.C. within which a civil or family action, proceeding, claim or appeal must be commenced in the courts was suspended. In addition, the new order continued the power of statutory decision makers to waive, suspend or extend a mandatory limitation period. The major change with the new order was that the suspension of limitation periods was not to apply to claims under the *Builders Lien Act* and Division 5 of Part 5 of the *Strata Property Act*.

Ministerial Order No. M098 was set to end on the date on which the declaration of a state of emergency first made March 18, 2020 expired or was cancelled, or if there was an extension, the date on which the last extension of that declaration expired or was cancelled. Notably, the suspension of limitation periods did not apply directly to deadlines for filing with tribunals or other administrative bodies. Instead, administrative bodies were provided with the discretion to waive, suspend or extend any mandatory timeframes.

On July 8, 2020, the Legislature passed the *COVID-19 Related Measures Act*.⁸³ The Act came into force on July 10, 2020 and continued the suspension of mandatory limitation periods and other mandatory time periods in B.C. enactments as set out in MO98/2020. Essentially, MO98/2020 was enacted as a “COVID-19 provision,” which elevated the order to the level of statute law and allowed for its effects to be extended beyond the state of emergency.

On August 4, 2020, the Lieutenant Governor made the *COVID-19 (Limitation Periods in Court Proceedings) Regulation*⁸⁴ and amended the *COVID-19 Related Measures Act*. The Regulation and the Act provide that the suspension of mandatory limitation periods and any other mandatory time periods in B.C. enactments or laws for commencing a civil or family action, proceeding, claim or appeal in the Supreme Court of British Columbia will end 90 days after the state of emergency expires or is cancelled.

⁸¹ *Emergency Program Act*, R.S.B.C. 1996, c. 111.

⁸² Ministerial Order No. MO98, Province of British Columbia. Online: www.bclaws.ca/civix/document/id/mo/mo/2020_m098.

⁸³ *COVID-19 Related Measures Act*, S.B.C. 2020, c. 8.

⁸⁴ *COVID-19 (Limitation Periods in Court Proceedings) Regulation*, B.C. Reg. 199/2020.

As of August 18, the B.C. government extended the state of emergency until September 1, 2020. The state of emergency allows the government to continue to use extraordinary powers under the *Emergency Program Act*.⁸⁵ Beyond September 1, 2020, the state of emergency may be extended or rescinded as necessary.

The “Essential” Services Determination

On March 26, 2020, B.C. announced its list of essential services⁸⁶ and defined such services as follows: “essential services are those daily services essential to preserving life, health, public safety and basic societal functioning.”⁸⁷ Unlike many other provinces, B.C.’s essential services list was extensive. This broader approach may be explained by the low number of COVID-19 cases in British Columbia in comparison to other provinces, like Québec.

B.C. is the only province from the four studied herein that introduced a ministerial order⁸⁸ to protect persons who provide essential services, or reasonably believe that they are providing such services, from liability for damages relating to COVID-19. This Order provides a list of essential services, including many services relating to the environment, such as businesses that support environmental management/monitoring and spill cleanup and response.

In both orders, the following services are deemed essential and are comparable to what we have reviewed in other provinces.

Critical infrastructure includes all of the required support, operations and staff critical for:

- drilling and production;
- refineries;
- electricity;
- drinking water;
- wastewater;

⁸⁵ EmergencyInfoBC, British Columbia. Online: www.emergencyinfobc.gov.bc.ca/covid19-provincial-state-of-emergency/#:~:text=The%20Government%20of%20British%20Columbia,the%20COVID%2D19%20pandemic%20response.

⁸⁶ *Ministerial Order No. M084* (March 26, 2020), pursuant to the *Emergency Program Act*, R.S.B.C. 1996, c. 111, s. 10.

⁸⁷ Government of British Columbia, “List of Essential Services” (last updated: June 12, 2020). Online: www2.gov.bc.ca/gov/content/safety/emergency-preparedness-recovery/covid-19-provincial-support/essential-services-covid-19#healthservices.

⁸⁸ Order of the Minister of Public Safety and Solicitor General, *Emergency Program Act*, Ministerial Order No M120, April 22, 2020 which repealed Ministerial Order No MO94.

- alternative energy production;
- oil, natural and propane gas;
- fuel, petroleum, crude oil; and
- other fuel sources, such as heating oil and wood pellets.

Sanitation services include:

- vegetation management crew and traffic workers who support environmental remediation and monitoring and respond to environmental emergencies; and
- businesses that support environmental management, monitoring and spill cleanup, such as:
 - o environmental consulting firms;
 - o professional engineers and geoscientists;
 - o septic haulers;
 - o well drillers;
 - o pesticide applicators;
 - o pest exterminators;
 - o management of industrial sewage/effluent (*e.g.* for mining operations); and
 - o environmental laboratories.

Bill 6, *Mines Amendment Act* is also relevant.⁸⁹ It passed third reading on July 21, 2020. This legislation includes a new chief permitting officer position and will strengthen the government’s ability to hold mines accountable. The rationale behind this legislation was described by Bruce Ralston, Minister of Energy Mines and Petroleum Resources as follows: “The COVID-19 pandemic has reinforced that health and safety must remain a top priority.”⁹⁰

⁸⁹ Bill 6-2020: *Mines Amendment Act, 2020*.

⁹⁰ “Mines Acts to improve permitting, regulation in B.C.”, *BC Gov News* (June 22, 2020). Online: <https://news.gov.bc.ca/releases/2020EMPR0022-001117>.

Systemic Delays in Environmental Prosecution and the *Jordan* Principle

The Supreme Court of Canada in *R v. Jordan* outlined a framework for compliance with the right to be tried in a reasonable time under s. 11(b) of the *Canadian Charter of Rights and Freedoms*.⁹¹ The Court held that there is a presumptive cap of 18 months from charge to the resolution of a trial in provincial court, and a 30-month cap for matters heard in superior court (or in provincial court following a preliminary inquiry). These limits apply to individual accused parties, as well as corporate⁹² and public defendants.⁹³

As courts across Canada announced adjournments of all non-urgent matters and plans for a prioritized gradual reopening, there is a concern that environmental prosecution matters may suffer undue delay and proceedings may be set aside. In such a scenario, the Crown has the onus of refuting the presumption of undue delay through evidence of exceptional circumstances outside of the Crown's control. The Provincial Court of British Columbia has now considered the circumstances of COVID-19's impact on the courts, finding that the response necessitated by the global pandemic did constitute an exceptional circumstance and the delay it caused was deducted from the net delay of a criminal case.⁹⁴ The Ontario Court of Justice noted that the global pandemic does not create a "free-for-all" in the justice system and that the system must still promote the principles of fairness and justice.⁹⁵

The federal *Time Limits and Other Periods Act (COVID-19)*⁹⁶ received Royal Assent on July 27, 2020. The Act suspended limitation periods established by federal legislation, as well as time limits in relation to court proceedings, between March 13, 2020, and September 13, 2020. The Act explicitly does not apply to investigations of offences or any proceedings with respect to an offence.⁹⁷ It allows for ministerial authority to make orders suspending or extending time limits or time periods under certain federal statutes and provisions listed in the Act.⁹⁸ Those suspensions or extensions ordered by a minister may be for no longer than six months, and, in any event, not continue after December 31, 2020. No environmental statutes are included in the enumerated list of statutory provisions that may be affected by the ministerial extension of time. Enumerated regulatory provisions include those contained in the *Canada Labour Standards Regulations*, *Canada Occupational Health and Safety Regulations*, and the *Nunavut Mining Regulations*.

⁹¹ *R. v. Jordan*, 2016 SCC 27.

⁹² *Mississauga (City) v. Uber Canada Inc.*, 2016 ONSC 461.

⁹³ *R. v. HMTQ et al.*, 2017 BCPC 371.

⁹⁴ *R. v. Ali Ismail*, 2020 BCPC 144, at paras 135-7.

⁹⁵ *R v. Brown*, [2020] O.J. No. 1432, at para 62.

⁹⁶ S.C. 2020, c. 11, s. 11.

⁹⁷ *Ibid.*, s. 4.

⁹⁸ *Ibid.*, s. 7.

Conclusion

At the time of writing this article, most of the provinces were still under the state of emergency, although Alberta lifted it as of June 15, 2020 and Ontario as of July 24, 2020. As described above, the state of emergency facilitated the implementation of numerous special measures during the pandemic, and allowed enough time to permanently implement certain of these measures.

Most of the provinces reopened with a plan that was in two or three phases and, as we were writing, the Reviewed Provinces were implementing their last reopening phases. The plan for most of the provinces was to be back to normal from an environmental perspective in Fall 2020. While numerous subsidy programs and financial assistance is available to help businesses cover salaries and other costs, we didn't identify any specific financial programs to help with environmental compliance. Based on the fact that most of the environmental measures enacted in the past months are deadlines, extensions or suspensions, we understand that the federal and provincial governments expect businesses to continue to comply with environmental laws and regulations.

On the project development front, we are concerned by pandemic-related delays adding to existing backlogs, which were already causing permitting problems in certain provinces. Few provinces positioned themselves by allowing exemptions or temporary simplified permitting processes. We understand that environmental questions are sensitive in the public sphere, and we have learned from Québec's experience with Bill 61 that enacting these types of measures to expedite processes can be highly controversial. Wetlands, natural habitat and anti-corruption rules were areas in which the public did not want to see any simplification or exemption.

Québec is expected to propose a new bill in September 2020 to help project development by reducing permitting deadlines, but will have to be careful which part of the processes it decides to simplify.

In this period of economic recovery, businesses should be reviewing the environmental compliance issues they had during the crisis in order to prepare in the event of a second wave of COVID-19, but also to take advantage of the lessons learned for process improvements going forward. Now that we can anticipate the kinds of measures that can affect businesses, it is easier to plan to mitigate potential impacts.

COVID-19 provided several lessons. From an environmental point of view, it reminded us of the importance of maintaining the confidence of regulatory authorities and business partners. Several improvements to

doing business should become the standard, including *force majeure* provisions in rehabilitation plans or environmental indemnity agreements, or being able to monitor environmental parameters of a business remotely.

Date	Organization	Description	Initial Deadline	New Deadline
a. The following regulatory deadlines were extended:				
Canada (Federal Government)				
April 3, 2020	CSSA ⁹⁹	Submission of the annual report for Packaging and Paper Product data. Stewards may choose to reuse their 2018 data, with necessary adjustments. Penalties and interests for late invoice payment are also waived for 90 days.	May 31, 2020	July 31, 2020
April 24, 2020	NPRI ¹⁰⁰	Submission of the annual data report, pursuant to the <i>Canadian Environmental Protection Act, 1999</i> .	June 1, 2020	July 31, 2020
April 23, 2020	ECCC ¹⁰¹	Submission of the report under the Greenhouse Gas Reporting Program, pursuant to the <i>Notice with respect to reporting of greenhouse gases</i> .	June 1, 2020	July 31, 2020
May 27, 2020	Ministry of Environment	Submission of the annual report and verification report under the <i>Regulations Amending the Output-Based Pricing System Regulations</i> and the <i>Greenhouse Gas Pollu-</i>	June 1, 2020	October 1, 2020

⁹⁹ Canadian Stewardship Services Alliance.

¹⁰⁰ National Pollutant Release Inventory.

¹⁰¹ Environment and Climate Change Canada.

Date	Organization	Description	Initial Deadline	New Deadline
		<i>tion Pricing Act</i> . The regular rate and high rate compensation periods were also pushed back by four months.		
Alberta				
March 30, 2020	MEP ¹⁰²	Emission reduction plan and compliance report with facility's net emissions pursuant to the <i>Technology Innovation and Emissions Reduction Regulation</i> .	March 31, 2020	June 30, 2020
March 30, 2020	MEP	Compliance report for fuel suppliers, approved contributors, and renewable fuel providers pursuant to the <i>Renewable Fuels Standard Regulation</i> .	March 31, 2020	June 30, 2020
British Columbia				
March 27, 2020	MEMPR ¹⁰³	Claims and licences under the <i>Mineral Tenure Act</i> and coal licences and leases under the <i>Coal Act</i> , set to expire.	Expire before December 31, 2021	December 31, 2021
April 1, 2020	Ministry of Finance	Filing and payments for carbon tax, motor fuel tax including the International Fuel Tax Agreement, provincial sales tax (PST) including the municipal and regional district tax on	Due between March 23, and September 30, 2020	September 30, 2020

¹⁰² Ministry of Environment and Parks.

¹⁰³ Ministry of Energy, Mines and Petroleum Resources.

Date	Organization	Description	Initial Deadline	New Deadline
		accommodation, and tobacco tax under the <i>Carbon Tax Act</i> .		
April 1, 2020	MEMPR and B.C. Hydro	Half of the electricity bill payments of eligible industrial customers with accounts in B.C. Hydro's Transmission Service rate category. The initial extension was May, but it was further extended later on.	Due after March 2020	June 20, 2020
April 8, 2020	BCOGC ¹⁰⁴	Payment for the 2019/2020 annual levy on pipelines under the <i>Fee, Levy and Security Regulation</i> and the <i>Oil and Gas Activities Act</i> .	Due 30 days after invoice	60 days
April 15, 2020	BCOGC	Permit or authorization under s. 32(2) of the <i>Oil and Gas Activities Act</i> , set to expire.	Expired between April 15, 2020 and September 1, 2020	September 1, 2020
April 16, 2020	BCOGC	Invoices of the Orphan Liability Levy.	Due every month	September 1, 2020
April 30, 2020	MFLNRO-RD ¹⁰⁵	Stumpage fees of Tree Farm Licence, Replaceable Forest Licence and First Nations' Woodlands Licence holders who	Due on the 23rd of each month	Delayed for 3 months

¹⁰⁴ BC Oil and Gas Commission.

¹⁰⁵ Ministry of Forests, Lands and Natural Resource Operations.

Date	Organization	Description	Initial Deadline	New Deadline
		are in good financial standing with the Province.		
June 11, 2020	MFLNRO-RD	Changes to the <i>Manufactured Forest Products Regulation</i> and the Coast-wide implementation of the variable fee-in-lieu of manufacture on log exports.	July 1, 2020	September 30, 2020
Ontario				
April 21, 2020	OMA-FRA ¹⁰⁶	Certificates and licenses under the <i>Nutrient Management Act</i> that are set to expire.	If expired	April 30, 2021
May 14, 2020	MECP ¹⁰⁷	Submission of emissions report pursuant to the <i>Greenhouse Gas Emissions: Quantification, Reporting and Verification Regulation</i> .	June 1, 2020	July 31, 2020
May 14, 2020	MECP	Submission of production parameter information pursuant to the <i>Greenhouse Gas Emissions: Quantification, Reporting and Verification Regulation</i> .	June 1, 2020	October 1, 2020
May 14, 2020	MECP	Submission of verification reports pursuant to the <i>Greenhouse Gas Emissions: Quantifica-</i>	September 1, 2020	October 1, 2020

¹⁰⁶ Ontario Ministry of Agriculture, Food and Rural Affairs.

¹⁰⁷ Ministry of Environment, Conservation and Parks.

Date	Organization	Description	Initial Deadline	New Deadline
		<i>tion, Reporting and Verification Regulation.</i>		
June 29, 2020	MECP	Temporary approach to forest operations in managed Crown forests under the <i>Endangered Species Act</i> set to expire this year.	June 30, 2020	June 30, 2021
July 27, 2020	TSSA ¹⁰⁸	Double-wall underground pressure piping systems upgrades required under clause 4.5.1.3 of the 2017 <i>Liquid Fuels Handling Code</i> .	October 1, 2020	October 1, 2021
July 28, 2020	MENDM ¹⁰⁹	Project deadlines under the Conservation First Framework, administered by the Independent Electricity System Operator.	December 31, 2020	June 30, 2021
April 21, 2020	OMA-FRA ¹¹⁰	Certificates and licenses under the <i>Nutrient Management Act</i> that are set to expire.	If expired	April 30, 2021
May 14, 2020	MECP ¹¹¹	Submission of emissions report pursuant to the <i>Greenhouse Gas Emissions: Quantification, Reporting and Verification Regulation</i> .	June 1, 2020	July 31, 2020
May 14, 2020	MECP	Submission of production parameter infor-	June 1, 2020	October 1, 2020

¹⁰⁸ Technical Standards and Safety Authority.

¹⁰⁹ Ministry of Energy, Northern Development and Mines.

¹¹⁰ Ontario Ministry of Agriculture, Food and Rural Affairs.

¹¹¹ Ministry of Environment, Conservation and Parks.

Date	Organization	Description	Initial Deadline	New Deadline
		mation pursuant to the <i>Greenhouse Gas Emissions: Quantification, Reporting and Verification Regulation</i> .		
Québec				
April 7, 2020	MEFCC ¹¹²	Submission of the report and verification report, pursuant to the <i>Regulation respecting mandatory reporting of certain emissions of contaminants into the atmosphere</i> .	June 1, 2020	July 31, 2020
April 9, 2020	MEFCC	Submission of the annual declaration of water withdrawal activities, pursuant to the <i>Regulation respecting the declaration of water withdrawals</i> . Water usage charges are extended to September 1, 2020, without interest or penalties.	March 31, 2020	July 15, 2020
April 24, 2020	SOFAD ¹¹³	All permits and certificates for the sale and use of pesticides that were not renewed before April 30, 2020, and that have an expiry date between March 1 and September 1, 2020, are automatically extended free of charge for six months. This	April 30, 2020	6 month extension

¹¹² Ministry of Environment and Fight against Climate Change.

¹¹³ Société de formation à distance des commissions scolaires du Québec.

Date	Organization	Description	Initial Deadline	New Deadline
		measure does not apply to temporary permits.		
June 11, 2020	MEFCC	Project submission under the Financial Assistance Program for the Planning of Sustainable Living Environments. It was initially extended to July 10, but was extended again later on.	June 2020	September 4, 2020
b. The following regulatory obligations were relaxed or modified:				
Canada (Federal Government)				
June 1, 2020	Gas Tax Fund	Acceleration of funding process to support the early completion of infrastructure projects, with the anticipated \$2.2 billion allocated in a single payment in June 2020.		
July 31, 2020	CER ¹¹⁴	Field inspection activities will use a risk-based approach, but CER officers will continue to have the power to enter and inspect facilities to verify compliance, prevent harm, or prevent a non-compliance from occurring.		
Alberta				
March 31, 2020	MEP	Suspension of reporting requirements for approvals and registrations issued under the <i>Environmental Protection and Enhancement Act</i> , except for drinking water facilities, bird protection plans for oil sands sector, annual mine financial security program submissions for oil sands and coal sectors, and research programs for Base Mine Lake and Miwasin Lake.		
March 31, 2020	MEP	Suspension of reporting requirements for licenses and approvals issued under the <i>Water Act</i> , except for drinking water facilities, final reclamation summary reports for all sectors, dam safety submissions for all high, very high,		

¹¹⁴ Canada Energy Regulator.

		and extreme consequence dams, and baseline studies at the McClelland Lake Wetland Complex.
March 31, 2020	MEP	Suspension of returns and reports submission requirements under the <i>Public Lands Act</i> , except for annual aggregate management plan updates for oil sands and coal sectors and annual disclosures of area cleared for oil sands and coal sectors.
April 6, 2020	ME ¹¹⁵	Suspension of certain reporting obligations under the <i>Coal Conservation Act</i> , including mine plans, progress reports, annual coal exploration activity reports and plans specified in the approval conditions. This suspension ceased on July 15, 2020.
April 6, 2020	ME	Suspension of certain reporting obligations under the <i>Oil and Gas Conservation Rules, Directives, Approvals and Licenses</i> , as well as for inactive wells excluded from the Inactive Well Compliance Program. This suspension ceased on July 15, 2020.
April 6, 2020	ME	Suspension of certain reporting obligations under the <i>Oil Sands Conservation Act</i> , including annual mine plans, report of mining operations, annual geotechnical report and all other plans specified in the approval conditions. This suspension ceased on July 15, 2020.
British Columbia		
March 27, 2020	EAB ¹¹⁶ , FAC ¹¹⁷ and OGAT ¹¹⁸	Suspension of mandatory timeframes for filing appeals. Appeal bodies were also granted the ability to waive, suspend or extend timeframes until the end of the pandemic. This suspension ceased on July 27, 2020.
April 1, 2020	Ministry of Finance	Postponement until further notice of the scheduled increase in the provincial Carbon Tax.

¹¹⁵ Ministry of Energy.

¹¹⁶ Environmental Appeal Board.

¹¹⁷ Forest Appeals Commission.

¹¹⁸ Oil and Gas Appeal Tribunal.

April 1, 2020	MRCCS ¹¹⁹	Flexibility toward reporting obligations under the <i>Greenhouse Gas Industrial Reporting and Control Act</i> , including a six-month extension for the submission of verification statements, emission reports and compliance reports, the acceptance of incomplete emission reports or compliance reports for the reporting period ending December 31, 2019, up to six months for the missing information to be provided.
April 2, 2020	MEMPR	Reduction and suspension of payments under the <i>Utilities Commission Act</i> .
April 24, 2020	MRCCS	Flexibility towards justified non-compliance to requirements under the <i>Environmental Management Act</i> due to the pandemic.
May 28, 2020	MEMPR	Extension for one year of drilling licences and leases under the <i>Petroleum and Natural Gas Drilling Licence and Lease Regulation</i> upon application of the holder.
Ontario		
June 10, 2020	MECP	Under the <i>Local Air Quality Regulation</i> pertaining to the petrochemical and petroleum refining industries, reduction of the frequency of leak detection and repair surveys from three to two for the year 2020. Reduction of the required number of storage tank and oil/water separator inspections from three to two for the year 2020.
Québec		
March 23, 2020	MEFCC	Flexibility towards the administrative obligations of companies involved in the production and distribution of drinking water, but the quality monitoring requirements must be maintained.
April 2, 2020	QCEC ¹²⁰	Flexibility towards the administrative obligations of facilities that have ceased operations or those who qualify as an essential service, but their legal obligations remain. On-site inspections will only proceed in cases of

¹¹⁹ Minister of Environment and Climate Change Strategy.

¹²⁰ Québec Center for Environmental Control.

		significant risk for environmental quality or for the health and safety of the population. Penalties will be limited.
April 2, 2020	MEFCC	Temporary exemption from prior ministerial authorization for activities related to the production and distribution of essential products for the COVID-19 pandemic. This exemption is only valid for the duration of the public health emergency.
May 13, 2020	SOFAD	Training and examination to obtain permits and certificates for the use and sales of pesticide are now available online.
June 17, 2020	QCEC	Gradual increase of regular on-site inspections, with priority to cases of significant risk for environmental quality or for the health and safety of the population. Inspectors must contact clients before conducting an inspection, so long as it does not affect the quality of the inspection. Some situations will justify intervention without prior notice.
Valid prior to COVID-19	MEFCC	An authorization for work planned in a wetland or body of water can be maintained if the specified timeframe has elapsed but the work has not yet begun since the issuance of the authorization.