

Timelines for Alberta builders' liens during the COVID-19 state of emergency

April 13, 2020

As of April 9, 2020

Due to the state of public emergency in Alberta arising from the COVID-19 pandemic, on March 30, 2020, the Minister of Justice and Solicitor General of Alberta issued a [Ministerial Order](#) which suspended the operation of limitation periods for a list of certain enactments.

This raises important questions of what timelines apply in Alberta with respect to unlisted statutes, such as the Builders' Lien Act and the *Public Works Act* during the COVID-19 state of emergency.

Key provisions of ministerial order

The Ministerial Order includes three key provisions, and states:

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 discretion 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.

The Ministerial Order lapses on June 1, 2020, unless it is continued, or earlier if the Order itself or the declaration of the state of public emergency is terminated.

The Ministerial Order coincides with Master Order #2 relating to the Court's Response to the COVID-19 Virus, which was issued by the Court of Queen's Bench on March 20, 2020 (and amended March 25, 2020). The Master Order suspended all filing deadlines under the Alberta Rules of Court, until May 1, 2020, with the exception of those rules applicable to the commencement of proceedings.

Impact on builders' lien timelines

The Alberta Builders' Lien Act and the *Public Works Act* are not listed in the Appendix to the Ministerial Order. This means that limitation periods under those acts are not suspended under paragraph 1 of the Ministerial Order.

However, given the structure of the Ministerial Order and the broad wording in paragraph 2, it is less clear whether paragraph 2 applies to steps in all proceedings generally, or whether it is limited only to steps which are to be taken in proceedings with respect to the enactments listed in Appendix A. Therefore, there is some uncertainty as to whether the time periods for steps to be taken by a lien claimant in a proceeding commenced under the Builders' Lien Act are suspended by paragraph 2 of the Ministerial Order.

Given the significant consequences that will result from a failure to comply with the deadlines set out in the Builders' Lien Act, combined with the fact that the Ministerial Order does not expressly include the Builders' Lien Act in the list of statutes for which limitation periods are suspended, contractors are best served by treating the Builders' Lien Act as still being in full force and continuing to comply with all statutory requirements and timelines for each step, as set out in the applicable legislation. Under the Builders' Lien Act, this would include steps such as:

- registering liens at the Land Titles Office within the applicable lien period
- commencing an action under the Builders' Lien Act to realize on the lien within 180 days from the date on which the lien was registered or within 30 days of receiving a Notice to Commence Action
- filing a certificate of lis pendens in respect of the lien at the applicable Land Titles Office within 180 days of the date on which the lien was registered or within 30 days of receiving a Notice to Commence Action
- filing an Affidavit to Prove Lien within 15 days of receiving a Notice to Prove Lien

Given the current requirements for social distancing, a Ministerial Order was issued on April 2, 2020, which temporarily allows the Land Titles Office to register documents that have been commissioned using video conferencing technology. A helpful resource on this novel procedure is the Law Society of Alberta's [Guidance for Video Conference Witnessing and Commissioning of Documents Submitted to Land Titles for Registration](#).

If you have any question regarding this topic, please reach out to one of the authors of this article. BLG has also created a [COVID-19 Resource Centre](#) to assist businesses on a variety of topics, including contractual risks, public disclosure requirements and labour and employment.

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