

February 11, 2021

Risk Management During COVID-19

COVID-19 | MATTERS DESERVING IMMEDIATE ATTENTION Beyond Ontario's Second State of Emergency

On January 12, 2021, Ontario declared its second state of emergency as a result of significant and sustained increases in the number of COVID-19 cases. While the state of emergency was lifted on February 9, 2021, due to an improvement in the number of COVID-19 cases, this does not translate into a universal loosening of restrictions generally and on the construction industry and construction related activities specifically.

This Bulletin contains essential information to assist you in managing your practice during this evolving situation.

Ontario is now moving back to a regional framework approach to reopening while, for the time being, maintaining the shutdown and stay-at-home orders in the majority of the province. As a result of the lifting of the state of emergency, all residential construction, including renovations and related activities can resume as of February 10, 2021, including for those regions that remain in a shutdown zone. However, as the approach to construction activities is likely to remain regional for the foreseeable future, it is imperative that architects actively inquire with their local building department to ensure compliance with local directives, rules and regulations.

Ontario's regional approach to reopening means that not all construction activities in the province may experience the same level of restrictions. The impact will likely be different and varied depending on whether a particular region falls under one of five colour coded zones, or worse, moves into a shutdown (depending on the local number of infections). Under the current approach, there will be an easing of restrictions as each region moves through five colour coded zones which range from green to grey, with grey having the harshest restrictions.

The province's phased reopening will start in regions where viral transmission is low. For example, Hastings Prince Edward, Kingston, Frontenac, and Lennox and Addington, as well as Renfrew County moved into the least-restrictive green on February 10, 2021. The shut down and stay-at-home order continues to apply to 28 other regions until February 16, 2021, with the

exception of Toronto, Peel and York regions which are expected to have their stay-at-home order lifted on February 22, 2021.

Some restrictions previously in place during the second state of emergency have been lifted as of February 10, 2021, irrespective of the region. All residential construction, inclusive of renovations can now resume.

Implications

While during the second state of emergency, the list of construction projects and construction related activities considered "essential" and therefore permitted to continue was relatively broad, there were restrictions imposed on residential construction. As of February 10, 2021, the restrictions on residential construction in the shutdown zones have been lifted pursuant to amendments made to Regulation 82/20 under the [Reopening Ontario \(A Flexible Response to COVID-19\) Act](#).

Once a region moves out of the shutdown zone and stay-at-home orders are lifted, even in circumstances where that region is in the most restrictive grey zone, construction activities are for the time being, captured within the meaning of businesses that may open in the grey zone.

While further changes are expected, their nature is not currently known. In this environment and in order to keep abreast of developments, constant monitoring of announcements at all levels of government is necessary.

Building Permits and Inspections

As the regional framework approach to reopening is adjusted depending on the number of COVID-19 cases, architects should consult with the local building department to determine the status of inspections and permits for a particular project.

It is still very important to use the DISCLAIMER provided below when meeting any General Review contractual obligations, and to refer to [COVID-19 Bulletin 5 regarding General Reviews and Site Visits](#).

Health and Safety – Fines and Penalties

During the second state of emergency, the province announced that it would authorize all provincial offences officers, including the Ontario Provincial Police, local police forces, bylaw officers, and provincial workplace inspectors to issue tickets to individuals who do not comply with the stay-at-home-order, or those not wearing a mask or face covering indoors in places open to the public, subject to limited exceptions. As the province now moves to a regional framework, the imposition of fines and penalties will follow the regional approach.

In light of the regional approach, it is important that architects familiarize themselves with all health and safety directives applying to their services in the applicable zone.

COVID-19 Resources

While some restrictions on construction related activities have eased and the regional framework

approach will no doubt have an impact on such activities, Pro-Demnity's [prior advice](#) (from the first state of emergency) is equally as important today as it was then.

Architects should still use DISCLAIMERS as previously recommended because the situation is fluid and there is no certainty in what the next few weeks or months will look like. Risks abound. Consider the case of building inspectors who could refuse to stay onsite and complete their inspections if they do not feel safe. Architects must therefore take steps to protect themselves from the municipality being unable or unwilling to fulfill its inspection duties.

The same concerns about delay claims, claims related to substitution of materials, as well as personal injury claims exist during this time.

Reminders about best practices: **communicate, communicate, communicate** and **document, document, document**. Wherever possible, seek out a collaborative approach with stakeholders. Consult with your lawyer to understand any contractual obligations you may have on existing projects and/or to craft protective contractual clauses for future work and even ongoing work.

Again, compliance with all statutes and regulations is essential. Constantly monitor the evolving situation and stay on the look-out for updates from all levels of government. Note that restrictions may be placed or lifted with little advance notice.

Watch for future Pro-Demnity Bulletins to be issued as the need arises.

DISCLAIMER – Long Form

*This report is issued and should be read together with all previously issued reports, including reports issued by any and all consultants. Nothing in this report relieves the contractor from performing its work in accordance with the plans and specifications, pursuant to the requirements of the Ontario Building Code and the requirements of all authorities having jurisdiction. The contractor shall ensure that its work is inspected by all authorities having jurisdiction. **This report is not a substitute for and does not replace the statutory duties of authorities having jurisdiction to carry out their own independent inspections.***

The full wording of this recommended Long Form addresses several issues that may be anticipated on construction projects during COVID-19. **The final sentence in bold should be considered mandatory** for any reports or correspondence submitted to any authority having jurisdiction, including a municipal building department.

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