

CHANGES TO ALLOWABLE CONSTRUCTION ACTIVITIES

Prior to April 17, 2021, s.43 of the O. Reg 82/20 provided that all construction activities or projects and related services were allowed to proceed in Stage 1 areas of Shutdown due to COVID-19. As of April 17, all of Ontario is in Shutdown and s.43 has been significantly amended, with the result that construction activities in the Province will be limited once again. Generally, and very briefly, the following construction activities are still permitted:

1. “residential construction activities or projects and related services,” however construction on hotels would appear not to be included within the scope of “residential”;
2. “landscaping services,” by virtue of s.15 of the Schedule, however this is probably restricted to landscape maintenance, and not “hard” landscape construction;
3. “maintenance, repair and property management services related to the safety, security, sanitation and operation of institutional, commercial, industrial and residential properties and buildings”;
4. virtually all site services work necessary to prepare a site for development, by virtue of s.43;
5. construction funded (or partially funded) by the Federal or Ontario Government, by an agency of those governments or by a municipality;
6. affordable housing, or construction intended to provide shelter or supports for vulnerable persons, provided that it is funded or partially funded by specified persons, a registered charity or a non-profit corporation; and
7. any construction work required to close a site where construction has been suspended.

More specifically, and again very briefly, with regard to non-residential construction, work may proceed where it relates to:

1. health care or long-term care, or spaces that “could be repurposed for health care space,” (although it is unclear what these sectors include and what construction might meet the repurposing test);
2. provincial infrastructure – including transit, transportation, resource, energy and justice sectors;
3. new capacity in the “supply or resources”, schools, colleges, universities, specified
4. child care centres; electricity or natural gas;
5. maintenance and operations of petrochemical plants and refineries;
6. “industrial” construction necessary for the production, maintenance or enhancement of PPE

and specific medical devices “directly related to” combatting COVID, (note that nonindustrial construction of PPE or such devices is most likely prohibited unless otherwise allowed by s.43);

7. production, processing, manufacturing or distribution of food, beverages or agricultural products; and
8. additional capacity in the operation and delivery of IT or for certain categories of businesses.

Kennaley suggests that in contemplating any construction project, it is not enough that the construction be at or for a business that is itself allowed to operate during the lockdown – unless the work is otherwise specifically allowed by s.15, 35 or 43.

Last year, the Province set up a Stop the Spread Business Information Line, at 1 (888) 444-3659. That line remains available as a resource to (hopefully) address any questions you might have in any particular circumstance.

Refer to Pro-Demnity’s [COVID-19 Bulletins](#), in particular [Bulletin No. 10](#) which addresses construction related considerations.