

Members' Bulletin: 2021-11

April 20, 2021

To All OIRCA Members:

Ontario Strengthens Enforcement of Stay-at-Home Order Part 2

On Sunday April 18, 2021 we released a bulletin outlining the Ontario government's changes to the Stay-at-Home Order as it relates to construction. We addressed maintenance work in a follow-up e-mail on that same date.

We have it under good authority that nothing has changed as it relates to service and maintenance work. Section 35 of the amended Regulation states: "maintenance, repair and property management services that manage and maintain the safety, security, sanitation and operation of institutional, commercial, industrial and residential properties and buildings" are allowed to continue. This would of course include roofing service and maintenance work.

As it relates to reroofing, we feel that what we recommended last year still applies. In Members' Bulletin 2020-06 we suggested the following:

The Ministry of Labour, Training and Skills Development (MLTSD) has made it clear to us that addressing a leaking roof would be considered an essential service. They have also advised that the decision to re-roof versus simply making a repair is up to the building owner, their design authority and the constructor for the project.

They have also told us that building owners and constructors should consult with their legal counsel on a case-by-case basis to develop a rationale for moving forward with a re-roofing project. This advice mirrors what we stated in our April 7th bulletin where we suggested that the Member obtain letters from the owner, designer and GC if there is one. The change here is that the owner should speak to their lawyers before preparing that letter.

The Ministry further opined that a roof that isn't leaking would not be considered an essential repair. So, if a school board, for example, has tendered a re-roof of a specific school where the roof is near the end of its life but is not leaking, that project would not be deemed essential. On the other hand, if the roof is leaking and a simple repair is not viable then yes, a case could be made to re-roof that building.

The government is clearly practicing risk management here by passing the buck to other parties to make the decision as to whether a re-roof is essential. To sum up, and based on the MLTSD advice, it is OIRCA's position that Members should advise their building owners to seek legal counsel when preparing a case to re-roof their building. On that advice the owner should prepare a letter addressed to your company directing you to proceed with the work.

The Member should then show that letter to their own lawyer to obtain advice as to whether your company should move forward with the project. This process may seem rather convoluted, but it is important that you practice your own risk management so that you can be prepared to defend yourself if a bylaw or MOL officer shows up on your job site.

With these latest amendments to the regulation, it seems clear that the intent was to impact construction sites that are now deemed non-essential. The necessity to service and maintain existing buildings is considered essential. The OIRCA considers re-roofing to be maintenance and repair work and that leaking roofs present a health and safety risk to buildings and their occupants.

Of course, it is imperative that you follow MOL guidelines as it relates to COVID-19 safety practices. We also remind you to be cognizant of this current period where they are blitzing construction sites in hot zones.

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