



## MEMBER BULLETIN

June 2, 2017

# Proposed Updates to the Construction Lien Act

On May 31, the government introduced legislation to reform the *Construction Lien Act* that, if passed, will reform the lien and holdback rules, introduce a prompt payment system, and create a new process to speed up payment dispute issues. The Bill will be reviewed and considered over the summer months and debated in the Legislature in the Fall when they return from summer recess. The Bill addresses the majority of recommendations that came out of *Striking the Balance: Expert Review of the Construction Lien Act* (Reynolds Report).

There are a number of very interesting proposals (highlighted below) which will substantially improve the construction payment and dispute process in the province. Proposals in the Bill include areas that OSWCA recommended and advocated for during its depositions to the Expert Panel and the Attorney General throughout 2015 and 2016, including: extending the lien period; introducing an adjudication panel to settle payment disputes prior to moving to litigation; and, more timely payouts of holdback.

There is still much to do to ensure that these reforms (presently being referred to as the "Construction Act") are passed in the Fall; but this represents a substantial step forward in modernizing the payment process on construction projects.

Highlights of the proposed changes include:

### **Lien and Holdback Reforms**

- Clarifying the definition of "owner" to better reflect public projects that have multiple owners;
- Extending timelines for contractors and subcontractors to file liens and start court actions from 90-days to 150-days to allow for more time to resolve payment disputes outside of court;
- Mandating that holdbacks be paid once the timeline to file liens has passed;



- Requiring contractors and subs to follow specific project bookkeeping requirements to protect subcontractors in the event of a bankruptcy;
- Requiring surety bonding on public sector projects above a certain amount to protect subcontractors and workers if the general contractor files for bankruptcy;
- Referring construction lien claims under \$25,000 to small claims court;

### **Prompt Payment**

- Allow the owner and general contractor to agree on a deadline to submit an invoice. If they do not agree, they would be required to submit invoices monthly;
- Owners would be required to pay GCs within 28-days. After receiving payment, GCs would then be required to pay all sub-contractors within 7-days, with sub-contractors being required to pay any of their subs within 7-days as well, all down the line.
- In cases where there is a dispute over money owed or the quality of work, owners would be permitted to deliver a notice of non-payment within 14-days of receiving an invoice. Any undisputed amounts must be paid.
- Contractors and subs would receive mandatory interest on late payments.
- Contractors and subs would be able to suspend work on a project if the matter is heard by an adjudicator and the payer does not comply with the decision.

### **Dispute Resolution**

- A new *interim* adjudication system would be established to prevent payment disputes from delaying project work, speed up the payment process, and reduce time and money spent on litigation.
  - This process would provide an interim binding decision within 6-weeks of being heard.
- Adjudication can rule on: the valuation of work; payments; setoffs against amount due under contract.
- If, after adjudication, the party owing the money refuses to comply with the decision, the party eligible for an award would be entitled to suspend further work under the contract.



- Adjudicators decisions could not be appealed, but the decision could be challenged on the grounds of adjudicator bias or a decision on a matter other than the matter referred.
- Either party may continue to pursue ordinary legal remedies to address the dispute.
- Time limits for preserving a lien would be extended to encourage parties to adjudicate first.

Additional reforms have also been proposed. A full list of the reforms, can be found at the following link: <https://news.ontario.ca/mag/en/2017/05/proposed-updates-to-the-construction-lien-act.html>

The full draft Act can be reviewed at the following link:  
[http://www.ontla.on.ca/web/bills/bills\\_detail.do?locale=en&Intranet=&BillID=4957](http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&Intranet=&BillID=4957)

OSWCA will continue to work on this file throughout the summer and Fall to see these reforms are passed through. If you have any questions or comments about the proposal, please contact Patrick McManus ([patrick.mcmanus@oswca.org](mailto:patrick.mcmanus@oswca.org) or 905-629-7766 ext. 222).