



Acoustical Association Ontario

Volume 8 Issue 6 — June 2013

Provincial in scope ...

Provincial in outlook

Prompt Payment Legislation Tabled in Legislature



MPP Steven Del Duca (Vaughan) recently introduced Bill 69, Prompt Payment Act, 2013 in the Ontario Legislature. The Private Members Bill which passed first and second reading sets out various rules and requirements in relation to payments made under construction contracts.

The Bill was based on an agreement reached between the Ontario General Contractors Association (OGCA) and the National Trade Contractors Coalition of Canada (NTCCA) (see March 2013 issue of AAO's newsletter) and is now headed before the Ontario Legislature's Standing Committee on Regulations and Private Bills. If passed, Ontario will be the first jurisdiction in Canada to adopt such legislation.

"I am proud to have brought forward a bill that produces significant measures to improve payment standards within the construction industry," Del Duca said in a statement. "This is an important bill which addresses issues that members from all sides of the house can and should support."

Clive Thurston, President of the OGCA, noted that "payment legislation has become increasingly critical, with the failure of successive governments to update the province's construction lien act." He said the lien act has major flaws, "which allow people not to get paid. legislation has become increasingly critical, with the failure of successive governments to update the province's construction lien act."

A joint statement by the OGCA and the NTCCA noted that prompt payment legislation will reduce financial risk and ensure that all contractors have rights to make business decisions based on fair and standard contract terms. "This will especially help many small businesses in construction." the statement said.

Ashley De Souza, Vice-President of Policy & Government Relations at the Council of Ontario Construction Associations (COCA) weighed in stating that "prompt payment legislation is based on the fundamental principle that everybody deserves to get paid on time. Hew further noted that "it will create more construction jobs, encourage greater use of apprentices, enable more investment into machinery and equipment and lower the cost of construction."



AGM Conference Scheduled for Late September

The Association will be holding its Annual General Meeting and Conference at the Marriott Rosseau Resort & Spa. Located in the heart of Muskoka, Ontario's "cottage country", this luxury resort is set on a granite bluff overlooking tranquil Lake Rosseau and welcomes guests to natural, unspoiled surroundings. The Conference will be held from September from September 27th to September 30th. Watch your mail for more information which will be forwarded by Flare Events.

The Mathews Dinsdale Minute



Video Surveillance: Be Careful What You See...

It is not uncommon for an employer, faced with an employee either off work sick or claiming accommodation, becomes suspicious and engages in video surveillance of the employee. Sometimes that video surveillance shows the employee engaged in activities that do not appear to match up with the claimed illness or disability. Quite often an employer then fires the employee. What risks arise?

In a recent case, an Ontario Court has awarded almost \$537 000.00 in damages against an insurance company that refused to make payments based on exactly this type of video. The plaintiff had owned a masonry company but the company could not operate without him working on the tools laying bricks. Rather than contribute to EI or WSIB on his own behalf he purchased disability insurance privately. He then fell off a scaffold and hurt his back. He returned to work for a period of time but fell off of a truck and hurt himself again. When it became clear he could no longer do the physical work he laid off his other employees and shut the company down. Then he claimed disability benefits.

The plaintiff collected about 6 months' worth of benefits and was then cut off after the insurance company secured video that showed him doing yard work at home shovelling earth, lifting cement blocks and carrying tools. None of this was done for extensive periods. The plaintiff explained that each time this caused him serious pain for several days and required rest and taking pain killers. This was supported by medical evidence at trial.

The Court concluded that the plaintiff was credible and described the insurance company's conduct as "high-handed, malicious, arbitrary and highly reprehensible." Along with almost \$237 000 in lost wages, the court awarded \$100 000 in aggravated damages and \$200 000 for punitive damages.

While this is a court case involving an insurance company, there is no reason to presume this line of thinking couldn't be applied at arbitration in the context where employees are terminated based on similar videos. Arbitrators have been found to have wide ranging remedial authority and similar issues regarding the impact on the employee arise in cases where they are terminated.

It is important, if you are dealing with similar circumstances, to investigate the matter fully and consider all the facts. Do not focus solely on the video, but seek explanations from the employee and updated medical information... and, of course, make sure you seek the appropriate legal advice. All of this is simply to say, in these situations, take a moment and make sure you "look before you leap."



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