Acoustical Association Ontario

Volume 10 Issue 3 March 2015

Provincial in scope ...

Provincial in outlook

Executive Director's Report

Ontario To Review Construction Lien Act (including Prompt Payment)

The review, announced in February, is expected to be completed by December 2015 and will involve extensive consultation with the construction industry, followed by a report to the Attorney General. Key stakeholders will be receiving introductory letters describing next steps and preliminary plans for stakeholder outreach. As a member of Prompt Payment Ontario (PPO), AAO will be actively involved in this process. This is a step in the right direction and long overdue. We will keep you updated as this progresses.

MINISTRY OF LABOUR (MOL) UPDATE

Ontario To Launch Public Consultations On Labour Laws

This spring, Ontario will launch public consultations on the changing nature of the modern workplace. The consultations will focus on how the Labour Relations and the Employment Standards Acts can be amended to best protect workers, while at the same time, support businesses in our changing economy.

The government has appointed C. Michael Mitchell, formerly of Sack Goldblatt Mitchell LLP, and the Honourable John C. Murray, a former justice of the Ontario Superior Court and prominent management labour lawyer as special advisors to lead the consultations. A formal written report with recommendations will be submitted to the Minister of Labour at the conclusion of their of their 12 month appointment. As information becomes available we will be reviewing and updating you accordingly.

Ministry of Labour New Working At Heights Standards

Effective April 1, 2015, new training standards will come into force for all construction workers working at heights. The new standards, established by the Chief Prevention Office (CPO) of the MOL, will be valid for a period of 3 years, after which workers will be required to complete a half day refresher course approved by the Ministry. Workers who have already completed a fall arrest training program that meets the requirements of Section 26(2) of the Regulations for Construction Projects of the Occupational Health & Safety Act, will not be required to complete the new Working at Heights Training until April 1, 2017. However, workers that have not had the Section 26(2) fall arrest training by April 1st will be required to complete the new Working at Heights Training Program. This training will be required to be taken by all construction workers who may use any of the following methods of fall protection:

- travel restraint systems
- fall restricting systems
- fall arrest systems
- safety nets
- work belts or safety belts

.....continued

Executive Director's Report (continued)

As members may recall, fall protection training became mandatory back in June 2002 to ensure workers using fall protection were "adequately" trained, by a competent person, through both oral and written instruction. Employers were required to also maintain written records of the training (including workers' name, training dates and the provider's signature) and make them available to MOL inspectors. However, this training and the training providers who delivered the program were not approved against an accepted standard.

Many employers and unions, at that time, complied with this legislative requirement by training their workers using the Construction Safety Association of Ontario's - CSAO (now known as the Infrastructure Health & Safety Association - IHSA), "Basics of Fall Protection". Private sector firms offered similar training, but it varied and was inconsistent because no approved standard was legislated by the government. As a result, these firms set their own curriculum and training standards — it was truly all over the map.

Identifying that falls remained the number one cause of fatalities and critical injuries the MOL acknowledged that the system needed improving. It is interesting to note that data from Newfoundland and Labrador in 2012 showed that falls decreased by 25% after that Province implemented mandatory Working at Heights training. This new MOL approved training will ensure that everyone, using a fall protection system, are consistently trained and thus better protected on the job.

The MOL has started the process of approving Working at Heights courses and the agents that deliver those courses. IHSA (CSAO) has submitted its program: "Working At Heights – Fundamentals of Fall Prevention" to the MOL for approval and so has the Carpenters' District Counsel and they are awaiting a decision from the CPO. The Ministry will be listing approved programs and providers on their website.

Once training has begun, the approved training provider will be required to send notification to the MOL when the learner has successfully completed the approved program. The MOL will then issue a standardized wallet-sized proof of training card to the learner which will be uploaded onto a secure MOL database. Employers having a copy of the CPO-issued proof of completion is one way for an employer to fulfill the requirement to maintain a training record. We will be reviewing this with the unions in the near future.

Ministry of Labour Proposes to Strengthen Health and Safety Protections for Construction Workers

In our last newsletter we informed you that the Ministry of Labour is proposing to strengthen the health and safety protection for Ontario's construction workers under the OHSA by implementing new regulations for the hazardous exposures to:

- Noise
- Biological and chemical agents
- Carbon monoxide released from internal combustion engines

Although not law yet, we are expecting amending legislation that will impose new regulations on the Construction industry which, to date, has been exempt from regulations with respect to these types of hazardous exposures. In our next issue we will focus on the first of these regulations – **NOISE**

……..continued

Executive Director's Report (continued)

Safety Tips

Nobody wants to see a worker injured on the job - we do not intentionally want to hurt people. But when somebody does get hurt, depending on the circumstances and outcome, it can end up in court and we can find ourselves trying to prove that we took "every reasonable precaution in the circumstances". This can be very difficult to defend. It could even be a year later when we find out we have been charged. There is no doubt that fines for convictions over the years have been rising. In fact, recently, fines have become substantial and jail times are much more common.

From my experience, one aspect of a health and safety program that is often over looked is discipline. Many companies have a discipline policy, which state it is progressive, but does it get used? Issuing discipline can be difficult, but it is something that has to be done when warranted, especially when your Health and Safety Policy says you have such a program.

The question to ask ourselves is when was the last time a supervisor disciplined someone for working in an unsafe manner or in an unsafe environment? If we cannot identify any, does this mean all our jobsites are perfect – day to day? Highly unlikely, as we all know there is no such thing as a perfect jobsite. Corrections are often made daily. When supervision identifies an unsafe situation that requires corrective action, it must be addressed and documented. In court, if it was not documented, it did not happen. Sometimes corrective action may require discipline and if the unsafe situation is repeated the discipline will have to be more severe. My advice – make sure your discipline policy is updated, communicated and applied. Maintain a binder of all the disciplinary actions taken by your supervisors — you never know when you might have to use it. This is part of "Due Diligence".

Upcoming Events

Ontario Construction Secretariat State of the Industry & Outlook Conference 2015 - March 3, 2015
(Paul Gunning attending)

IHSA Acoustic & Drywall Labour-Management Committee Meeting - March 10, 2015
(Paul Gunning attending)

Take Advantage of These FREE Upcoming OEA WSIB Webinars

Form 7 Webinar: March 5, 2015 - 10:00 a.m. – 11:00 a.m. ET

WSIB Appeals Webinar: March 12, 2015 - 10:00 a.m. – 11:00 a.m. ET

Introduction to Workplace Safety & Insurance Webinar: March 26, 2015 - 11:00 a.m. – 12:00 p.m. ET

Copy the following URL to your browser to register for these webinars:

http://employeradviser.ca/CourseMS/login.php?utm_source=ENGeventspage&utm_medium=website&utm_campaign=webinars

If you have any questions, please call me at 519-671-5930.

Thank You

Paul Gunning

Paul Gunning
Executive Director

The Mathews Dinsdale Minute

As our thoughts turn to spring (and negotiations about a year away, there have been questions about a "no strike no lock-out" protocol. This has not been raised officially with the bargaining agencies, though various groups have internally discussed it. What does it mean and how does it affect bargaining is important to understand?

In the normal course of events, should parties to a collective agreement not be able to reach a settlement, they can resort to the economic pressure of a strike (union) or lock-out (employer). Over the years many parties have tried to avoid this by seeking alternative means to arrive at a settlement. One of those ways is to arrive at a protocol prior to bargaining whereby work would continue and outstanding items would be referred to an independent arbitrator to conduct a hearing a determine the final provisions of the collective agreement. This process presents a number of advantages. First, it avoids any disruption of work as the protocol provides that there shall be no strike or lock-out. Second, it sends a message to the purchasers of construction services that their projects will not be delayed or disrupted by labour unrest and strike activity. Third, it allows the heated atmosphere of deadline bargaining to be replaced by well thought out submissions that are placed before a neutral (arbitrator) who determines which of the final positions of the parties is more in keeping with the industry norm.

However, the process has disadvantages as well. It has, as this writer has experienced, resulted in far less hard bargaining and agreed compromise as parties become satisfied "to let someone else make the tough calls". Second, many business people wish to avoid putting the major issues before an arbitrator who likely has no understanding of their businesses and who will make a decision based solely on economic factors which may have no relevance to the businesses being affected by the decision. Third, the arbitrator, from his or her "ivory tower" is out of the picture once the decision is made, unlike the parties who have to deal with the collective agreement on a daily basis.

In determining whether to opt for the "no strike – no lock-out protocol", the above considerations must be taken into account by the bargaining parties. Obviously, it takes both sides to agree to the protocol and each side will weigh the benefits and disadvantages it offers. A very wise man once said "We are too busy to take a strike". And the next round stated "We don't have enough work on. We cannot afford a strike" At the end of the day, are these realities the true determining factors in whether to accept a "no strike – no lock-out" protocol?

mathews dinsdale *Workplace Law Spoken Here*

32 Vancho Crescent
Etobicoke, Ontario
M9A 4Z2

Phone: 416-605-6417
Fax: 416-246-1993
Email: info@aao-online.ca

Provincial in scope ...
Provincial in outlook