



## *Executive Director's Report*

### **HIGHLIGHT** PROVINCIAL GOVERNMENT INTRODUCES CONSTRUCTION LIEN ACT REFORM BILL



On May 31<sup>st</sup>, Attorney General Yasir Naqvi tabled the Ontario Construction Lien Amendment Act, Bill 142, which if passed will modernize the Construction Lien Act, introduce a prompt payment regime and introduce a timely dispute resolution system. The name of the statute will be changed to the Ontario Construction Act. This is an important first step in the legislative process. The House has now recessed for summer.

Minister Naqvi said “The Construction Lien Amendment Act, 2017, would, if passed, modernize Ontario’s construction laws and support Ontario’s construction industry. This bill seeks to modernize the payment and dispute resolution system in the Construction Lien Act based on the report entitled *Striking the Balance: Expert Review of the Construction Lien Act*. This bill, if passed, will modernize the construction lien and holdback rules, introduce rules around prompt payment and create an adjudication process that will resolve disputes quickly. This bill will also rename the Construction Lien Act to the Construction Act.

Key measures in reforms proposed for the Construction Lien Act include:

- Creating new prompt payment rules to give contractors and subcontractors certainty about when to expect payment;
- Extending the timelines to file liens and start court actions from 90 days to 150 days, giving contractors and subcontractors time to resolve their disputes outside of court and avoid additional legal fees;
- Requiring holdback funds to be paid as soon as the deadline to file liens has passed, so contractors and subcontractors know when to expect full payment;
- Creating an adjudication process to speed up dispute resolution and prevent disputes from delaying work on construction projects.

*Executive Director's Report (continued)***CONSTRUCTION LIEN ACT REFORM BILL (continued)**

Other measures include:

- 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 disputes outside of court;
- Requiring holdbacks to be paid once the timeline to file liens has passed. This would give contractors and subcontractors greater certainty about when the hold-back will be paid, allowing them to plan and accept contracts for new work;
- Requiring contractors and subcontractors to follow specific bookkeeping requirements to protect subcontractors in the event of bankruptcy;
- Requiring surety bonding on public sector projects above a certain amount to protect subcontractors and workers if the general contractor files for bankruptcy;
- Allowing condominium unit owners to remove liens from their unit in relation to common elements, such as corridors, lobbies, the garage and roof;
- Providing for the referral of construction lien claims under \$25,000 to the small claims court.

Under the proposed prompt payment system, the owner and general contractor on a project would be able to agree to a deadline to submit an invoice. If they do not agree, they would be required to submit invoices on a monthly basis.

Once they receive an invoice, owners would be required to pay general contractors within 28 days. After they receive payment, general contractors would have to pay subcontractors within seven days. Subcontractors would be required to pay other subcontractors within seven days of receiving payment, and so on.

Parties would be free to agree to a timeline for the submission of invoices, before triggering the prompt payment timelines.

In cases where there is a dispute about the amount owed or the quality of the work, owners would be permitted to deliver a notice of non-payment within 14 days of receiving the invoice. Successive payers would be permitted to deliver a notice of non-payment within seven days. Any undisputed amounts must be paid.

Contractors and subcontractors would receive mandatory interest on late payments. They would also 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.

We will have the opportunity to review the Bill over the summer. The Legislature is scheduled to reconvene on Monday, September 11<sup>th</sup>.

The next step for the Bill is to have 2<sup>nd</sup> reading in the Legislature, hoped very early in the fall session and then it would be referred to a Standing Committee for study. We will continue to make sure it is the Committee's top priority and is dealt with quickly. The Committee will likely hold two days of public hearings and a day of clause-by-clause review. Amendments could be made at this stage. Then the Bill will be reported back to the Legislature for third reading. The final step is for the Bill to receive Royal Assent. The Bill will not come into force until all the regulations under the Bill have been written and consultations have been held on the regulations. We continue to hope that this important Bill gets Royal Assent before the government prorogues with the next provincial election June 8, 2018. If the government prorogues parliament, all Bills in process are ended. Our work is not done and AAO, COCA and Prompt Payment Ontario will continue to pressure the government to implement this important bill.

*Executive Director's Report (continued)*

**MOL ACCREDITATION UPDATE**

Ian Cunningham, President COCA and myself represented COCA at a recent Ministry of Labour's Prevention Office focused consultation on Occupational Health and Safety Management Systems and Employer Recognition Programs. This was an early stage consultation to assist the Ministry on the development of an Accreditation Standard.



Studies have shown conclusively that employers that use health and safety management systems effectively have superior health and safety performance. This initiative will develop a standard against which health and safety management systems will be measured. The most common health and safety management systems presently used in the construction industry are COR and ISO 18000. Employers that effectively use health and safety management systems that meet or exceed the standard will be recognized or "accredited". There will very likely be some form of reward for those employers that become accredited.

AAO will be seeking input from its members that can assist the Ministry in drafting a final consultation document that addresses the needs of the construction industry. Once this early stage consultation is completed, the Ministry will consider the feedback and produce a final consultation document which will be published in early July. As currently planned, the consultation will close on October 15 and the Accreditation Standard will be posted in April 2018. The Ministry will undertake the work of identifying the health and safety management systems that meet or exceed the standard.

**WSIB HAS NEW WAY TO MEASURE WORKPLACE HEALTH AND SAFETY**

The Workplace Safety and Insurance Board (WSIB) has developed a new tool, the Health and Safety Index, to measure the overall health and safety of Ontario's workplaces. The Health and Safety Index condenses a wide range of data into a single measure to show how Ontario's workplaces overall are performing from year to year – how safe they are, and whether they're getting safer. It is the first index of its kind in North America.



"Everyone in Ontario has an interest in making workplaces as healthy and safe as possible," said Tom Teahen, WSIB President and CEO. "The Health and Safety Index will give an overall view of Ontario's workplaces so that we know what's working well and what needs to work better."

The Health and Safety Index is based on five categories of data in prevention, worker empowerment, workplace culture, enforcement and injuries. The WSIB will use data gathered up to April 2017 to set a baseline and will publish new data along with the overall measure annually starting in summer 2018. The Health and Safety Index is an evidence-based tool that can help the WSIB, employers, and other partners in the safety system to identify areas for improvement and track improvements. The index was designed so that it can be adapted by other workers' compensation boards across Canada. The Health and Safety Index is available at [healthandsafetyindex.ca](http://healthandsafetyindex.ca).

**UPCOMING JUNE 2017 EVENTS**

- |   |               |                          |
|---|---------------|--------------------------|
| <b>IHSA Drywall Labour-Management Committee Meeting</b> | June 7, 2017  | (Paul Gunning attending) |
| <b>COCA CLA Review Committee Meeting</b>                | June 13, 2017 | (Paul Gunning attending) |

**UPCOMING Mathews Dinsdale Seminars/Webinars**

Copy the following URL to your browser to register for new sessions or review archived session videos:  
<http://www.mathewsdinsdale.com> (see right side)

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

**Paul Gunning  
Executive Director**

The Mathews Dinsdale Minute



**Ontario: Extending WSIB Benefits for Work-Related Mental Stress**

On May 17, 2017, the Legislature passed Bill 127 - the Stronger, Healthier Ontario Act (Budget Measures), 2017. Among other changes, the Bill amended the Workplace Safety and Insurance Act (“WSIA”).

What changed? As of January 1, 2018, workers may receive Workplace Safety and Insurance (“WSI”) benefits for chronic mental stress (“CMS”) that arises out of and in the course of employment. These changes will apply to workers whose injury occurs on or after January 1, 2018.

While “chronic” is not currently defined, the WSIB has released a draft policy for stakeholder consultation. This Draft Policy suggests that:

- a work-related stressor will generally be considered substantial if it is excessive in intensity and/or duration in comparison to the normal pressures and tensions experienced by workers in similar circumstances, and
- work-related CMS could be the result of being subjected to harassment or bullying such as humiliating jokes, demeaning conduct, or persistent criticism by a co-worker over several years.

What if the worker has a negative reaction to discipline? Don’t worry, the Act states that workers will not receive WSI benefits for an employer’s managerial actions (including terminations, demotions, transfers, discipline, changes in working hours or changes in productivity expectations).

Why worry now? By nature, CMS can occur as a result of a cumulative series of work-related stressors. This means that workplace stressor(s) that are occurring in the workplace today, may result in entitlement under this new legislative scheme.

Employers can attempt to mitigate the impact of these changes by taking proactive steps to re-evaluate the workplace and to take measures to address circumstances that may significantly contribute to the development of CMS.

An opportunity to participate! WSIB is currently seeking feedback regarding this draft policy. If you would like to participate in this consultation process, the WSIB has requested that you provide your written feedback to the WSIB’s Consultation Secretariat by July 7, 2017 at:

**[consultation\\_secretariat@wsib.on.ca](mailto:consultation_secretariat@wsib.on.ca)**

Still have questions? Reach out to one of our qualified team that specializes in WSIB:

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