

Construction Lien Act Review Consultation Meetings **General Introductory Remarks**

In February 2015, Bruce Reynolds and Sharon Vogel were appointed to conduct an expert review of the *Construction Lien Act* (the “Review”). The appointment was announced to the public by the Ministry of the Attorney General (“MAG”) however, the retainer is to advise both MAG and the Ministry of Economic Development, Employment & Infrastructure. Mr. Reynolds and Ms. Vogel are retained as lawyers who are experts in the field of construction law.

The Review’s primary contact has been through MAG, and in particular Mr. Irwin Glasberg, Assistant Deputy Attorney General, Policy and Innovation Division. He has been very supportive of the Review.

The Review is not a commission of inquiry with the power of subpoena. The Review cannot compel people to attend the stakeholder consultation meetings. They work with stakeholders to organize the meetings based on their schedules.

The Review was preceded by the evolution, and ultimate failure, of Bill 69, the *Prompt Payment Act, 2013* (“Bill 69”). It was a private member’s bill that made it to Second Reading. Bill 69 is the local emanation of a global movement regarding prompt payment. The issues that led to Bill 69 being brought forward are very important to stakeholders in the industry. This was a motivating factor in establishing the Review. Also, stakeholders have observed that the interface between the construction industry and the judicial system is not very efficient.

Following the announcement, Mr. Reynolds and Ms. Vogel met with the Minister Meilleur and Minister Duguid to discuss the Review. It was made clear that the Review is to be conducted in a transparent, inclusive, and collaborative manner. One of the criticisms of Bill 69 was that there was not enough consultation with key stakeholders. The Ministers indicated that the legislation is going to be modernized and this was the opportunity for stakeholders to have a dialogue with the Review.

The retainer to conduct the Review is formed upon a solicitor-client relationship, however unlike a normal retainer for the purpose of generating an opinion; the Review is to broadly meet with stakeholder groups throughout the industry and conduct consultations. The process is very valuable because the Review has learned about the stakeholder’s perspectives on the industry, the Review process, and the *Construction Lien Act* (the “Act”).

The ultimate task of the Review is to produce a report aimed at recommending the modernization of the Act, which has not been reviewed in a holistic way in 30 years. The report will not be issued based on instructions from the clients. In other words, the Ministries will not instruct the Review what to say in the report, because another key aspect is that the Review is to approach its task on an intellectually independent basis. Striking this balance will be a challenge. There are some issues where the views of the core stakeholders are diametrically opposed. There are other issues where there is a broad consensus.

Another aspect of the announcement is that the report will be made public promptly following its delivery.

Importantly, the Review's mandate is to review the Act, *including* considerations of prompt payment and the efficiency of dispute resolution.

The Review designed and developed the process with the assistance of MAG. There are various stages to the Review:

1. Stakeholder identification.
2. Issue identification.
3. Dissemination of the Information Package and launch of the website.
4. Stakeholder consultation meetings.
5. Advisory Group meetings.
6. Final research and writing of the report.

Once we had followed up with the list of contacts provided to the Review, it was immediately apparent that there would be many other associations and groups that would want to participate. The Review heard from many stakeholders in short order following the public announcement. The Review has also been connected with new stakeholders by other stakeholders at their consultation meetings. Ultimately, the Review has heard from hundreds of people representing some 60 plus stakeholders.

Following the stakeholder identification process, the Review began issue identification. There were more issues than originally anticipated. The Review considered a great deal of research material to assist them in developing the Information Package. We tried to summarize the research to give people a clear sense of what the issues were. Over the course of stakeholder meetings, the list has grown to over 80 issues.

The Review then issued the Information Package and an online survey to collect data on the issues.

We then scheduled and held the stakeholder consultation meetings. There were about 30 meetings. This phase of the Review ended in mid-December 2015.

The next phase of the Review involves an Advisory Group of subject matter experts. The Advisory Group is expected to hold meetings in January and February to discuss the issues and try to achieve consensus, where possible.

The Review will then write the report. The report is due on March 31, 2016. This was an extension from the original December 31, 2015 date.

The Review has received many excellent written submissions from stakeholders, and the Review advised stakeholders that the submissions will be made publicly available via the Review's website.

An important part of the Review's job is not to come to any premature conclusions, prior to completing the stakeholder consultations. The Review has been vigorously engaged in the consultation meeting process and nearly every consultation has generated a new idea or new issue for the Review. We have assiduously avoided arriving at any conclusions until after hearing the views of all the stakeholders on what our ultimate recommendation should be.