

Construction Lien Act Review

NEW ISSUES LIST

January 13, 2016

Lienability

1. Consider whether Municipal Lands should be considered in the same manner as federal and provincial crown lands vis-à-vis lienability.
2. Consider clarifying the process by which a lien is given.
3. Consider removing the notice of lien provisions.
4. Consider further clarification of the definition of improvement (e.g. distinguishing between construction and IT projects and service agreements).
5. Consider whether the process with respect to liening condominium units needs to be modified.

Holdback and Substantial Performance

6. Consider, with respect to release of holdback, drawing a distinction with respect to services (such as design services) rendered prior to commencement of construction.
7. Consider use of certain financial instruments (i.e. letters of credit or bonds) or cash for holdback purposes.
8. Consider implementing a deficiency holdback.
9. Consider releasing tranches of holdback as the project achieves designated percentages of completion.
10. Consider annual release of holdback.

Prompt Payment or Timely Payment for Construction Work

11. Consider punitive “interest” as a mechanism for breach of payment terms.
12. Consider potential conflicts with prompt payment legislation and regulatory legislation such as the *Professional Engineers Act* and/or *Architects Act*.
13. Consider the causes of payment delays and how they can be addressed in the Act or other legislation.
14. Consider whether or not technological solutions would improve prompt payment issues (e.g. an automatic rejection of incomplete progress draws).

15. Consider implementing KPI's as a method of motivating prompt payment.

Alternative Dispute Resolution

16. Consider introducing an adjudication mechanism for construction disputes in Ontario:

- a) Consider how adjudication could work where there is the ability to preserve a lien.
- b) Consider the potential institutional bias of adjudicators.
- c) Consider a qualification process for adjudicators.
- d) Consider when an adjudicated decision would have to be appealed.

Miscellaneous

17. Consider False Claims legislation similar to that used in the United States.

18. Consider modifications to the statutory settlement meeting provisions.

19. Consider issues related to case management references.

20. Consider implementing changes to documentary disclosure requirements.

21. Consider improving harmonization of the Act with the *Registry Act*.

22. Consider allowing electrical contractors an ability to seize machinery and equipment from a customer that has not paid the contractor.

23. Consider a requirement for additional information in the certificate of substantial performance.

24. Consider exemptions or carve-outs from lien legislation for specific forms of contract.

25. Consider the use of the Daily Commercial News as a medium for publications.

26. Consider the effect of the Act on projects regulated by the Ontario Energy Board.

27. Consider providing a practice guide or series of interpretive bulletins to accompany new legislation.