

Construction Lien Act Review Consultation Meeting Summary **Carpenters District Council of Ontario**

December 9, 2015 (2:00 p.m. to 2:30 p.m.)

Attendees: Nikki Holland, Mark Lewis, Bruce Reynolds, Sharon Vogel

Sheryl Cornish, Counsel at the Ministry of the Attorney General, attended the meeting to record a summary.

For the introduction provided by the Review, please see document titled BLG Consultation Introduction.

1. Prompt Payment

The CDCO is a member of Prompt Payment Ontario (“PPO”) and shares its views. The most important thing for the CDCO is that its members and their pensions are in jeopardy. When we talk about prompt payment, CDCO says their members are the last to be paid. This is why this is a key issue to them.

The CDCO might differ from PPO in its views on payment timelines. According to CDCO, PPO is asking for prompt payment legislation with strict deadlines. The CDCO believes that, while it is important to have legislation that requires payment within a prompt time, there is a way it can be negotiated in the contract. The answer may be that the right to lien can be invoked five days after the payment period, whatever the payment term.

CDCO explained that the lien is not an option because it is time consuming and costly. Another issue is that people are scared to lose their livelihood, so they are taking, for example, 75 percent for one job based on a commitment that they will get another job. They keep losing money on each job.

According to the CDCO, the subcontractors are being asked to negotiate on these terms. The general contractor gets the work and the subcontractor gets piecework and is not paid for all of the work, but is given work on another job for the same general contractor instead of filing a lien. The union is the biggest loser because pension remittances are not getting paid. The subcontractor has negotiated away 25 percent of the contract price and it shortchanges the labour, according to CDCO.

The CDCO deals with a variety of employers. They do not have a problem with the big general contractors because they have the cash flow. The problem is smaller general contractors or subcontractors. The CDCO sometimes has problems getting wages paid, but generally the wages are the last thing that does not get paid because contractors recognize that if they do not pay, they will not have workers. They put off paying the remittances that go to benefits and pensions. They are already a month behind. If a contractor misses a payment for a month, the CDCO will speak to them.

The CDCO has a problem with how long it takes to get payment and how costly it is. When it is trust money, it puts the trustee in the position of writing down the amount that

it collects. The other issue is that they are stuck in between the subcontractors and the interests of the members. The subcontractors are employers of the members and they will tell the CDCO not to lien the project because they would not get more work, all the money would be frozen from the general contractor, and the union would not get anything. This puts the union in a difficult position.

The CDCO needs to ensure that prompt payments are made down the chain so that it can collect from the employers that want to pay, but can only pay when they get their money. The union can enforce against those who are unscrupulous and are not paying. Currently, the process is too long, cumbersome and costly. Taking legal action is counterproductive to getting payment from contractors according to CDCO.

The CDCO explained that the prompt payment issue stems from the owner/developer to the general contractor to the subcontractor, and the subcontractor to the union. There are multiple steps. The CDCO has problems in terms of certain projects where they cannot lien the premises (e.g. Crown projects). There is also an issue of what is held back. When the union tries to recover funds, they are told that there is no holdback left and the lien rights have expired.

The CDCO does not have a direct relationship with the payer. It may be several steps down the chain. This occurs with respect to remittances. It takes time because the union has to determine how many hours the members have worked and what their last days were in order to calculate what it could claim.

There is also an issue with the residential projects on finding detailed information on the lots and condominium units, in CDCO's view.

2. Adjudication

The CDCO is in favour of any kind of adjudication model that is quicker and cheaper. It is familiar with some of the systems in UK and Australia. The CDCO raised this issue at the outset of the Review.

The Review noted that it has had positive feedback about adjudication because it is intended to be a way to break up the "gridlock" that happens when a project runs into a major dispute and the payment stops flowing. In the United Kingdom ("UK"), they adopted adjudication over 20 years ago.

CDCO explained that it would also take away the fear that subcontractors have to initiate a lien claim. The subcontractor may have worked for the same general contractor for years and is very dependent on them. They are often stuck working for the same general contractor on whatever payment terms they have been given because they have a lot of equity on the project.

3. Home Renovations

Some stakeholders have suggested to the Review that home renovations should be taken out of the Act for smaller jobs. For example, if a dispute is under \$25,000, it could be dealt with in small claims court.

This is not a huge issue for CDCO members because they do not tend to work in home renovations and they do not work on smaller projects. Members may work on subdivisions and perform a small amount of work in each house. If there were thresholds below which would be excluded from the Act, it should be clear that it cannot be on a lot-by-lot basis in the subdivisions, otherwise there would be huge amounts of work excluded.

Some stakeholders have suggested removal of lot-by-lot expiry. The CDCO agrees with this. It makes it very difficult to collect. With major developers and subdivisions, there could be a threshold.

Given the nature of the industry, CDCO suggested that there will always be problems relating to late payment, but we need a system where we become aware of the problem sooner. CDCO suggested that the Review consider whether there should be a more effective way to collect the money quickly so that it can flow down.