

**Construction Lien Act Review Consultation Meeting Summary  
International Union of Operating Engineers (Local 793)**

**December 14, 2015 (1:00 p.m. to 2:00 p.m.)**

Attendees: Jeffrey Long, Jeff Smith, Kirsten Agrell, Bruce Reynolds, Sharon Vogel, James Little

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. Comments from the Local Operating Engineers, Local 793**

The Local Operating Engineers, Local 793 ("Local 793") is a provincial union that represents members throughout Ontario and Nunavut. It represents heavy equipment operators, crane operators and other heavy equipment (e.g. bridges, shovels, bulldozers). They are involved in big road operation projects, bridges, highways, and mines.

Local 793 has about 14,000 members, 12,000 of which are active and 2,000 are retired. The union enters into a collective agreement with unionized contractors who work on the job. The collective agreements have provisions about contributions made to unions or trust funds. The two biggest are health and welfare and pension. If contractors stop paying these contributions, the union goes after them to collect. There are a number of tools to do so, and a key one is the Act.

If there are issues about wages, then the union may get orders from the Ontario Labour Board ("OLB") and garnish. They determine which will be the most effective way to deal with the issue. It often depends on the company and what the members are saying. It is not mutually exclusive; you can bring a claim to the OLB and also file a lien. Recently, a lot of large contractors have gone bankrupt. If it appears that the contractor will become insolvent, the union will file a lien to stop the flow of funds.

**2. Holdback**

The Review noted that there was some discussion in the Information Package about changing the amount of the holdback. To this point, no stakeholder has proposed that it be reduced. Some have talked about phased release of the holdback. Others have suggested phasing based on a certain percentage. A couple of stakeholders have proposed increasing the holdback.

Local 793 explained that on a long project, the contractor would want the holdback over the course of the project. It is important to ensure that it flows through so there will not be breach of trust issues.

The Review noted that some stakeholders raised the idea of annual release of the holdback.

Local 793 explained that the wages are not subject to the holdback. The Review team has heard from some contractors that they are waiting for holdbacks and if they have to carry the risk, they are squeezed. The imbalance between the owners and subcontractors must be considered. Local 793 felt that the owners have a lot of power that those at the bottom of the pyramid do not. They do not have the power to protect themselves.

### **3. The Act and Insolvency Legislation**

This is an important issue for Local 793 because when a big company goes under there is a significant amount of money in holdbacks. This money should not go to the bank under a different statute. The holdback was created by the Act and held back from people who have earned the money. This issue must be addressed. When it is at the bankruptcy stage, the holdback is all the workers have. A garnishment has no priority in a bankruptcy. It is a judgment.

Some owner stakeholders have said that the Review needs to reconsider the policy objectives of the Act. They have noted that, particular with big infrastructure projects, there is a public interest and policy imperative to get the project done on time and on budget. Once the holdback loses its character as a holdback, it may be used as set-off. They say that this is important because it gets the punch list and deficiencies fixed.

According to Local 793, a union who does big projects, they work with the contractor to make it happen. They are responsible actors on the credit side of the equation. They are also an integral part of construction. The pension fund has been involved in funding a lot of infrastructure projects.

The Review is hearing from the owner stakeholder community that the mechanisms in the Act protect them too. It protects them in the sense that they do not want to pay for work unless they can demonstrate that it has been done. They have internal processes to follow. They also mention the importance of preventing corruption.

Local 793 noted that part of the problem is that the money is not flowing fast enough after the payment request has been approved.