CONSTRUCTION LIEN ACT REVIEW – NEW ISSUES LIST SUBMISSIONS OF THE REGIONAL MUNICIPALITY OF YORK

Lienability

1. Consider whether Municipal Lands should be considered in the same manner as federal and provincial crown lands vis-à-vis lienability.

   YR (1): The Region strongly believes that 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.

   YR (2): The Region supports clarifying the process by which a lien is given

3. Consider removing the notice of lien provisions.

   YR (3): The Region does not support removing the notice of lien provisions, but would support clarifying 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).

   YR (4): The Region supports further clarification to the definition of improvement

5. Consider whether the process with respect to liening condominium units needs to be modified.

   YR (5): The Region has no comment on this issue

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.

   YR (6): The Region supports drawing a distinction with respect to services rendered prior to the commencement of construction, which would allow for release of holdbacks for pre-construction services

7. Consider use of certain financial instruments (i.e. letters of credit or bonds) or cash for holdback purposes.

   YR (7): The Region would be willing to consider the use of certain financial instruments for holdback purposes

8. Consider implementing a deficiency holdback.

   YR (8): The Region supports implementation of a deficiency holdback, and includes provision for deficiency holdbacks in its construction contracts

9. Consider releasing tranches of holdback as the project achieves designated percentages of completion.

   YR (9): The Region is generally supportive of releasing tranches of holdback as long as this is clearly described in the contract and does not create an unreasonable administrative burden on the parties

10. Consider annual release of holdback.

YR (10): The Region does not support the release of holdback on an annual basis, but would prefer to deal with the release of holdback when the project has reached certain stages or designated percentages of completion

Prompt Payment or Timely Payment for Construction Work

11. Consider punitive "interest" as a mechanism for breach of payment terms.

YR (11): The Region does not support having 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*.

YR (12): The Region supports consideration of the potential conflicts between prompt payment legislation and regulatory legislation

13. Consider the causes of payment delays and how they can be addressed in the Act or other legislation.

YR (13): The Region supports considering the causes of payment delays and how they can be addressed, however, the Region would not support prompt payment provisions without a careful review of their applicability and/or adaptability to different types of contracts

14. Consider whether or not technological solutions would improve prompt payment issues (e.g. an automatic rejection of incomplete progress draws).

YR (14): The Region supports considering technological solutions which would improve prompt payment issues

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

YR (15): The Region requires more information on how KPI's could be implemented as a method of motivating prompt payment, but is generally supportive of the idea

Alternative Dispute Resolution

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

YR (16): The Region supports considering an adjudication mechanism for construction disputes in Ontario

a. Consider how adjudication could work where there is the ability to preserve a lien.

YR (16(a)): The Region supports consideration of this issue

b. Consider the potential institutional bias of adjudicators.

YR (16(b)): The Region is not aware of such an institutional bias, however, the Region supports consideration of this issue

c. Consider a qualification process for adjudicators.

YR (16(c)): The Region supports considering a qualification process for adjudicators

d. Consider when an adjudicated decision would have to be appealed.

YR (16(d)): The Region supports considering when adjudicated decision would have to be appealed

Miscellaneous

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

    YR (17): The Region supports considering false claims legislation

18. Consider modifications to the statutory settlement meeting provisions.

    YR (18): The Region supports considering modifications to the statutory settlement meeting provisions

19. Consider issues related to case management references.

    YR (19): The Region supports considering issues related to case management references

20. Consider implementing changes to documentary disclosure requirements.

    YR (20): The Region supports considering the implementation of changes to documentary disclosure requirements

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

    YR (21): The Region strongly supports considering improving harmonization of the Construction Lien 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.

    YR (22): The Region does not support consideration of this issue

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

    YR (23): The Region supports considering revisions to the certificate of substantial performance, including a requirement for additional information

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

    YR (24): The Region requires more information on this subject in order to determine whether we would be supportive of it

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

    YR (25): The Region supports consideration 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.

    YR (26): The Region has no comment on this issue

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

    YR (17): The Region strongly supports providing a practice guide or series of interpretive bulletins to accompany new legislation