New Issues Response to the Independent Review of the Construction Lien Act

JANAUARY 29, 2016

This additional submission to the Independent Review of the Construction Lien Act is in response to new issues identified by Counsel during its consultation process with stakeholders.

The following comments relate to items 4, 6 & 24 of the new issues list:

4. *Consider further clarification of the definition of improvement (e.g. distinguishing between construction and IT projects and service agreements).*

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.*

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

CEO proposes introduction of the concept that for engineering firms the definition of ***improvement*** apply only to "construction related services that place responsibility for the construction of the work onto the engineer". In other words the act would only apply to engineering services when the engineer is contributing directly to the construction work by working as a sub-consultant to a contractor, or as a sub-consultant or partner in a design-build arrangement or where the engineering scope includes some direct improvement (like physically modifying a facility through wiring and automation works for example). We are proposing the engineering assignments that include, studies, planning, design and construction administration, where the engineers are contracted directly by the owner and such contract does not include making physical improvements to the facility or property, be exempt from the act.

The following comments relate to item 9 of the new issues list:

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

CEO supports the concept of phased release of holdback. If it is decided to apply holdback in the Act for design and construction administration services (counter to our recommendation above) then we would recommend that the Act also provide clarity regarding release by phase as follows: after Design (submission), Construction Administration (substantial) and Post Construction Services (end of warranty period).

Thank you for the opportunity to provide these additional comments as part of our submission to the Independent Review of the Act.