COLLEGES ONTARIO | COLLÈGES ONTARIO

November 2, 2015

Via email: cla-review@blg.com

Mr. R. Bruce Reynolds
Borden Ladner Gervais LLP
Scotia Plaza, 44th Floor
40 King Street West
Toronto, Ontario
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Dear Mr. Reynolds:

On behalf of the 24 publicly supported colleges in Ontario, thank you for the opportunity to provide comments on the Construction Lien Act (CLA). As crown agencies, the colleges believe CLA has adequately protected owners and contractors and no changes to the act are required.

We understand that the review of the CLA was initiated as a response to Bill 69, the Prompt Payment Act. The colleges know the value that paying contractors promptly for properly completed work has for a successful construction project.

Colleges support the principle that payments should be made promptly. However, it is equally important that owners have a mechanism to ensure that projects are completed according to the contract.

In order to allow owners assurances that projects are completed and accurate, the colleges agree with the Ontario's School Boards Associations (OSBA) that the payment terms and contractual obligations for submitting progress draws vary from owner to owner, and recommend that the freedom of contract remain with the individual contract terms, and not be defined in the CLA. We also agree with the OSBA that the release of holdback timings and obligations are best defined within the construction contract. Payment terms for the holdback should be as defined by the contract and not the CLA.

As such, we believe that the holdback should remain at 10 per cent, as these are sufficient funds needed to be retained for liens and/or setoffs. We also believe that the release of the holdback should be as defined in the payment terms of the contract, and not be mandated nor have the release terms defined under the CLA.

As you consider the opinions and comments of stakeholders, we would like to remind you that as crown agencies, the public colleges are exempt from lienability and are assets on the province's books. Any changes to the CLA that detrimentally affects the financial position of colleges would also directly impact the financial position of the government, as defined under The Financial Administration Act and other legislation.

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Thank you again for this opportunity and we look forward to the review secretariat's report.

Sincerely,

Linda Franklin

Linda Franklin
President and CEO