January 26, 2016

Dear Mr. Reynolds:
This letter is a follow-up to our phone conversation and my email to you from Nov. 27, 2015 and your reference in the "New issues" list:

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

The Construction Lien Act has some wording that conveys an exceptional circumstance for a private business: A mandatory legislative monopoly. This may have made sense when the CLA was introduced long before the Internet and online searching became an easy process, but is an anachronism that results in significant and in my opinion unnecessary (and unfair) compliance costs to the industry in 2016.

The current Act (Section 32) sets out publication requirements for Certificates of Substantial Performance (CSP) as follows (paragraphs 5 and 9).

> 5. The contractor shall publish a copy of the certificate once in a construction trade newspaper; and
> 9. The person who applied to the court shall publish a copy of the declaration of substantial performance once in a construction trade newspaper.
> Under "definitions", section 1:
> "Construction Trade Newspaper" means a daily newspaper having circulation generally throughout Ontario, that is published no less frequently than on all days except Saturdays and holidays, and in which calls for tender on construction contracts are customarily published, and that is primarily devoted to the publication of matters of concern to the construction industry; ("journal de l'industrie de la construction").

This wording, of course, means that only one media outlet can be used to publish CSP notifications, *The Daily Commercial News (DCN).*

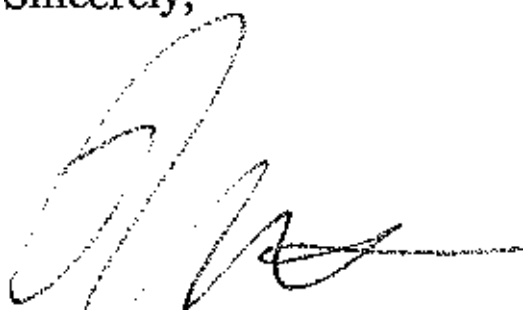
2 Each month, my business receives inquiry calls from contractors seeking to place CSP notification advertisements. We of course refer them immediately to DCN, as otherwise the notices would not comply with the Act.

As it is, while there was obviously a need for a centralized system for publishing CSP notifications in a newspaper format before the Internet era, this no longer is necessary because of alternative online options. As well, in my opinion, if there is to be a mandatory, legislative monopoly for the certificate notices, this should not be in the possession of a single commercial business — at least unless the revenue opportunity for that business has been publicly tendered and is for a finite period.

In place of the current structure, I would advocate that the CSP notification system be either administered by Service Ontario and/or a contractor selected according to criteria established in a fair, open and public competition (for which the DCN publishers could apply, of course.)

The competition could set out mandatory reliability/service requirements and also take into account the service fees the publishing contractor would expect businesses complying with the lien regulations should be expected to pay. Several services may be interested in competing for this opportunity, including online bid registry services and publishers.
The competition will likely result in significantly lower compliance costs, as the CSP publication system would be either cost-neutral to manage (as a public service) or significantly less expensive to the industry if tendered to a private business, because of the inherent lower costs in distributing online information than through printed media.

Sincerely,



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