



## Construction Act: Changes Effective as of July 1, 2018

As of July 1, 2018, the *Construction Lien Act* will be renamed the *Construction Act*, and significant amendments related to the *modernization of the construction lien, holdback, and trust rules* will take effect.

The following changes will be in effect for all Ontario construction projects where the procurement processes or prime contracts were entered into on or after July 1, 2018:

### Construction Liens

- Extension of the deadline for the preservation of liens from 45 to **60** days (s. 31);
- Extension of the deadline for the perfection of liens from 45 to **90** days (s. 36(2));
- Minor errors to liens will not automatically invalidate the lien (s. 6);
- When vacating a lien, security for costs will be the lesser of \$250,000 (increase from \$50,000) or 25% of the value of the lien (s. 44(1)(d));
- A contract is deemed to be complete when the price of completion is not more than the lesser of 1% of the contract price or \$5,000 (increase from \$1,000) (s. 2(4));
- Substantial performance is now calculated as (i) known deficiency of not more than 3% of the first \$1,000,000 of the contract price (increase from \$500,000), (ii) known deficiency of not more than 2% of the next \$1,000,000 of the contract price (increase from \$500,000), and (iii) known deficiency of not more than 1% of the remainder of the contract price (s. 2(1)(b));
- Lien claims under \$25,000 may be referred to the Small Claims Court (s. 58(1)(c));

- Where a landlord agrees to pay for all or part of an improvement (i.e. fit-up agreements), 10% of such payment is now subject to a lien against the landlord's interest (s. 19);

### Holdback

- Holdbacks may be retained in forms other than funds, i.e. bonds or letters of credit (s. 22(4));
- Express provisions for the release of holdback on an annual or phased basis if the contract price exceeds \$10,000,000 (ss. 26.1, 26.2);
- If an owner refuses to pay some or all of the holdback, the owner must **publish** a notice of non-payment of holdback – which specifies the amount in dispute – within 40 days of substantial performance (s. 27.1);

### Bonds and Trusts

- Mandatory bonding (minimum 50%, up to a maximum of \$50,000,000) for public construction projects which exceed \$500,000 (ss. 85.1, 85.2);
- New statutory bookkeeping requirements for trustees require that (i) trust funds be deposited in a bank account in the trustee name(s), (ii) the trustee shall maintain written records of all amounts received, paid out, and transferred, and (iii) trust funds may be deposited together in a single bank account, so long as the trustee maintains separate records in respect of each trust (s. 8.1).

For further information, please contact:

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