



Ontario Association of Architects

Ministry of the Attorney General
Corporate Policy Unit
720 Bay Street, 7th Floor
Toronto, ON M7A 2S9

Submitted by email

March 8, 2018

Re: Construction Lien Act: Proposed Regulations

Dear Minister, staff within the Corporate Policy Unit,

The Ontario Association of Architects (OAA) is the regulator and professional association for Ontario's architects. Established under the *Architect's Act*, it is the mandate of the OAA to regulate the practice of architecture to ensure that the public interest is served and protected. The OAA appreciates the opportunity to have collaborated extensively with the Government on the modernization of the *Construction Act* and looks forward to continued collaboration as new regulations under the *Act* are developed and introduced.

Throughout our numerous submissions and meetings with Ms. Vogel, Mr. Reynolds and government officials, the OAA has appreciated a positive reception to our comments. It is with that in mind that we share the following recommendations to the current consultation:

Construction Lien Act Regulation (General)

Section 5 of the draft regulations ("Holdbacks") references a threshold whereby the contract price must be "\$20,000,000 or more." However, no such monetary threshold exists as related to design services under clause 26.2(3) of the *Construction Act*. Left unchanged, the applicability of dollar amount will be confusing, and the appropriate language in the Act related to design services should be integrated more clearly into the regulations.

Further, it should be clarified that the threshold does not apply to the remainder of any architect/client contract which includes design services.

The OAA would also stress a critical point that we presented throughout our meetings, submissions, and deputation to the Standing Committee. The OAA has repeatedly asked the Ministry to make explicit that substantial performance applies to architectural services. This position—that substantial performance applies—has been and continues to be supported by Bruce Reynolds.

As a result of Mr. Reynolds' personal interpretation, the advisors did not feel it was necessary to change the legislation to explicitly state or reaffirm applicability. We remain acutely aware that other lawyers do not share Mr. Reynolds' interpretation. This is reflected in numerous client contracts that state that there is no release of basic holdback, only release of the holdback on the architect's fees at completion

of the contract. The problem further presents itself in Forms 9 and 10 which refer simply to an “improvement”, defined in the Act as:

- (a) any alteration, addition or [capital] repair to the land,
- (b) any construction, erection or installation on the land, including the installation of industrial, mechanical, electrical or other equipment on the land or on any building, structure or works on the land that is essential to the normal or intended use of the land, building, structure or works, or
- (c) the complete or partial demolition or removal of any building, structure or works on the land; (“améliorations”)

We assert that a clarifying note that design services is an improvement remains of critical importance to the architectural profession. Failure to do so will disenfranchise architects from critical elements of this legislation, or will unnecessarily put them in the costly and otherwise preventable situation of having to go to court to challenge the interpretations or biases of the client’s lawyers.

While this clarification would have been best addressed through reforms to the legislation itself, we encourage Ministry staff to look for an opportunity to make this clarification as you write and modernize the regulations associated with the *Construction Act*. We would note that such a precedent (to clarify something specifically for the architectural profession) is already contained within the existing *Construction Lien Act*, section 14(3).

Construction Lien Act Regulation (Adjudications)

In light of the current consultation, we would like to applaud the government for recognizing the experience of architects as a valid qualification for becoming an adjudicator. This is an important recognition of the skills and expertise offered by members of the architectural profession.

Forms Regulation - Consultation Version (with the exception of Forms 4, 5, 31 and 32)

The OAA suggests that a slight revision to *Form 6* is necessary, particularly the sentence about “...paid under sections 26 and 27 of the *Construction Act*”. Sections 26 and 27 address two distinct and separate events (release of basic holdback and release of finishing holdback). The sentence should be adjusted to clarify it could be related to sections 26, 27, or both. As a result, the title of the form would need to be changed to recognize both sections of the Act.

The OAA is also proposing the introduction of another form: *Statement of Contract Deemed Completion*. This form was not included in the original Construction Lien Act documents, and the OAA had developed a form as a result to provide

consistency (see attached). The OAA would be happy to work with Ministry staff on integrating the existing form or developing a new one.

On behalf of the OAA, I would like to thank you and your Ministry for your continued commitment to modernizing the *Construction Lien Act* and for working with the OAA as partners on this important project. Please do not hesitate to contact us should you need any further advice or information.

Sincerely,

A handwritten signature in black ink, appearing to read "John Stephenson". The signature is fluid and cursive, with a large initial "J" and "S".

John Stephenson, Architect
OAA, MRAIC
President

