

**Ontario Association of Architects
2023 Admission Course
Construction Act**

Presenter

Glenn Ackerley, WeirFoulds LLP, Barristers & Solicitors.

Part 1 – Construction Lien Act

This part looks at the Construction Act and outlines the purpose of the legislation, how lien legislation relates to the architect's responsibilities, costs, claims, the lien rights of architects, trust obligations, prompt payment rules and adjudication.

Part 2 – Implications for Architectural Practices

This part looks at the practical implications of the Construction Act related to the normal administration and payment certification of standard construction contracts.

Course Objectives

- To prepare a diagram of the traditional 'construction pyramid';
- To describe who is eligible to benefit from the Construction Act;
- To identify when, and how, to issue a certificate of substantial performance and a statement of completion;
- To explain when the lien period commences and expires for contractors and sub-contractors;
- To outline the process of registering a lien;
- To differentiate the following procedures:
 - Notice of Lien
 - Preservation of a Lien
 - Perfection of a LienAnd describe the consequences of each.
- To explain at least five actions that might be taken when a lien is claimed;
- To describe how the certification of substantial performance relates to the warranty period in a CCDC contract;
- To describe how the lien rights of an architect differ as an architect engaged as a prime consultant by the client and as a sub-consultant to the prime consultant;
- To understand the various office processes of an architectural practice that are required of the payment certifier on a construction contract related to the Construction Act.
- To understand the new payment rules governing construction and architectural services contracts
- To be familiar with the new adjudication process for construction disputes.

Course Topics

Part 1

- What is a construction lien?
- History and present status of the Construction Act
- Outline of legislation, basic elements

- How the 'construction pyramid' operates: owners, contractors, and subcontractors
- The importance of lien legislation to architects
- Who is entitled to lien under the Construction Lien Act
- The types of claims a lien can protect, special situations
- Timing of lien rights and when they expire
- Holdback obligations of owners and others
- How and when to issue certificates of substantial performance, consequences of issuance of certificate on warranty periods, requirement to publish certificate and effect of errors in certificate
- How basic and finishing holdback releases are administered, including title searches
- Certificates of completion of subcontract and early release of holdback
- Written notice of lien, preservation of lien claim and the consequences of each
- What steps should be taken when a lien is preserved
- Perfection of lien claims
- Problems with the form of the lien
- Costs involved in lien procedures
- Trust aspects of the Construction Act
- How payments are required to be made promptly
- How the Adjudication process works

Part 2

- Accounting for lien holdback and releases on Certificates for Payment
- When the various releases apply and the implications of each type
- Use of prescribed forms
- Supplementary and backup information and calculations
- Difference between "deemed completion" and "total completion"
- Documenting the lien events
- Advising the client
- How far to go with "due diligence" and advice: too little or too much?
- Common misunderstandings

Texts

- OAA Practice Tip: PT.10
- Document 100: OAA/OGCA Take-over Procedures (2007)
- The Construction Act (full version)
http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90c30_e.htm