

Next in the Series
Deconstructing Ontario's
New Construction Act

CONSTRUCTION LIENS UNDER ONTARIO'S NEW CONSTRUCTION ACT: *Strategies for Navigating the New Regime*

Program Chairs & Advisor

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McMillan LLP

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WeirFoulds LLP

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McMillan LLP

Date and Time

February 20, 2020
8:30 a.m. – 4:30 p.m. EST
In Person or Webcast

Online Replay: April 30, 2020

Location

Osgoode Professional
Development
1 Dundas St. West, 26th Floor
Toronto, ON

The law has changed in Ontario.
*Are you on top of the new legal landscape
and your new obligations?*

In one intensive day, you will get crucial **expert guidance** and **practical strategies** on how to navigate the new regime.

- Get a concise overview of lien rights in Ontario and how to apply them
- Understand the anatomy of a lien action and the mechanics of actioning a lien
- Obtain strategies to assess legal risk and other considerations that impact a lien
- Learn how to navigate the new procedures under the Act
- Analyze gaps in the Act and how these should be filled in your contracts & subcontracts
- Acquire proven tactics to competently navigate challenges, focusing on real-world matters, including “oddball” issues
- Get troubleshooting tips for complex situations and to analyze different approaches

Register today at:

osgoodepd.ca/cns-act4

Marketing Partner



Construction Liens under Ontario's New *Construction Act*: Strategies for Navigating the New Regime

Waves of legal change are hitting Ontario's construction industry, resulting in new priorities, obligations and shifting processes for construction liens. As a construction professional or advisor, you must fully comprehend your new obligations in order to effectively navigate this new legal regime.

Focusing on the practical, this *OsgoodePD* intensive one-day program takes a deep dive into navigating construction liens and brings together an exceptional, multi-disciplinary faculty of legal and industry professionals. You will learn from their playbook and acquire critical skills to comply with the new law and successfully manage your next lien.

Get essential practical guidance, including:

- Understanding the new legal and procedural requirements – When do lien rights arise? When do they expire? What are the various types of liens?
- Strategic considerations of when to use a lien (and appreciating what this means)
- Identifying what is truly a lienable service – including the common types of lienable services, oddball situations, and the “non-lienable”
- Tactics to protect yourself from gaps and inconsistencies in the *Act*
- Develop troubleshooting techniques, including what to do when:
 - CRA gets involved
 - Federal land is involved
 - You want a trial management hearing
 - You lose at adjudication
- How to decide when to pursue alternatives to liens

PLUS! A Lien Master will walk you through a lien trial, providing invaluable insights and practical advice. You will also receive a useful ‘Tip Sheet’ on what works and what doesn’t if your matter ends up in court.

Who Should Attend

- Construction and in-house lawyers
- Litigation and real estate lawyers
- Municipal, government and procurement professionals
- Owners and developers
- Builders and construction professionals
- Project managers
- Contract managers
- Architects
- Engineers
- Business and finance professionals
- Insurance professionals
- Consultants

This is the fourth program in our ***Deconstructing Ontario's New Construction Act*** series. Missed the previous sessions? No problem. Programs are available on demand. Take advantage of special bundle pricing when you register for programs in this series, including the live program.

Agenda

8:00 a.m.

Registration

8:30 a.m.

Chairs' Welcome + Opening Remarks

8:45 a.m.

Liens: A Practical Overview of Key Principles and Concepts

Paul Hancock

Goldman Sloan Nash & Haber LLP

- What is a lien?
- When do lien rights arise and when do they expire? Is there an ultimate expiry period?
- How to recognize and differentiate the various types of liens
- Understanding how to preserve, register and give a lien – including vacating, discharging and perfecting
- What is the liability for exaggerated liens?
- Troubleshooting tips – what to do when there are two subcontracts issued to one trade (2 liens)? Federal land?

9:45 a.m.

Refreshment Break

10:00 a.m.

The Anatomy and Mechanics of a Lien Action

Lea Nebel

Blaney McMurtry LLP

- Geographic distinctions – within and outside Toronto
- The class-action like nature of a lien proceeding – includes references and discovery
- How to set a lien down for trial
- Understanding the new procedures under the *Construction Act*:
 - Scott Schedules, Vetting Committee, Carriage and Salvage Costs
 - Pre-Trials and Settlement Meetings
 - Reports and Interim Reports
 - Consolidation orders and consecutive trials
 - How to get a trial management hearing outside of Toronto

11:00 a.m.

To Lien or Not to Lien? Legal and Strategic Considerations

Anna Esposito

Pallett Valo LLP

- Overview of the interplay between construction liens and the new adjudication regime
- The importance of relationships in the construction industry and the related dynamics
- Pros and cons of alternatives to liens – includes other security and dispute resolution procedures
- Deciding whether to lien or not after losing at adjudication
- Monetary limits and minimums – are there amounts too small for a lien?
- What to do when the CRA gets involved?

12:00 p.m.

Networking Luncheon

12:55 p.m.

Chairs' Remarks

1:00 p.m.

Do's and Don'ts in Court: A Lien Master's Guide

Master Charles Wiebe

Ontario Superior Court of Justice

Join Lien Master Charles Wiebe for an interactive walk-through of a lien trial, focusing on best practices and his recommended "do's and don'ts" when appearing before a decision-maker in court. **PLUS!** You will receive a valuable 'Tip Sheet', which will serve as a vital resource long after the program concludes.

2:00 p.m.

What's Truly a Lienable Service?

Edward Lynde

McLauchlin & Associates

Darcia Perry

McLauchlin & Associates

- What's the difference between a capital repair and maintenance?
- Can construction managers have liens in Ontario?

- What about design professionals?
- Liens from union workers?
- Oddball and other liens, including the non-lienable

3:00 p.m.

Refreshment Break

3:15 p.m.

Beware of Gaps in the *Construction Act*: How to Fill Them in Your Contracts & Subcontracts

Robert (Rob) Kennaley

Kennaley Construction Law

In this session, you will identify the crucial gaps and inconsistencies in the *Construction Act* and you will get practical guidance on how they might best be managed, through both contractual language and strategies in the field. Issues surrounding the following topics will also be discussed:

- Transition provisions and multiple contracts on a project: which version of the *Act* applies?
- Release of holdback on a phased or annual basis
- Preserving the lien against a Municipality
- Public contract and the contractor's bonding obligations
- "Giving", "providing" and "serving" of documents under the *Act*
- What must, and can, be included in the Proper Invoice?
- What is the timing, effect and import of a Notice of Termination of Contract?
- Limitation involving 'no adjudication once the contract or subcontract is complete'
- Scope of the 'one matter per adjudication' limitation
- Importance of the Notice of Adjudication and the choice of Adjudicator

4:15 p.m.

Wrap-Up, Open Discussion and Final Q+A

4:30 p.m.

Program Concludes

"Very good. Useful content [and] well delivered."

Peter-Paul Du Vernet, Counsel, Glaholt LLP

Online Module

(included with Course fee)

"Ted's Lien Talk": Key Changes to Complex Liens under Ontario's *Construction Act* (approx. 60 mins)

Ted Rotenberg

Burstein Law

Join Ted Rotenberg and special guests for this dynamic and engaging online "Ted's Lien Talk" to learn how to effectively navigate liening leases, condominiums, subdivisions and municipalities and Crown agencies under Ontario's new *Construction Act* (the "*Act*").

This virtual class will include practical tips, expert insights, crucial guidance and materials that will serve as valuable resources.

You will gain practical tools and strategies to navigate these complex liens under the new regime and avoid common pitfalls, including:

- Leases – a succinct refresher on key steps, how to determine ownership, and how to assess the pros and cons of liening leaseholds in your situation
- Condominiums – an overview of how to lien a condominium in Ontario, highlighting unique entitlement considerations, and tips for analyzing the benefit of liening any work completed on behalf of a condominium corporation
- Municipalities & Crown Agencies – a recap of the key principles and mechanics involving liening municipalities and Crown agencies, as well as tips and practical strategies to navigate them under the new *Act*
- Subdivisions – a review of the multifaceted characteristics and considerations and entitlement issues involving this complex property type, and with a special focus on lot and by-lot provisions, how to navigate park lands and buffer zones, roads and residential homes

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Jason Annibale
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McMillan LLP

Faculty Includes

Anna Esposito
Pallett Valo LLP

Darcia Perry
McLaughlin & Associates

Paul Hancock
Goldman Sloan Nash &
Haber LLP

Ted Rotenberg
Burstein Law

Robert (Rob) Kennaley
Kennaley Construction Law

Master Charles Wiebe
Ontario Superior Court of Justice

Edward Lynde
McLaughlin & Associates

Lea Nebel
Blaney McMurtry LLP

Here's what participants in our *Deconstructing Ontario's New Construction Act Series* had to say:

“Very good. How daunting this will all be for an industry better at building things than at process [and] costs will go up to implement all of this.”

Brian Swartz, Executive Legal Advisor, Aecon Group Inc.

“Excellent. Knowledgeable and competent presenters.”

Don Dinnin, Vice-President, Procurement Services, Metrolinx

Registration Details

Fee per Delegate: **\$595 plus HST**

Newly Licensed (2017 – 2020): **\$297.50 plus HST**

Bundle price for all 4 programs in the *Deconstructing Ontario's New Construction Act Series*: **\$1,995 plus HST**

Fees include attendance, program materials, lunch and break refreshments. Group discounts are available. Visit www.osgoodepd.ca/group-discounts for details. Please inquire about financial assistance.

Program Changes

We will make every effort to present the program as advertised, but it may be necessary to change the date, location, speakers or content with little or no notice. In the event of program cancellation, York University's and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund is available if a cancellation request is received in writing 14 days prior to the program date. If a cancellation request is made with less than 14 days notice, a \$75 administration fee will apply. No other refund is available.



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Eligible CPD Hours – Primer: LSO (ON): 45m CPD (30m Substantive; 15m Professionalism); Program: LSO (ON): 6h 45m CPD (6h Substantive; 45m Professionalism)



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This program is approved for LAWPRO Risk Management Credit.

This program has been accredited by the CCA for 1 credit toward Gold Seal Certification education requirements.



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