

February 2018

## Out with the old and in with the new: transitioning from Ontario's old *Construction Lien Act* to the new *Construction Act*

This article is an update to our [December 2017 article](#), where some of the most significant substantive changes to the *Construction Lien Act* (the "**CLA**") are considered.

On December 12, 2017, Bill 142, the *Construction Lien Amendment Act, 2017* ("**Bill 142**"), received Royal Assent and became law in Ontario. Bill 142 changes the CLA's name to the *Construction Act* and represents a thorough and intensive modernization of the CLA.

### Coming into Force of Substantive Amendments

Although now law, the substantive amendments to the CLA (including the CLA's name change) have yet to come into force. The Ministry of the Attorney General ("**MAG**") advised this month that the amendments respecting the modernization of the lien and holdback rules will come into effect July 1, 2018. Amendments respecting prompt payment and adjudication will come into effect October 1, 2019.

The effective date for the prompt payment and adjudication amendments is later as these interconnected sections require the creation of the Authorized Nominating Authority ("**ANA**"). The ANA is to appoint adjudicators who must then be trained before the adjudication and prompt payment regime can commence.

MAG has also posted on Ontario's Regulatory Registry website this month for public comment the numerous draft regulations and prescribed forms supporting the *Construction Act*. The public is now able to comment on the draft regulations and prescribed forms for a thirty day period. Following this time, the regulations and forms will be finalized.

### Grandfathering Provisions for the CLA

Once the *Construction Act's* substantive provisions come into force, there will be a grandfathering of certain existing projects, improvements, and contracts. More specifically, section 87.3 of the *Construction Act* provides that the CLA will continue to apply to an improvement if,

- (a) a contract for the improvement was entered into before subsection 2(2) of Bill 142 comes into force (the "**Triggering Date**"), despite whether any subcontract under the contract was entered into after;
- (b) a procurement process for the improvement was commenced before the Triggering Date by the owner of the premises (including the making of a request for qualifications, a request for proposals, or a call for tenders); or
- (c) the premises is subject to a leasehold interest and the lease was first entered into before the Triggering Date.

Given MAG's expressed timing for the coming into force of the amendments, it appears that the Triggering Date will be July 1, 2018.

Also, the prompt payment and adjudication sections will apply only to contracts entered into on or after the day the adjudication provisions of the *Construction Act* come into force, and in respect of subcontracts made under those contracts. Given MAG's expressed timing, it appears that this day will be October 1, 2019.

## Concluding Remarks

McMillan will continue to monitor the status of the *Construction Act* as the year progresses. In the interim, please consider attending McMillan's Construction Law Seminar and Webcast on March 1, 2018 for a consideration of some of the major changes that the *Construction Act* will bring to Ontario's construction industry. To register, [click here](#).

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### a cautionary note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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