

# **Bill 142**

## ***An Act to Amend the Construction Lien Act***

# What was Bill 142?

- Purpose of the Bill was to modernize the *Construction Lien Act*
- Bill 142 received Royal Assent on Dec. 12, 2017
- Strong push in legislative changes to ensure money flows down the construction pyramid while maintaining substantial contractual freedom
- Substantial changes are implemented in two phases

# Substantial Changes In Force July 1, 2018

- Limitations to set-off rights
  - Payors no longer have the ability to set off payments to a contractor for one project against debts owed by the same contractor for a different project
- Changes to holdback rules
  - Two major changes are mandatory release of holdbacks and phased release of holdbacks
  - Holdback must be released upon expiry of lien period
  - Owner continues to be allowed to withhold or set off against holdback but must publish a notice of nonpayment within set timeframe
  - Phased release of holdback allowed if they are provided for in the contract
  - Alternate methods available for payment of holdback

# Substantial Changes In Force July 1, 2018 Cont'd

- Changes to lien periods
  - Lien periods extended throughout the Act
  - 45 days to “preserve” liens and 90 days to “perfect” liens
  - Total 150 days from date lien rights trigger to perfected lien
- Mandatory surety bonds for “public contracts”
  - All public contracts above \$500,000 require bonds from Contractors
  - Two types of bonds required – Labour and Materials bond & Performance Bond
  - Bonds must be in form prescribed by regulation (available online through Ontario Court Forms)
  - <http://ontariocourtforms.on.ca/en/construction-lien-act-forms/>
  - Bonds must cover at least 50% of the “contract price”

# Substantial Changes Delayed to October 1, 2019

- Introduction of a Prompt Payment Regime
  - Triggered by “Proper Invoice” and designed to ensure the efficient flow of cash down the construction pyramid
  - Minimum requirements of “proper invoice” set out in Act but can be modified by contract
  - Upon receipt of invoice Owner has 28 days to pay in full or 14 days to provide “notice of nonpayment”
  - Strict timelines continue down the construction pyramid
  - Notice of non-payment must specify “all” of the reasons for non-payment
  - Default payment scheme is monthly, but can be modified by contract

# Substantial Changes Delayed to October 1, 2019 Cont'd

- Introduction of a Mandatory Adjudication Regime
  - Adjudication available for most monetary disputes, subject to modification by contract
  - Designed to produce fast and cheap resolutions to interim disputes
  - Can be initiated by either party at any stage of project prior to completion
  - Strict timelines from beginning to end of process
  - Once notice is received adjudicator can be appointed by mutual agreement or by ANA but must be appointed within 7 days
  - Adjudicator has broad investigatory powers and must make a decision within 30 days (can be extended by 14 days upon written consent)
  - Maximum 51 days from time adjudication is triggered until decision
  - Document management will be key

# Substantial Changes Delayed to October 1, 2019 Cont'd

- Changes to lien claims against Municipal Property
  - Liens no longer “attach” to municipally owned property
  - Brings municipal property in line with current rules for other Crown property
  - While they no longer “attach” it is still possible to have a lien claim against municipal property
  - Process is now that lien claimant must provide a copy of the lien claim to the clerk of the municipality instead of registering the claim on title
  - Municipality will have obligation to track lien claims against their property

# Regulations

- Four regulations were promulgated by the Ministry of the Attorney General – General, Adjudication, Forms, and Court Procedures
- “General” regulation fills gaps in legislation including setting thresholds for bonding in public contracts
- “Forms” regulation provides standardized forms to be used in several key procedures including bond forms
- “Adjudication” regulation is largely concerned with the Authorized Nominating Authority (ANA) which will appoint and oversee adjudicators
- “Court Procedures” regulation deals with procedures for actions under the Act – moves provisions previously in the Act to a Regulation
- Regulations are intended to fill “gaps” in legislation



# Transition Provisions

- Section 87.3 sets out the transition provisions as they relate to the two implementation dates
- For changes that were implemented on July 1 – the old Act applies to any contracts entered into before that date or for which a “procurement” process was started before July 1
- For changes to be implemented on Oct. 1 2019 – the prompt payment and adjudication provision will apply to any contracts entered into on or after Oct. 1

# Miscellaneous

- OPS and CEDC contracts may be updated to incorporate changes – No definite timeline on changes as yet
- Special provisions for P3 projects in Act
- New ability to bring lien claims in Small Claims Court where they are under the Small Claims threshold
- Some changes around Contractor's Trust Accounts – primarily aimed at improving traceability
- Heavy Reliance on use of Prescribed Forms – Available Online

# Questions?



**It's QUESTION TIME!!**