



# Acoustical Association Ontario

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*Provincial in scope ...*

*Provincial in outlook*

## *OGCA Works With NTCCC On Prompt Payment Legislation*



Who gets paid when and under what conditions has, for years, been an ongoing issue in the Ontario construction industry. General Contractors, Sub-Contractors, Suppliers as well as Owners have disagreed on how to improve the payment system to ensure that all interested parties are paid in a timely manner.

As you may recall from an earlier issue of this newsletter the National Trade Contractors Coalition of Canada (NTCCC) identified the need for prompt payment legislation. NTCCC in its briefs to the both the National and Provincial governments, and in particular to our Ontario government, identified and suggested the removal of “paid when” and “paid if” clauses in construction contracts. The NTCCC conducted a review of other jurisdictions and found that it was common in approximately 40 of the 50 states in the US. The NTCCC had draft legislation prepared based on these practices, and it was introduced as a private members Bill in the Ontario Legislature prior to the House adjourning for the provincial election.

The Ontario General Contractors Association (OGCA) argued that little was done “due to a belief that codifying the payment schedule will reduce the flexibility relating to freedom of contract”. The challenge as OGCA stated, “was to find a middle ground that will support both concepts”.

OGCA approached the NTCCC to communicate their concerns on the process and contents of the draft proposal. In an attempt to find a way to develop an industry agreement, OGCA met with NTCCC and an agreement was reached whereby OGCA would work with NTCCC to develop an improved draft of the legislation. OGCA also agreed to support the concept of “prompt payment” for all participants, recognizing the concerns with “pay when paid” clauses that developed when contractors experienced difficulty in obtaining timely payments from owners. To that end, Heenan Blaikie was retained to draft legislation based on the following principles:

- Draft prompt payment legislation is to be prepared which embodies the payment principles sitting within the standard CCDC/CCA contract documents.
- One of those principles will be the “pay when paid” provision in CCA 1-2008, including the process set out in that contract whereby the GC’s payment obligation can be delayed for a limited time (90 days) provided the various steps prescribed in that contract are followed.
- No other “pay if paid” or any other type of “pay when paid” concept is to be contemplated in the draft legislation.

The draft legislation process has been ongoing since September and it is anticipated that a decision on the final draft may be reached very soon. Readers will be advised on any further developments as they become available.



### *The Mathews Dinsdale Minute*



Happy holidays to everyone. We hope that at the end of your year, you find the opportunity to slow down, if only for a moment, to celebrate the season. In considering what to write about in this month's Mathews Dinsdale Minute, we decided to repeat our guidelines and suggestions for holiday events where alcohol is served. We know that you have seen this before, but believe that it is important enough to be worth saying again.

Holiday parties are an opportunity to build moral, socialize without the day to day pressures to get the job done and to generally say thanks to everyone for the hard work of the entire year. Sometimes they are a lunch, others a cocktail party and sometimes they are full dinner events.

While we hate to rain on the parade, when your company holds one of these events have you taken steps to try to insulate yourself from potential liability that may arise? In 2002, the issue of host liability, both in the employment setting and in the social host context, gained significant publicity arising out of a pair of Ontario Court cases where people who attended events and consumed alcohol drove under the influence and were involved in catastrophic car accidents inflicting permanent injuries on themselves and/or others on the road. When the best intentions go wrong, sooner or later people look for someone to blame and claims of liability follow.

What can you do to protect yourself from liability when hosting your holiday event? While no scenario is perfect, and sadly, nobody can prevent someone from trying to sue, the following are a few simple suggestions that should help insulate your organization should tragedy strike:

- If you are serving alcohol, hire a caterer with an endorsement to serve alcohol, or host your event at a restaurant, bar or event hall where the owner has insurance.
- Be careful with "open bars". A useful alternative may be drink ticket policies. Always ensure that there are ample non-alcoholic alternatives.
- Designate people to stay sober and assist in observing and monitoring alcohol consumption, approach people and confront them if there are concerns about consumption. Don't be afraid to seize car keys from intoxicated employees and/or to call the police if necessary.
- Provide transportation, carpools or taxi vouchers for a safe trip home. Well in advance of the event, advise employees of the Company's "no drinking and driving" policy and inform them of the options available.

It is important that in your efforts to generate good will and improved moral, you ensure that you don't expose your organization to liability which can be avoided. These steps are designed to try to protect your employees and your business. We hope that they help you have a successful, safe and fun holiday season.

 **mathews  
dinsdale** *Workplace Law Spoken Here*



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