



Acoustical Association Ontario

Volume 8 Issue 3 March 2013

Provincial in scope ...

Provincial in outlook

OGCA & NTCCA Reach Agreement on Proposed Wording of Prompt Payment



The Ontario General Contractors Association (OGCA) and the Ontario Caucus of the National Trade Contractors Coalition of Canada (NTCCA) have agreed on a “blueprint” that could lead to legislation governing prompt payment for general and trade contractors in this province. The OGCA and NTCCA joint task force released a draft document outlining the key principles to be included in any “Act Respecting the Protection and Viability of Construction Contractors.” Following is a summary of the of some of those key principles:

- It is to apply to all Ontario construction contracts and contracting out of Act is to be prohibited.
- Contract payment and payment valuation terms are to followed and payments are to be made no less than monthly.
- The Act is to prescribe mechanisms governing payments and to provide a mechanism for valuing those payments in the event that a contract does not provide for them.
- The Act is to deem that payment applications approvals take place unless the payer provides a timely statement explaining any disapproval or amendment of such payment application.
- Payment or amendment of payment applications must be limited to reasonable estimates of direct loss, damage or cost of completion or correction of work, and that direct loss, damage or cost of completion or correction must otherwise be recoverable under the contract.
- A payer may only withhold the reasonable value of the disputed portion of the construction work from a progress payment, provided timely written notice is given.
- If a payer fails to make payment, written notice of default must immediately be provided, and the default can be cured during any cure period in the contract.
- If the payment default is not remedied, the payee may lien or suspend work performance.
- Provided the payee who has not been paid suspends performance or liens, and gives the required written notices the timing of that payee’s own payments is extended to the earlier of the date of final determination of lien rights, date of expiry of lien rights, date on which the default is corrected, or the date on which the default is settled.
- In any event a general right is given to a contractor or subcontractor who does not get paid to suspend performance or terminate the construction contract, in accordance with the provisions of the construction contract.
- If a contract is silent, or prohibits suspension or termination, unpaid contractors or subcontractors may suspend performance or terminate a contract and not be in breach of contract.
- If work resumes following a suspension, the party resuming work is entitled to reasonable remobilization costs in addition to such other amounts as are owed.
- The Act is to provide various rights to information, including remedies for failure to provide information or for providing misstated information.

A joint OGCA/NTCCC task force will present its recommendations to government representatives as a first step toward the drafting of legislation to incorporate these principles.



The Mathews Dinsdale Minute



As you all know, every third year (2007, 2010, 2013) the turn of the calendar brings bargaining season for the renewal of the Collective Agreement. We will have more for you on bargaining in a future Mathews Dinsdale Minute.

What you may not realize or know is the last 90 days of the expiring collective agreement brings with it what is referred to as the “open season”. This is the time when various trade unions can fight with each other about the right to represent each others’ groups of employees. When a union applies to replace another union in representing a group of employees it is called a “raid”. Raids are especially common and problematic in lowrise and high rise residential construction.

This year, the carpenters and the labourers unions have been very active in their raiding activities, especially in and around Toronto. In the first few days there were in excess of 35 raid applications filed, most of them involving trim carpentry. It is not hard to imagine how the union organizing efforts, the applications, the votes and any related litigation can be disruptive to job sites.

In addition, there are significant time pressures on employers. As raid applications have the same timelines as regular applications for certification, once an employer receives one they have only two (2) business days to respond to it. Responding in a timely manner is very important for the employer.

While we have not seen raiding activity in your area of the construction industry it is entirely possible that it could start. In that context, it is very important that you be aware of all packages and/or faxes being delivered to your offices and that you take the proper steps to retain counsel and respond to any applications if you get one.



Membership Survey

We wish to thank everyone that completed the Association’s survey and trust that we have not been too intrusive. Having to complete a survey, we are sure, is not an important priority especially when everyone is extremely busy trying to run their businesses, so the time you have taken was extremely appreciated. A survey such as this, however, will give us the information and feed back to allow us to focus this organization on the membership’s needs. Over the next several weeks the Review Committee and the Board of Directors will analyze and summarize the results and provide a full report to the membership. Of course the intention is to move forward on the gathered information and provide you with those services that you have identified as being important.



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