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Standing Committee on the Legislative Assembly

Construction Lien Amendment Act, 2017

2nd Session
41st Parliament

Wednesday 15 November 2017

Chair: Monte McNaughton
Clerk: William Short

Journal des débats (Hansard)

M-24

Comité permanent de l'Assemblée législative

Loi de 2017 modifiant la Loi sur le privilège dans l'industrie de la construction

2e session
41e législature

Mercredi 15 novembre 2017

Président : Monte McNaughton
Greffier : William Short

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Hansard Reporting and Interpretation Services
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

COMITÉ PERMANENT DE L'ASSEMBLÉE LÉGISLATIVE

Wednesday 15 November 2017

Mercredi 15 novembre 2017

The committee met at 1304 in committee room 1.

CONSTRUCTION LIEN AMENDMENT ACT, 2017

LOI DE 2017 MODIFIANT LA LOI SUR LE PRIVILÈGE DANS L'INDUSTRIE DE LA CONSTRUCTION

Consideration of the following bill:

Bill 142, An Act to amend the Construction Lien Act / Projet de loi 142, Loi modifiant la Loi sur le privilège dans l'industrie de la construction.

The Chair (Mr. Monte McNaughton): Welcome, everyone, to the Standing Committee on the Legislative Assembly. I would like to remind committee members that proceedings start at 1 o'clock for this committee.

MR. THEODORE B. ROTENBERG

The Chair (Mr. Monte McNaughton): We will have our first presenter: Theodore Rotenberg.

Mr. Theodore B. Rotenberg: Rotenberg.

The Chair (Mr. Monte McNaughton): Rotenberg. You'll have 10 minutes for your presentation—up to 10 minutes—and then the time will be split equally between each party, up to five minutes. You can begin.

Mr. Theodore B. Rotenberg: Thank you, Mr. Chair. The people who appear before this committee on the changes to the Construction Lien Act, generally speaking, are stakeholders or people who have an ideological conviction. I am neither. I have 45 years of practice as a litigation lawyer, 37-plus of them for the new home industry, Tarion issues and construction issues on behalf of all of the stakeholders. I represent and deal with clients who are largely entrepreneurial.

My concern, in the 30-odd recommendations and a brief summary that I'm going to give you, is one concern and one concern only: Make the remedies that are granted by this act meaningful and effective. All too often you have, in theory, a legal remedy, but in practice you can't make it work. I'm informed by my experience about the things that don't work, and that's what I'm here to tell you about today.

The first point has to do with the distinction between liens that attach to property and liens that only attach to a flow of money, which are basically public sector liens. The policy issue is really very simple: If there is no realistic possibility that a piece of real estate is ever going to be sold to satisfy a lien claimant, why put the lien on title? From my experience as a practitioner, this makes no sense. I understand the logic of Mr. Reynolds and Ms. Vogel in their recommendation saying, "Put the lien on where there's a risk that somebody could legally go bankrupt," but in the real world, in the 21st century, if you have a lien on a building in the Darlington facility or on the SickKids hospital, realistically, are those properties ever going to be sold to satisfy a lien? If the answer is that they'll never be sold, why register the lien? This involves costs and expense.

Our law has always provided that we don't register liens on highways, railway rights of way, and property of the crown and of crown agencies. The suggestion that I make to you is to broaden what is in the bill to include district school boards, lands in subdivisions which are intended to become school land, parkland or buffer zones, and land in any broader public sector agency, such as a hospital or, let's say, Toronto social housing buildings. That seems to me to be a worthwhile objective.

As a practising lawyer, however, I have a practical problem sometimes in figuring out which property is a crown agency and which isn't. Typically, in my practice and the practice of many of my colleagues, we get called on day 42 or 43, if we're lucky, to put a lien on. When the act changes, we're going to get called at day 57 and 58, if we're lucky, because the A-type personalities who exist in this industry tend to want to try and solve their problems and only come to us at the last possible minute.

What I have suggested to you is to set out in the regulations a procedure for all of us to identify who to serve. It can be referenced to a website; it can be referenced to a default position, but give us some guidance so we're not scrambling at the last minute to try and figure out, "Do we lien or do we not lien on title, and who do we serve?" If you do that for us, I and my practising colleagues will be very grateful.

A second example of liens that don't work in the real world are liens on condominiums. Typically, the lien on a condominium is going to arise in three circumstances.

The first: when the developer hasn't paid everything—in which case, those liens will be paid off as the units sell, just before title transfer.

The second: some homeowner or unit owner renovates his unit and the contractor isn't sure whether he has renovated common elements.

The third situation is where you have the condominium itself hiring the contractor and there's a dispute. When you have a 200-unit high-rise condominium, you have 200 residential units, but typically all of the parking units and all of the locker units are unitized. That condominium could have 600 or 700 units in it. Somebody puts a lien and they register it on 700 units, and we're all scrambling to figure out: "If the lien isn't paid, are we going to sell 700 units?" This makes no sense.

The condominium corporation, however, has a better remedy: Unlike any other private sector group, it has the right to levy a special assessment. That assessment, if not paid, can be registered on title, and it takes priority over all pre-existing liens and encumbrances and mortgages. Put in the act that all you have to do is serve the claim for lien on the condominium corporation, and give us a procedure for service—and that will be easier now with the changes to the Condominium Act. Provide that if the condominium won't pay off the judgment from the lien, an administrator can be appointed who would make the special assessments. It's easy, cheap and workable. Please do it.

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The third point is liens on leasehold interest. This has never been a really effective remedy. The proposal that came from the Ontario Bar Association subcommittee on this issue, of which I was a member, was that you lien only, and the landlord is responsible only for the money that the landlord pays the tenant for leasehold improvements.

We wanted to turn the landlord from a prospective owner into a payer. Somehow, when this act got enacted, that idea never got picked up, and now the payment is confined to the holdback. It shouldn't be. It should be the whole amount payable. That's effective, that's efficient and that money is intended to pay for the improvements that the contractors would have put into the leasehold interest.

The other change to make to leasehold interest is to make provision to protect a landlord for doing all those prudent things, and only those prudent things, that a landlord has to do: Approve the plans, make sure the work is inspected and rectify deficiencies that don't conform to the plans. If he does that, he should be exempt from any further liability. That's a good idea. Please follow it.

The next point I have is one where I have a fundamental disagreement with Mr. Reynolds and the expert reviewers on removing set-offs from outside the improvement.

There are three problems with this. The first problem is that, normally, it's just to allow the set-off. If a contractor has one contract on project A and project B, and the electrician gums up and causes $50,000 or $100,000 worth of damages, the contractor should be able to set that off on the payments coming to the electrician from project B. Yes, it's important that the payments flow down in project B, but it's also important that the contractor doesn't get stiffed for this money if the electrician goes bankrupt, which can and often does happen.

This was a well-intentioned mistake. Leave in the words "whether or not related to the improvement" in subsection 17(3).

If you don't want to do that, you have to do two other things. The first is to take the carve-out for the new-home construction industry in subdivisions for lot-by-lot exemptions. That is for the benefit of those contractors so that they get their holdbacks quickly. If you don't put that exemption in, you're going to defeat the purpose of prompt payment and early release of holdbacks in subdivisions, because the builders will not put that provision in and will want to preserve their set-off rights.

The last point is that if you're going to remove the set-off rights, make it clear that the common-law rules of set-off and equitable set-off do not apply. Currently, this is left as ambiguous.

Finally, have a little sympathy for the only people in large projects who have no lien rights: the subcontractors, particularly those at the primary stage. They can finish their work months ahead of the completion of the project. They can't lien an ongoing project if they expect to get work from other people. Their lien rights will expire, and if the owner has set-off claims, they can't protect their holdback.

The last point, on better protection for subcontractors, has to do with an early release of a subcontract once there has been 100% completion of that. Mr. Reynolds and Ms. Vogel recommended against that being mandatory, only being optional. Because owners pay interest on the money they use to pay that amount, they're very reluctant to do it, and these contractors can have, in some cases, millions of dollars in holdback money that they can't get released, even though their contract has been paid.

Put a dollar value in ceilings so that a general contractor or an owner is not burdened with releasing holdbacks and dealing with 30 or 40 different contractors. My suggestion is a $2-million number where, if it's over that amount on 100% completion of the subcontractor, payment should be made.

Those, in brief, are the main policy issues that reflect the objective I've said to you that I think is important, and that my experience teaches me is important. You have the framework of a very good statute. You also have the opportunity—

The Chair (Mr. Monte McNaughton): Thanks, Mr. Rotenberg. We have to move to questions now. The first set of questions will come from MPP Bailey.

Mr. Robert Bailey: Thank you, Mr. Rotenberg, for your presentation. I understood that you said you might not be able to complete your presentation, so if you'd like to take my time and just finish up?

Mr. Theodore B. Rotenberg: The only other point I would mention has to do with the trust provisions which require certain bookkeeping requirements of contractors and subcontractors. It wasn't applied to owners because the public sector owners such as municipalities would find it too burdensome, and they are correct. It would be

too burdensome and unnecessary because public financing doesn't work the same as private financing.

But for private sector owners, it would be a benefit to them and to their subcontractors and everyone if those private sector owners had the requirement to keep those separate electronic records of what money is spent on each project. That would be the only other point in terms of substance that I would add. Everything else is really mechanical and it's a lot of detail, and there are other people here who have to speak as well.

The Chair (Mr. Monte McNaughton): Perfect timing. Mr. Bisson?

Mr. Gilles Bisson: I'm good.

The Chair (Mr. Monte McNaughton): Okay. We'll move to the government: Mr. Berardinetti.

Mr. Lorenzo Berardinetti: On behalf of the government, sir, thanks again for your presentation. In the very first part, you mentioned, about the liens on properties such as SickKids hospital and other public properties, that it doesn't work. What would you say would work better, then?

Mr. Theodore B. Rotenberg: Treat them the same way as we treat liens on public lands. In other words, you don't register it on title. You serve a notice of lien. I will also tell you that for universities it's the same thing: If we renovate Hart House at the University of Toronto, nobody is going to sell that building.

The other problem—it's mechanical, but in some universities, because of the way their land assemblies work, it's very difficult to find the right building where the work was done, particularly if your client is a supplier who is not on site. I think there's an easy, workable solution. Yes, in theory, the hospital could go bankrupt, but I can't imagine a provincial or municipal government not stepping up to the plate for these players.

Mr. Lorenzo Berardinetti: Okay, all right. Those are my questions.

The Chair (Mr. Monte McNaughton): Thank you very much for your presentation today.

ONTARIO ASSOCIATION OF ARCHITECTS

The Chair (Mr. Monte McNaughton): I'd now like to call upon the Ontario Association of Architects. Good afternoon.

Mr. John Stephenson: Good afternoon.

The Chair (Mr. Monte McNaughton): You will have up to 10 minutes for your presentation. Questions this time will begin with the third party. If you would just state your name for Hansard, please.

Mr. John Stephenson: Thank you, Mr. Chair. My name is John Stephenson and I'm the president of the Ontario Association of Architects.

The OAA is the regulator and professional association for architects in Ontario. Established by the Architects Act and dating back to 1889, it is the legislated mandate of the OAA to regulate the practice of architecture to ensure that the public interest is served and protected.

I would like to start by thanking the government for undertaking this important initiative to modernize the Construction Lien Act. The OAA has collaborated extensively with the government over the Construction Lien Amendment Act, including three submissions and numerous meetings and discussions with Mr. Reynolds and Ms. Vogel as well as government officials and staff, and we have appreciated the positive reception of our input and comments to date.

I would also like to acknowledge that, based on recent communications from Minister Naqvi, it appears that our concerns regarding performance bonds will be addressed through the addition of a clarifying statement to "exclude architects, engineers, and consulting professionals from the requirement." The OAA applauds the government for this important amendment.

With that said, I sit before you today to communicate a few remaining concerns and recommendations from the architectural profession. Most importantly, there remains a lack of clarity regarding substantial performance as it applies to architectural services. Also, while attempts have been made to clarify the transition period, the OAA remains concerned about a lack of clarity as to the effective date of the new act and how it applies to existing contracts. I'll expand on these points now.

Firstly, regarding substantial performance: Regarding substantial performance, the OAA believes that the concept of substantial performance applies, and should apply, to architectural services. During ongoing conversations that we have had with Mr. Reynolds and Ms. Vogel, we were pleased to hear they agree with this interpretation.

However, not all lawyers share Mr. Reynolds and Ms. Vogel's opinion. Some construction lawyers do not believe substantial performance applies to architectural services. The reason for this is the definition of "improvement" in subsection 1(1) of the Construction Lien Act. This definition does not explicitly reference design services, instead focusing on largely physical improvements such as repairs, construction and demolition.

While Mr. Reynolds and Ms. Vogel felt the definition of "improvement" did not require modifications as it already encompassed design services, the OAA recommends that a clarifying statement be appended to the definition of "improvement" to resolve this issue.

This statement should make it explicitly clear that design services are an improvement so as to end any debate within the legal community as to whether substantial performance applies to an architect's contract.

If the government does not wish to modify the definition, our concern could also be resolved by adding this clarifying statement in section 2(1), which deals with the determination of substantial performance. In either case, the clarifying statement could follow the form of a similar statement currently included as 14(3) dealing with liens.

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Secondly, then, to speak about the transition period: Regarding the transition period, the OAA does acknow-

ledge that the minister has provided some clarifications. However, outstanding concerns remain regarding, firstly, the effective date of the new act, and, two, how the new act applies to existing multi-year, multi-project contracts.

Architects and other members of the design and construction community should have a clear understanding of how their lien rights or prompt-payment responsibilities, and the administration of these requirements, for which architects are often responsible, are to be applied in instances such as with multi-year, multi-project master services contracts and vendor-of-record contracts.

It is our understanding that the government intends for these types of contracts to continue to be governed by "the previous regime." In other words, pre-existing contracts will not be governed by the requirements of the new legislation. These master contracts would therefore continue to dictate the terms and conditions of subsequent work for five or more years beyond when this legislation comes into force, despite the fact that these new projects—not pre-existing work—may commence long after the Construction Act is passed. This could continue to disenfranchise architects and others from the important changes and protections that government has put in place for years to come.

The OAA recommends that all provisions of the proposed legislation apply to any individual project contract that is dated after the effective date of the legislation, regardless of whether there was a pre-existing master services or vendor-of-record contract.

I thank you very much for the opportunity to speak to you today, and I look forward to addressing any questions you might have.

The Chair (Mr. Monte McNaughton): Thank you very much. Mr. Bisson.

Mr. Gilles Bisson: My only question is: How practical is it to put existing contracts—jobs that have been started—under this legislation? Wouldn't that create some problem down the road?

Mr. John Stephenson: In our opinion, no. The structure of a master contract or a vendor-of-record arrangement is such that you sign an agreement which is an agreement to agree at a later date to enter into a subsequent contract for a specific project or improvement. The effective date of that subsidiary or secondary contract should be the triggering date for applicability to this legislation. It seems that it would be very clear.

Mr. Gilles Bisson: That's good.

The Chair (Mr. Monte McNaughton): Ms. Mangat.

Mrs. Amrit Mangat: Thank you, Mr. Stephenson, for your presentation.

We all know that architects play a key role in construction work, from design to certified payments. If this legislation is passed, do you think it will improve the way architects carry out their functions in construction projects?

Mr. John Stephenson: I think there are a number of very significant improvements in this legislation, which we applaud and which we think will, in fact, aid our profession in the work that we do in administering contracts on behalf of owners and contractors. So, yes, to answer your question, I think there will be an improved regime which all the parties will benefit from, including architects.

Mrs. Amrit Mangat: Okay. Can you expand on that?

Mr. John Stephenson: Well, I do think the added clarity which addresses the nuances of multi-phase contracts in particular will be of great benefit. The permissive language in the proposed new act will allow owners and contractors to agree to deal with progressive release of holdbacks and certification of substantial performance where there are clearly multi-phased contracts at stake that extend over great lengths of time. This will be of benefit to all the parties, particularly given that significant funds that would be otherwise tied up for many, many years could be released earlier.

Mrs. Amrit Mangat: Thank you.

The Chair (Mr. Monte McNaughton): Mr. Bailey.

Mr. Robert Bailey: Thank you for your presentation. Could you give a little more explanation to—I think it was the fourth paragraph down where you say you'd suggest that they make it explicitly clear that design services are an improvement, to end the debate between the legal communities. Do you see this, the way it's written, as going to cause a lot of issues when they get into disputes, the way the present bill is written?

Mr. John Stephenson: The way it's written, because it doesn't specifically, expressly identify professional services as a component of an improvement, opens the door to interpretation. Our experience has been that often this interpretation is uneven and there are, in fact, members of the legal profession who have advised owners that professional services are not an improvement, and therefore not subject to substantial performance. So that's our concern, and we think there's a simple remedy in adding a clarifying statement which says, for greater certainty, this is the case.

Mr. Robert Bailey: Okay, thank you. That's all.

The Chair (Mr. Monte McNaughton): Thank you very much for your presentation today.

Mr. John Stephenson: Thank you, Mr. Chair.

THE ADVOCATES' SOCIETY

The Chair (Mr. Monte McNaughton): I'd like to call upon the Advocates' Society. Good afternoon. You have up to 10 minutes for your presentation. Questions this time will begin with the government. If you would both state your name for Hansard and then begin with your presentation, please.

Mr. Christopher Stanek: Hi, my name is Christopher Stanek. I'm a lawyer at Gowling WLG, and I'm here today representing the Advocates' Society. I'm a member of the Advocates' Society construction law practice group executive. This is David Mollica from the Advocates' Society.

The Advocates' Society is a not-for-profit association of over 5,700 litigators throughout Canada, and the Advocates' Society has followed Bill 142 with interest.

We previously made submissions to the expert review team prior to the release of the expert review report upon which Bill 142 is based, and the Advocates' Society also met with Attorney General Naqvi and provided submissions prior to the introduction of Bill 142.

Following the introduction of Bill 142 in the summer of 2017, the Advocates' Society construction law practice group executive held a town hall meeting of our members to discuss Bill 142. Most of the proposed legislative amendments to the Construction Lien Act were very positively received. In particular, the proposed changes that would allow, for the first time, a construction lien action to be litigated in Small Claims Court as well as the removal of the prohibition on breach of trust claims being heard together with lien actions were agreed to be well overdue.

But there were concerns raised about the proposed repeal to sections 53 to 57 which include the repeal of the procedural pleadings element, and sections 59, 60 and 61, 66 and 69. The theory behind this, we believe, was that the construction lien proceedings would proceed under the regular rules of civil procedure and the individual sections that regulated construction lien litigation were unnecessary. However, many of those sections are actually critical to provide jurisdiction with respect to how construction lien proceedings are now litigated. Certain concerns were raised by participants at our town hall with respect to the effect of these amendments.

To assist this committee and understanding the implication of these changes, I'm going to outline how construction lien actions are litigated under the current act and the importance of sections 60 and 61 in particular, so that the committee can better understand our concerns. If you want a comprehensive review of how lien actions are litigated in Ontario, I refer you to a case decided by Master Sandler in 2004, Pineau v. Kretschmar Inc., 2004 CanLII 24478.

How lien litigation proceedings go are as follows. In Toronto, if any party, usually the plaintiff, wants a master to hear the case—which is the usual procedure—then the party must obtain a judgment of reference under subsection 58(1), and then it will be referred to a Toronto master or a case management master. Under subsections 58(1) and 67(6), these detail how the motion for a judgment of reference is to be made. The form of judgment of reference is set out under form 16. In that form, it refers the jurisdiction of a judge to the master to determine the action on a trial. Once the judgment of reference has been obtained, then the plaintiff can make a motion to the master without notice to have a date, time and place fixed for the trial of the action. So it's usually a routine motion. Once this order has been obtained, the party who obtained it must serve a properly worded notice of trial on all persons described in subsection 60(2), and that's a requirement of subsection 60(4). This is a very important provision because it makes the construction lien proceeding a class proceeding—that's the provision that directs service of a notice of trial on everyone with an interest in the land; otherwise, they're not parties to the litigation.

As Master Sandler says in Pineau v. Kretschmar, "This notice of trial is a critical document." Once that's served, the date for trial is fixed. Colloquially in Toronto, we call this the "first construction lien pre-trial." It's really the first day of trial. Once the master conducts this first pre-trial, he or she is seized of the reference. As a matter of practice, construction lien masters do not order settlement meetings but deal with those issues at the first pre-trial, which is supervised by a master and is a more effective procedure than an unsupervised settlement meeting under sections 60 and 61.

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Outside of Toronto, those settlement meetings under sections 60 and 61 are often ordered. Sometimes they're supervised by a judge; sometimes they're not. Then these settlement conferences cover the matters usually covered by the first pre-trial under the Toronto procedure.

If the parties don't agree on production and discovery, leave for any discovery motions goes to the judge on a motion. Once discovery is complete, then the section 60(4) notice of trial is served as required, and then a trial date is set.

It's critical to note that under section 37(1) of the Construction Lien Act, which is not changed by Bill 142, there is a provision that if, within two years after the date of the statement of claim served, the action or an action in which a lien may be enforced is not set down for trial, the lien expires. They lose the lien right if not set down for trial. All of this has to be done within two years, which we believe is the reason for the special procedures under the current Construction Lien Act.

It is section 60(4) that provides that an action to prove a perfected lien is a class proceeding requiring notice to every party with an interest in the improved premises. The repeal of that section is somewhat confusing because the priority section, section 79, continues to remain. That identifies streams for each class of payer, and it remains unaltered.

In light of the proposed repeal of subsection 60(4), the following questions aren't currently answered by Bill 142: Is a lien action still a class action? What mechanism exists to deal with priorities under part XI of the Construction Lien Act? How can pro rata distribution under the priority section be ensured if a party with an interest in the improved premises is not part of the action in which the lien is to be proven?

Moreover, eliminating the section 60 settlement conference and leaving the parties to the regular rules of civil procedure seems to be at odds with the desire for summary proceedings. We note that the expert review did not recommend repeal of sections 60 and 61.

Bill 142 does include a new proposed subsection, 50(3), which provides that proceedings would be of a summary nature. But with the proposed elimination of the restrictions on production and discovery of documents and discovery of witnesses, and no mandatory case management, the new legislation may not have the means through which summary procedure can be enforced. The regular rules of civil procedure would apply to all cases.

Our members are concerned that it will undoubtedly take longer to litigate construction lien actions under the proposed legislation. Specifically, the "discovery culture" that encourages litigants to produce and review every document and fact about a case prior to trial is a concern.

Also, with the deadline to set the lien action down for trial in section 37 unchanged, litigants will still need to make strategic decisions within this two-year window. We note that the period provided to set a matter down for trial under the regular rules is five years. The Construction Lien Act continues to keep it at two years.

There was a further concern raised at the town hall meeting regarding the application of rule 50 pre-trial procedures under the regular rules of civil procedure. Rule 50 of the rules of civil procedure requires discovery to be completed before a pre-trial can be ordered.

As I noted, the current practice is a pre-trial or section 60 settlement conference before discovery. Moreover, if discovery is being carried out as a matter of right under the rules of civil procedure, it may be ambitious to expect that it will all be completed within two years.

The Advocates' Society believes that if proceedings are not of a summary nature, lien actions have the potential to increase the court's caseload. Construction disputes are notorious for having reams and reams and reams of paper. Having all of that produced and discovered within the process creates a very real potential to overload court offices.

Many motions are currently being brought in Toronto for all over the province. In particular, there's a potential to overload Toronto court offices.

Mr. Gilles Bisson: Excuse me?

Mr. Christopher Stanek: Toronto court offices.

Additionally, the repeal of subsection 67(2), the prohibition on the appeal of interlocutory matters, now allowing appeals where they weren't allowed before, could give recalcitrant parties another opportunity to delay litigation. These are all proceedings, we note, that involve encumbering lands until they are resolved. It was noted at the Advocates' Society town hall meeting that the expert review report, which was before the Attorney General when Bill 142 was drafted, recommended that the summary nature of construction lien actions be removed from the act.

The Chair (Mr. Monte McNaughton): We have to move to questions now. Ms. Wong?

Ms. Soo Wong: I'm going to give you some time to talk about adjudications because I know you're not finished.

Mr. Christopher Stanek: I have very little left. As I was saying, the expert review report recommended that these sections be removed, but it also recommended that all construction lien claims be case-managed. By removing the summary proceedings sections without including case management, Bill 142 may increase the additional overload on courts.

Ms. Soo Wong: Okay. I have a very short time. I've got a couple of questions dealing with adjudication.

First things first: How would adjudication help with prompt payment? I didn't hear it in your written submission or your verbal presentation.

Mr. Christopher Stanek: Adjudication is, the way I understand Bill 142, not part of the legislative process. It's a process that's connected with prompt payment that the parties carry out. From what I understand in Bill 142, it's not a litigation matter. Litigation occurs notwithstanding the right to adjudication. My comments are focused on litigation.

Ms. Soo Wong: On page 2 of your written submission to the committee, you're talking about "in 40 days." I think you have concerns about these days, saying that it's a short window. How many days are you suggesting? You said, "The adjudication process is contemplated to be completed in 40 days, and access to the courts in that short window would ... be nearly impossible." What are you suggesting to the committee?

Mr. Christopher Stanek: It has been raised among our membership that for the adjudication—

The Chair (Mr. Monte McNaughton): I'm sorry; that's all the time for government questions. We have to move to Mr. Bailey.

Mr. Robert Bailey: Go ahead and finish. I find that interesting.

Mr. Christopher Stanek: Okay. It has been raised that 40 days to find an adjudicator, have the person become knowledgeable on the issues, set a procedure to have the adjudication conducted, hear submissions in whatever form and then make a decision is ambitious.

Ms. Soo Wong: So what are you recommending—

The Chair (Mr. Monte McNaughton): No, we're over here. Mr. Bailey?

Mr. Robert Bailey: Just one more point: So it's your—we can share the next time—contention that this legislation would make it more contentious and delay the outcome of the lien—the payment?

Mr. Christopher Stanek: We think that if there is not a current limit on discovery and if it is not judicially case-managed or case-managed by a master, then individual actions could run away with production and discovery issues and delay resolution.

Mr. Robert Bailey: Okay.

The Chair (Mr. Monte McNaughton): Mr. Bisson?

Mr. Gilles Bisson: Clear as mud. Thank you.

Mr. Christopher Stanek: It's presented by a lawyer.

Mr. Gilles Bisson: That's right.

The Chair (Mr. Monte McNaughton): Great. Thank you very much for your presentation.

ONTARIO HOME BUILDERS' ASSOCIATION

The Chair (Mr. Monte McNaughton): I'd like to call upon the Ontario Home Builders' Association. Good afternoon. You have up to 10 minutes for your presentation. If you'd begin with your name, please, for Hansard. This time, the official opposition will begin the questions when you're done.

Mr. Joe Vaccaro: Thank you very much, Mr. Chair. Good afternoon. My name is Joe Vaccaro. I am the CEO of the Ontario Home Builders' Association. We represent 4,000 members across the province, organized in 29 local associations representing the new home construction and renovation industry.

Today I will provide some general comments about the legislation and will pass it on to Eric Hoffstein from Minden Gross to say some additional technical analysis.

The legislation in front of you really is a massive overhaul of the current system. As you heard from municipalities and other public sector buyers of construction services, this will add new costs through anticipated added litigation, payment certifiers and administration.

Ontario will be the only jurisdiction in the world that has both a lien process and mandatory adjudication. While this might be a win for the legal community because it provides another outlet for litigation, there's a loss for small businesses across Ontario, which will have a difficult time adapting to this new and complicated process.

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Residential construction has a very different payment process compared to ICI construction. For new home builders it is an individual home purchaser as an owner, creating a complete different set of warranties, pressures and expectations. Our sector is also different as it is small business-dominated, with family business as the common model. The legislation requirement that allows 14 days to record deficiencies makes it administratively difficult when you recognize the need for municipal inspectors, engineers and other certifiers within a small window to determine the accuracy of an invoice. It takes 40 trades to build a home, and there is a minimum of 11 Ontario building code inspections before a new home can be occupied.

Considering the regulatory environment in which residential construction works, we appreciate that the government maintains the lot-by-lot lien provisions in subdivisions, contrary to the expert panel recommendations. By maintaining this provision, it means that one trade working on one home in a subdivision could not lien the entire project. This protects innocent homebuyers from liens that would delay them from moving into their new homes. This way, homeowners do not suffer because of a contractual dispute on a house or an individual condo unit in a completely different part of the subdivision or building.

This decision by the government demonstrates why residential construction is different and why we require a separate regulatory framework for our sector. One of our main criticisms of this bill is that it doesn't differentiate between large and small contracts or between public and private. While many US states have prompt payment, a significant number of them only apply to public contracts. In some states where it does apply to private contracts, there is a minimum threshold that must be met. In Massachusetts, prompt payment only applies to contracts over $2 million.

Different sectors and construction owners have different realities. For example, the government has indicated that they would provide more leeway for AFP projects than for other projects, as was stated in the Attorney General's email on October 23. Prompt payment for AFP projects will allow for certification of payment prior to the submission of an invoice. In other words, large AFP conglomerates will have the ability to verify work before an invoice is submitted—a different set of rules for the AFP side.

We believe we need a different set of rules for the renovation and residential construction sector, and that will be our core recommendation to the government.

With that: Eric?

Mr. Eric Hoffstein: Thank you. My name is Eric Hoffstein, from Minden Gross. I'm a lawyer. I'm here to talk about the technical aspects of the proposed legislation.

The residential construction industry is dominated by owner-managed family-run businesses with small numbers of employees and limited resources for project administration. My comments are going to focus on three areas: the prompt-payment regime, the adjudication regime, and the interplay between the draft legislation and collective bargaining agreements with unionized workers.

Looking first to the prompt-payment regime: Bill 142 contemplates that on receiving a proper invoice the owner will decide whether the work complies with the project's specifications. If there's any doubt about the quality of the work that has been done, then the owner would be well advised to give the contractor a notice of nonpayment. Upon receiving that notice of nonpayment, the contractor has potentially seven days to give a notice of nonpayment to a subcontractor and 14 days to refer the dispute to adjudication. This gives the contractor just 21 days to resolve the issue before the adjudication process gets invoked. During that time, the contractor and owner have to inspect the work; they have to coordinate between the owner's deficiency claims and the subcontractor's work; they have to complete the corrective work; and have the owner inspect the work and approve that work for payments. Keep in mind that in the residential construction business, the owner may not be an experienced construction builder or be sophisticated when it comes to construction matters, and may not always get it right. For an owner-managed business with limited resources and ongoing construction obligations in relation to the rest of the project, that timeline is practically impossible.

Furthermore, OHBA suggests that Bill 142 include a provision ensuring that contractors and subcontractors will be given access to the project site within the timelines contemplated by the statute to inspect any alleged deficiency concerning their work.

On a separate note and as a general comment, we note that Bill 142 provides several seven-day timelines for payments; that is, a contractor may be required to make a payment within seven days of having received payment

from the payer. Payments in the residential construction sector are often made by cheque. Even assuming that a cheque is deposited on the same day it's received, most banks will require up to eight days for a cheque to clear. The Legislature should consider increasing the timeline in Bill 142 to 10 days in order to avoid payment problems and additional administrative hassles in the event that a cheque doesn't clear the contractors' accounts.

I'll turn now to our concerns with the adjudication process. The adjudication process contemplated by Bill 142 does not lend itself well to the residential construction sector. Because contractors are often small family-run businesses, they have limited resources to prepare for and attend an adjudication in the middle of a project while they're working at the same time to meet the project deadlines.

The cost of lien proceedings already imposes a financial strain on any contractor in the residential sector. The added cost of the adjudication procedure will inevitably put smaller contractors at a disadvantage when they don't have the time and money to consult with legal counsel and they face an owner or general contractor with greater financial resources. An unscrupulous owner or general contractor can use this extra procedural step to take advantage of a smaller contractor or subcontractor who has fewer resources.

Finally, I'll turn to the possible conflict between the Bill 142 provisions and collective agreements that are common in the industry. As a general comment, Bill 142 does not take into account the timelines which are normally imposed on contractors by the collective agreements which govern unionized workers. The disconnect between the statutes and the collective agreements can put contractors at a significant disadvantage.

By way of example, one union collective agreement requires employers to inspect work within five days of the invoice and to deliver either a completion slip if the work is done satisfactorily or a deficiency list if the work is not done satisfactorily. Payment must then be made within 15 days of the invoice date. There is a provision of two to three days to correct any deficiencies that have been identified. Under the timeline set out in Bill 142, the general contractor or owner might raise complaints well after the five-day timeline, even possibly after the 15-day timeline for payments which exists in the collective agreements. This raises the possibility of a conflict between the legislative regime and the contractual obligations under the collective agreement.

To give you a very real example: Even if the invoice for the union's work is immediately passed up to the owner, if the owner raises concerns more than five days later, as the owner is entitled to do, the contractor who engaged the union worker may be deprived of their opportunity to complain to the union or require the union worker to correct any deficiency identified by the owner. Furthermore, if the owner's complaint is made more than 15 days from the invoice date—which, again, the owner is entitled to do—the contractor would have been obliged to pay the union worker before even being aware of the owner's complaint. This runs contrary to the very principles on which the new legislative regime is founded: to protect payers in the construction pyramid from having to pay for deficient work without having an opportunity to adjudicate that dispute first.

In conclusion, these comments are intended to highlight the differences between the residential construction sector and the other sectors of the construction industry. While many of the principles, such as prompt payment and efficient adjudication, are very attractive to the residential construction sector, different processes and regulations are needed to better align with the nature and size of the residential sector's players.

The Chair (Mr. Monte McNaughton): Mr. Bailey?

Mr. Robert Bailey: Could you speak a little bit more about: What would be the proper timeline? I was interested in the timing, the 21 days, and you talked about the 10 days for the cheques to clear. The other one was about 21 days. What would be a more appropriate time—30 days?

Mr. Eric Hoffstein: Are you talking about for a cheque to clear?

Mr. Robert Bailey: No, about the other time, when you can start—

Mr. Eric Hoffstein: That would require a more fulsome review of how long the residential sector players need. But at the very least I think there would have to be at least 30 days for the contractor to just review the deficiencies that the owner alleges.

Mr. Joe Vaccaro: I think the challenge for us is that if you create an opportunity to differentiate different kinds of construction purchasers—through either a threshold of the contract or whether it's residential, ICI, AFP or what have you—in the legislation, then we have the ability through regulatory work to drill down and figure out what fits and what is functional within those different sectors.

The challenge we have is that the bill presents itself as "every construction buyer is the same," and I would say to you that for a small renovator in Stratford versus a large construction builder who is building a hospital, they may both be in the construction business, but they are in different types of businesses with different types of arrangements. This bill does not, at this point, create that difference or that space where we can actually have a sector-specific discussion.

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Mr. Robert Bailey: Okay, that's fine.

The Chair (Mr. Monte McNaughton): Great. Thank you. Mr. Bisson?

Mr. Gilles Bisson: Interesting presentation. Generally, you're not in favour of the bill, right?

Laughter.

Mr. Joe Vaccaro: Generally, we recognize the bill is here and we have to make the best of it, yes.

Mr. Gilles Bisson: No, but generally. I hear your arguments around timing but I'm just wondering how you achieve that. If you have to carve out every single type of contractual arrangement, I don't know, legisla-

tively—is that even possible? I'm just looking over at legislative counsel to give me some—

Interjection.

Mr. Gilles Bisson: I hear what you're saying but I'm wondering how practical that is.

Mr. Joe Vaccaro: Well, I would say, with respect, that if you recognize the American states and that legislation that people keep pointing back to, they've already done that. They've already split private versus public, and they've also created thresholds for contracts.

Mr. Gilles Bisson: They also don't have a public health care system so I won't use them as an example.

Mr. Joe Vaccaro: Fair enough, but, again, if you want to look back at this piece—

Mr. Gilles Bisson: It's a different ideology, right?

Mr. Joe Vaccaro: And fair enough. So I guess the question is, we are now bringing in a new regime that maintains current lien rights and adds adjudication to it. Okay, and now we have to figure out, contractually, in our minds at least, if it's fair to treat a renovator from Thunder Bay the same as you would a large hospital constructor.

Mr. Gilles Bisson: And I have some sympathy for you. I was a small contractor so I get what you're getting at. But on the principle that somehow or other the rules don't apply to me because I'm small, if we apply that to other laws across Ontario, I don't know what the heck that would mean.

Mr. Joe Vaccaro: But I would suggest that we're not suggesting that. The rules will apply but when you get into the details of the rules, it's the right rules for the right sector for the right reality. That's our challenge. When I speak to members across the province, they're challenged. They're looking at this piece and they are looking at how lien rights are maintained and there's adjudication and there's this and there's that—

The Chair (Mr. Monte McNaughton): Thank you very much. We have to move to the government, and Mr. Berardinetti.

Mr. Lorenzo Berardinetti: Thanks for your presentation. Do you have any written submissions to give to the committee?

Mr. Joe Vaccaro: We'll be following up with those.

Mr. Lorenzo Berardinetti: Okay. Thank you. Following up on my friend Mr. Bisson's question, you don't want the bill.

Mr. Joe Vaccaro: I would say that we recognize the bill is here and we have to make the best out of it. What we want is recognition that residential is different—that recognition has already been granted by the government—and then maintaining the lot-by-lot provisions of the lien act.

Mr. Lorenzo Berardinetti: But we had an extensive consultation process. Were you not invited to that process at all?

Mr. Joe Vaccaro: We were, and in that process we always maintained that if you're going to move forward with this, there needs to be a regulatory status for residential-specific regulations. Do not group them in with ICI and other payment structures, because it's a different reality here, it's a different industry. We're just looking for that recognition in the regulations. So an amendment to this bill that provides that space helps us.

Mr. Lorenzo Berardinetti: I'm going to run out of time here. This bill has been prepared and if we take one little string and take it out in one area, it's going to affect another part of the fabric of the legislation; that was heard earlier. This is our third afternoon of two hours of hearing deputations. Some of them are in the audience here today. They understand that part and hopefully you do too, that if we change one little string here it's going to affect something on the other side. It has been very carefully crafted. You're asking us to make some changes.

Mr. Joe Vaccaro: Well, I would say that the Attorney General has already indicated a number of amendments coming through the system, so clearly there are changes coming to this bill. I would suggest to you that, if we want to maintain some fairness around small contractors versus big contractors, thresholds, private versus public—AFPs are now going to get a separate opportunity to verify work before an invoice is submitted. Private sector members are not getting that opportunity. So what I am suggesting to you is that the government is already engaged in a series of amendments. This is well within that spirit if we want to take the time to craft it appropriately.

The Chair (Mr. Monte McNaughton): Thank you very much. That's all the time we have for your presentation.

Mr. Joe Vaccaro: Thank you.

ONTARIO PAINTING CONTRACTORS ASSOCIATION

The Chair (Mr. Monte McNaughton): Now I'd like to call upon the Ontario Painting Contractors Association. Good afternoon.

Mr. Andrew Sefton: Good afternoon.

The Chair (Mr. Monte McNaughton): You'll have 10 minutes for your presentation. Questions this time will begin with the third party. Please state your name for Hansard and begin.

Mr. Andrew Sefton: Good afternoon, Chair and committee members. My name is Andrew Sefton and I'm the executive director of the Ontario Painting Contractors Association, otherwise known as the OPCA.

The OPCA represents the largest and well-established employers performing painting and coating work in the industrial, commercial and institutional sector of Ontario's construction sector. Since 1976, the OPCA has fostered collaboration to achieve success in advocacy, education, industry standards and labour relations. The employers I represent are bound to the International Union of Painters and Allied Trades, which in turn represents 10,000 workers across various trade groups.

I congratulate the government for initiating the process that led to the creation of Bill 142. I have been

actively engaged in the Council of Ontario Construction Associations' construction lien subcommittee since 2007, and we are closer than we have ever been to modernizing the outdated Construction Lien Act and introducing a fair, equitable and reasonable payment regime that ensures a speedy adjudication process for the resolution of construction project disputes.

Construction is a primary driver for the economy, providing for the employment of more than 430,000 workers, 6.4% of Ontario's workforce, yet delinquent payment in construction is rampant. Trade contractors are commonly made to wait for periods of four months or longer to get paid for work that has been certified as being complete.

Delinquent payment drives up the cost of construction, as contractors must factor the risk of delinquent payment into their bids.

Delinquent payment strains cash flow, especially for small businesses that must meet payroll and pay bills, taxes, WSIB premiums and other costs, to the point of forcing some businesses into insolvency.

Delinquent payment stymies new job creation and restricts investment in apprenticeship training—the construction industry accounts for roughly 40% of all apprenticeships—as trade contractors must limit their payroll commitments to meet cash flow obligations.

Delinquent payment practices erode the level playing field, as those who maintain honourable practices are put at a disadvantage.

Employers that extend benefits to employees, such as pension, welfare and training, are obliged to provide such remittances within prescribed timelines. Employers extend such benefits not only for the well-being of employees but for the well-being of Ontario.

Employers bound to the painters' provincial collective agreement must remit such payments on or before the 20th of the month following the work completed. For example, for the work month of October 2017, employer contributions for an employee's pension, welfare and training are due on or before November 20, 2017. Delinquency or non-payment risks a lapse of coverage for the worker and/or enforcement of the penalty mechanisms prescribed in the painters' provincial collective agreement. Furthermore, the recourse for the trust fund is to lien a construction project for delinquency, further exacerbating the problem to be solved through Bill 142.

Upon the successful implementation of Bill 142, the Construction Lien Amendment Act, construction employers may begin reducing cash flow reserves and investing in increased productivity and capacity to fulfill the ever-growing demand of ongoing construction spending, planned increase in construction permits, and resolving the infrastructure maintenance gap.

Your actions today will ensure a prompt-payment regime for construction work certified as being complete within the 30 days of the certification, monthly progress payments for a project of longer duration, and interest in penalties to accumulate where payment is not forthcoming. It will allow for contractors to suspend work where payment is not forthcoming for unreasonable periods.

Regarding the October 23, 2017, proposed amendments, overall, the amendments are beneficial. The concerns that we have relate to the amendments that are not on the list. It is important that construction professionals—that is, current or former trades and contractors—be eligible to act as adjudicators. In most cases, the best person to decide disputes within the expedited format of an adjudication will be a construction professional with years of experience in the industry. It is also believed that expanding the pool of people who are qualified to act as adjudicators will keep the cost of adjudication from escalating.

Furthermore, the Construction Act should permit the delivery of written notices of lien by any method that gives effective notice to the payer who receives it. Delivery by fax or email with a receipt should be permitted.

Thank you for the opportunity to appear before this committee.

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The Chair (Mr. Monte McNaughton): Great. Thank you very much. Mr. Bisson?

Mr. Gilles Bisson: Two questions: One is, in the previous presentation, we heard that the rules should be somewhat different for smaller contractors. I'd like to hear what you have to say about that. And on the timing issue that he raised in regard to: Do you have to put in sync the timing for, for example, collective agreements as far as payment versus the lien act?

Mr. Andrew Sefton: I will address your questions, but I think what was specifically said was that residential is distinct from ICI—and I represent ICI contractors, or contractors engaged in the heavy sector. Furthermore, what I think I heard was that provisions within the residential agreement, based on the nature of that work, require a timeliness by which the subcontractor corroborates the quality of the workmanship being performed. Those don't necessarily exist in the ICI sector, and I won't speak to whether there should or should not be a difference between the residential sector and ICI.

Mr. Gilles Bisson: Fair enough.

The Chair (Mr. Monte McNaughton): Great. We'll move to the government now. Ms. Wong.

Ms. Soo Wong: I'm going to ask you a couple of questions. In your presentation, you made numerous references to these delinquent payments—I wrote here "delinquent payments." So who are these delinquent payers? Big contractors? Governments? Who are they?

Mr. Andrew Sefton: The contractors I represent—

Ms. Soo Wong: Let's name them—

Mr. Gilles Bisson: The Ontario Liberal Party.

Ms. Soo Wong: Oh, yes, right. It could be the NDP too, you know, Mr. Bisson.

Mr. Andrew Sefton: I would suggest that, in general, as the payment system went beyond 45 days—30, 60 and into 90 and 120—I think that that became the expected

norm of the industry, thus the requirement for the contractors I represent to—

Ms. Soo Wong: Okay; I don't have lots of time. I'm going to ask a question. My next question here is: In terms of the adjudication, you are encouraging the government to hire former construction professionals to be adjudicators. Can you also explain to us—I'm going to assume you support Bill 142.

Mr. Andrew Sefton: I do.

Ms. Soo Wong: Okay. That's the second question. With regard to the resolution and dispute mechanism, do you agree that what has been proposed through the legislation would help some of your members?

Mr. Andrew Sefton: Yes, I believe that it will help some of my members.

Ms. Soo Wong: And then the other piece here is in terms of—because we heard the previous witnesses from the Ontario Home Builders' Association, where there were concerns raised, and then the first witness talking about the different liens. What is your comment about the different liens that he is proposing? I'm not sure if you were here when he made the presentation.

Mr. Andrew Sefton: Again, I can't speak on behalf or about the residential sector. So I'm sorry, I don't know—

Ms. Soo Wong: Okay. Your members are usually the large group of professional painters?

Mr. Andrew Sefton: Painting contractors and coating contractors. My contractors do the Burlington Skyway.

Ms. Soo Wong: Oh, the big jobs.

Mr. Andrew Sefton: They do the water towers. They do your schools. They do your hospitals.

Ms. Soo Wong: Okay, so they're not the small home renovation—

Mr. Andrew Sefton: No, I do not represent—

Ms. Soo Wong: Okay. Thank you for your presentation.

The Chair (Mr. Monte McNaughton): Perfect timing. Mr. Bailey.

Mr. Robert Bailey: So if there was one thing your association would like to see, if there was a way it could be improved, what would it be?

Mr. Andrew Sefton: Prompt payment.

Mr. Robert Bailey: That's already going to be in there. Is there anything besides that, though, that could improve it?

Mr. Andrew Sefton: No, as I said, I think that adding to the adjudication roster would be beneficial to everyone to mitigate cost, to expedite the process.

Mr. Robert Bailey: Okay. That's fine.

The Chair (Mr. Monte McNaughton): Excellent. Thank you for your presentation.

Mr. Andrew Sefton: Thank you.

BARRIE CONSTRUCTION ASSOCIATION

The Chair (Mr. Monte McNaughton): I'd now like to call upon the Barrie Construction Association. Good afternoon.

Ms. Alison Smith: Good afternoon.

The Chair (Mr. Monte McNaughton): If you would state your name for Hansard, and then you'll have up to 10 minutes for your presentation. This round of questioning will begin with the government.

Ms. Alison Smith: Thank you. Good afternoon, Chair and committee members. I thank you for the opportunity to appear at these hearings to represent the hard-working men and women of Barrie and surrounding areas. My name is Alison Smith, and I am the executive director of the Barrie Construction Association, the BCA.

The BCA is a mixed-trade association representing and supporting over 350 general and trade contractors, manufacturers and suppliers in and around Simcoe county. Our members operate in the industrial, commercial and institutional construction sector. The BCA is a proud member of the Council of Ontario Construction Associations, or COCA, and I would be remiss if I did not recognize their tireless efforts made on our behalf for lien act reform.

CCOA is mandated to work with its members and decision-makers at Queen's Park to make sure Ontario's laws and regulations support success in the construction industry and broad prosperity across the province.

The BCA and COCA have been lobbying for a reform of the Construction Lien Act for more than 20 years and for prompt-payment legislation since 2011. Bill 142 is long overdue.

Our association would like to thank Attorney General Naqvi and his government for recognizing this province's need for a fair, clear path for payments in the construction industry. There are approximately 455,000 workers in the construction industry in Ontario. These workers build, install, repair or renovate work worth over $85 billion annually.

The 18-month study completed by Bruce Reynolds, Sharon Vogel and a 15-member expert panel included input from stakeholders on all sides. The purpose of the study was to examine and recommend remedies for the chronic problem of delayed payment on construction projects in Ontario. The result of this study was a report titled Striking the Balance. Most, if not all, stakeholders believe that Striking the Balance proposes a fair and reasonable balance point amongst all stakeholders' competing interests. Not one stakeholder got everything they wanted.

Delayed payments have negative consequences not only for the industry workers but also for the economy. Overall, late payment increases the cost of construction services, reduces investment in equipment and machinery, reduces investment in apprenticeships and training programs, and lowers employment in construction.

BuildForce Canada reports that 85,000 new skilled workers will be needed this decade as 21% of Ontario's construction workforce goes into retirement. Reform of the Construction Lien Act will go a long way to ensuring a thriving, growing skilled trades workforce.

Construction costs are higher for owners as bidders will add a contingency for the delayed collection of

receivables into their bids as the number of companies able to carry these receivables diminishes. There are fewer companies bidding on projects, further driving up costs. The passing of Bill 142 would ensure that the construction sector prospers and drives our economy forward.

The current existing law in Ontario is costly and the lien rights of many will expire long before they realize they will not get paid. The lack of prompt-payment legislation is an obstacle to smaller contractors in terms of bidding on projects. Unless a contractor is large enough to handle delays in receiving payment, it is difficult to compete. This lack of competition drives up the cost of construction. Prompt-payment legislation would generate investment and growth for our entire economy, as well as protecting our smaller independent trade contractors.

Currently in Ontario, there is no effective remedy to late payments. The smallest players in the construction chain actually end up financing projects as they are carrying invoices well beyond 60 and 90 days. The financial risk of a project is unfairly and without justification transferred on to the smaller contractors down the construction project chain.

With the passing of Bill 142, Ontario workers would have the right to stop work on projects when they have not received payment. Currently, trade contractors are contractually obligated to continue working even when payments owed to them have been delayed. This bill protects the livelihood of over 455,000 workers, and it is the right thing for our government to do.

Bill 142 modernizes the outdated Construction Lien Act, introduces a payment regime, and introduces an adjudication process with tight timelines for the resolution of construction project disputes. Prompt-payment legislation offers government the opportunity to provide stimulus to a vital sector without spending a dime.

Bill 142 also includes other improvements that will minimize the disruption to construction schedules. Bill 142 allows for the hearing of liens under $25,000 in Small Claims Court, which will be more efficient and cost-effective for the industry as a whole. Under the current act, a lien action can only proceed in Superior Court, which is costly for liens that are $25,000 or less. If Bill 142 passes, it will create a more efficient manner of settling smaller liens.

I am confident that I speak on behalf of all of the local construction associations across Ontario to say that we are poised and ready to educate and inform our members of new legislation. Construction lawyers, many of them involved with COCA's Construction Lien Act Task Force, will be involved in educating the construction community through seminars held by construction associations. Governments in comparable economies such as the United States, the United Kingdom, Ireland, New Zealand, Australia and the European Union have already introduced prompt-payment legislation while we continue to work under antiquated legislation.

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In closing, the BCA is in agreement with the Council of Construction Associations' stance. We are in support of the recommendations made by Bruce Reynolds and Sharon Vogel. We believe that the government needs to implement these recommendations in their entirety. We oppose any amendments to Bill 142 that conflict with the intent of the recommendations made in the Reynolds-Vogel report. This is about doing the right thing: ensuring that small and medium-sized businesses receive a fair day's pay for a fair day's work.

The Chair (Mr. Monte McNaughton): Thank you very much. Ms. Wong?

Ms. Soo Wong: Thank you, Ms. Smith, for being here.

I was asked by my colleague and friend, your MPP, Ann Hoggarth, to ask this question, so here it is: She wants me to ask you how Bill 142 helps small businesses like your organization in terms of improving the payment process, because we hear the two sides of the fence. If you could answer the question, I'll pass it on to Ann for you.

Ms. Alison Smith: Certainly. By adopting a payment regime that begins with a proper invoice triggering a payment timeline, contractors will then know when they can expect payment. Right now, they don't know. They can submit an invoice, and it can sit there for 60 or 90 days or six months. Once an owner receives a proper invoice from the contractor, the timelines are prescribed in the act.

Ms. Soo Wong: My other question here is—I think you alluded to, in your oral presentation, the adjudication process. Can you elaborate a little bit further? A previous witness talked about having construction experts be part of this. Besides this kind of criteria, would you suggest anything else in terms of the adjudicators for this?

Ms. Alison Smith: I definitely agree with allowing construction professionals to become adjudicators. It will certainly keep prices down if there's a larger pool to select from. They are the experts in this field. They understand the technical specifications of projects and how disputes need to be resolved.

Ms. Soo Wong: Thank you very much for your presentation and for being here today.

The Chair (Mr. Monte McNaughton): Perfect. Right on time.

Mr. Hillier?

Mr. Randy Hillier: Sure. Thanks. Listen, there's one element that has come up from time time—and I'm sorry; I missed the earlier part of your presentation. Was there any concern as to why P3s are not captured in the same way under this proposal? Just if you have any comments on that—

Ms. Alison Smith: I will admit to being from small-town Barrie, Ontario, and P3s aren't a large part of our members' projects at this time.

Mr. Randy Hillier: Right. So no added comment on P3s.

Ms. Alison Smith: Correct.

Mr. Randy Hillier: Thank you very much.

The Chair (Mr. Monte McNaughton): Mr. Bisson?

Mr. Gilles Bisson: I'm good. It was clear—not a problem.

The Chair (Mr. Monte McNaughton): Sorry, no questions?

Mr. Gilles Bisson: No, I'm good.

The Chair (Mr. Monte McNaughton): Okay. Thanks for your presentation.

ONTARIO GENERAL CONTRACTORS ASSOCIATION

The Chair (Mr. Monte McNaughton): Now I'd like to call upon the Ontario General Contractors Association.

Good afternoon. I know you're been here most of the afternoon, if not all of it. You'll have up to 10 minutes for your presentation. Questions this time will begin with the official opposition. If you would each just state your name for Hansard and then begin.

Mr. Paul Raboud: Very good. We have Bruce Karn, senior counsel with EllisDon, who is an OGCA member. David Frame is government relations for the OGCA. My name is Paul Raboud. I'm Chair of the Ontario General Contractors Association. In my day job, I'm a director of Bird Construction. I was previously chief executive officer.

The OGCA represents 183 general contractors right across the province of Ontario. Our typical member is a small business—15 or 20 employees—but we also count amongst our membership the very largest contractors. Most of the large national general contractors are members of the OGCA as well.

There are three points that we'd like to make today, and they're pretty straight ahead:

(1) The OGCA is 100% behind Bill 142.

(2) We're 100% behind the package of amendments that the government has floated out in the industry. In fact, we think that it's critical that these be passed for the effective functioning of the legislation. We have two modest suggestions for you that we'd like to make in addition to those this afternoon.

(3) A lot of co-operation and collaboration has gone in the development of this bill, and we really hope that this consultative approach carries on through the development of the regulations and the implementation of the bill.

To elaborate on that, the OGCA is 100% behind Bill 142. We've been advocating for an update to the lien legislation now for as long as I've been involved with the OGCA, so 15 or 20 years. We've been active and, we hope, constructive participants in the development of the report, the Striking the Balance report, and ultimately this legislation.

One of the key issues, obviously, in Bill 142 is to improve cash flow in the industry. That's an objective that the OGCA is 100% behind. A lot of attention has been focused on the prompt-payment timelines in the report, and they're really important, but we're here to say that if the bill stopped at those prompt-payment timelines, I think a lot of people would be surprised and disappointed at how little a difference it would make to cash flow in the industry.

In our view, the real game-changer, the difference-maker in this legislation is adjudication. I say that for two reasons. Number one, for a lot of the payment delays that we see, the root cause of that is disputes, and adjudication is a very good way to keep the money flowing during the course of a dispute. The other thing is that adjudication is the teeth behind this legislation. This is what's going to drive people to pay attention. Ultimately, we hope the threat of adjudication is what's going to cause people to behave better in the absence of anything to do with the legislation. It's just going to change the norms in the industry.

I know that you've heard from some of the larger buyers of construction, and they've expressed some discomfort with the tight time frames that are mandated in the legislation. They are tight time frames in the legislation; there's no doubt about it. But everybody is going to have to retool to meet the timelines. It's not just the owners; general contractors, trained contractors, and everybody is going to have to change their processes in the way we do business, but we believe that it is doable. Our fond hope is that it changes expectations, that it changes what is viewed as normal in terms of sorting out disputes and what's viewed as normal in terms of paying the bills.

So the bottom line on that is that we're 100% supportive of the legislation. In terms of the package of amendments that the government has put forward, we're completely in support of those amendments. In fact, we'd like to emphasize that it's critical that those plain-language amendments that have been floated are very important, and we hope that they're all passed.

We'd like to put two other thoughts for your consideration. One relates to mandatory adjudication timelines. If you recall, in the bill, if an owner disputes a bill—the client is to pay the bill—all the contractors in the chain can defer payment downstream, provided, though, that they commit to starting an adjudication within 14 days. There's nothing wrong with that process, but we just think that that 14-day timeline is a little bit too tight. One thing that's important to remember is that with 14 days, at day 14 you have to be able to deliver the paperwork to start the adjudication, so you have to back that up. Somewhere around day 7, your mind shifts and now you're starting to put together the paperwork to start the adjudication, and that's a pretty short time frame.

The best outcome for everybody, the best outcome in terms of being paid quickly, is not adjudication; it's actually negotiating a solution and getting paid. That can happen in 10 days; adjudication, no matter what you do, is still a 60-day payment. So in our way of thinking, the timeline before a mandatory adjudication has to start needs to be a little bit longer, and we're thinking something in the order of 30 days.

Our second suggestion relates to this thing called "ambush adjudication." I think people have spoken to you about that in the past. It's this concept where the person initiating the adjudication has got lots of time to get organized and get all their paperwork straight, and sometimes what these folks will do is they'll launch an adjudication right up against a holiday period with the express intention of jamming people up against the holiday, which we think is unfair. One way to mitigate this, in our view, is to reference, as it applies to adjudication, business days rather than calendar days in the legislation, just to try to take a little bit of pressure off jamming people around the time frames.

In terms of collaboration, the last point I'd like to make—and, I suspect, after sitting through three days of this you're going to agree with me—is that lien legislation is complicated. It's a complicated and very technical piece of legislation. It's not just legally complicated; it's also commercially very complicated. What I mean by that is, it's got to work in an enormously wide array of circumstances. It's got to work for everything from your bathroom renovation to multi-billion-dollar infrastructure projects, and it's got to work for such a wide array of people, from owners to trade contractors to general contractors to suppliers, not to mention engineers, architects, insurance companies and bonding companies. It's a really complicated piece of legislation, and for one group to sit in isolation and try to develop this legislation, it's really unlikely that they're going to get it right.

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In our view, the government did exactly the right thing in terms of taking a collaborative approach. They hired Bruce Reynolds and Sharon Vogel, they went out and consulted widely with the industry and they drove a consensus, which is no mean feat. I see Bruce and Sharon in the back here, and it's a testament to their skill, it's a testament to the dedication that they brought to this undertaking that they were able to drive a consensus. We really hope that the government continues to work with Bruce and Sharon during the development of the regulations and through the implementation phase of this bill.

That concludes our formal remarks. I really would like to express, on behalf of the OGCA, our appreciation for you guys getting behind this important initiative. We're happy to answer any questions you may have.

The Chair (Mr. Monte McNaughton): Great; thank you very much. I'd like to move to the official opposition: Mr. Hillier.

Mr. Randy Hillier: In our lengthy minute and 45, if you could give a lesson, an in-depth overview of the amendment package that you've received from the government.

Mr. Paul Raboud: There are 40 amendments. It's a wide variety.

Mr. Randy Hillier: Do you have a copy of those? Could you show those to the committee?

Mr. Paul Raboud: I think the government has circulated those around, if I'm not mistaken.

Mr. Randy Hillier: Have we got these amendments? I've not seen them.

Mr. David Frame: These are not formal amendments. This is plain language.

The Chair (Mr. Monte McNaughton): Just for clarification: To my knowledge, the government hasn't filed them with committee.

Mr. Paul Raboud: They're plain-language amendments.

Mr. Randy Hillier: Okay, so they've telegraphed to you a significant number of amendments that you're satisfied with. I guess maybe we should change roles and I should be over there and you should be over here. Thank you very much.

The Chair (Mr. Monte McNaughton): Thank you, Mr. Hillier. Mr. Bisson?

Mr. Gilles Bisson: No questions.

The Chair (Mr. Monte McNaughton): No questions? We'll move to the government: Mr. Berardinetti.

Mr. Lorenzo Berardinetti: Thank you for your presentation, on behalf of the government. It's not really much to ask, but the adjudicative process: I think you've outlined why it works. The only thing you're concerned about is the timeline of when someone is notified of going to adjudication? Or—

Mr. Paul Raboud: It's the timeline before you have to start adjudication. The idea for us is that ultimately, you don't really want to drive everything to adjudication. You want people to behave properly, pay their bills, and sort out their disputes. If you narrow the window too much before you're forced to start adjudication, you're going to just drive too many things through adjudication rather than having them resolved through negotiation, which is better for everybody, ultimately.

Mr. Lorenzo Berardinetti: I understand that. If you hang around, the next presenters are going to be Mr.—

Mr. Paul Raboud: Reynolds.

Mr. Lorenzo Berardinetti: Mr. Reynolds and Ms. Vogel: They'll be here. They're going to present after you. That's all.

The Chair (Mr. Monte McNaughton): Ms. Wong.

Ms. Soo Wong: Thank you, Mr. Chair. So, I heard from the previous witness talking about delinquent payment driving up the costs. What are you anticipating for the industry? Because if this is going to bring down the costs, will we be seeing some of the benefit for the consumers, for Ontarians? That's what I heard.

Mr. Paul Raboud: I think ultimately you will. If you increase cash flow in the industry, it creates more capacity in the industry. More capacity creates a competitive environment, and that's what drives down prices, ultimately.

Ms. Soo Wong: So you anticipate that's going to be—

Mr. Paul Raboud: I do, I do.

Ms. Soo Wong: I agree. Thank you for being here.

The Chair (Mr. Monte McNaughton): Thank you very much for your presentation today.

BORDEN LADNER GERVAIS LLP

The Chair (Mr. Monte McNaughton): I'd now like to call upon Borden Ladner Gervais LLP, please. Did I say that right? Gervais? Is it Gervais? Excellent, welcome to the committee. Your names have been mentioned a few times. You will have 10 minutes for your presentation, and then we'll split the remaining five minutes between each party. If you'd just state your name for Hansard, and begin.

Mr. Bruce Reynolds: Thank you very much. My name is Bruce Reynolds. I'm the head of the international construction projects group of Borden Ladner Gervais.

Ms. Sharon Vogel: I'm Sharon Vogel. I'm national practice group leader of the construction group of Borden Ladner Gervais.

Mr. Bruce Reynolds: Thank you very much for allowing us to appear before you today. We have attended and/or monitored the hearings to date, and we just wanted to try to add a few comments, clarifications with a view to being helpful to the committee.

Item number one, just having sat and listened to the presentations today, is that—and with no criticism intended—some of the stakeholders have not been perhaps as aware as others of the development, the evolution of the legislation, and in particular the development of the amending motions. As I'm sure the committee knows, the Attorney General sent out an email on October 23 which described in plain language key amending steps that are intended. The amending motions themselves have not been circulated. Ms. Vogel and myself have been working with the Ministry of the Attorney General on the amending motions since first reading on May 31, and we can assure you they have not been circulated.

Just by way of example, you heard earlier from the Advocates' Society that they were quite concerned about the potential loss of the very specific procedures that are associated with a lien action. If they were still here, I'm sure they'd be very pleased to hear that as a matter of legislative drafting, those sections are being removed from the act, but they are being transported directly into the regulations. The reason for this, from a legislative drafting perspective, is that to the extent that they may need to be tweaked in future, it's much easier to amend the regulation than it would be to amend the act itself. But all their concerns are directly addressed by importing those provisions that they were concerned about directly into the regs.

Another example would be the submissions of the very first presenter at your hearings, which was the CCPPP, the overarching group that is mainly focused on alternative financing projects. They expressed a number of concerns, and we were aware of those concerns beforehand because they had written us a very helpful and informative letter. As a result of receiving the CCPPP's letter from Mr. Romoff, who was the main presenter in that submission, with the permission of the Ministry of the Attorney General, we struck a task force that met three times for two, three or four hours a pop, which considered the AFP-related issues of aligning Bill 142 with the AFP project delivery model.

That task force produced a set of recommendations, and those recommendations fully address all of Mr. Romoff's concerns and are embodied in one of the amending motions, which the committee will see shortly, as I understand it.

These are just two examples of areas where the post-first reading consultation process and effort to improve the bill have addressed concerns that you have heard spoken to in your committee hearings.

Having said that, we'd like to touch upon some discrete issues relating to prompt payment and some discrete issues relating to adjudication.

Number one, as it relates to prompt payment: People have expressed a concern that the timelines for payment down the contractual pyramid are tight, are ambitious, and some people have submitted to you that they're perhaps too ambitious. But we want to assure you that we have looked at every jurisdiction in the world that has this type of legislation and considered the timelines that we've recommended and which are contained in Bill 142. If you looked at this as a spectrum of how different jurisdictions set these time constraints, we have gravitated to the middle of that spectrum. In fact, in certain instances, we've gone toward the long end of the spectrum.

I'm not disrespecting people's concern about having to change their modalities of payment. What we would suggest to you is that the intention here is to cause people to change their cultures in relation to payment, to re-engineer their processes in order to allow funds to flow down the construction pyramid more quickly. The time limits we've chosen are reasonable and mid- to long-range, relative to global standards—and this is a global movement, as I'm sure you're aware.

Second, as it relates to prompt payment, there has been a concern expressed to you about our recommendation that certification of payment and/or owner approval no longer be allowed to be a precondition to the delivery of a proper invoice. The reasons for this are that in the UK, after prompt payment was first brought in, it was realized that payers were gaming the certification process and using it to defer payments. So when they amended their legislation, they introduced a prohibition such as we have recommended.

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What we would like to make clear to you is two things. Number one, we're not prohibiting the certification process. The certification process itself can continue to take place. So issues with regard to the inspection by engineers and architects of work for satisfying themselves as to its quality are still going to go on.

Secondly, with regard to the timing for the delivery of a notice of intention not to pay, which is the protection for an owner to be able to challenge the quality of work or to assert a set-off and say, "I do not intend to pay you

and I'm telling you," which is 14 days after the submission of the proper invoice, here too we've chosen a date, 14 days, which is mid-range relative to similar legislation in other jurisdictions.

Important, however, is to recognize that this too will necessitate a re-engineering of payment culture in terms of incenting the owners, contractors, subcontracts, architects and engineers to address the issue of payment further upstream so that by the time the proper invoice is delivered, the parties will actually be in agreement as to what the quantum of the proper invoice should be.

Finally, there has been a concern expressed about the right of suspension. Owners are obviously very sensitive to this. The last thing they want is their contractor to be able to suspend work. Here we have recommended a made-in-Ontario solution. In other jurisdictions that have prompt-payment legislation, once payment exceeds the maximum number of days, the contractor can suspend right then. What we recommended, and what is contained in Bill 142, is that once the owner—let's use the owner as an example—is late paying, interest begins to run, which is not waivable. But before the contractor or subcontractor can suspend, they must go through an adjudication process and an adjudicator must, in essence, find that the nonpayment is invalid, order the payment to occur, and then the owner, which would include public owners, has to ignore the order of the adjudicator to pay, all before the right of suspension arises. This is a huge protection relative to other similar pieces of legislation around the world. It was a very significant compromise made in the consultation process by the advocates of prompt payment, including Prompt Payment Ontario and COCA.

Having said that, I'll turn it over to Sharon.

Ms. Sharon Vogel: One of the most important aspects of Bill 142 is the use of adjudication as a mechanism to enforce prompt payment. We've listened to many stakeholders who have referred to the phrase "mandatory adjudication" in their submissions before you. We're not forcing anyone to initiate an adjudication. The lien remedy is still there. Parties can choose to exercise their lien rights. They can choose to negotiate, mediate and/or adjudicate. If they're not satisfied with an adjudicated result—

The Chair (Mr. Monte McNaughton): Ms. Vogel?

Ms. Sharon Vogel: Yes?

The Chair (Mr. Monte McNaughton): I'm sorry; the 10 minutes is up.

Ms. Sharon Vogel: Okay.

The Chair (Mr. Monte McNaughton): Mr. Berardinetti.

Mr. Lorenzo Berardinetti: Point of order: Can I move a motion for unanimous consent from all three parties for them to finish their presentation?

The Chair (Mr. Monte McNaughton): Is it agreed? We have a UC in front of us that the presenters—

Mr. Gilles Bisson: Hang on a second here. Do we have the time?

The Chair (Mr. Monte McNaughton): We do have the time.

Mr. Berardinetti asked for unanimous consent. Agreed? Okay. Continue.

Ms. Sharon Vogel: I'll try to be quick.

Mr. Gilles Bisson: No, no. I just want to have questions.

Ms. Sharon Vogel: Absolutely. We want to answer your questions.

In terms of the current dispute resolution process, we've heard from a lot of stakeholders over the course of our review that using the lien remedy and then litigation costs too much and takes too long. We heard from some stakeholders who made submissions to you that adjudication is going to be costly. Well, it's going to be significantly more cost-effective than a piece of litigation.

We also heard various submissions made to you about who the adjudicators are going to be, and that is going to be something that's going to be addressed in the regulations. People made some very interesting submissions to you about adjudicators and wanting it not just to be a process that is controlled by lawyers, and that makes sense. For many of these disputes, the adjudicator may not be a lawyer, but could be an engineer, an architect or another experienced individual. There will be training programs set up by the ANA. It is possible that people who are representative and specialized in particular areas of the construction industry could be selected as adjudicators, provided they have the proper training, once the programs are set up.

You have heard from various stakeholders about surety bonds, including Mr. Ness and Mr. Bassett, who are here in the room. They've answered your questions about surety bonds, and you may have more for us today, but surety bonds were recommended by us as a policy-based solution to protect labour and material suppliers on a construction project, particularly in the event of an insolvency.

In conclusion, you've heard from many stakeholders about many ideas. We heard from those same stakeholders, and we heard many of those ideas that were articulated to you. Our report is entitled Striking the Balance for a reason: Not everybody gets everything they want. This is a compromise that is intended to work together. As we heard you say in response to some of the stakeholder submissions, the goal is to have a piece of legislation that works together, and pulling at one strand can affect so many other strands.

Thank you for your time.

The Chair (Mr. Monte McNaughton): Thank you very much. We'll move to Mr. Bisson.

Mr. Gilles Bisson: I have a lot of questions, but I'll leave it at two.

The first one is: We've heard from one or two presenters that we should treat public versus private differently. I'd like to hear your thoughts about that.

And hang on; I'll ask you the second question so that I don't waste any time. The first presentation by Mr.

Rotenberg talked about liens and simplifying that liens process, and I'd like to hear what you have to say about that.

Mr. Bruce Reynolds: Well, maybe I can take the first question, and Ms. Vogel could handle the second question.

I think the focus of your question is the submission in regard to distinguishing between different classes of owners. The existing Construction Lien Act does make distinctions in regard to not so much public owners but public properties, and they are treated differently. You'll recall Mr. Rotenberg mentioned that when you're dealing with a public property, you don't register the lien against the land, but you serve the lien, in essence.

That has been a distinction that has been maintained and broadened under our recommendations and under Bill 142. The report goes through quite an analysis of how much we should broaden the exemption of the lands from the lien. Without going into all of the granularity of it, we recommended that that be extended to municipal lands, and that was a recommendation that was accepted and is contained in the bill. Mr. Rotenberg was suggesting that we extend it further for reasons that have to do with insolvency risk. We recommended against extending it further.

The Chair (Mr. Monte McNaughton): You have 20 seconds to finish that.

Ms. Sharon Vogel: In relation to the second question about lien procedures: They will be dealt with through the regulations.

Mr. Gilles Bisson: Just so you know, I'm not a big fan of delegating our authority to cabinet.

The Chair (Mr. Monte McNaughton): Thank you very much.

We'll move to government: Mr. Berardinetti.

Mr. Lorenzo Berardinetti: First of all, on behalf of the government, I want to thank you for your tremendous amount of work on this bill. As you said, it's kind of a compromise, and I think we need to emphasize, too, that it's a changing culture, because I think some of the presenters realize that this bill will cause a change in the industry of construction itself and how they shift money around.

Did you want to go any further with that? I think you explained it pretty well, in terms of—

Ms. Sharon Vogel: I think that our goal is to improve the flow of payment down the construction pyramid so it gets to the people at the bottom of the pyramid faster. That's the goal here. You do have to re-engineer processes so that that happens, because it's not happening now, as you heard from many of the stakeholders.

Mr. Bruce Reynolds: Just a supplementary very quickly: I think you've heard from a number of owner-side stakeholders to the effect that they're going to be inconvenienced. They're going to have to redraft their standard form contracts. Collective agreements will have to be revised in order to bring them into alignment with the legislation.

That is absolutely correct. Standard form construction contracts are going to have to be revised. That's one of the reasons that a staggered transition has been recommended, so that education and revision of standard form contracts and collective agreements can take place in order to bring the culture into alignment with the new legislation.

Mr. Lorenzo Berardinetti: Thank you again.

The Chair (Mr. Monte McNaughton): Mr. Hillier?

Mr. Randy Hillier: Generally speaking, the opposition is very satisfied with Bill 142. We've spoken highly of it. Also, more important has been the process and how it finally did get developed and developed properly.

But I do have some thoughts developing as I go through this consolidated construction act that was provided, that speaks of all these amendments or has a number of these amendments. This is a unique way of doing things. I've not seen it done this way in the past. Generally, we have amendments delivered in advance of clause-by-clause consideration, and we go through those. So it is very different to see an email from the Attorney General and then a change to the bill done up in this fashion.

I'm just wondering what certainty we have that your understanding of these changes, and the amendments that come through, will be the same thing.

Mr. Bruce Reynolds: It's a very good question. I have been involved in revising the amending motions, as has Ms. Vogel, along with the team from MAG every day this week. The latest versions of certain of the key amending motions, for example, I should be receiving in about an hour.

Mr. Randy Hillier: Okay.

Mr. Bruce Reynolds: The amending motions are receiving very, very close attention, I can assure you. As I understand it, they will be filed by the end of the week, if I'm not mistaken.

The Chair (Mr. Monte McNaughton): Friday.

Mr. Bruce Reynolds: Friday. At that time, of course, the committee will have the opportunity to look at the amendments in relation to the bill.

The Chair (Mr. Monte McNaughton): We have about 10 seconds.

Mr. Randy Hillier: What we won't know is what is being moved off into regulation, because the amendments can't speak to that. The amendments speak to what is going to be incorporated in the bill. So if there are areas that are struck out, we won't know if it's the government's intention just to strike them down, or if they're going to be moved over to regulation.

The Chair (Mr. Monte McNaughton): With that, Mr. Hillier, that's all the time we have today.

Mr. Bruce Reynolds: There's a quick answer.

The Chair (Mr. Monte McNaughton): Thank you very much. On behalf of the committee, I really do want to thank you for your work on this legislation.

Mr. Bruce Reynolds: Thank you very much.

The Chair (Mr. Monte McNaughton): As I said, your name has come up virtually in every presentation. We are very thankful for all the work you've done. Thank you for that.

Mr. Bruce Reynolds: Thank you for allowing us to speak to you.

Ms. Sharon Vogel: Thank you.

Mr. Randy Hillier: Off the record, you can give us the answer now.

The Chair (Mr. Monte McNaughton): Yes, you can meet separately.

Presentations are over for today. I do want to remind committee, as was just mentioned, that amendments are due on Friday at noon. We will be meeting next Wednesday at 1 o'clock sharp. If I could remind all committee members to be here before 1 o'clock next Wednesday, as we consider clause-by-clause. Thank you.

The committee adjourned at 1444.

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