



BRIEFING ON BILL 142 – AN ACT TO AMEND THE CONSTRUCTION LIEN ACT BY THE ONTARIO HOME BUILDERS' ASSOCIATION

OHBA supports a modernized *Construction Lien Act*, however, this legislation as tabled could cause significant disruption in residential construction and increased costs in litigation caused by a new adjudicative system. OHBA continues to work closely with individual municipalities, Association of Municipalities of Ontario, school boards, and other public sector purchasers of construction services as well as private sector construction associations.

AREAS OF CONCERN:

PAY-WHEN-PAID: LARGE GENERAL CONTRACTORS NOW HAVE A LEGAL EXCUSE NOT TO PAY SUBS

Section 6

The legislation creates a “pay-when-paid” model. This means if the owner does not pay the general contractor, payments can be legally stopped to sub-contractors. This model may create more non-payment to sub-contractors as large general contractors can use this legislation to legally stop payment to sub-contractors that have completed their work.

Currently, contractual agreements between owner and general contractor or general contractor and sub-contractors have their own legal terms and conditions. When there is a breakdown in this legal arrangement it is unlikely to impact other contractors not party to those agreements from getting paid. Under this legislation any breakdown in a legal arrangement at the top of the construction pyramid would now impact contractors with no legal standing to those agreements working below. This Bill leaves sub-contractors vulnerable when the legal arrangement between the owner and the general contractor is compromised.

ADMINISTRATIVE COSTS: NEW BURDENS ON SMALL BUSINESSES

Section 7

The timelines after receiving an invoice, the owner has only 14 days to give a notice of non-payment to their contractor. Within those 14 days the owner must determine whether the work has been completed adequately. For complex projects this could require an engineer or other experts to verify the work was completed. The 14 days provided by the proposed legislation is unreasonably short, particularly considering that, in the residential building sector, many contractors and subcontractors are small, family-run, owner-operated businesses with limited ability to jump immediately into dispute resolution proceedings.

ADJUDICATION: GREAT FOR LAWYERS, BAD FOR BUSINESS

Section 8

A mandatory adjudication model for payment disputes is not currently used anywhere in North America. In jurisdiction where it is used, like Great Britain, there is no lien system in place. The legislation creates two parallel dispute resolution processes. We are not aware of this model being used anywhere in the world.

The adjudication process proposed in Bill 142 risks creating delay and expense for those involved in a residential construction project, and is open to abuse. An unscrupulous person could force the parties to incur significant costs and delays by triggering the adjudication process and subsequently pursuing an appeal or judicial review of the adjudicator’s decision, in addition to the new having a new lien.

An adjudication process does not lend itself well to the residential construction sector which is dominated by small, owner-managed businesses which cannot afford to engage legal counsel, investigate allegations of deficiencies, and take time away from work, all while coping with the usual intense pressure to complete ongoing work on time and run a business.

ABOUT OHBA

OHBA represents over 4,000 members including 1000 builder members in Ontario. Our members have built over 700,000 homes in the last decade in over 500 Ontario communities. The residential construction industry employed over 330,000 people representing \$19.8 billion in wages and contributed over \$56 billion to the province’s economy.