



20 Queen Street West
Suite 1400
Toronto, Canada
416.593.1221
F 416.593.5437

New Ontario Labour and Lien Legislation



*Presented by the ACES and
Labour & Employment Groups*

April 11, 2001



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F 416.593.5437

Labour Relations Amendment Act, 2000



April 11, 2001

Elizabeth J. Forster
Tel: 416.593.3919
Email: eforster@blaney.com

Certification/Termination of Bargaining Rights

- † Certification**
- † Termination of bargaining rights**
- † Bars to applications for certification**

Negotiation of Collective Agreements

- † **First contract arbitration**
- † **Ratification/strike votes**

Termination of Bargaining Rights

Information

Administration

- † Breach of duty of fair representation**
- † Termination of hearing**

Construction Industry

- † Non-Construction Employer**
- † Project Agreements**
- † Sector Determination**





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**Bill 69: An Act to amend the
Labour Relations Act, 1995 in
relation to the Construction Industry**



April 11, 2001

Mark E. Geiger
Tel: 416.593.3926
Email: mgeiger@blaney.com

Key Concepts

† Construction treated separately in Act

- † divided into “sectors”
- † provincial bargaining in ICI sector
- † accreditation in other sectors
- † province divided into “Board Areas”

History

- † **Many associations expressed concerns to Minister and to Government**
- † **Considerable lobbying over many years**
- † **Attempts to institute “double breasting”**
- † **Constant strikes - especially in residential sector**
 - † roofers: small group but big impact

Main Aspects of Bill 69

- † 1. Change to “key man” jurisprudence**
- † 2. Compulsory arbitration for residential sector in Board Area 8 (GTA)**
 - † linked with limited strike options**
- † 3. Meetings with Director of Labour Management (residential sector)**

Main Aspects (cont'd)

- † 4. Deemed abandonment**
 - † precursor to eliminating Board jurisprudence regarding certain employers
- † 5. Amendments to provincial agreements**
 - † referral to arbitration
 - † “competitive disadvantage”
- † 6. Hiring hall changes**

1. “Key Man” Changes

- † **Board not to consider family relationships**
- † **If “key man” at different times**
 - † length of hiatus
 - † whether formal management role
 - † able to carry on business without substantial disruption or loss
- † **Applies to both Related Employer and Sale of Business**

2. Arbitration for Residential Sector

- † All Collective Agreements in Board Area 8 plus end on April 30, 2001 - NO EXTENSIONS!
- † All strikes/lockouts end as of June 15, 2001
- † Either party applies for binding arbitration
- † Joint application or Minister appoints
- † Return to statutory freeze as of June 15, 2001
- † Parties to agree on proceeding OR set by Regulation (not proclaimed yet)

Implications

- † Residential rates in GTA likely to be set by arbitration
- † Clearly:
 - † precedent for others
 - † possible precedent for ICI
 - † who goes first could be crucial
- † Unions are now seeking agreement on method and process because Regulation not out yet
- † What happens to overlapping Board Areas?

3. Residential Meetings with Director

- † How did it work?**
- † Should it end?**
- † Should it be expanded?**

4. Deemed Abandonment

- † Response to ICI “abandonment” jurisprudence**
- † Based on specific wording of the Act**
- † Wait and see how introduced**

5. Amendments to Provincial Agreements

- † Applies only to future ICI Collective Agreements**
- † Legislated “Target Funds” initiative**
- † Regional or province wide**
- † Specific projects or kinds of projects**
- † Issues addressed:**
 - † Wages**
 - † Hiring rules**
 - † Travel allowances**
 - † Apprentices/journeyman ratios**

Amendments (cont'd)

- † Done by way of application and written submissions**
- † Kind of work, specific market and location**
- † Only one application per above criteria**
- † If no agreement, amendments submitted to binding arbitration**

Referral to Arbitration

- † Written submissions**
- † Does the Provincial Agreement create competitive disadvantage?**
- † IF SO,**
- † Which final offer best solves the competitive disadvantage?**
- † Final and binding decisions without reasons**

6. Hiring Hall Changes

- † **Not yet proclaimed**
- † **Unless otherwise agreed by employer**
 - † 75% employer hired
 - † only maximum of 40% from affiliated bargaining agent
- † **Does not apply if percentage lower in Provincial Agreement**

Summary

- † **Very significant changes**
- † **No experience of compulsory binding arbitration in construction industry**
- † **HLDA may provide useful lessons for both parties**





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Proposed Amendments to the *Construction Lien Act*



April 11, 2001

Michele Hecke

Tel: 416.593.3935

Email: mhecke@blaney.com

Proposed Amendments

- † More stringent requirements for the establishment and maintenance of trust accounts**
- † Automatic release of holdback upon expiry of lien rights**
- † Extension of lien rights of all parties until substantial performance of the contract**

History of Proposals & Chronology

- † **Stakeholders** † Council of Ontario Construction Associations (COCA) † Ministry of the Attorney General † Other Government Ministries
 - † **1999-2000: COCA's Construction Lien Act Committee reviews proposed changes submitted by various associations and individuals**
 - † **June 2000: COCA submits 6 recommendations to Attorney General**
 - † **January 2001: proposals narrowed to 3 and submitted to affected Ministries for input**
 - † **Present - proposals circulated within the construction industry for comment**

Trust Funds - Now

- † Sections 7 and 8 of Act define what monies constitute “trust funds” in the hands of an owner, contractor or subcontractor and obligations with respect to those funds**
- † Section 7 - all financing and certified amounts in owner’s hands = a trust fund for benefit of contractor (purchase price of property and prior encumbrances excepted)**

Trust Funds - Now (cont'd)

- † Obligation of owner as trustee - the owner “shall not appropriate or convert any part of the fund to the owner’s use or to any use inconsistent with the trust until the contractor is paid...”**
- † Section 8 - all amounts owing to or received by a contractor or subcontractor in connection with the project = a trust fund for the benefit of subcontractors and suppliers below on the chain**

Trust Funds - Now (cont'd)

- † Obligation of contractor and subcontractor as trustees - same as owner. Contractor or subcontractor shall not appropriate or convert any of the fund to their own use or any use inconsistent with the trust until subcontractors and suppliers paid**
- † Act does not require that trust funds be segregated for each project**

Trust Funds - Now (cont'd)

- † Suggested ambiguity resulting in trust funds being co-mingled with non-trust funds or with monies held in trust for different project(s) or different beneficiaries**
- † This practice places trust funds at risk and subjects trustee to possible claim of breach of trust**

Trust Funds - Proposed

- † Introduce stricter record keeping requirements similar to those in Manitoba *Builders Lien Act*
- † Require every trust fund constituted under Act to be maintained in a separate account
- † Trust funds shall not be co-mingled with:
 - † trust funds arising from separate project
 - † non-trust funds
- † No indication that trust funds required to be segregated by beneficiary
- † No offence provisions proposed for breach of trust, but existing civil remedies remain

Release of Holdback - Now

- † **Section 22(1) of Act sets out period during which holdback shall be retained:**
 - † Each payer upon a contract or subcontract under which a lien may arise shall retain a holdback equal to 10% of the price of the services or materials as they are actually supplied under the contract or subcontract until all liens that may be claimed against the holdback have expired ...or have been satisfied, discharged or provided for [by payment into court].
- † **Sections 25 and 26 of the Act set out when a payer “may” make payments to reduce or discharge the holdback. Permissive rather than mandatory.**

Release of Holdback - Proposed

- † **Intent is to ensure timely release of holdback upon expiry of lien rights**
- † **Out of holdback retainer by owner, contractor is entitled to receive an amount = to the holdback applicable to a subcontract upon:**
 - † completion of the subcontract, and
 - † expiry of the lien period
- † **Similar to Section 9 of British Columbia *Builders Lien Act***

Expiry of Lien Rights - Now

- † **Section 31 of Act sets out expiry of lien rights:**
 - † Contractors - earlier of 45 days from publication of certificate of substantial performance or 45 days after contract is completed or abandoned
 - † Others - as early as 45 days after last supply of services or materials
- † **Reason for proposed change - trades involved in early stages of project face loss of lien rights before substantial performance of general contract achieved**
- † **Preserving lien rights by registration of claim for lien may not be desirable**

Extension of Lien Rights - Proposed

- † Extending lien rights of all parties through to substantial performance, unless there has been early release of holdback**
- † Procedure for certifying completion of subcontract (Section 33) remains. Lien rights expire 45 days following issuance of certificate of completion of subcontract**