

3RD ANNUAL LEGAL GUIDE TO MANAGING CONSTRUCTION LIENS IN ONTARIO

Managing construction liens in Ontario is highly technical, complex and constantly evolving. *Are you current on the latest updates and best practices?*

Avoid costly mistakes. In one intensive day, get **crucial updates, expert guidance** and **practical strategies** to better manage liens, risk and obligations.

Designed by leading experts for legal and experienced industry professionals, you will learn about the ongoing impacts from the pandemic and virtual proceedings.

- Get a practical overview of lien rights and important developments for 2022
- Understand the anatomy of a lien action and the mechanics of actioning a lien
- Obtain legal strategies to assess risk and important considerations that impact a lien
- Learn how to navigate the collision between bankruptcy, insolvency and trusts
- Get tools for bridging legal gaps and risk using your contracts and subcontracts
- Acquire proven tactics to navigate challenges and troubleshooting tips for tackling complex situations

Hear from **Associate Justice Charles Wiebe** on what works and what doesn't if your matter ends up in court (including virtual proceedings).

PROGRAM CHAIRS

Jason Annibale Partner, McMillan LLP
Sandra Astolfo Partner, WeirFoulds LLP

PROGRAM ADVISOR

Geza Banfai
Counsel, McMillan LLP

REGISTRATION OPTIONS

April 1, 2022:
Online, Live
9:00 a.m. – 5:00 p.m. ET

OR

May 18, 2022:
Online Replay
9:00 a.m. – 5:00 p.m. ET

Can't make the date?
Registration includes 120-day unlimited, online access to the recorded program.

Register today at:

[osgoodepd.ca/
construction-liens](https://osgoodepd.ca/construction-liens)



3rd Annual Legal Guide to Managing Construction Liens in Ontario

Ongoing global events and change continues to hit Ontario's construction industry, resulting in new legal priorities, obligations and processes for lien management. As a construction professional or advisor, you must keep up-to-date and have a clear grasp of your risks, rights and options.

Focusing on the practical, this intensive OsgoodePD program gives you the **latest information, knowledge and tools** to help you represent your clients' lien interests and comply with updates in the law and in practice.

Get important updates, tools and insights from a multi-disciplinary faculty, including:

- Strategies for when to use a lien (and appreciating what this means) and when to pursue alternatives to liens, including adjudication
- Tactics for navigating evolving legal and procedural requirements – when do lien rights arise? when do they expire? what are the various types of liens?
- How to identify what is truly a lienable service – including the common types of lienable services, oddball situations, and the “non-lienable”
- How to deal with an insolvent party, and understanding shifting lien priorities
- Tools to protect yourself from gaps and inconsistencies in the law
- Troubleshooting techniques, including what to do when: CRA gets involved, Federal land is involved, you want a trial management hearing, you lose at adjudication

PLUS! You will get access to two online modules covering core concepts and tips for navigating complex lien types.

Who Should Attend

- Construction and in-house lawyers
- Litigation and real estate lawyers
- Municipal, government and procurement professionals
- Owners and developers
- Builders and construction professionals
- Project managers
- Contract managers
- Architects
- Engineers
- Business and finance professionals
- Insurance professionals
- Consultants

Register today at:

osgoodepd.ca/construction-liens

Agenda

9:00 a.m.

Chairs' Welcome, Remarks and Overview

9:15 a.m.

The Anatomy and Mechanics of a Lien Action in 2022

Lea Nebel, Partner, Blaney McMurtry LLP

Maria Ruberto, Partner, Pallett Valo LLP

- What's new for 2022? Key updates, impacts and issues you need to know
- Geographic distinctions – including virtual proceedings
- The class-action like nature of a lien proceeding – includes references and discovery
- How to set a lien down for trial
- Understanding the new procedures under the *Construction Act*:
 - Scott Schedules, Vetting Committee, Carriage and Salvage Costs
 - Pre-Trials and Settlement Meetings
 - Reports and Interim Reports
 - Consolidation orders and consecutive trials
 - How to get a trial management hearing outside of Toronto

10:30 a.m.

Health Break

10:40 a.m.

To Lien or not to Lien? Legal and Strategic Considerations and Other Available Remedies

Anna Esposito, Certified Specialist Construction Law, Partner, Pallett Valo LLP

- Overview of the interplay between construction liens and the adjudication regime
- The importance of relationships in the construction industry and the related dynamics
- Pros and cons of alternatives to liens – includes other security and dispute resolution procedures
- Deciding whether to lien or not after losing at adjudication
- Monetary limits and minimums – are there amounts too small for a lien?
- What to do when the CRA gets involved?
- When should you pursue other remedies?

11:40 a.m.
Health Break

11:50 a.m.

What's Truly a Lienable Service?

Paul Hancock, Partner, Goldman Sloan Nash & Haber LLP

Edward Lynde QArb, Associate, Singleton Urquhart Reynolds Vogel LLP

- Key developments and risks in the face of ongoing pandemic impacts
- What's the difference between a capital repair and maintenance?
- Do construction managers have liens in Ontario?
- What about design professionals?
- Liens from union workers?
- Oddball and other liens, including the non-lienable

12:50 p.m.
Lunch Break

1:30 p.m.

Best Practices in Court – Featuring Associate Justice Charles Wiebe

Join Associate Justice Charles Wiebe for an interactive walk-through of a lien trial, focusing on best practices and recommended “dos and don'ts” when appearing before a decision-maker in court, including virtual proceedings. The session will include a valuable tip sheet, which will serve as a vital resource long after the program concludes.

2:30 p.m.
Health Break

2:40 p.m.

Navigating Insolvency and Bankruptcy Priorities and Key Legal Risks

Chris Burr, Partner, Blake, Cassels & Graydon LLP

Philip Cho, Partner, WeirFoulds LLP

- Overview of the current landscape, key developments and trends (includes pandemic impacts)
- Understanding the collision between bankruptcy and construction trusts
- Overview of the CCAA and BIA – how do they work?
- What are the lien priorities during an insolvency

- What is a CCAA proceeding? What is a stay of proceedings?
- What is a lien regularization order, or what happens when you don't follow the *Act* and the CCAA kicks-in?
- Top tips and best practices for dealing with an insolvent contractual party:
 - Managing the contract in the face of insolvent party
 - Unique features of dispute resolution proceedings
 - Getting the project built while containing risks
 - How to protect yourself more effectively

3:40 p.m.
Health Break

3:50 p.m.

Beware of Legal Gaps and Conflicts: How to Manage Them Using Your Contracts and Subcontracts

Catherine DiMarco, Partner, Heal & Co LLP

Robert Kennaley, Principal, Kennaley Construction Law

Expert faculty will give you the latest updates to identify crucial gaps and inconsistencies in the law. You will get practical guidance on how to manage these through both contractual language and field strategies.

- Transition provisions and multiple contracts on a project: which version of the *Act* applies?
- Release of holdback on a phased or annual basis
- Preserving the lien against a Municipality
- Public contract and the contractor's bonding obligations
- “Giving”, “providing” and “serving” of documents under the *Act*
- What must, and can, be included in the Proper Invoice?
- What is the timing, effect and import of a Notice of Termination of Contract?
- Limitation involving ‘no adjudication once the contract or subcontract is complete’
- Scope of the ‘one matter per adjudication’ limitation
- Importance of the Notice of Adjudication and the choice of Adjudicator

5:00 p.m.
Program Concludes

Online Modules

This **program includes** two online modules designed to clarify core and complex lien concepts, and provide you with practical insights, guidance and materials that will serve as valuable resources long after the program concludes. **We recommend viewing both online modules before the program begins.**

Construction Liens in Ontario: The Essentials (70 mins, on demand, recorded in 2021)

Paul Hancock, Partner, Goldman Sloan Nash & Haber LLP

This online module covers fundamental lien rights and principles in Ontario for those who are newer liens or who may benefit from a succinct refresher.

- What is a lien?
- When do lien rights arise and when do they expire? Is there an ultimate expiry period?
- How to recognize and differentiate the various types of liens
- Understanding how to preserve, register and give a lien – including vacating, discharging and perfecting
- What is the liability for exaggerated liens?
- Troubleshooting tips - what to do when there are two subcontracts issued to one trade (2 liens)? Federal land?

Key Changes to Complex Liens Under Ontario's Construction Act (65 mins, on demand, recorded in 2020)

Ted Rotenberg, Drudi Alexiou Kuchar LLP

This online session is suited to all and covers key principles and tips for dealing with these more complex lien matters.

- Leases – key steps, determining ownership and the pros and cons in your situation
- Condominiums – key steps, entitlement and analyzing whether to lien any work completed by or on behalf of the condominium corporation
- Municipalities and Crown Agencies – key principles, mechanics and navigational tips
- Subdivisions – review of entitlement, lot and by-lot provisions, park lands and buffer zones, roads and residential homes
- Troubleshooting tips for avoiding common pitfalls

Program Chairs

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Geza Banfai
Counsel, McMillan LLP

Faculty

Associate Justice Charles Wiebe
Ontario Superior Court of Justice

Robert Kennaley
Kennaley Construction Law

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Maria Ruberto
Pallett Valo LLP

Anna Esposito
Pallett Valo LLP

Ted Rotenberg
Drudi Alexiou Kuchar LLP

Paul Hancock
Goldman Sloan Nash &
Haber LLP

Registration Details

Fee per Delegate: \$695 + TAX

Newly Licensed*: 50% off regular rate + TAX

**This fee applies to newly licensed professionals within the past 2 years*

Fees include online attendance, electronic program materials and 120-day access to program archive. Group discounts and financial assistance are available. Visit www.osgoodepd.ca/group-discounts for details.

Program Changes

We will make every effort to present the program as advertised, but it may be necessary to change the date, location, speakers or content with little or no notice. In the event of program cancellation, York University's and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund is available if a cancellation request is received in writing 14 days prior to the program date. If a cancellation request is made with less than 14 days notice, a \$75 administration fee will apply. No other refund is available.



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Eligible CPD Hours – LSO (ON):
Program – 7h 5m CPD (6h 5m Substantive; 1h Professionalism).
On-Demand Content – 2h 15m CPD (2h Substantive; 15m Professionalism).



This program has been accredited by the CCA for 1 credit toward Gold Seal Certification education requirement.



This program is approved for LAWPRO Risk Management Credit.
OsgoodePD programs may be eligible for CPD/MCLE credits in other Canadian and US jurisdictions. To inquire about credit eligibility, please contact cpd@osgoode.yorku.ca.


Here's what past participants in our construction law programming had to say:


“Very good. All faculty were very experienced in construction lien matters, and I valued learning more about the process to register a lien and lienable vs. non-lienable costs and services.”


Nisar Patel, Law Office of Nisar Patel

“Very good. Useful content [and] well delivered.”

Paul Du Vernet, Counsel, Glaholt Bowles LLP

 osgoodepd.ca **Osgoode Professional Development**

 **416.597.9724** **1 Dundas Street West, Suite 2600**

 **@OsgoodePD** **Toronto, ON Canada M5G 1Z3**

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