

DSF NEWS

DEVRY SMITH FRANK LLP NEWSLETTER

SUMMER 2018 ISSUE

PART 1: THE CONSTRUCTION ACT PROPOSED CHANGES TO THE CONSTRUCTION LIEN ACT

BY ADAM GROSSI, CHRISTOPHER W. STATHAM AND MARLY PEIKES | MAY 9TH, 2018



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This is Part 1 of a continuing blog series on the proposed changes to the Construction Lien Act and generally, the enactment of Ontario's new Construction Act.

Background

The Construction Lien Act ("CLA"), introduced in 1983, grants special protections to people involved in the construction industry. The CLA recognizes the special nature of the construction business.

This year, the Construction Act will come into force, ushering in a new era for the construction industry in Ontario with new rules and processes that the industry will have

The New Rules and the Proposed Changes

Bill 142 was introduced in order to improve efficiency and competitiveness for construction businesses. Below is a discussion of a few of the key amendments that have been proposed.

1) Prompt Payment

A prompt payment regime has been proposed. Several jurisdictions throughout the world have enacted similar initiatives. The prompt payment provisions have prescribed timelines for payment to contractors

periods. Currently, a lien is only preserved if it is registered within 45 days. The amendments seek to extend the preservation period to 60 days. Under the present CLA, a lien claimant has 45 days to perfect the lien. Bill 142 seeks to extend the perfection period to 90 days from the last day on which the lien could have been preserved.

The Potential Effects

The prompt payment regime and new interim adjudication system will likely reduce time and money spent on litigation in the construction industry. This will hopefully translate to fewer disruptions in the course of a project and subcontractors. The proposed amendment is intended to speed up the payment process.

2) Special Adjudication

Currently, the only recourse that contractors and subcontractors have relating to improvements is with the courts. Bill 142 has introduced an interim, binding dispute resolution system, whereby any party can refer a dispute to a registered adjudicator during the course of a project. The proposed interim dispute resolution process provides quick decisions relating to disputes, which will minimize disruptions to projects.

3) Timelines Related to Liens

Bill 142 proposes extended preservation and perfection periods. Currently, a lien is only preserved if it is registered within 45 days.

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UPCOMING EVENTS

HR/IMMIGRATION SEMINAR OCTOBER 17, 2018



DSF is proud to announce that we have partnered with HR Options for our upcoming HR/Immigration seminar.

The seminar will take place in Devry Smith Frank Toronto at 95 Barber Greene Road, Suite 100, Toronto.

NEW MEMBERS OF DSF



MARLEY PEIKES, B.A. (HONS.), J.D.

We are happy to announce that Marly Peikes has joined our Wills & Estates, Commercial Lending, and Corporate Law groups in Toronto. Prior to joining Devry Smith Frank LLP as a lawyer, Marly articulated with the firm as an articling student. During which she gained experience in a wide range of business law and estate planning matters.



FARZANA JIWANI, B.B.A., LL.B.

We are happy to announce that Farzana Jiwani has joined DSF's Family Law group in Toronto.

Farzana is passionate about family law and is committed to providing her clients with compassionate and focus driven service. Farzana practices in all areas of family law including custody, access, support and property issues. Prior to focusing on family law, Farzana's legal experience concentrated on various areas of public service, including class-actions, self-regulation, privacy and healthcare.

TRINITY WESTERN DECISION

BY MAYA KRISHNARATNE | JUNE 5TH, 2018



The Supreme Court of Canada has rendered a decision that is an important victory for the promotion of equality, diversity and access to justice in Canada. On June 15, 2018, the Court released the landmark decision, finding that law societies were entitled to deny accreditation to a proposed law school that had discriminatory admissions requirements. The case garnered national attention as it seemingly involved a clash between freedom of religion and the right to equality, values which are central to Canada's democratic society.

Trinity Western University ("TRU"), a Christian university in British Columbia, submitted a proposal to open a law school that was based in the foundational religious beliefs of evangelical Christianity. Admission to the proposed law school would require that all students and faculty adhere to a community code of conduct, which contained a covenant that effectively denied admission to LGBTQ students. Trinity Western University ("TRU"), a Christian university in British Columbia, submitted a proposal to open a law school that was based in the foundational religious beliefs of evangelical Christianity.

Admission to the proposed law school would require that all students and faculty adhere to a community code of conduct, which contained a covenant that effectively denied admission to LGBTQ students. The covenant required TRU students to voluntarily abstain from a number of activities and explicitly prohibited "sexual intimacy that violates the sacredness of marriage between a man and woman."

The British Columbia and Ontario law societies voted against accreditation of the school because of the discriminatory nature of the covenant. The school sought judicial review of this decision, claiming that refusal to approve the law school on this basis violated its right to religious freedom under Section 2(a) of the *Canadian Charter of Rights and Freedoms*.

The majority of the Court found that the law societies' decision to deny accreditation was reasonable and constituted a proportionate balance between the limitation of religious freedoms under the Charter and the statutory objectives of the decision to refuse approval. The Court found that the infringement of religious rights was minor compared to the discrimination members of the LGBTQ community would face under the covenant.

The Court found that protection of public interest was a valid objective for law societies to consider when making decisions with respect to admission to the legal profession. The Court further accepted that by promoting equality, supporting diversity within the bar, and preventing harm to LGBTQ law students, the law societies were acting in furtherance of the public interest.

In addition to upholding human rights, this decision has broader implications for the promotion of access to justice. A major policy issue experienced by Canadians is the inaccessibility of the legal system. This problem is particularly pronounced among members of historically marginalized groups, including the LGBTQ community.

One explanation for the heightened barriers experienced by certain communities in accessing legal services is their lack of representation within the legal profession. Accordingly, there has been a call from policymakers and accessibility advocates to promote diversity within the bar to ensure that members of disadvantaged groups can assess legal representatives who can identify and respond to their unique needs. Paul Schabas, treasurer of the Law Society of Ontario, acknowledged this important implication of the decision, stating, "Access to justice is facilitated where clients seeking legal services are able to access a legal profession that is reflective of a diverse population and responsive to diverse

needs."

Ultimately, this decision of Canada's highest court recognizes that Law Societies, as self-regulating bodies of the legal profession, have an overarching obligation to promote equality and uphold human rights when making decisions involving admission to the profession. As gatekeepers to the legal system, these decision makers must be prepared to take active steps to remove inequitable barriers and ensure all persons have an equal opportunity to pursue a legal education.

For assistance with or legal advice on human rights laws in Toronto, please contact one of our human rights lawyers.

DSF IN THE COMMUNITY

RIDE 4 UNITED WAY! AUGUST 12, 2018



On August 12, a team of riders from DSF participated in the Ride4UnitedWay in support of Durham Region.

Our riders travelled 60km and raised over

\$1000 for the United Way!

TORONTO CALCUTTA ASSOCIATION



Personal injury lawyer Marc Spivak on behalf of Devry Smith Frank LLP recently in collaboration with the Toronto Calcutta Association gave back vision to

211 people. An eye camp was held in Sonarpur, a town in West Bengal, India. 3 optometrists were paid to test the vision of people who desperately needed help with their vision problems that could not afford to help themselves. The eye camp with DSF funding was able to provide 150 pairs of glasses to allow these needy people to see.

PARAMEDIC RIDE 2018! SEPTEMBER 14-17, 2018



DSF was a proud sponsor of this year's Paramedic Ride. Our Family Law Partner John Schuman participated again in this year's ride which took place in September. The Paramedic Ride is a not-for-profit or-

ganization dedicated to strengthening the Paramedic community. Riders started their journey from Toronto on September 14, 2018, and completed their ride in Ottawa on September 17, 2018.



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