

THE NEW CONSTRUCTION ACT

THERE ARE A LOT OF CHANGES COMING INTO FORCE SOON.
HERE ARE OUR TOP 10 THINGS TO KNOW BEFORE JULY 1, 2018

1. The “lien modernization” provisions of the *Construction Act* apply if:
 - a. The contract for the improvement; or
 - b. The procurement process (RFQ, RFP or tender call); or
 - c. The premises is subject to a leasehold interest, and the lease, is entered into or started on or after **July 1, 2018**.
2. If the new lien modernization applies, you have 60 days to preserve a lien and 150 days to perfect a lien.
3. You need to keep track of two statutory regimes after July 1, 2018 (the former *Construction Lien Act* and the *Construction Act*). If you are unsure which regime applies to your lien rights, use the former *Construction Lien Act* regime: lien within 45 days and start a lien action within 90 days.
4. Under the *Construction Act*, if you lien a municipality, serve the lien on the municipality. Serving the lien is more time consuming than registering a lien on title, so make sure you give yourself enough time and call ahead to find out when the clerk will be in the office.
5. You do not need separate trust accounts for each project! You do however need to keep proper accounting records for each project and bank account.
6. Adjudication is going to have a big impact on projects, but it doesn’t come into force until October 1, 2019. Until then, your remedy is the construction lien and litigation (same remedies as you had under the *Construction Lien Act*).
7. Release of holdback is mandatory, unless a notice of non-payment is published within 20 days of the date of release.
8. It is possible to post security for the early release of holdback. A form of bond for the early release of holdback is included in the new regulations.
9. You have the ability to get more information from an owner, or landlord from a “section 39” request. You can use this “request for information” to learn more about your project.
10. Review the prime contract, your subcontract and purchase orders to make sure they comply with the *Construction Act*. You cannot contract out of the new requirements.

When in doubt, our construction team of lawyers are ready, willing and able to help you navigate the new construction regime!



SANDRA ASTOLFO
PARTNER

416.947.5045
sastolfo@weirfoulds.com



FAREN BOGACH
PARTNER

416.947.5078
fbogach@weirfoulds.com