

FALL CONSTRUCTION LAW FORUM

OCTOBER 26, 2021



LEGAL DISCLAIMER

- The presentation today is not intended as legal advice.
- Because this is a high level overview, it is impossible to cover all relevant details, and your available rights and remedies will depend on the unique facts of each situation, your applicable contract or subcontract, or the nature of your project.
- For specific advice, please contact your qualified legal counsel before making any decisions or taking any action. This is of particular importance as every province and territory has its own legal regime.
- As you know, the situation is extremely fluid and is changing on a daily basis. As things evolve, your best course of action could also evolve. Please follow up to date and reliable sources for your information.

AGENDA

Topic	Speaker
Welcome	Ted Betts
Introduction & case law update	Sahil Shoor
Important considerations in advancing construction projects on Indigenous land	Maya Stano Jeremy Sapers
Contrasting the Ontario and Alberta builders' lien legislation re: Prompt payment & adjudication	Stephen Carter-Edwards Ted Betts
Construction labour & employment law: Navigating the 4th wave	Hina Ghaus Tushar Anandasagar
Habitations Trigone & increased scrutiny over RBQ's licensing process	Joey Suri
Closing & introduction to breakout rooms by province	Sahil Shoor

CASE LAW UPDATE

SAHIL SHOOR – PARTNER



Pentad Construction Inc. v. 2022988 Ontario Inc., 2021 ONSC 824

Third-party payment certificates will be binding if agreed to, absent fraud, bad faith, or wilful disregard of duty.

- In this case, the contract between a sub-contractor and a project manager stipulated that “the sub-contractor’s work be inspected for quality and quantity and certified complete, received and approved by the project manager’s authorized engineer, prior to any sums becoming due.”
- The authorized engineer did not certify the sub-contractor’s claims, and as a consequence of opposing views, the sub-contractor halted work and registered a lien under Ontario’s *Construction Act*.

THE DECISION

- The Court held that the two parties agreed to a payment certification provision and were bound by the decisions of the authorized engineer.
- The law holds that, “**where payments are dependent on certification, the determination of the payment certifier is final and binding, absent fraud or bad faith, or a knowing and wilful disregard of duty.**”

KEY TAKEAWAYS

1. Contractual interpretation continues to be, “grounded in the text and read in light of the entire contract.”
2. Courts presume that parties have meant to be bound by their bargain — and so, what parties agree to is key.
3. The decisions of third-party payment certifiers, made in the context of a contractual provision stipulating that such decisions are binding, will be enforced absent fraud or bad faith, or a knowing and wilful disregard of duty.

Companies must be attentive to such contractual language and whether there is a transparent and clear process for certifier decisions or room to challenge such decisions.

CONTRACTUAL NOTICE REQUIREMENTS

A contractor intending to pursue a claim against an owner must take care to adhere to contractual notice provisions, or risk having its claim dismissed entirely, especially in cases of governmental owners.

- In two recent decisions, claims by contractors were dismissed on interlocutory motions for summary judgment in circumstances where the Court found that the contractors failed to provide notice as required by the contract.

Tower Restoration v. Attorney General of Canada., 2021 ONSC 3063

- In this case, the owner, the Attorney General of Canada (“**Canada**”), rejected a contractor’s claim for an additional post-completion payment.
- Canada advised the contractor that if it disagreed with the rejection of the claim, it could exercise its options under the dispute resolution provisions of the contract, which required the contractor to submit a Notice of Dispute to Canada within 15 days of receiving its rejection of the claim.
- **No** action was taken until almost two years later.

THE DECISION

- The Court **rejected** the contractor's claim.
- The Court found that the terms of the contract regarding notice were “crystal clear”, and further noted the policy rationale behind binding notice provisions such as in this case, that the defending party ought to be allowed to consider options in response to a prospective claim and take corrective action.

Elite Construction Inc. v. Attorney General of Canada., 2021 ONSC 562

- In this case, the contractor, brought an action against the owner, Canada, seeking additional compensation under the contract in relation to delays and extras.
- The contract contained two applicable notice provisions:
 1. contractor to give Canada notice of its intention to claim for an extra, loss, or damage within 10 days of the alleged cause of same;
 2. contractor to submit a Notice of Dispute to Canada within 15 days of the receipt of any decision or direction of Canada.
- The contractor did **not** provide notice of its claims.

THE DECISION

- Canada moved for summary judgment on the basis that the contractor failed to comply with the notice provisions of the contract, and was thereby precluded from pursuing its claim.
- The court ultimately agreed with Canada.
- Accordingly, as in *Tower Restoration*, **summary judgment was granted and the contractor's claim was dismissed on the motion.**

KEY TAKEAWAYS

Courts will enforce contractual notice provisions where circumstances warrant their enforcement and applicable notice provisions will not be lightly set aside.

- **Take the notice provisions in the contract seriously!**
 - When a project has “many moving pieces” and the parties are otherwise in “constant communications”, contractors can be hesitant to adhere to notice provisions for commercial reasons.
 - In many cases, subcontracts expressly incorporate prime contract conditions by reference. In such cases, subcontractors will need to ensure they: **(1)** carefully review prime contract provisions to be incorporated into the subcontract; and **(2)** adhere to notice provisions as may be required.

CONSTRUCTION ACT

The contract used to determine whether the old *Construction Lien Act* or the new *Construction Act* applies under section 87.3(1)(a) is the **prime contract between the owner and the contractor**.

- On July 1, 2018, significant changes to Ontario's construction lien legislation came into force:
 - Section 31 of the *Act* was amended to increase the deadline to preserve a lien from 45 to 60 days
 - Section 36 of the *Act* was amended to increase the timeline to perfect a lien from 45 days to 90 days.

JULY 1, 2018

87.3 (1) This *Act* and the regulations, as they read on June 29, 2018, **continue to apply with respect to an improvement if,**

- a. a contract for the improvement was entered into before July 1, 2018;**
- b. a procurement process for the improvement was commenced before July 1, 2018 by the owner of the premises; or**
- c. in the case of a premises that is subject to a leasehold interest that was first entered into before July 1, 2018, a contract for the improvement was entered into or a procurement process for the improvement was commenced on or after July 1, 2018 and before the day subsection 19 (1) of Schedule 8 to the *Restoring Trust, Transparency and Accountability Act*, 2018 came into force.**

(2) For greater certainty, clauses (1) (a) and (c) apply regardless of when any subcontract under the contract was entered into.

Crosslinx Transit Solutions Constructors v. Form & Build Supply (Toronto) Inc., 2021 ONSC 3396

- In this case, two liens were registered 56 days after the date of last supply.
- The liens were registered too late if the 45 day deadline under the old legislation applied, but were properly preserved if the new 60 day deadline under the *Construction Act* was applicable.

THE DECISION

- The Court found that since the prime contract was entered into before July 1, 2018, **the old *Construction Lien Act* provisions applied** and the liens were registered after the 45 day deadline.
- The Court ruled that the determinative date is **not** the date of the subcontract but the date of the prime "contract for the improvement".

KEY TAKEAWAYS

- The Court in this case has clarified that the date of a subcontract is **not** determinative of which version of Ontario's construction lien legislation applies as the date of a subcontract does not factor into the analysis under s. 87.3.

Attention should be given to the date of the prime contract (or to the other key dates set out in s. 87.3) when determining when lien rights expire.

J.D. Strachan Construction Ltd. v. Egan Holdings Inc., 2021 ONSC 6425

Reliance on promises to pay does not extend the strict lien timelines in Ontario's *Construction Act*.

- In this case, the Divisional Court upheld a motions court decision to discharge a substantial portion of a lien for being registered out of time.
- The lien claimant argued that the defendant owner had made multiple promises to pay leading up to the lien expiration date, which the lien claimant had relied on to its detriment. As a result, the owner should be "estopped" from asserting a lien expiry defence.

THE DECISION

- **Motions Court Level:** The Judge rejected the claimant's argument, finding that the owner "did not make any representations, either by words or conduct, that would have led the Plaintiff to expect that strict legal rights and obligations under s. 31(2)(a)(i) of the *Act* would not be enforced." Had the owner done so, the outcome of the motion may have been different.
- **On Appeal:** The Divisional Court upheld the lower court ruling, and provided reasons why it was unlikely that promises to pay could defeat the deadlines in the Construction Act. However, the court did **not** go so far as to overturn or diminish the two previous Ontario cases where promissory estoppel had operated to prevent owners from advancing lien expiration defences.

KEY TAKEAWAYS

- The Divisional Court's careful handling appears to have left an opening for promissory estoppel to one day succeed in the right circumstances.
- However, the court was clear that **relying on promises to pay is not enough.**

Scott, Pichelli & Easter Limited v. Dupont Developments Ltd., 2021 ONSC 6579

When mortgages have priority over liens in Ontario, **the priority includes accrued "interest, charges and fees"** arising from the priority mortgage.

- This Divisional Court's recent decision reviews the operation of mortgage priorities in Ontario's *Construction Act*. Specifically, section 78(3) determines whether and to what extent mortgages have priority over liens.
- This matters when distressed projects are pushed past the breaking point into insolvency: "priority" over the proceeds of sale can make the difference between 100% to 0% recovery for a creditor or lien claimant.

THE DECISION

- The appeal court held that **mortgage priority includes accrued fees, charges and interest.**
- In this case, **those amounts were substantial**, including receiver's fees in the amount of \$463,892.46, arrears in mortgage interest in the amount of \$429,104.15, and other charges in the amount of \$108,676.64.
- Priority for the mortgage meant that those monies were **not** available to lien claimants.

KEY TAKEAWAYS

Mortgage priorities are a technical area of the *Act*, with **serious consequences** in the event of a project insolvency.

ADVANCING CAPITAL PROJECTS ON INDIGENOUS RESERVE LANDS

MAYA STANO – PARTNER
JEREMY SAPERS – ASSOCIATE



OUTLINE

- ☐ Context
- ☐ Developing the Project
- ☐ Managing for Project Success
- ☐ What if things go wrong?
- ☐ Looking ahead



CONTEXT

LOTS OF PROJECTS ALREADY UNDERWAY

- **Tla-o-qui-aht First Nation – Shipping container housing**
(funding from Indigenous Services Canada & Canada Mortgage Housing Corporation)
- **Salt River First Nation – Residential infrastructure project**
(funding from Government of Canada)
- **Norway House Cree Nation – Health Centre of Excellence**
(funding from Government of Canada)
- **Animbiigoo Zaagi-igan Anishinaabek – Electrification project**
(funding from Government of Canada and small contribution from the Nation)
- **Residential social services in Muskowekwan (Saskatchewan) and Pikangikum (Ontario)**
(funding from Indigenous Services Canada Indigenous Homes Innovation Initiative)

DEVELOPING THE PROJECT

WHAT TO BUILD – DEFINING THE PROJECT

- **Scope the Project**

- Align with community needs & vision
- Identify funding options, and scope accordingly

- **Maximize Community benefits**

- Identify Indigenous employment / business opportunities
- Enhance / upgrade infrastructure
- Seek other economic development opportunities

- **Carefully consider Project location**

- Impacts on existing interests in land? (such as CP holders? Other licences/leases? Surrounding land uses?)
- Alignment with FN zoning laws/by-laws?
- Alignment with FN land use plans (current and future plans)?
- Any sensitive environmental features?
- Environmental assessment required?
- Application of *Species at Risk Act*?

PROJECT FUNDING

- “Strings attached” to federal or provincial funding
- Specific purpose – not a blank cheque
- Up-front vs. reimbursement
- Fair competitions for third-party contracts
- Ongoing oversight and reporting / accounting obligations
- Project start and end dates for funding access

PROCUREMENT

- Contracts must be awarded in a way that is fair, transparent, competitive, and consistent with value for money principles
- Common requirement for public tender
- General tendering / procurement rules will apply
- Be aware of risks associated with contract award to FN economic development entity



MANAGING FOR PROJECT SUCCESS

KEY CONSIDERATIONS FOR PROJECT DEVELOPMENT

- **Project Manager**

- Key role to oversee project development

- **Payment**

- Tracking budget and schedule
- Evaluation of requests for payment



- **Managing change**

- Careful oversight over change order requests

- **Community**

- Compliance with applicable laws
- Engagement with Council + Lands Department/Committee
- Regular communications to manage expectations

WHAT IF TIMINGS GO WRONG?

LIEN RIGHTS ON RESERVE?

- **Section 88 of the *Indian Act***
 - all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province, except to the extent that those laws are inconsistent with this Act
- **Section 29 of the *Indian Act***
 - reserve lands are not subject to seizure under legal process
- **Section 89(1) of the *Indian Act***
 - reserve lands are not subject to charge, pledge, mortgage, attachment, levy, seizure, distress or execution in favour or at the instance of any person other than an Indian or a band

LIENS UNDER PROVINCIAL STATUTES

- **Lien laws vary by province**
 - Generally, reserve lands cannot be liened
- **Other rights/remedies in lien legislation may apply – depends on specific language of applicable statute**
- **For example, in British Columbia:**
 - No statutory holdback obligation
 - But statutory trusts still arise

SO ... WHAT TO DO?

- **Prevention & Being Proactive is key**

- Manage expectations: Early and ongoing Project updates with Chief and Council, Project Manager and Nation's Lands Department
- Draft key terms into contract: Consider incorporating dispute resolution and statutory requirements into construction contract
- Flexibility: Be prepared to revise Project scope if funding becomes an issue
- Act as a Partner: Approach project development as a partner with the Indigenous community, with similar goals for project success

LOOKING AHEAD

NUMEROUS FUNDING SOURCES AVAILABLE

■ **Indigenous Community Infrastructure Fund**

- Starting in 2021-22, this fund will support immediate demands, as prioritized by Indigenous partners, with shovel-ready infrastructure projects in Indigenous communities
- \$4.3 billion over four years

■ **First Nation Infrastructure Fund**

- helps First Nations communities upgrade and increase public infrastructure to improve the quality of life and the environment in First Nations communities.
- supports a wide range of infrastructure projects on reserves, Crown land or land set aside for the use and benefit of First Nations.
- targets infrastructure categories with long-standing community needs.
- off-reserve projects can be considered if they are cost-shared with non-First Nations partners, such as nearby municipalities or other Indigenous partners

AND MORE FUNDING ...

- **Capital Facilities and Maintenance (CFM) program**
 - Over \$1 billion per year available
 - Intended for housing, education, water and wastewater systems, and other infrastructure (roads and bridges, fire protection, electrification, community facilities, etc.).
 - three funding streams - operations and maintenance (O&M), minor capital (for projects under \$1.5 million) and major capital (for projects over \$1.5 million).
- **Other sources**
 - For example, Canada Infrastructure Bank has a mandate to target at least \$1 billion investment for Indigenous infrastructure
- **Community funds (through IBAs, settlement agreements, economic development activities, etc.)**

CONSIDERATIONS FOR INDIGENOUS GOVERNMENTS

- **Identify Community Needs & Community Vision**
- **Consider Land Use Goals**
- **Secure funding sources up front**
- **Retain a Project Manager to oversee project development from the start and through to complete construction**
- **Communicate regularly with community to provide project updates and manage expectations**

CONSIDERATION FOR DEVELOPERS

- **Develop relationships**
 - Requires early and ongoing engagement and transparency
 - Consider requesting cultural training
 - Ensure communications are with appropriate parties (Leadership, Lands Department, etc.)
- **Consider partnerships with Indigenous economic development entities**
- **Carry out your due diligence**
- **Understand funding limitations (if any) and carry out material procurement activities accordingly**
- **Seek to be flexible in project development**

SUMMARY

- **Indigenous Nations are increasingly becoming a power-house in project development**
- **There is a lot of potential for development on Indigenous lands**
 - Important role in addressing community needs and goals
 - Supported by many funding sources
- **Relationships can translate into long-term benefits**
 - Important relationships can be developed with Indigenous communities and their economic-development entities that can result in long-term benefits to the community and those developers that become their partners

ALBERTA V ONTARIO: HOW ADJUDICATION MAY DIFFER ACROSS CANADA

STEPHEN CARTER-EDWARDS – PARTNER
TED BETTS – PARTNER & HEAD OF INFRASTRUCTURE AND CONSTRUCTION GROUP



ALBERTA'S NEW BUILDERS' LIEN LEGISLATION

- **December 9, 2020:** Bill 37 amended Alberta's *Builders' Lien Act* and renamed it the *Prompt Payment and Construction Lien Act* ("New Act")
- **June 17, 2021:** Bill 62 amended the *New Act*
- **Presently:**
 1. Awaiting proclamation of the *New Act*, likely July 2022
 2. Ongoing industry consultation about *Regulations*

ALBERTA V ONTARIO: APPLICATION TO CROWN

- **ON: *Construction Act* binds the Crown but does not apply to nuclear facility projects (*Construction Act* s. 3(1) and 88(1)(k))**
- **AB: Adjudication does not apply to essentially all provincial Crown projects:**
 1. Does not apply to public works (*New Act* s.1.1(2)(a))
 2. Does not apply to agreements to finance and undertake an improvement in which the Alberta Crown (or provincial corporation) is an entity (*New Act* s1.1(2)(b))
- **Issue: Will other provinces decide to exempt the provincial Crown from prompt payment and adjudication?**
 1. Role of Crown projects in post-COVID economic recovery
 2. Policy reasons for exempting Crown projects

ALBERTA V ONTARIO: NOMINATING AUTHORITIES

- **ON: One Nominating Authority authorized to train and quality adjudicators, ODACC (*Construction Act* s.13.2)**
- **AB: “One or more” entities may be designated (*New Act* s.33.2(1))**
 1. Two groups currently seeking to be a Nominating Authority
 2. Theory of multiple Nominating Authorities is to increase competition, drive lower costs, better quality
- **Issue: Will other provinces follow Alberta in permitting multiple Nominating Authorities?**
 1. Forum and adjudicator shopping
 2. Consistency between Nominating Authorities
 3. Will there be too many people training to become adjudicators?

ALBERTA V ONTARIO: ADJUDICATION AND COURT

- **ON:** Parties to a contract may refer stipulated disputes to adjudication even if they are the subject of a court action or arbitration (unless the action or arbitration is finally determined) (*Construction Act* s.13.5(5))
- **AB:**
 1. A party cannot submit a matter to adjudication that is already the subject of a court action (s.33.4(1)).
 2. If an adjudication commenced on the same date as a court action is commenced, the adjudication is discontinued in favour of the court action (s.33.4(3)).
- **Issues:** How will other provinces decide the relationship between adjudication and Court Actions? Will AB have fewer adjudications due to court actions?

ALBERTA V ONTARIO: ADJUDICATION

- **ON: Parties have some control of adjudication process**
 1. Parties can agree to an adjudicator, but not through provision of contract or subcontract (*Construction Act* s.13.9(2) and (3))
 2. ON: Adjudications can be consolidated by consent, or by direction of the contractor (*Construction Act* s.13.8(1))
- **AB: Parties presently have little control of adjudication process**
 1. No present ability in the *New Act* for parties to agree an adjudicator
 2. No present ability in the *New Act* for parties (nor anyone else) to consolidate adjudications
- **Issues: What rights will other provinces afford parties to an adjudication to have to control the adjudication process? What happens if two NAs involved?**

CONSTRUCTION LABOUR & EMPLOYMENT LAW: NAVIGATING THE 4TH WAVE

TUSHAR ANANDASAGAR – ASSOCIATE
HINA GHAS – ASSOCIATE



AGENDA

1. Status Update: To mandate or not?
2. Personal vs. Human Rights
3. Status Update: Mandatory Rapid Testing
4. Site Health & Safety – Navigating the 4th Wave



STATUS UPDATE: TO MANDATE, OR NOT?

Types of Policies

- Vax or else ...
- Vax or alternative ...

Authority

- Reopening Legislation – High Risk
- OH&S Legislation – Regular Risk
- Health Protection Legislation – TBD



STATUS UPDATE: TO MANDATE, OR NOT?

Risks of Implementation

- Constructive Dismissal, HRC, Privacy
- Adverse Reactions - Workers' comp / Tort

Risks of No Implementation

- Mandated sectors – High Risk
- TBD – Regular Risk

Vaccine Passports



HUMAN RIGHTS VS. PERSONAL RIGHTS ...

Ontario Human Rights Commission:

While receiving a COVID-19 vaccine remains voluntary, the OHRC takes the position that **mandating and requiring proof of vaccination to protect people at work or when receiving services is generally permissible under the Human Rights Code (Code) as long as protections are put in place** to make sure people who are unable to be vaccinated for Code-related reasons are reasonably accommodated. This applies to all organizations.

Organizations with a proven need for COVID-related health and safety requirements might also put **COVID testing in place as an alternative to mandatory vaccinations** or as an option for accommodating people who are unable to receive a vaccine for medical reasons. Organizations should cover the costs of COVID testing as part of the duty to accommodate.



Ontario
Human Rights Commission
Commission ontarienne des
droits de la personne

ON RELIGION (CREED) VS. PERSONAL REFUSAL ...

Personal preferences and singular beliefs not protected

Receiving a COVID-19 vaccine is voluntary. At the same time, the OHRC's position is that **a person who chooses not to be vaccinated based on personal preference does not have the right to accommodation under the Code**. The OHRC is not aware of any tribunal or court decision that found a singular belief against vaccinations or masks amounted to a creed within the meaning of the Code.

While the Code prohibits discrimination based on creed, **personal preferences or singular beliefs do not amount to a creed for the purposes of the Code**.



Ontario
Human Rights Commission

Commission ontarienne des
droits de la personne

MANDATORY RAPID ANTIGEN TESTING?

LIUNA Local 183 v EllisDon Construction

... The experience of EllisDon in other job sites including **positive tests and sites partially shut down** by Toronto Public Health are **very relevant** to assessing the risk of COVID spread.

This assessment of COVID risk and this decision should not be made in a vacuum ...

... COVID spread remains a threat to the public at large and those working at EllisDon construction sites. **When one weighs the intrusiveness of the rapid test against the objective of the Policy, preventing the spread of COVID-19, the policy is a reasonable one.**



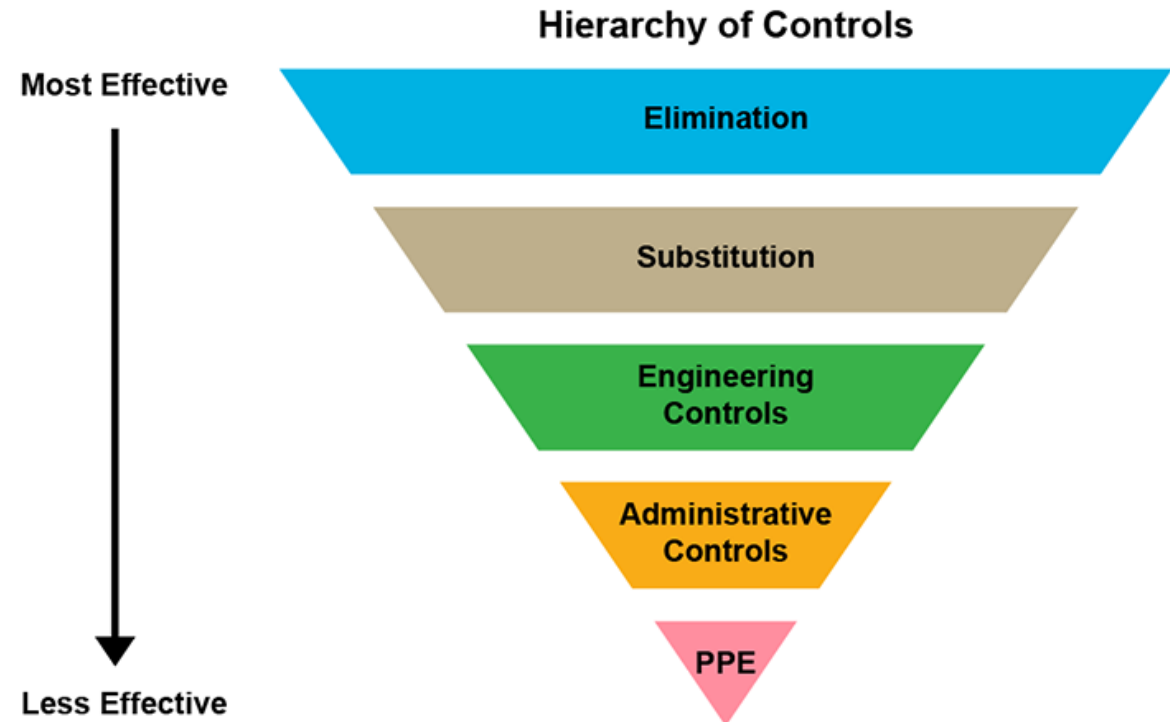
SITE HEALTH & SAFETY

C-19 Safety Plan

- Hierarchy of Controls
- Masking (ASTM)
- Signage
- “Active” Health Screening
- Sanitation
- “Positive Plan”

Expansion of Enforcement

Reporting obligations



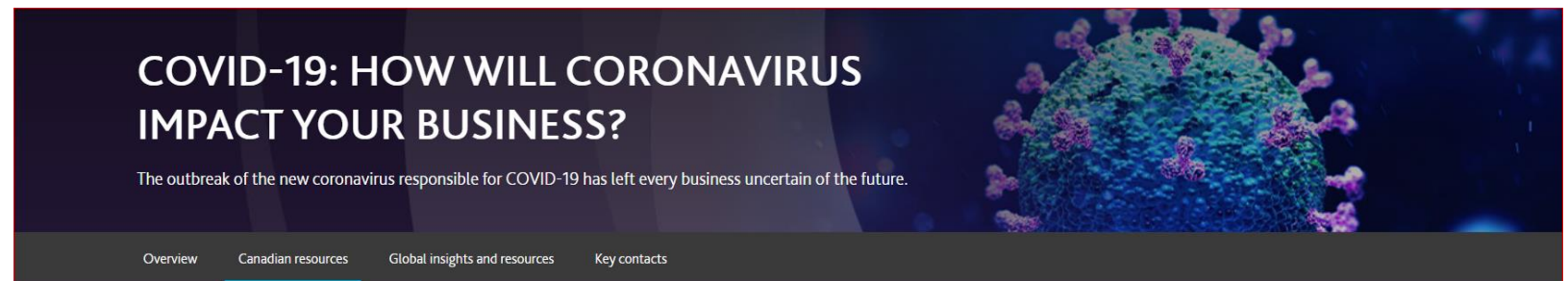
USEFUL RESOURCES

Gowling WLG – COVID-19 Insights

<https://gowlingwlg.com/en/topics/covid-19-how-will-coronavirus-impact-your-business/canadian-resources/>

Insights: Mandatory Vaccinations

<https://gowlingwlg.com/en/insights-resources/articles/2020/workplaces-vaccination-policies-to-mandate-or-not/>

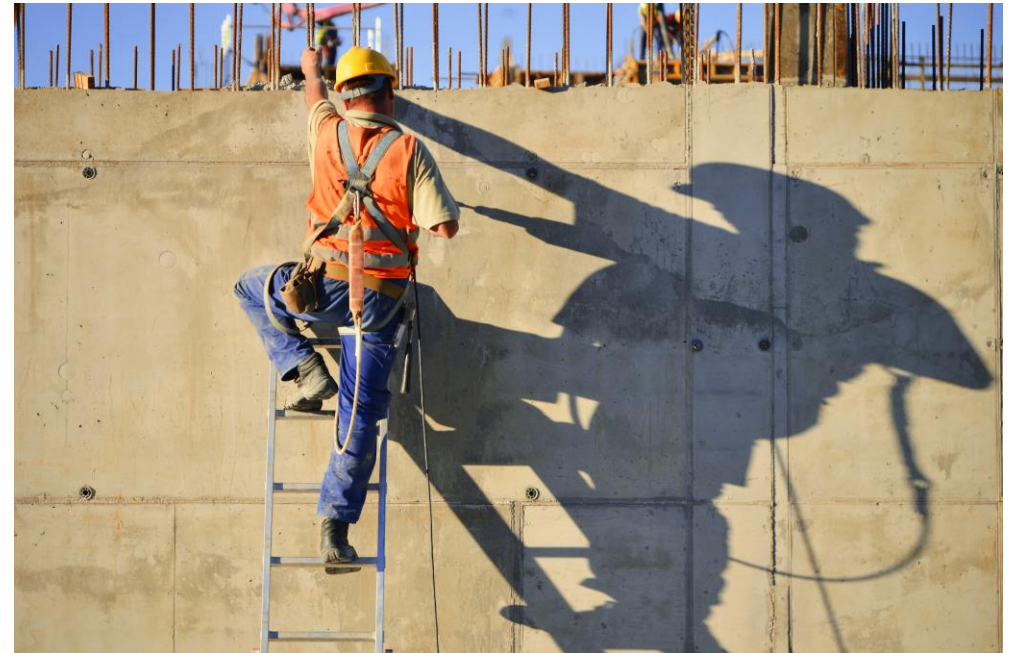


HABITATIONS TRIGONE & INCREASED SCRUTINY OVER RBQ'S LICENSING PROCESS

JOEY SURI – ASSOCIATE

HABITATIONS TRIGONE LOSES ALL HIS LICENCES

- **Who is Habitations Trigone?**
 1. Founded in 1991 by Patrice St-Pierre and Serge Rouillard
 2. One of the biggest construction contractors in Québec (more than 22,000 housing units built)
 3. “Habitations Trigone” is in fact a trademark
 4. An independent corporate entity with a distinct licence from the RBQ is created for each new construction project



RÉGIE DU BÂTIMENT DU QUÉBEC C. 3087-9894 QUÉBEC INC.

What is analysed in this decision?

- 1) Confusion
- ~~2) Illegitimate terminations, non-compliance with judgments and ongoing legal proceedings~~
- 3) False declarations
- 4) Remedial notices and public safety
- 5) Criminal and municipal offences
- ~~6) Claims to warranty schemes~~
- 7) Quality of work and after-sales services
- 8) Work without a licence

CONFUSION

- Habitations Trigone is a trademark without any licence, but his logo and his name are frequently used on documents and advertising
- No distinction with the different entities of the group on Habitation Trigone website
- Many customers testified that they thought they were buying a unit from Habitations Trigone
- For many customers, the name “Trigone” was a determining factor in their decision to contract, as it represented a guarantee of solvency
- Confusion and mixing in licence numbers and company names
- Habitations Trigone is in violation of the *Building Act* by giving reason to believe that it is a construction contractor
- “To do so is to *lack transparency, to confuse. The identity of the contractor with whom one contracts is crucial. To intentionally or unintentionally hide one's true identity is to mislead the public in general and the future buyer in particular.*”

FALSE DECLARATIONS

- Multiple false declarations by executives and certain Trigone entities in documents submitted to the RBQ
- Even if they are honest mistakes, these false declarations constitute violations of the *Building Act*, which can even lead to criminal sanctions
- “*The forms are a means for the Régie to ensure the application of the Act and the protection of the public. They must be completed with diligence and accuracy.*”

REMEDIAL NOTICES AND PUBLIC SAFETY

- **Several non-conformities identified by the RBQ were not corrected within the time frame specified in the remedial notices**
- **Lack of collaboration by Trigone with the authorities, long delays in correcting non-compliances, some of which are serious and of concern for public safety (e.g., evacuation notices by the fire department)**

CRIMINAL AND MUNICIPAL OFFENCES

- The various entities of the Trigone have been found guilty of criminal offences on more than 130 occasions since 2007
 1. Criminal violation of laws such as the *Act Respecting Occupational Health And Safety*
- Trigone entities have been found guilty on more than 200 occasions of violating various municipal regulations
 1. Municipal offences such as unlicensed construction work, accumulation of debris or excessive noise
- “*Thus, the respondents are contravening the public interest by their disrespect for municipal regulations.*”

QUALITY OF WORK AND AFTER-SALES SERVICES

- **Water infiltration, ant infestations, mould, structural problems**
- **The fact that the number of violations is relatively small compared to the number of units built is not a “determining factor”**
- **Lack of collaboration and difficulties in reaching the after-sales service**
- **The various Trigone entities in charge of construction projects are often “empty shells” which are not able to compensate the buyers**
 1. Several judgments against various entities of the Trigone Group have not been paid and will not be paid
 2. Many of these entities no longer have any assets

WORK WITHOUT A LICENCE

- *“No person may act as a building contractor, hold himself out to be such or give cause to believe that he is a building contractor, unless he holds a current licence for that purpose.” – Building Act, section 46*
- Some Trigone entities were acting as construction contractors without the proper licences and used the services of other contractors who did not hold a licence for the purpose of the work
- *“Not ensuring the validity of the licence held by the company to which it is about to award a contract for the execution of construction work demonstrates a negligent attitude, which is not what is expected from a construction contractor.”*

APPRECIATION AND SANCTION

- The accusations against one of the Trigone entities are imputed to the other entities, since they form a whole (they all share the same officers and guarantor)
- Habitations Trigone has shown a disregard for the interests of their clients and the public, a lack of probity, a lack of transparency by sowing confusion and a lack of loyalty
- Trigone has shown no willingness to change its behaviour and practices
- “Maintaining a licence for the businesses of these executives is to provide moral support for this type of behaviour.”
- “The conduct alleged against the respondents and their executives seriously undermined the trust of the clients, but also that of any reasonable person who would have been aware of all that was revealed at the hearing.”
- Habitations Trigone's licences are cancelled

TRIGONE MAY RESUME OPERATIONS UNTIL JANUARY 2022

- **Trigone contests the RBQ decision based on 8 grounds, such as:**
 1. The impartiality and independence of the RBQ investigation
 2. The decision is aimed at punishing the plaintiffs rather than seeking to protect the public
 3. There is no “intention” to confuse the public
- **Provisional order from the *Tribunal administratif du travail* (October 14th)**
 1. Serious and irreparable harm arising from the 12 projects that are currently under construction, totalling 2,000 housing units
 2. The cancellation of the licences affects a total of 1380 employees of Habitations Trigone and its subcontractors, who are also likely to lose their contracts and jobs
 3. The *Tribunal administratif du travail* will hear the case on its merits in January 2022

INCREASED SCRUTINY OVER RBQ'S ACTIVITIES

- **Public interest TV shows (*La Facture*) and newspaper articles on the RBQ in the past months**
- **Two main issues with RBQ's activities were raised:**
 1. **Licensing process**
 - Inadequate evaluation methods
 - Easy access to test answers
 - No practical evaluation
 2. **Inspections**
 - Quebec is the only province in Canada where residential construction inspection is not mandatory
 - Several associations and professional orders are calling on the Québec government to pass legislation to make construction site inspection mandatory

INCREASING PRESSURE ON THE RBQ

- **RBQ recently announced that it would hire more inspectors and that it would review the evaluations used in the licencing process**
- **Minister for Municipal Affairs and Housing, Andrée Laforest, has sent a list of requests to the RBQ in the last few days:**
 1. Inspections at key stages of construction
 2. Mandatory pre-purchase inspection
 3. Initial training for obtaining a license



SPEAKERS



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