

4TH 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 2023
- 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 complex situations

Hear from **The Honourable Phillip Sutherland** and **Associate Justice Charles Wiebe** on what works and what doesn't if your matter ends up in court.

Register today at:

osgoodepd.ca/construction-liens

PROGRAM CHAIRS

Jason Annibale
McMillan LLP

Sandra Astolfo
WeirFoulds LLP

PROGRAM ADVISOR

Geza Banfai
McMillan LLP

REGISTRATION OPTIONS

April 11, 2023:
Online (Blended)
9:00 a.m. – 5:00 p.m. ET

OR

May 11, 2023:
Online (Replay)
9:00 a.m. – 5:00 p.m. ET

LOCATION

Osgoode Professional Development
1 Dundas Street West, 26th Floor,
Toronto, ON Canada M5G 1Z3

Can't make the date?

*Registration includes 120-day
unlimited, online access to the
recorded program.*

4th 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 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, mines, 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 tips/what to do when: CRA gets involved, Federal land is involved, you want a trial management hearing, you lose at adjudication
- Tactics for dealing with complex liens and breach of trust actions and remedies

PLUS! You will get access to three 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

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Agenda

9:00 a.m.

Chairs' Welcome, Remarks and Overview

9:15 a.m.

The Anatomy and Mechanics of a Lien Action in 2023

Lea Nebel, Blaney McMurtry LLP

Maria Ruberto, Pallett Valo LLP

- Session will follow the path of a lien matter from start to resolution, including title searches
- What's new for 2023? Key updates, impacts and issues you need to know
- Geographic distinctions – including virtual proceedings
- The class-action like nature of a lien proceeding
- 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

10:30 a.m.

Health Break

10:40 a.m.

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

Lena Wang, Glaholt Bowles 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 and 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?
- When should you pursue other remedies?

11:40 a.m.

Health Break

11:45 a.m.

What's Truly a Lienable Service?

Paul Hancock, Daoust Vukovich LLP

Edward Lynde QArb, Fasken Martineau DuMoulin LLP

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

12:45 p.m.

Lunch Break

1:15 p.m.

Best Practices in Court – Featuring The Honourable Phillip Sutherland and Associate Justice Charles Wiebe

Join The Honourable Phillip Sutherland and Associate Justice Charles Wiebe for an interactive walk-through of a lien trial, including the proper pre-trial practices for select regions, focusing on best practices and recommended “dos and don'ts” when appearing before a decision-maker in court. 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, Blake, Cassels & Graydon LLP

Philip Cho, WeirFoulds LLP

- Overview of the current landscape, key developments and trends
- 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?
- What to do if the CRA gets involved
- 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

3:45 p.m.

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

Catherine DiMarco, Pallett Valo LLP

Robert Kennaley, Principal, Kennaley Construction Law

Get the latest updates to identify crucial gaps and inconsistencies in the law and practical guidance on how to manage them through 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 and how to handle release of holdback during adjudication
- Preserving the lien against a Municipality
- Public contracts and the contractor's bonding obligations
- “Giving”, “providing” and “serving” of documents under the *Act*
- What should 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’
- Importance of the Notice of Adjudication and the choice of Adjudicator

5:00 p.m.

Program Concludes

Online Modules

Program includes three 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 all three online modules before the program begins.

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

Paul Hancock, Daoust Vukovich LLP

- What is a lien? When do rights arise and expire?
- Understanding the different types of liens
- How to preserve, register and give a lien – vacate, discharge and perfect
- What is the liability for exaggerated liens?
- Troubleshooting tips

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

Ted Rotenberg, Drudi Alexiou Kuchar LLP

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

Breach of Trust and Companion Remedies: Moving Beyond the Usual and Other Risks (~60 mins, available on demand by April 3, 2023)

Ted Rotenberg, Drudi Alexiou Kuchar LLP

Tushar Sabharwal, Drudi Alexiou Kuchar LLP

- Overview of a breach of trust action and remedies – key principles, mechanics, steps and the pros and cons to consider
- Summary of key trust action issues, challenges and what they mean
- How to prevent or mitigate liability
- Troubleshooting tips to avoid common pitfalls, including if your matter ends up in court
- Session includes resources for bringing/defending a breach of trust action

Program Chairs

Jason Annibale
McMillan LLP

Sandra Astolfo
WeirFoulds LLP

Program Advisor

Geza Banfai
McMillan LLP

Faculty Includes

The Honourable Phillip W. Sutherland
Ontario Superior Court of Justice

Associate Justice Charles Wiebe
Ontario Superior Court of Justice

Chris Burr
Blake, Cassels & Graydon LLP

Philip Cho
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Maria Ruberto
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Drudi Alexiou Kuchar LLP

Tushar Sabharwal
Drudi Alexiou Kuchar LLP

Lena Wang
Glaholt Bowles LLP

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



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Registration Details

Fee per Delegate: \$695 + TAX

Newly Licensed*: \$347.50 + TAX

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

Fee includes program registration, electronic program materials and 120-day unlimited online access to program archive. Group discounts and financial assistance 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.



OsgoodePD has been approved as an Accredited Provider of Professionalism Content by the LSO.



Eligible CPD Hours – LSO (ON):
Program – 7h 15m CPD (6h 15m Substantive; 1h Professionalism).
On-Demand Content – 3h 15m CPD (2h 45m Substantive; 30m Professionalism).



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



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.



This program is approved for LAWPRO Risk Management Credit.

Register today at:

osgoodepd.ca/construction-liens



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