

5TH 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 practical impacts of ongoing global events, including supply chain issues.

- Get a practical overview of lien rights and important developments for 2024
- Hear about the anatomy of a lien action and the mechanics of actioning a lien in 2024
- 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 **Associate Justice Charles Wiebe** on what works and what doesn't if your matter ends up in court.

PROGRAM CHAIRS

Jason Annibale
McMillan LLP

Sandra Astolfo
WeirFoulds LLP

PROGRAM ADVISOR

Geza Banfai
McMillan LLP

REGISTRATION OPTIONS

February 21, 2024:

In-Person or Online (Blended)
9:00 a.m. – 5:00 p.m. ET

OR

April 4, 2024:

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.*

Register today at:

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

5th 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:

- 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”
- Tools to protect yourself from gaps and inconsistencies in the law
- Tactics for dealing with complex liens and breach of trust actions and remedies
- How to deal with an insolvent party, and understanding shifting lien priorities
- Troubleshooting tips/what to do when: CRA gets involved, federal land is involved, you want a trial management hearing, you lose at adjudication

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
- Business and finance professionals
- Insurance professionals
- Consultants

Register today at:

osgoodepd.ca/construction-liens

Agenda

9:00 a.m.

Chairs' Welcome and Overview

9:10 a.m.

The Anatomy and Mechanics of a Lien Action in 2024

Lea Nebel, Blaney McMurtry LLP

Maria Ruberto, Pallett Valo LLP

Session will generally follow the path of how a lien action is commenced, how it proceeds and how it can be resolved.

- Overview of conducting title searches – getting it right:
 - Teraview Documents – parcel abstracts, mortgages, instruments and encumbrance
 - Applications to Delete, construction lien forms, proper terminology
 - Issues with LRO not understanding things like when we as counsel can and cannot make a 'sheltering statement'
- Geographic distinctions in select regions (within and outside Toronto)
- 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 (within and outside Toronto)

10:40 a.m.

Break

11:00 a.m.

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

Lena Wang, Glaholt Bowles LLP

- The interplay between construction liens and the adjudication regime – deciding whether to lien or not after losing at adjudication
- 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
- Getting the timing right – bankruptcies and insolvencies and contract terminations
- Monetary limits and minimums – are there amounts too small for a lien?
- When should you pursue other remedies?

12:00 p.m.

What's Truly a Lienable Service?

Paul Hancock, Daoust Vukovich LLP

Edward Lynde QArb, Fasken Martineau DuMoulin LLP

- How to lien portable structures – summary of recent case law
- 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

1:00 p.m.

Lunch Break

1:30 p.m.

Best Practices Leading up to and in Court: Associate Justice Charles Wiebe

Join **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 tips for in-person vs. virtual proceedings and you will get valuable tips, which will serve as a vital resource long after the program concludes.

2:45 p.m.

Break

3:00 p.m.

Navigating Insolvency and Bankruptcy Priorities and Key Legal Risks

Chris Burr, Blake, Cassels & Graydon LLP

Adrienne Ho, Aird & Berlis LLP

- Overview of the CCAA and BIA – how do they work?
- What are lien priorities during an insolvency

- What is a CCAA proceeding? What is a stay of proceedings?
- What is a lien regularization order, and how might it dismantle the *Construction Act*?
- What to do if the CRA gets involved
- Top tips and best practices for dealing with an insolvent contractual counterparty:
 - Managing the contract in the face of insolvent party
 - Unique features of dispute resolution proceedings
 - Getting the project built while containing risks
- Recent insolvencies in the news and the road ahead for the construction industry

4:00 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

- 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 ‘one matter per adjudication’
- Importance of the Notice of Adjudication and the choice of Adjudicator

5:00 p.m.

Program Concludes

“Excellent. Knowledgeable and competent presenters.”

Don Dinnin
Vice-President, Procurement Services, Metrolinx

Online Modules

Program includes three online modules designed to clarify foundational and complex lien concepts, and provide you with practical insights, guidance and materials.

We recommend viewing all three online modules prior to attending the program.

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 (62 mins, on demand, recorded in 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, including what to do 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

Associate Justice Charles Wiebe
Ontario Superior Court of Justice

Chris Burr
Blake, Cassels & Graydon LLP

Lea Nebel
Blaney McMurtry LLP

Catherine DiMarco
Pallett Valo LLP

Maria Ruberto
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Paul Hancock
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Drudi Alexiou Kuchar LLP

Robert Kennaley
Kennaley Construction Law

Lena Wang
Glaholt Bowles LLP

Edward Lynde QArb
Fasken Martineau DuMoulin LLP

Here's what past participants had to say:

“Lots of good information [and] insights. All speakers were appropriate for and well informed on the topics of the program. I was very pleased with the [online] program – convenient and did not require any additional travel or accommodations.”

John Vanos, Certified Adjudicator, Ontario Dispute Adjudication for Construction Contracts (ODACC)

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

Peter-Paul Du Vernet, Counsel, Glaholt Bowles LLP



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Registration Details

Fee per Delegate: **\$795 + TAX**

Newly Licensed*: **\$397.50 + TAX**

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

Fees include attendance and electronic program materials. Group discounts are available. Visit www.osgoodepd.ca/group-discounts for details. Please inquire about financial assistance.

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 CPD (6h Substantive; 1h Professionalism).

On-Demand Content – 3h 15m CPD (2h 45m Substantive; 30m Professionalism).



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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.

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