

Now Online!

# 2<sup>ND</sup> ANNUAL LEGAL GUIDE TO MANAGING CONSTRUCTION LIENS IN ONTARIO

Managing construction liens in Ontario is highly technical and complex – involving ongoing change to laws, rules and procedures. *Are you current on the latest updates and best practices?*

Avoid costly mistakes. In one intensive day, you will get **crucial updates**, **expert guidance** and **practical strategies** to navigate liens and better manage your risks and obligations – including COVID-19 impacts and virtual proceedings.

Designed by leading experts for legal and experienced industry professionals, you will:

- Get a practical overview of lien rights and key changes in Ontario
- Understand the anatomy of a lien action and the mechanics of actioning a lien
- Obtain strategies to assess legal risk and other 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 & subcontracts
- Acquire proven tactics to competently navigate challenges, using real-world examples
- Get troubleshooting tips for tackling complex situations and analyzing different approaches

**PLUS!** A Lien Master will walk you through a lien trial, and you will get a useful tip sheet on what works and what doesn't if your matter ends up in court.

## Program Chairs

Jason Annibale    Sandra Astolfo  
McMillan LLP      WeirFoulds LLP

## Program Advisor

Geza Banfai  
McMillan LLP

## Date and Time

February 22, 2021  
9:00 a.m. – 5:00 p.m. EST

Online Replay: April 9, 2021

## Location

ONLINE – Live, Interactive

*Can't make the date?  
Includes 120-day access  
to program archive.*

Register today at:

[osgoodepd.ca/  
constructionliens](https://osgoodepd.ca/constructionliens)



# 2<sup>nd</sup> Annual Legal Guide to Managing Construction Liens in Ontario

Waves of change continue to hit Ontario's construction industry, shifting construction lien processes, along with your priorities and obligations. 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 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. Led by a multi-disciplinary expert faculty, you will learn from their combined liens playbook for 2021.

## Get important updates, tools and insights, including:

- Strategies for navigating the evolving legal landscape, including the shifting procedural requirements – When do lien rights arise? When do they expire? What are the various types of liens?
- Strategic considerations of when to use a lien (and appreciating what this means)
- How to identify what is truly a lienable service – including the common types of lienable services, oddball situations, and the “non-lienable”
- Best practices to protect yourself from gaps and inconsistencies in the law
- Tools for dealing with an insolvent party, and understanding shifting lien priorities
- Troubleshooting techniques, including what to do when
  - the CRA gets involved
  - Federal land is involved
  - you want a trial management hearing
  - you lose at adjudication
- How to decide when to pursue alternatives to liens

**PLUS!** You will also get access to two online modules for this program, focused on liens essentials and tips for navigating complex types of liens.

## 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

# Agenda

9:00 a.m.

Chairs' Welcome + Opening Remarks

9:15 a.m.

The Anatomy and Mechanics of a Lien  
Action in 2021

**Lea Nebel**, Partner, Blaney McMurtry LLP

**Maria Ruberto**, Partner, Pallett Valo LLP

- Geographic distinctions – 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 outside of Toronto

10:15 a.m.

Health Break

10:30 a.m.

To Lien or Not to Lien? Legal and Strategic  
Considerations

**Anna Esposito**, Certified Specialist  
Construction Law, Partner, Pallett Valo LLP

- Overview of the interplay between construction liens and the new adjudication regime
- The importance of relationships in the construction industry and the related dynamics
- Pros and cons of alternatives to liens – includes 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?
- What to do when the CRA gets involved?

11:30 a.m.

### What's Truly a Lienable Service?

**Edward Lynde**, Associate, McLaughlin & Associates

**Darcia Perry**, Associate, McLaughlin & Associates

- What's the difference between a capital repair and maintenance?
- Do construction managers have liens in Ontario?
- What about design professionals?
- Liens from union workers?
- Oddball and other liens, including the non-lienable

12:30 p.m.

### Lunch Break

1:15 p.m.

### Fireside Chat with a Construction Master: Best Practices in Court & Do's + Don'ts – Featuring Master Charles Wiebe

Join Lien Master Charles Wiebe for an interactive walk-through of a lien trial, focusing on best practices and his recommended "do's 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

2:45 p.m.

### Navigating Insolvency & Bankruptcy Priorities and Key Legal Risks

**Chris Burr**, Partner, Blake, Cassels & Graydon LLP

**Philip Cho**, Partner, WeirFoulds LLP

- Overview of the current landscape, key developments and trends (includes pandemic impacts)
- 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?
- Top tips and best practices for dealing with an insolvent contractual party
  - Managing the contract in the face of an insolvent party
  - Unique features of dispute resolution proceedings
  - Getting the project built while containing risks
  - What are some practical tips to protect yourself more effectively?

3:45 p.m.

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

**Kirk Brown**, Associate, Kennaley Construction Law

**Robert (Rob) Kennaley**, Principal, Kennaley Construction Law

In this session, you will get the latest updates to help you identify crucial gaps and inconsistencies in the law. You will get practical guidance on how to manage these through both contractual language and strategies in the field.

- Transition provisions and multiple contracts on a project: which version of the *Act* applies?
- Release of holdback on a phased or annual basis
- Preserving the lien against a Municipality
- Public contract and the contractor's bonding obligations
- "Giving", "providing" and "serving" of documents under the *Act*
- What must, and can, 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' limitation
- Importance of the Notice of Adjudication and the choice of Adjudicator

5:00 p.m.

### Program Concludes

## Online Modules

Included with your registration are two online modules designed to clarify complex concepts, and provide you with practical insights, guidance and materials that will serve as valuable resources long after the program concludes.

**We recommend viewing both Online Modules before the program begins.**

### Module One – Construction Liens in Ontario: The Essentials (approx. 60 mins, available on-demand as of February 17, 2021)

**Paul Hancock**, Partner, Goldman Sloan Nash & Haber LLP

This online module covers fundamental lien rights and principles in Ontario and is suited to those who are newer liens or who might benefit from a succinct refresher.

- What is a lien?
- When do lien rights arise and when do they expire? Is there an ultimate expiry period?
- How to recognize and differentiate the various types of liens
- Understanding how to preserve, register and give a lien – including vacating, discharging and perfecting
- What is the liability for exaggerated liens?
- Troubleshooting tips – what to do when there are two subcontracts issued to one trade (2 liens)? Federal land?

### Module Two – "Ted's Lien Talk": Key Changes to Complex Liens Under Ontario's Construction Act (65 mins, recorded January 2020, available on-demand)

**Ted Rotenberg**, Burstein Rotenberg Berk LLP

This online module is suited to all and covers key principles and tips for dealing with these more complex lien matters.

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

## Program Chairs

Jason Annibale  
McMillan LLP

Sandra Astolfo  
WeirFoulds LLP

## Program Advisor

Geza Banfai  
McMillan LLP

## Faculty Includes

Master Charles Wiebe  
Ontario Superior Court of Justice

Robert (Rob) Kennaley  
Kennaley Construction Law

Kirk Brown  
Kennaley Construction Law

Edward Lynde  
McLaughlin & Associates

Chris Burr  
Blake, Cassels & Graydon LLP

Lea Nebel  
Blaney McMurtry LLP

Philip Cho  
WeirFoulds LLP

Darcia Perry  
McLaughlin & Associates

Anna Esposito  
Pallett Valo LLP

Maria Ruberto  
Pallett Valo LLP

Paul Hancock  
Goldman Sloan Nash & Haber LLP

Ted Rotenberg  
Burstein Rotenberg Berk LLP

## Registration Details

### Fee per Delegate

**\$595 plus HST**

**Newly Licensed (2018 – 2021): \$297.50 plus HST**

Fees include online attendance, electronic program materials and 120-day access to program archive. Group discounts and financial assistance are available. Visit [www.osgoodepd.ca/group-discounts](http://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 CPD (6h Substantive; 1h Professionalism).

Online Modules – 2h CPD (1h 45m Substantive; 15m Professionalism).



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.

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](mailto:cpd@osgoode.yorku.ca).

## Here's what past participants in our construction law programming had to say:

*Very good. How daunting this will all be for an industry better at building things than at process [and] costs will go up to implement all of this.*

Brian Swartz, Executive Legal Advisor, Aecon Group Inc.

*Excellent. Knowledgeable and competent presenters.*

Don Dinnin, Vice-President, Procurement Services, Metrolinx



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