

Lien act review top provincial newsmaker in 2016

by Angela Gismondi Dec 30, 2016

Another year has come and almost gone, and while most Ontario construction industry stakeholders agree 2016 was a big year, the biggest story by far was the Construction Lien Act review which has many associations looking ahead to see how it plays out in 2017.

Construction law experts Bruce Reynolds and Sharon Vogel released a review of the 33-year-old act at the end of September entitled *Striking the Balance: Expert Review of Ontario's Construction Lien Act*. The report includes numerous recommendations, including suggestions for prompt payment reform and effective dispute resolution.

"We played a very active role in 2016 in the Reynolds/Vogel review of the Construction Lien Act," said Ian Cunningham, president of the Council of Ontario Construction Associations (COCA). "Clearly for us, it's something COCA has been working on for more than 20 years."

He also said it was a good year for health and safety performance on construction work sites.

"Critical injuries were down and while the year is not over yet, we're optimistic fatalities will be down," Cunningham stated.

Giovanni Cautillo, executive director of the Ontario Sewer and Watermain Construction Association (OSWCA), said the lien act review was a major development this past year and means a "complete overhaul of an antiquated system.

"It affects every single contracting firm just because it removes a lot of the ambiguity from what was in the original act," said Cautillo. "We're looking forward to its final conclusion at this point in time. The government has given us their assurances that they will have something for us in the spring."

The other news story for OSWCA was the announcement of \$1.1 billion in joint federal, provincial and municipal spending on 41 water and wastewater projects across Ontario. After the federal government launched its Clean Water and Wastewater Fund and announced it would be distributing \$2 billion nationally, the provincial government also stepped up with a significant contribution to the sector.

"We advocated for the industry and we were able to derive in total \$1.1 billion for our sector, a bit of a windfall," Cautillo noted. "It's something that was monumental for us because it was the realization and recognition...that an industry that is normally out of sight and out of mind has come to the forefront and needs to be addressed."

For Andy Manahan, executive director of the **Residential and Civil Construction Alliance of Ontario (RCCAO)**, the most significant story in 2016 was the Climate Change Action Plan that was released by the province in early June. In November, the federal government released its Climate Change Initiative.

"I think having both the Ontario and the federal government promoting climate change is really significant and it will have impacts on infrastructure in terms of building either buildings or infrastructure that's more resilient," said Manahan.

The infrastructure bank announced in the Fall Economic Statement is also significant for the RCCAO. Manahan said the RCCAO wrote a letter to Federal Finance Minister Bill Morneau stating although it applauds the government's commitment to investing in public infrastructure, it's not exactly what was envisioned in the second report commissioned by the RCCAO entitled Implementing a Canadian Infrastructure Investment Agency.

"We highlighted that if it's going to be an effective agency, it should have a broader mandate," said Manahan. "Private investment and pension funds are good but we really have to have a better process for making the best decisions we can to evaluate which projects need to be funded."

Sean Strickland, CEO of the Ontario Construction Secretariat (OCS), said the lien act was the big issue of the year for the OCS and the recommendations to update and change it are much needed.

In addition, he said the government's commitment to infrastructure funding also tops the list. Between the federal, provincial and municipal investments over the next 10 years, a total of \$750 billion will be spent in infrastructure across Canada, he noted.

"It bodes well for the future of the construction industry in Ontario and provides a great opportunity to attract young people into the industry," said Strickland.

This past year was a collective bargaining year for the OCS, Strickland explained.

"We had a two-day strike from demolition labourers, all other agreements were settled with no other labour disruptions," Strickland said. "That really speaks highly to the maturation of our industry and co-operation that exists when it comes to collective bargaining and achieving settlements."

Clive Thurston, president of the Ontario General Contractors Association (OGCA) and David Frame, director of government relations for the association, agreed it has been a challenging year in the construction industry, especially with regards to procurement.

"We've been seeing over the past year public bodies building ever more complex and oppressive regimes for procurement. For instance, the procurement audit system and the exclusion clauses and the vendor performance system that we're seeing being developed," Thurston stated.

Frame and Thurston agreed health and safety is a priority for the OGCA. They have made significant strides with the Certificate of Recognition program and the League of Champions which aim to promote a safety culture in the industry.

"The League of Champions, which got off the ground this year and is growing exponentially among many sectors, we're very proud of that and we think it will go a long way in addressing the cultural problems we have in health and safety," Thurston said.

Like other organizations, the lien act also topped their list.

"We have worked very hard to put in additional comments and we look forward to what comes next in the spring session to see how we make this a reality," said Thurston.

"It's a big story this year and it's probably going to be a bigger story next year," added Frame. "It'll be an interesting ride moving from good ideas which are in the report to the legislation."

With respect to the lien act review, Geoff Wilkinson, executive director of the Ontario Road Builders' Association (ORBA), said the association "is looking forward to seeing the government implementing key recommendations."

Both Cunningham and Wilkinson commented on approval of the new proposed rate framework modernization by the Workplace Safety and Insurance Board (WSIB).

"We're optimistically looking forward to some changes there that will have a positive impact on our members and have a positive impact on rate groups," said Wilkinson. "From an ORBA perspective, we have seen a decrease in rates and that is likely across the board in terms of construction with the reduction in the unfunded liability."

Noting he was chair of the Construction and Design Alliance of Ontario, he said, "We've also been focusing on federal infrastructure spending and advocating for the federal government to see the process through in getting money into the hands of the municipalities as well as the province."