



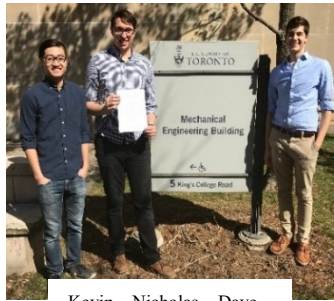
# DID YOU KNOW

## Mechanical Contractors Association of Toronto

The Mechanical Contractors Association of Toronto (MCAT) is the leader of the mechanical industrial, commercial and institutional sectors. The Mission of the MCAT is to promote professionalism, cost-effectiveness, safety and productivity of mechanical services through education, labour relations, public relations and government affairs.

### University of Toronto Student Chapter

The Mechanical Contractors Association of Toronto (MCAT) is proud to announce the newly formed University of Toronto Student Chapter! On March 16, 2017, the University of Toronto Student Chapter Executive Committee signed a Student Chapter Constitution Agreement to formalize their affiliation with MCAT.



Kevin, Nicholas, Dave

We would like to take this opportunity to extend a warm welcome to the Executive Committee of the UofT Student Chapter, comprised of Nicholas Petrelli, Simon Andre, Dave Pecile and Kevin Nguyen. Their dedication to participate and promote this Student Chapter to other UofT Students is commendable! We are also very pleased to have the Faculty representation and support of Dr. Anthony Sinclair, Professor of Engineering at UofT. Dr. Sinclair has kindly agreed to take on the role as UofT Lead for UofT with plans to encourage UofT Mechanical Engineering students to be part of this initiative.

Our appreciation is also extended to Mr. Al Prowse, H. Griffiths Co. Ltd., MCAT Lead of UofT Student Chapter, and the many MCAT Members who have expressed their willingness to support the professional development and mentoring of the UofT Students through site tours, events and job shadowing.

Through the combined efforts of Dr. Sinclair, Student Chapter Executive Committee, Mr. Prowse and participating MCAT Members, a concerted effort will be made to hold regular monthly meetings, increase awareness of the MCAT Student Chapter, grow the Student Chapter, organize networking and educational events, participate in the Student Chapter Summit Competition, etc.. Through mentorship arrangements, the Students will be exposed to diverse roles relating to the Mechanical Engineering Profession. This will allow them to build relationships with industry leaders and create prospective employment opportunities for summer, co-op and full time placements.

We will provide additional information and updates as this Student Chapter gets underway. If you have any questions, comments or would like to participate in this UofT Student Chapter initiative, please contact Debbie Vieira at 416-491-9004, ext. 14.

### WHAT'S HAPPENING 2017

#### **Working at Heights Training**

Local 46 – Available until October 1, 2017

#### **First Aid & CPR – MCAT**

May 11-12

#### **MCAO Annual Meeting**

Edinburgh, Scotland

May 11-19

#### **Bonding, Claims, Insurance & Liens Seminar - MCAT**

May 25

#### **MCA Toronto Young Executive Golf**

DiamondBack Golf Club

May 26

#### **Special MCAT Contractor Members Meeting - MCAT**

##### **MCAO Collective Agreement**

May 30, 3pm to 5pm

##### **IPEX Inc. Product Seminar - MCAT**

June 7, 2017, 4pm to 6pm

##### **Infection Prevention Training - MCAT**

June 13, 2017 – Full Day

##### **OPIA 87th Annual Meeting**

Holiday Inn Kitchener-Waterloo Conference Centre

June 11-13

##### **MCA Toronto Golf Classic**

Nobleton Lakes Golf Club

June 22

#### **Ontario College of Trades Information Session - MCAT**

David Tsobouchi, College Registrar & CEO, OCAT

June 20

#### **Site Tours to Victaulic, Mirolin, Blanco**

Arranged through MCAT Office

June 29 – Full Day

#### **ORAC Annual Charity Golf Tournament**

Glen Eagle Golf Course

July 6

#### **CEC Golf Tournament**

Royal Ontario Golf Course, Milton, ON

July 12

#### **MIAO 19th Annual Golf Classic**

Royal Woodbine Golf Club

August 18

#### **MCA Toronto 54th Annual General Meeting**

Blue Mountain Resort

September 29–October 1

#### **Advanced Leadership Institute**

Massachusetts, USA

Part I September 10-14, Part II November 5-10

#### **MCA Canada 76th Annual Conference**

Maui, Hawaii

November 6-9

#### **Construct Canada Tradeshow**

Metro Toronto Convention Centre, Booth 641

November 29-December 1

## Time and Again – Lien Periods Under the Construction Lien Act

*Submitted by: Dan Leduc, Partner, Norton Rose Fulbright, LLP*

It is amazing that even the most collegial and enjoyable meeting of mechanical contractors can be disrupted and brought to a standstill with a simple mention of the Construction Lien Act. I suggest that typically happens because resorting to a claim for lien typically means you are not being paid and that the “black clouds” of delay payment and potentially nonpayment have gathered over your office exposing that particular receivable.

Agreeably, recourse by claim for lien is hardly an enjoyable experience. However, it is remedial legislation provided to contractors in order to secure payment. And as a result, it would be best to understand how the initial time periods to register a claim for lien operate.

We all know that we are dealing with a 45-day period. But 45 days from what?

There are two time periods: one if you have a direct contract with the owner in which case you are called a “contractor” for the purposes of the Construction Lien Act and one if you have a contract with anyone else respect of the Project in question but not with the owner. So if you have contracted with a general contractor on a project, your time period to register a lien will fall within the second group.

If you contract directly with an owner and are thus a “contractor”, your lien period will expire 45 days from the earlier of:

1. The date on which a copy of a certificate or declaration of substantial performance of the prime contract is published, and
2. The date the contract is completed or abandoned.

Now in terms of a contract being “completed”, you will want to know that there is something called a deemed completion principle within the Construction Lien Act. It is beyond the scope of this short article to take you through that but ultimately, if your contract has the lesser of \$1000 or 1% of its contract Price left to complete, you could be deemed complete and your 45-day period would begin running from that trigger of events commonly called “deemed completion”.

If you contract with someone else in respect of a project, your lien period will expire 45 days from the earliest of:

1. The date on which a certificate or declaration of substantial performance of the prime contract is published;
2. Your date of last supply of services or materials to the Project site; and,
3. The date your subcontract is certified as complete.

This last item is one that applies to trades that have typically completed their work at the outset or early portions of a project and allows that subcontract to be certified as complete (not substantially performed) and therefore the release of holdback and the time it registered a claim for lien would start from the date of that certificate. Typically for electrical contractors, that would not apply seeing as your work is generally performed through the duration of the project.

A couple of additional considerations; when counting 45 days, you do include weekends and holidays however if the 45th day ends up on a weekend or statutory holiday, then the next available date would be the applicable deadline date for registration of your lien.

Also, when trying to determine if the certificate of substantial performance relating to the prime contract has been published, I would suggest going to the Daily Commercial News webpage at: <http://dailycommercialnews.com/en-US/Search/?q=completions> and searching for your project name or address.

Hopefully the foregoing assists you with calculating when your 45-day time period begins and expires.

Dan Leduc is a partner in the law firm Norton Rose Fulbright Canada LLP and practices almost exclusively in the field of construction law. He can be reached at [dan.leduc@nortonrosefulbright.com](mailto:dan.leduc@nortonrosefulbright.com) or 613-867-7171.

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## Design-Assist vs Design-Build

MCAT Contractors are often requested to participate in “Design-Assist” and “Design-Build” methods of project delivery. There has been some question regarding the differences in responsibilities and accountabilities for “Design-Assist” vs “Design-Build” projects.

How does “Design Assist” differ from “Design-Build”? Although these project delivery methods sound similar - “Design-Assist” and “Design-Build” - they are in fact very different and are not interchangeable. One of the main differences is the designation of the firm that is legally responsible and ultimately liable for the design of the systems.

“Design-Assist” is a project delivery method that allows for capital, operating and maintenance cost consideration during the design phase. The Consultant selects a trade contractor to work with their Engineers to come up with the means, method, cost estimating and scheduling to deliver scope of work as required for successful and timely project completion. The Engineers (for mechanical, electrical, plumbing, etc.) are typically hired by the Consultant. These Engineers are responsible for the project’s design and they coordinate closely with the other design team members (architect, structural engineer, landscape architect, civil engineer, etc.) to ensure that each individual system is designed to meet the intent of the project. In the “Design Assist” project delivery method the Consultant Engineers and the Architect are responsible & liable for design, function, and cost.

“Design-Build” is a project delivery method where the design and construction services are contracted after



design completion. This method is most often overseen by a Project Management Firm and relies on a single point of responsibility, namely the General Contractor, to minimize risks for the Project Owner and to reduce the delivery schedule by overlapping the design phase and construction phase of a project. In a “Design-Build” project, the different Engineers are typically employed or contracted by the “Design-Build” contractors (mechanical, electrical, plumbing, etc.). These contractors are solely responsible to the General Contractor for designing, installing and commissioning the mechanical, electrical, plumbing systems to satisfy the intent of the project. The different Design-Build contractors collaborate as a team and are responsible for informing each other of how their system will impact the project overall. In a “Design-Build” the General Contractor will be responsible for all of the work completed by sub-trades on the project, regardless of the nature of the fault, in the case of being over budget or over schedule. This greatly reduces risks and overall costs for the Project Owner.

Please forward any questions, concerns regarding these project delivery methods to [communications@mcats.on.ca](mailto:communications@mcats.on.ca).

## Prompt Payment - Bill S-224 - Federal Government

### Introduction and First Reading

- 2016-04-13

### Second Reading & Referral to Committee

- 2016-11-28

### Standing Senate Committee on Banking, Trade and Commerce Report Presented with Amendments

- 2017-04-04

### Next Steps:

- Awaiting Third Reading
- If passed, Awaits Royal Assent
- Effective 6 months after receiving Royal Assent

Once Bill-S224 receives Royal Assent, the Provincial government will proceed with introduction of Provincial Prompt Payment Legislation. More information will be provided as events unfold and details are made available to MCAT.

## Bill 70, Schedule 17, New Policy & Information Session

On December 8, the Ontario Legislature passed amendments to the Ontario College of Trades and Apprenticeship Act, 2009 (OCTAA) – Bill 70, Schedule 17. As required by these legislative changes, in June 2017, the Ontario College of Trades' new comprehensive Compliance and Enforcement Policy will be posted for the public.

On June 20, 2017, 9am to 10am, MCAT will be hosting an information session with guest speaker, Mr. David Tsubouchi, Registrar & CEO of the Ontario College of Trades. We encourage MCAT Members to attend as useful information will be presented regarding the implementation of these amendments and how skilled trade workers & contractors will be impacted.

## Working at Heights Training Deadline Extension

On March 29, 2017, the Ministry of Labour informed that the April 1, 2017 Working at Heights training deadline has been extended to October 1, 2017. This training deadline extension is not intended to allow contractors to postpone or ignore the legislated Working at Heights training requirements. This training deadline extension is only available for workers who have already completed the Fall Protection training before April 1, 2015 and who can show proof of enrolment in a Working at Heights training program with completion prior to October 1, 2017. The employee or employer must be able to provide proof of enrolment to be provided to an inspector upon request.



## WHMIS 2015 – Phases of Implementation

### Phase 1: February 2015 – May 31, 2017

Manufacturers, importers and distributors must comply with WHMIS 1988 or WHMIS 2015 (CPR or HPR). They cannot use a combination of both systems.

### Phase 2: June 1, 2017 – May 31, 2018

Manufacturers and importers must comply with the new requirements. Distributors must comply with WHMIS 1988 or WHMIS 2015 (CPR or HPR). They cannot use a combination of both systems

### Phase 3: June 1, 2018 – November 30, 2018

Manufacturers, importers and distributors must comply with the new requirements. They cannot use a combination of both systems. Employers may still see remnants of both systems in their workplaces.

### Completion:

By **December 21, 2018**, Manufacturers, importers, distributors and employers must fully be transitioned to the new WHMIS 2015 system. No elements of the old system should be found within workplaces.



## We Want to Hear from You!

Your input is greatly valued! Any questions, suggestions, comments, concerns or updates regarding important current industry issues, events and trends can be sent to [communications@mcat.on.ca](mailto:communications@mcat.on.ca).

## Call for Committee Members

We are looking for enthusiastic MCAT Members to join the Education Committee, Young Executives Committee and to participate in the UofT Student Chapter initiative. If you are interested in participating in any of these committees, please email [communications@mcat.on.ca](mailto:communications@mcat.on.ca).