

# Construction Alert

A Publication for the Buyers of Construction Services

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## SICA At-A-Glance - Regional News

### Builders Lien Act - Some Basic Questions

The *Builders Lien Act, SBC 1997 c.45*, was brought into force on February 1, 1998. The *Act* must be understood by anyone working in the construction industry in British Columbia.

The *Act* provides that owners, contractors and subcontractors will all holdback a percentage of each of the contracts that they have with others below them in the pyramid. They must retain a holdback equal to 10% of the greater of (a) the value of the work or material actually provided under the contract or subcontract, or (b) the amount of any payment made on account of the contract or subcontract price.

Q: *What is a Certificate of Completion?*

A: A Certificate of Completion is a formal notice, issued by the payment certifier (typically the project consultant, architect or engineer) which certifies that a particular contract or subcontract has been substantially completed. The issuance of the Certificate of Completion triggers the times for both the filing of builders lien claims and the release of builders lien holdbacks.

Q: *What triggers the issuance of a certificate of completion?*

A: The certificate process is triggered by a request made by a contractor or subcontractor to the payment certifier that the certifier determine whether the contract or subcontract has been completed and, if it has been substantially completed, that the payment certifier must issue a certificate of completion. The payment certifier must do this within ten days after the date of the request.

Q: *Once a Certificate of Completion has been issued, how long do you have to file a lien?*

A: Generally speaking, you have up to 45 days after the date on which the Certificate of Completion was issued to you (or to anyone above you in the construction pyramid) to file a lien in the appropriate Land Title Office. You may have less than that amount of time if you are the head (general) contractor on a project.

Q: *When is the Builders Lien Holdback due?*

A: The holdback may be released 55 days after the earlier of:  
1) A Certificate of Completion being issued;  
2) The head contract is completed, abandoned, or terminated, if there was a head contractor; or,  
3) If there was no head contract, then 55 days after the improvement is completed or abandoned.

Q: *Who can file a lien?*

A: An architect, an engineer, a worker, material supplier, contractor or subcontractor who does work on the project or causes work to be done on the project, or supplies material to the project or supplies both work and material to a project is entitled to

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**CCO Reference  
Material Available  
Now – 4 copies  
ONLY**

Did you miss out on the recent CCO Workshop held in Kelowna? Wondering about the material presented? Well, here is your chance to get hold of the valuable information binder that was distributed at the Workshop. Including the “How-To Session” discussion papers, this binder is sure to be of assistance. Limited

file a lien if they are not paid.

Q: *How do you file a lien?*

A: A Claim of Lien form is completed and filed in the appropriate Land Title Office. The lien claimant must then commence legal proceedings to enforce that claim of lien within one year of the date of filing or within a 21-day period if a Notice to Commence Action has been sent to a lien claimant.

Q: *Who can apply to discharge a disputed lien?*

A: The owner, the head contractors, the subcontractors, or other persons liable on the contract can apply to cancel a lien upon giving sufficient security for the payment of it. This may entail paying the full value of the lien claim, plus security for costs into Court or to provide some other form of adequate security. The new Act allows an owner, contractor, or subcontractor to post security that is 'satisfactory to the Court'. Accordingly, security may be something less than the full amount of the lien claim.

Q: *What event or events will trigger the running of time for filing a lien and the release of holdback?*

A: As noted above, the Act identifies three different events that may trigger the running of time.

- A certificate of completion is issued,
- The head contract is completed, abandoned or terminated
- The improvement is completed or abandoned

Which of these events is applicable will depend on the circumstances of the individual project or contract.

This article is provided for general information purposes only and should not be relied upon as legal advice or opinion. For specific legal advice on the Builders Lien, please consult your lawyer.

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## Loss Prevention: Frozen Hosebibs/Outdoor Taps

Because our temperatures got so low this winter, I anticipate that this will be another big year for water damage from frozen hose bibs. If your hose bib has frozen and split, there's nothing you can do about it, except to call a plumber to repair it. HOWEVER, with a little extra caution, you can save yourself from some major inconvenience and costs with respect to water damage **inside** your house. You won't know it's frozen or split until you use the outside tap for the first time in the Spring. My suggestion is to always have someone check inside the house for any leaks or gushing water when you use your hose outside for the first time. So, when you go to wash off your deck, driveway, car, water the lawn, or clean windows, please, please make sure you're not getting just as much water inside the house as outside.

Although failing to disconnect hoses from the tap over the winter are a big cause of freezing hose bibs, it can happen to you even if you have done everything right. So-called "frost-free" hosebibs are no guarantee either. If they weren't installed properly or it's been colder than usual, we get quite a number of claims from them anyway. Our claims dept. is seeing a big increase in these claims and I expect it will only get worse over the next few weeks as people start their Spring cleaning.

Happy Spring to you all. Hope it's a dry one (if you know what I mean).

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## BCCA At-a-Glance - Provincial News



### "Onerous Contract Conditions"?

#### Common Causes Of Onerous Contract Conditions

quantities are available now for the low cost of \$50 per binder. Contact SICA Kelowna at (250) 491-7330 to order your copy today.

### Need Info on Managing a Project?

Looking for a consensus document on managing projects from a full cross-section of the BC building industry? Why not refer to the BC Building Projects Committee manual "Management of Building Projects"? With input by their various member associations, as well as owners, project managers, facility managers, specification writers, etc., this is the reference tool you need to help manage your project. Available from SICA for the low cost of \$95.00 plus tax, why not add it to your reference library today?

### CCDC 24 - A Guide to Model Forms and Support Documents

For use by construction professionals, this document is accompanied by model forms which are intended to be used in the project administration aspect of a project. These model forms are in printed form in the CCDC 24 document and also offered in softcopy form, on diskette, for ease of use.

The model forms are intended to provide a

- An owner has experienced a problem on a particular issue and wants to ensure it does not happen again and/or the owner has obtained advice to address the issue or risk within the project documents.
- Institutions and government now rely heavily on their purchasing departments and in many instances these departments are not skilled in the construction tendering/procurement process.

### The Result Is

With the changes in the tendering/procurement process, contractors are finding far more onerous clauses in the contract documents than in previous years. These changes are leading to less competition with fewer bidders because they are not prepared to accept the risk or they are compensating themselves for the higher risk. Hence the burden of these onerous clauses may be one of the contributing factors to even higher costs of construction in an already escalating marketplace.

### What Can A Contractor Do?

If you find onerous clauses in the documents you are bidding:

- Review all contract provisions to determine any clauses that constitute a risk in submitting a bid and discuss with qualified advisors (insurance, surety, legal counsel and the Regional Association).
- Inform your Regional Association of the onerous clauses by completing an Onerous Bidding Clauses Report and submitting it immediately. Provide as much information as possible including a copy of relevant documents and a list of the offending clauses utilizing the “Onerous Clause Report” (found on the BCCA website at [http://www.bccasn.com/pdfs/Contractor\\_OBC\\_Report.pdf](http://www.bccasn.com/pdfs/Contractor_OBC_Report.pdf)).
- Reply to Bidding Alerts issued by the association when applicable informing the bidding authority of your support.
- Decide if and how you want to bid.

### What Will The Association Do?

We will:

- Upon receiving the “Onerous Clause Report”, BCCA will review the project documents and determine what clauses are unduly onerous.
- Communicate with the Tendering Authority to solicit a change to the onerous clauses.
- In the event that the Tendering Authority will not change the documents or the Tendering Authority has a prior history of not changing the similar conditions, BCCA will issue a Bidding Alert to contractors and the bidding authority upon the request of the Regional Association.
- Post the Bidding Alert in the electronic and regional planrooms.
- Copy trade associations and solicit their support in the Onerous Clauses initiative.
- Assist contractors with responding to Bidding Alerts to make a response as easy as possible.

### Summary

Construction is all about competition and taking risks. However, accepting terms which are onerous not only hurt a contractor’s profitability, but undermine accepted industry standard practices. Conditions that undermine industry standards may likely be a forewarning of how things will progress through the project’s duration and historically can lead to costly disagreements. Say NO to onerous bidding conditions. It’s in your and your industry’s best interest. The BC Construction Association is committed to improving industry practices and recommends the usage of CCA# 29 – A Guide on Standard Contracting and Bidding Procedures.

### TILMA Report Available

The Province recently released a Conference Board report on the impact of the B.C./Alberta Trade, Investment and Labour Mobility Agreement (TILMA) on B.C.’s

format for development of clear and concise project specific documents that are used in conjunction with other CCDC contract document forms widely used in our industry today. These forms are sufficiently flexible to be used or modified to suit specific project or contract conditions.

For a complete listing of all documents visit our website [www.sica.bc.ca](http://www.sica.bc.ca)

### **The Canadian Design-Build Institute National Conference**

CDBI is proud to announce its 10th annual Design-Build Conference

*DESIGN-BUILD:  
Partnering for Progress  
May 3-4, 2007,  
Vancouver, BC*

CDBI’s 2007 Conference will take place at the Hyatt Regency Hotel in beautiful downtown Vancouver. No other forum can provide you with access to such an elite group of professionals within Canada’s design-build construction industry.

There will also be a separate “Fundamentals of Design-Build” one day Tutorial May 2, 2007.

For more information please link to: [www.cdbi.org/events/index.html](http://www.cdbi.org/events/index.html)

economy. The report was commissioned by government and is entitled *An Impact Assessment of the B.C./Alberta Trade, Investment and Labour Mobility Agreement*. It states:

“Overall, this agreement has the potential to make a real difference in B.C.’s economic performance. After all the net benefits are realized, the TILMA has the potential to add \$4.8 billion to real GDP and create 78,000 new jobs in the province.”

The report highlights a number of advantages B.C.’s economy will gain from TILMA’s full implementation. Specifically, a more open economy will:

- Attract new business and investment as it will create the second-largest market in Canada;
- Allow B.C. firms operating in the goods and services-producing sector to benefit from better access to the Alberta market, creating new business and investment opportunities;
- Open up the market for B.C.’s primary and agricultural sectors by streamlining regulations and standards;
- Enhance the position of B.C.’s strong financial services sector;
- Result in a more efficient allocation of resources between the two provinces, which in turn will lead to higher incomes due to productivity advancements; and
- Create more opportunities for workers through the reconciliation of credentials.

The report also found that all regions of the Province will benefit from implementation of the proposed agreement: especially the northeast, lower mainland and southwest regions.

If you are interested in reviewing the report, *An Impact Assessment of the B.C./Alberta Trade, Investment and Labour Mobility Agreement*, it is available from the Ministry of Economic Development web site: [www.gov.bc.ca/ecdev](http://www.gov.bc.ca/ecdev)

It is unclear at this time what the potential impact of TILMA might be for the construction industry. However, in the months to come the BCCA is supporting a research project into the terms of the agreement and expects to gain a solid understanding of any benefits or pitfalls that may arise after its implementation. So stay tuned!

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## CCA At-A-Glance - Federal News



### New Conference Board of Canada Report Issued

On December 19, the Conference Board of Canada issued a groundbreaking report entitled, “Build It and Will They Drive?”, a look into the relationship between increasing road/highway capacity and the change in personal vehicle use on that highway - and as a result, changes in greenhouse gas emissions. This report, which was commissioned by TRIP Canada, sought to clarify whether the long-held myth that “more highways equals more people driving that highway, which equals more air pollution and greenhouse gases” was in fact truth or myth.

The report was a first of its kind, in that it relied on never-before used survey data to determine driving habits. The report’s conclusions were definitive - “Building roads at a rate that matches driving age population growth does not generate additional demand for travel on the road network in Canada”. Instead, the report concluded that socio-economic variables - income, prices, urbanization, etc – were clear drivers of demand for travel.

This report provides key findings for policy and decision makers. It debunks the myth that more highways simply means more greenhouse gas emissions - on the contrary, the report states that on many stretches of road, particularly congested stretches, greater highway capacity will lead to lower greenhouse gas emissions. Given its importance for transportation policy makers, a copy of this report has been sent to all

### CCA Expresses Disappointment with New EI Rate-Setting Process

CCA recently wrote to both the Minister of Finance and the Minister of Human Resources & Social Development, stating that the new EI rate-setting process first put in place for 2006 is seriously flawed in that it will, as in the past, continue to lead to significant surpluses being generated in the EI Fund, which are then diverted to the Government’s general funds. The new process prevents both the EI Chief Actuary and the Canada Employment Insurance Commission (CEIC), which is responsible for setting the EI rate, to consider past performance of the EI Fund (i.e. surpluses and accrued interest) when setting future EI premium rates. For 2007 the CEIC simply adopted the Chief Actuary’s suggested “break-even” rate of \$1.80 per \$100 of insurable earnings, which does not factor in the Federal Government’s own projected EI Fund surpluses of \$2.2 billion for 2005-06 and a further \$2.4 billion for 2006-07. The 7-cent reduction announced for 2007 is expected to only reduce the anticipated EI Fund surplus by some \$700 million.

federal/provincial/territorial Transport Ministries across Canada.

For a copy of the report and an accompanying news release, link to: [www.conferenceboard.ca/press/2006/traffic.asp](http://www.conferenceboard.ca/press/2006/traffic.asp).

## Bringing Home the Gold

Building infrastructure to the highest quality standards are goals of the Southern Interior Construction Association (SICA), the City of Kamloops, and the City of Kelowna. In recognition of this goal, five time Paralympics gold medalist Chantal Petitclerc presented on March 9, 2007 in Puerto Rico, the Canadian Construction Association (CCA) Gold Seal Association Award, and with it, the Ted Wyatt Memorial Trophy, to SICA.

"Gold Seal elevates the professionalism of the industry" says Debra Hicks, President of SICA. "We are pleased to be presented this award that recognizes industry not only responding to concerns of the buyers of construction services, but also supporting the elevation of professionalism in the industry. Construction is an "educated" person's world and Gold Seal recognizes both the experience and education required to be a professional."

Gold Seal is a national recognition that fosters and positions construction management to be the "best it can be". SICA has been a supporter of the national Gold Seal program since its inception in 1991. Among their efforts to support Gold Seal, SICA promotes Gold Seal via newsletters, publicly recognizes Gold Seal recipients, and provides Gold Seal accredited training courses.

SICA successfully worked with the City of Kamloops to become the first municipality in Canada to accept Gold Seal as a Condition of Contract. The Condition of Contract is industry's response to the concerns of buyers of construction services about the quality of construction management. For the City of Kamloops, it requires the Site Superintendent to be Gold Seal certified for all projects over \$1 million. SICA also successfully worked with the City of Kelowna to accept Gold Seal as a Condition of Contract for projects over \$2 million. Patrick Waunch, Chairman of SICA states, "This initiative is unparalleled by other municipalities across Canada—the Southern Interior is clearly in the forefront of fostering the standards that promote excellence in construction."

"As the first municipality in Canada to adopt the use of Gold Seal as a Condition of Contract, we are confident that this certification will elevate the level of professionalism of contractors working on our larger projects and provide a strong commitment towards construction management excellence," states Maurice Gravelle, Division Manager, Asset Management and Capital Projects, City of Kamloops. "The City of Kamloops congratulates SICA on receipt of the National Gold Seal Award."



to identify capability and commitment in the extremely busy construction industry", says John Vos, Director of Works and Utilities for the City of Kelowna.

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## Bill C-257 - We Won!

The House of Commons voted on 3rd reading of Bill C-257, the act that would ban the use of replacement workers during strikes or lockouts in federally regulated industries. CCA is happy to report that the bill was defeated 177 to 122.

This vote is in stark contrast to the vote at second reading, where this bill then passed by some 70 votes. This change in fortune reflects the hard work of the business coalition that assembled an aggressive lobby coalition to counter union arguments in favour of this bill. Our thanks to all of you who took the time to write or speak to individual MPs on CCA's and the business community's behalf - your efforts helped a great deal.