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Bill 142 Update

The Committee on the Legislative Assembly held public hearings on Bill 142 on the afternoons of October 25th, November 1st and November 15th. Clause-by-clause review of the Bill was scheduled for the afternoons of November 22nd and 29th however the Committee completed this phase of the legislative process on November 22nd. At that session, amendments were approved that: i) provided definitions and clarifications, ii) added transition provisions for projects started under the current regime that finish after Bill 142 is passed into law and iii) addressed public private partnerships. The Committee has until December 14th to report the results of its work back to the Legislature for third reading and Royal Assent. We remain confident that Bill 142 will pass third reading and receive Royal Assent before the Legislature rises for its winter break on December 14th.

If passed, the substantive amendments created by Bill 142 will come into force on the proclamation of the Lieutenant Governor.

Bill 148 Update

Bill 148 will have a significant impact on construction employers. It was subject to hours of debate in the Legislature and passed third reading and received Royal Assent on November 27, 2017. It amends the Employment Standards Act (ESA) and the Ontario Labour Relations Act (OLRA). The

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provisions of the Bill come into force on various dates prescribed in the Bill, some as early as January 1, 2018. So it's important for employers to prepare NOW! Among the changes to the ESA brought in by Bill 142 are:

- Increased minimum wage
- Equal pay for equal work
- New scheduling restrictions
- Violation of the ESA where an employer misclassifies an employee as an independent operator
- Increased vacation entitlement
- Changes to the way public holiday pay is calculated
- Personal Emergency Leave for all employees regardless of size of employer
- Changes to Pregnancy Leave
- Introduction of Domestic Violence and Sexual Assault Leave

For more detail, click on the following link to a brief prepared by our friends at Sherrard-Kuzz LLP

- http://www.sherrardkuzz.com/pdf/news_20171127_bill_148_undergoes_amendment.pdf

Current Consultations

COCA is currently involved in the following consultations:

- The Ministry of Labour's Prevention Office is consulting on the Accreditation Standard. Deadline for input is December 20, 2017
- The WSIB is consulting on 7 RFM policies. Deadline for feedback is January 15, 2018

Impact of Royal Bank of Canada v. Atlas Block

Section 8 of Ontario's *Construction Lien Act (CLA)* provides that any money received by a general contractor is held in trust for its subcontractors and suppliers. There is similar legislation in all common law provinces in Ontario

The priorities created by section 8 of the *CLA* used to apply in a bankruptcy proceedings. Before *Atlas Block*, if a general contractor went bankrupt and the trustee in bankruptcy received payment from an owner for work done by the general contractor, the trust would be preserved in bankruptcy and the money received from the owner would flow down to the subcontractors and suppliers who supplied to the job generating the payment.

Royal Bank of Canada v. Atlas Block changed the law. Now, if a general contractor goes bankrupt, any money paid by an owner will be distributed without regard to the trust provisions of the *CLA*. In practice, this means that money gets distributed to secured creditors (i.e. banks) first and then unsecured creditors. The subtrades who worked on the job that generated the payment to the general contractor are treated as unsecured creditors and would have no higher claim than the general contractor's credit card company.

Paying banks in priority to subcontractors and suppliers is bad policy. First, subcontractors and suppliers should have priority over funds generated by their labour and services. Second, *Atlas Block* gives banks an incentive to

push a general contractor into bankruptcy. Third, reversing *Atlas Block* would improve the financial stability of subcontractors who create skilled jobs in the community.

Submitted by Ted Dreyer, Partner, Madorin Snyder LLP

Latest Forum Poll Shows Neck and Neck Race in Toronto

Random polling of 843 Toronto voters conducted by Forum Research and released on November 23, 2017 (nine days after the Government's Fall Economic Update) revealed the following:

- 33% of respondents said they would vote Liberal if the election was held at the time of the polling, unchanged from the October Forum poll
- 31% said they would vote PC, down 5% from the previous Forum poll in October
- 25% said they would vote NDP, up 2% from the October poll
- 7% said they would vote for the Green Party, up 1%
- 4% said they would vote for another party, up 2%

For more details, go to <http://poll.forumresearch.com/data/854f986c-b674-4b07-9e0b-f9a6c006128cProvincial%20Horserace%20in%20TO%20Nov.pdf>

PC Election Platform

The Ontario PC Party launched its platform document for the June 7, 2018 election titled "People's Guarantee" at their policy convention on the weekend of November 25th and 26th. Pages 4 and 5 of the document present a signed pledge from Ontario PC Party Leader Patrick Brown that he will not seek a second mandate if his top five promises are not enacted. They are:

- 25% lower income taxes for the middle class
- 75% refund on child care expenses
- 12% more off your hydro bill
- Largest mental health commitment in Canadian provincial history
- First ever Trust, Integrity and Accountability Act

People's Guarantee has been characterized by some Queen's Park observers as a centrist plan, more like something out of a Bill Davis Conservative policy blueprint rather than the more right leaning platforms of more recent PC leaders Mike Harris and Tim Hudak.

Other platform pledges include:

- Replacing the cap and trade program with a carbon tax
- Reducing business taxes
- Increasing health care spending including \$1.9B for mental health
- Providing funding for children with autism

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- Investing in recreational infrastructure for physical activity and healthy living
- Building more child care spaces
- Putting a stop to school closings
- Uploading funding for new subways in Toronto
- Unwinding much of the current Liberal government's energy and environmental programs and policies

The full document is available at the following link: https://www.ontariopc.ca/peoples_guarantee

What's Up at OCoT

COCA Past Chair, Don Gosen, was recently installed as Chair of the Board of Governors of the Ontario College of Trades (OCoT). While COCA neither supported nor opposed the creation of the College, Don's appointment maintains COCA's close association with the self-governing body for the trades.

George Gritziotis, Ontario's former Chief Prevention Officer and Associate Deputy Minister in the Ministry of Labour, recently assumed the role of Registrar & CEO at OCoT, succeeding David Tsubouchi. Given Gritziotis' background and experience, he was an obvious choice and we have confidence he will perform highly competently in his new role.

There are currently vacancies for employer representatives on the Construction Division Board and on various construction Trade Boards. Interested and qualified individuals are encouraged to apply. To apply go to <http://cot-appointments.ca/vacancies-cotac/>

There are a number of significant challenges that lay ahead for OCoT:

- A Ministerial Review of the Ontario College of Trades and Apprenticeship Act is legislated for 2018. With a new Chair and Registrar in place and a number of new board members, one has to wonder if OCoT's cumbersome and inefficient governance structure will be the subject of review and change.
- In his review of OCoT, Tony Dean recommended that enforcement focus on "risk of harm". Gritziotis' former Prevention Office colleague, John Vanderdoelen, has been hired by the College to develop compliance and enforcement policies based on the "risk of harm" principle to reflect Dean's recommendation.

The College has already addressed many of the recommendations contained in Tony Dean's report and the College's recommended courses of action have been forwarded to the Minister

- The review of scopes of practice is underway
- The College may recommend de-prescribing a number of trades such as the saddle maker trade
- The College is eager to become involved in MAESD's modernization of apprenticeship initiative
- Look for the College to release a go forward strategy document on December 6th.