

# 10 Things You Should Know Growing Your Construction Business

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# 1. Your lien rights don't necessarily end at 40 days!

- Saskatchewan has some of the best lien protection for contractors/subcontractors in Canada
- Liens rights are still available after 40 days, but the Owner can pay out at 40 days if there are no liens on the project
  - **Rule for subs:** If there's still money in the jeans, the liens can still attach to it!
- For those working for Owner direct, liens can be registered within standard limitation period for debt

## 2. You can lien non-holdback funds without registering a lien against title

- Saskatchewan has a 'Written Notice of a Lien', a powerful way to attach a lien to non-holdback funds without registering against the title
- Many benefits to using a Written Notice v. a Claim of Lien
  - Owner must set aside amount in Written Notice
  - Can be withdrawn by simple letter or email
  - Can re-serve Written Notice for same amounts if you're still unpaid
  - Most effective if used during course of Project

### 3. Trust obligations apply up and down the construction chain

- Under *The Builders' Lien Act*, parties up the construction chain have 'trust' obligations to ensure any money received for a project flows through to those below
- These obligations extend to directors and officers of companies personally
- In some cases, these obligations will survive a bankruptcy

## 4. Investigate the Project financials early

- Titles are often encumbered by large mortgages, making lien rights limited
- When working for the Owner, do some homework on their legal and financial status (eg watch out for straw houses)
- Section 82 of *The Builders' Lien Act* allows you to access project financial information from the Owner the moment you start work

## 5. Get it in writing!!

- Get into the habit of using written documents
  - Contracts
  - Subcontracts
  - Change Orders
- Ensure the terms of the contract are clear
  - Avoid the 'battle of the forms'
  - Responding to requests for tenders with Quotes, followed by POs with different terms, can lead to trouble

## 6. Know your CCDC and CCA contracts

- The Canadian Construction Association (CCA) and Canadian Construction Documents Committee (CCDC) have created precedent construction documents that are widely used in the industry
- These documents are created with fairness in mind for all parties; knowing these contracts will save time in contract review AND help you understand when Supplementary Conditions (or different types of contracts) are shifting risk

## 7. Get a good insurance broker who knows your business

- Brokers have a legal responsibility to recommend insurance products that will protect you
- Standard insurance policies can be modified to ensure specific risks are covered
- Never assume a loss will not be insured by your insurance company

## 8. L&M Bonds can help you get paid

- Request a copy of the Labour and Material Payment Bond (if any) early in the Project
- Know the standard notice and claim periods; otherwise, you lose your right to claim
  - E.g. CCDC 222
    - Notice must be given to Bond Co. 120 days after date of last work/supply
    - Claim against Bond Co. must be issued before 1 year from date Principal (eg General Contractor) ceased work

## 9. Learn the basics of bidding and tendering law

- Low bids cannot be accepted if the bid is non-compliant
- Consultants are becoming very wary of allowing bids with procedural flaws, as litigation is a real risk (especially in a competitive market)
- Read the bid documents clearly and comply
- Attend a session on bidding and tendering law to get the basics down

## 10. Get legal advice early!

- Many different limitation and notice periods at play (legislation and contract); once they're expired, your rights become limited (or extinguished altogether)
- Consider creating a Project 'Cheat Sheet' from the outset that provides a simple guide to the most important notices/deadlines for that Project

# Questions?

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