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#1

Improvements to the Construction Act (November, 2018) Here Comes Bill 57!

On November 15, 2018, Bill 57 (*Short Title: "Trust, Transparency and Accountability Act, 2018"*) had its first reading and passed through the Legislative Assembly of Ontario.

Bill 57 is comprised of 45 schedules that, as the name aptly describes, enact, amend and repeal various statutes.

Schedule 8 is entitled as the Construction Act ("Act") and makes various amendments to the Act, including the following:

1. Section 13.3 of the Act is amended to broaden the powers of the Authorized Nominating Authority to set fees, costs and other charges in relation to the administration of adjudication by the Authority under Part II.1 of the Act, and to specify that such fees, costs or charges are not public money and may be retained by the Authority. Section 88 of the Act is amended accordingly to adjust the related regulation-making authority set out in that section.

2. Section 13.6 of the Act is re-enacted to provide that adjudication procedures are governed by the Act and the regulations and, to the extent set out in that section, by adjudication procedures specified in an applicable contract or subcontract.

3. Section 13.11.1 is added to the Act to provide expressly for a party to respond to a notice of adjudication.

4. Section 27.1 of the Act is re-enacted to provide that if an owner, contractor or subcontractor refuses to make payment under section 26 of 27 of the Act, the person to whom the payment is owed may refuse to pay out a further person from the payment owed, if the person to whom the payment is owed takes the specified steps.

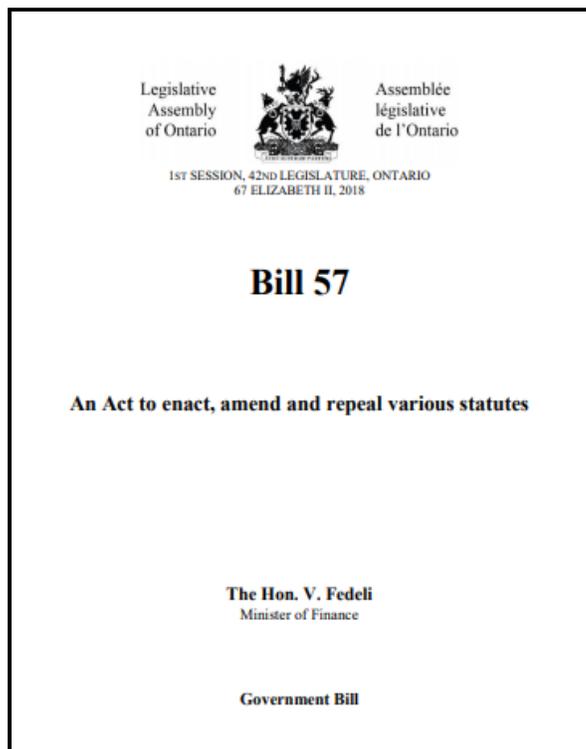
5. Section 87.3 of the Act, dealing with transitional rules connected to the *Construction Lien Amendment Act, 2017*, is re-enacted.

6. Various amendments are made to the French version of the Act to ensure a consistent form of expression.

Specific to adjudication, noticeable improvements, in addition to broadening the powers of the Authorized Nominating Authority, are as follows:

- The parties can include adjudication procedures in the contract as long as they do not conflict with the Act and Regulations.
- The parties giving the notice of adjudication provide a copy of the notice to the adjudicator and provides the adjudicator and the other party a copy of the contract and any other documents being relied upon.

The Act has to receive a second reading, third reading and the day it receives Royal Assent it will come into force.



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