Nuts & Bolts

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The Cascade Effect and a Post-Tender Duty of Fairness

*David Debenham**

As will often happen, an owner will decide not to accept any bid, and decide to negotiate with the low bidders. A recent decision of the Ontario Superior Court suggests that the duty of fairness to bidders, be they general contractors or the sub-trades whose bid they carry, may continue after the owner refuses to accept any of the initial bids.

In *G & S Electric Ltd. v. Devlan Construction Ltd*. the Plaintiff's bid was carried by Devlan in its bid to the town of Tilsonburg. After all the bids were found to exceed the town's budget for the project, the town started a Post-Addendum Tender process that eventually led to Devlan winning the general contract, albeit not at its original bid price. Faced with the town's request for budget cuts after the close of tenders because the project was over budget, Devlan argued that (a) it was not limited to G & S as the low electric bidder; (b) it quite properly sought revised bids from the three low electric bidders which included G & S and Prouse Electric; and (c) it properly awarded the electrical subcontract to Prouse Electric as the low bidder for the Post-Addendum Tender process. All of these arguments failed.

As part of the tender process, the town's instructions to the general contractors included the following: "*The tenderer shall name in this list, the subcontractors he proposes to perform work under the contract in which will be included in the Contract Agreement. No substitutions to this list shall be made following submission without the approval in writing of the Consultant.*" The importance of this clause to the result is unclear, however, this clause together with expert evidence regarding the standard practice for contractors on a tendering process appear to have combined to allow the Plaintiff to succeed in its claim that it had been treated unfairly by the general contractor.

According to the expert testimony, the construction industry has followed informal guidelines issued by the Canadian Construction Association, and that these guidelines provide that if the project is over budget, the owner should negotiate with the low

bidder, which should cascade down to the low subcontractor. In the event negotiations between owner and low general contractor should fail to produce a contract, bid requests could then be enlarged to the three low bidders from the general contractor level down to the subcontractors. The court found that by not following this cascade procedure, the general contractor breached its duty of fairness to the Plaintiff. Although the town did not restrict itself to the Defendant when it asked for new bids, the Defendant low bidder won the general contract under the post-tender process, and therefore had no claim for breach of contract or unjust enrichment.

Bidding takes a great deal of time and effort. Absent very clear language owners should not be able to vary or cancel bids and transform a competitive process into a negotiated one. This decision is one of a number of decisions that are assisting in establishing that principle of fairness.

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Indoor Mould Litigation in Canada

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The issue of mould in buildings has been a growing concern within recent years. Indoor mould has been suspected to cause a range of symptoms from eye, throat and skin irritation to headaches, fatigue, nausea and respiratory illnesses.

Mould litigation in the United States has been on the rise since 2000. Juries have awarded millions to plaintiff owners for remediation costs and personal damages against insurers, builders, vendors and design professionals [see *Allison (Ballard) v. Fire Insurance Exchange,* (1 June 2001), Travis County Cause No. 99-05252 (Tex. Dist. Ct.)].

In Canada, the number of cases involving mould has also risen, however it appears that the courts have been more cautious in their approach to mould claims.

In *MacDonald v. Dufferin-Peel Catholic District School Board,* [2000] O.J. No. 5014 (S.C.J.), the court dismissed a class action on behalf of students, teachers and other employees of the Dufferin-Peel School District who were allegedly exposed to toxic mould found in portable school classrooms because the commonality requirement between class members was not met.

In *Seiler v. Mutual Insurance Co. of British Columbia*, [2003] B.C.J. No. 2879 (C.A.), the plaintiff's action for damages arising from water damage and health issues from mould was dismissed. The court held that the plaintiff had done no testing to detect the existence of mould and that expert evidence was necessary to establish the appropriate standards of care of the contractor and adjuster.

In *A.M.A.P.C.E.O. v. Ontario (Ministry of Health & Long-Term Care)*, 2003 CarswellOnt 2115 (O.L.R.B.), the Ministry employees alleged that their workplace was mould-infested and that they were at risk of developing cancer and other illnesses. The court found that there was no scientific evidence that the building was contaminated.

In *Kingston Municipal Non-profit Housing Corp. (c.o.b. Town Homes Kingston) v. Frank Cowan Co.,* [2004] O.J. No. 5510 (S.C.J.), the court dismissed an action against the defendant insurers for mould related

damage caused by a flood on the basis that the plaintiff's cause of action was discoverable within months of the flood and that the action was barred by the limitations statute.

In *Somerville v. Ashcroft Development Inc.,* [2005] O.J. No. 3361 (S.C.J.), the court held that the builder was liable for damages resulting from its breach of contract to construct the property in a good, workmanlike manner, and awarded the plaintiff $21,675.40 in damages. However, the court rejected the claim associated with air quality as the plaintiff failed to establish a nexus between illness and indoor mould.

In *Usenik v. Sidorowicz,* [2008] O.J. No. 1049 (S.C.J.), a vendor of a property was ordered to pay the purchaser $33,874 in damages for the repair of the building, including the removal of water and mould, remedial work to prevent future leaking, and the restoration of the basement, which had been caused by flooding.

In *Alloway v. CMG Engineering Services Ltd.,* [2008] A.J. No. 363 (Prov. Ct.), the plaintiff purchasers brought an action against the defendant inspectors who had inspected the property prior to its purchase. The defendants were found to be negligent for failing to detect flaws and the degree of rot in the roof. The plaintiffs were awarded $23,252.78 to cover the costs of repairs.

From a review of Canadian case law, it appears that damages may be awarded for reasonable costs of mould remediation, testing, inspection and property damage where owners have attempted to mitigate their losses. However, courts are reluctant to award personal injury damages for mould related illness.

While personal injury damages in mould claims are rare in Canada, the health and safety risks posed by mould are gaining more coverage in media. The Canadian Construction Association has created a Mould Task Force to develop national guidelines for the construction industry. The Canadian Centre for Occupational Health and Safety and Health Canada have published information regarding mould, related health effects and preventative measures on their websites. *Building Owners and Managers Association* has held various seminars and published newsletters on the topic.

In the new CCDC 2 2008 Stipulated Price standard form contract, General Condition 9.5 provides that if mould is detected during construction, it is to be reported and remediated promptly. If the mould is a result of the contractor's operations, the contractor shall be responsible for all associated costs. GC 9.5.1.3 provides that if the owner and contractor do not agree on the existence, significance or cause of the mould or remedial steps to be taken, the owner shall retain an independent qualified expert to investigate and determine the issue.

In summary, current construction practices, published guidelines and standard contracts advocate taking proactive steps to prevent mould growth in buildings and to ensure proper remediation of contaminated areas. A thorough understanding of these issues and procedures will ultimately assist in reducing mould litigation.

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Copyright in Architectural Works

*Andrea W.K. Lee**

The *Copyright Act,* R.S.C. 1985, c. C-42, s. 3(1) defines copyright as the sole right to produce or reproduce a work or any substantial part thereof in any material form. The work must possess at least some individualistic style and have "something apart from the common stock of ideas" to be copyrighted [*Viceroy Homes Ltd. v. Ventury Homes Inc.* (1991), 34 C.P.R. (3d) 385 (Ont. Gen. Div.), aff'd 69 C.P.R. (3d) 459 (C.A.)]. An architect's copyright in his or her work will protect the work for the life of the architect plus fifty years [*Copyright Act*, supra, s. 6].

Most standard form contracts provide that the copyright in an architect's instruments of service, which include plans, sketches, drawings, and computer-generated designs, belongs to the architect and remains his or her property regardless of whether the project is executed or not. If the architect produced the work under a service contract or an apprenticeship, the employer of the architect will own the copyright in the work [*Copyright Act*, supra, s. 13(3)].

An architect may assign copyright and grant any interest in copyright by license [*Copyright Act*, supra, s. 13(4)]. An architect may revoke his or her consent to the transfer of copyright if it was given without consideration [*Katz (c.o.b. Michael Katz Associates) v. Cytrynbaum*, [1983] B.C.J. No. 2421 (C.A.)].

The client may retain copies of the architect's instruments of service for purposes of maintenance and records related to the work. The instruments of service may be copied only for a one-time use in respect of the same site and for the same project, and shall not be used for the purpose of renovation, addition or alteration to the project unless written consent is obtained from the architect [OAA Standard Form of Contract for Architectural Services Document 600, 2005, GC5; Canadian Standard Form of Contract for Architectural Services, Document Six (2006 edition), GC 5].

In the event a dispute arises between the client and the architect, the client must pay the architect before using or modifying the design. Payment for the architect's services implies the transferral of the right to use the plans for the purposes contemplated at the time the client-architect agreement was made [*Netupsky v. Dominion Bridge Co.*, [1972] S.C.R. 368].

Where the client ends its relationship with one architect and retains another architect to continue the work, the new architect should obtain the written permission of the original consultant to use the design [*Architects Act,* R.R.O. 1990, Reg. 27, s. 49.2; OAA Practice Bulletin A Series-Regulatory (A. 4a) June 28, 2005]. In addition, the new architect should obtain from the client written acknowledgement that the previous architect has been paid and that the right to use the drawings has been transferred [OAA Practice Bulletin A Series-Regulatory (A. 4b) June 28, 2005]. The original consultant should be credited for the work done prior to the retainer of the new architect [OAA Practice Bulletin A Series-Regulatory (A. 4c) June 28, 2005].

Upon infringement of copyright, an architect is entitled to such remedies as injunctions, damages, accounts, and delivery up [*Copyright Act*, supra, s. 34]. If the construction of a project which infringes an architect's copyright has already started, the architect will not be able to obtain an injunction halting construction or to order its demolition. [*Copyright Act*, supra, s. 40].

The court considers various factors in the assessment of damages for copyright infringement. These include:

a) the fee the architect would have earned for the granting of a license [*Hay and Hay Construction Co. Ltd. v. Sloan* (1957), 12 D.L.R. (2d) 397 (Ont. H.C.)];
b) the profit gained by the infringing party [*Kaffka v. Mountain Side Developments Ltd.* (1982), 62 C.P.R. (2d) 157 (B.C. S.C.)];
c) the loss of opportunity to enhance the architect's reputation [*Bemben and Kuzych Architects v. Greenhaven-Carnagy Developments Ltd.,* [1992] B.C.J. No. 2489 (S.C.)];
d) the architect's risk and exposure to liability [*Bemben,* supra];
e) the amount of labour and expenditure involved in the project [*Bemben*, supra]; and
f) the conduct and knowledge of the individual infringing the copyright [*Kaffka*, supra].

Punitive damages will be awarded only where there has been an intentional disregard for the architect's rights and the direct unauthorized reproduction of the original design [*Morton v. Echo Glass Installations Ltd., (1991), 36 C.P.R (3d) 355 (B.C. S.C.)*].

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Through the Minefield: Avoiding Limitations Disasters in Construction Law

*Donald E. Short**

Picture this scenario: Your client, a construction subcontractor, prudently tells the general contractor at the first site meeting on a very large project that problems with the drawings provided to it after its bid was accepted will mean that, if the project is to be completed on schedule (two years in the future), it will be necessary to put on double shifts and work significant overtime hours. The project unfolds as predicted by your client and it incurs substantial extra costs during the last two months. Following the Substantial Completion of the project, a claims expert compiles a typical impact report and it is sent to the owner and the general contractor who promptly reject the claim for extra costs. You immediately commence an action on behalf of your client only to be told by the defence, "sorry, out of time". How can this be? The extra work was only done six months before the statement of claim was issued!

Discoverability and Limitation Periods

In 2002, the *Limitations Act*[1] was completely revised, introducing a shortened basic limitation period of two years, a longer 15 year ultimate limitation period, and *a modified concept of discoverability*.

Under s. 4 of the *Act,* a proceeding cannot be commenced after the "second anniversary of the date upon which the claim was discovered." Section 5 of the *Act* defines when discovery has taken place:

5. (1) A claim is discovered on the earlier of,

(a) the day upon which the person with the claim first knew,

(i) that the injury, loss or damage had occurred,

(ii) that the injury, loss, or damage was caused by or contributed to by an act or omission,

(iii) that the act or omission was that of the person against whom the claim is made, and

(iv) that, having regard to the nature of the injury, loss, or damage, a proceeding would be an appropriate means to seek to remedy it; and

(b) that day on which a reasonable person with the abilities and in circumstances of the person with the claim first ought to have known of the matter referred to in clause (a).

(2) A person with a claim shall be presumed to have known the matters referred to in clause (1)(a) on the day the act or omission on which the claim is based took place, unless the contrary is proved.

Section 15 of the *Act* sets out the ultimate limitation period that applies regardless of when the act or omission on which the claim is based was discovered:

15. (2) No proceeding shall be commenced in respect of any claim after the 15th Anniversary of the date on which the act or omission on which the claim is based took place.

Sections 5 and 15 came into force with the revision of the *Act* on January 1, 2004.

In effect, discovery takes place on the day that all four requirements in s. 5(1)(a) are met. However, s. 5 poses particular problems for the construction industry. As larger construction projects can last several years, problems between the parties often arise early in the work but only come to a head near the end of the project. In the scenario above, your client "*discovered*" the claim two years earlier, even though the costs of double shifts and overtime were not incurred until six months before the end of the project. This leaves parties to construction contracts with a difficult choice: either polarize a relationship at the first sign of trouble and risk scuttling the entire project; or wait it out, and potentially lose the claim due to the limitation period.

Discoverability, the core concept of the *Act*, is "elastic and imprecise."[2] Traditionally, the principle of discoverability was designed to prevent claim periods from running out before the plaintiff was aware of the harm he suffered. This is the way discoverability has been employed in the context of sexual assaults on minors where it is often invoked.[3] The application of the principle in these cases presumes that the harm was fully manifested before the date of discovery, i.e. the sexual assault occurred years earlier and the claimant is only now able to comprehend the harm this assault caused and is emotionally capable of enduring a law suit.

But in construction cases discoverability has the opposite effect: the date of discovery is often earlier than the date upon which the harm fully manifested itself. As the Ontario Superior Court of Justice recently stated in *Denis v. Truemner*[4]: "where there is a single act, the full extent of the damage does not have to be known for the limitation period to start running". According to this definition of discoverability, the clock begins ticking before the economic impact can be fully determined.[5] However, in *Grey Condominium Corporation No.* 27,[6] Epstein J.A. recently held that, when multiple deficiencies present themselves over a period of time, whether or not they are "independently discoverable" must be determined in order to qualify them as a single cause of action or separate actions – the former of which starts the clock on limitation periods upon discovery of (or having "ought to have known of") the first defect or deficiency.

The Two Year Limitation

The time period for assorting Breach of Trust claims is important to examine in light of the interaction between the new *Act* and the *Ontario Construction Lien Act*. A recent case dealing with this issue is *Cast-Con*

Group Inc. v Alterra (Spencer Creak) Ltd., The Effort Trust Company, and Alterra Developments (Dundas) Ltd.[7] The plaintiff (contractor) had a contract with the defendant (developer) to perform structural framing for a new condominium development. Upon completion, the plaintiff immediately registered a claim for a lien on the lands improved in the amount owed under the contract. Unfortunately, the lien was registered on the wrong land. When this mistake was discovered the plaintiff's claim for lien was discharged and his claim against every defendant but Alterra (Spencer Creek), the developer, was dismissed. This was followed by an extensive delay during which the plaintiff changed counsel.

It was not until almost three years later that the plaintiff made an application to include new defendants and add claims based on unjust enrichment, quantum merit, and breach of trust to the pre-existing claim for breach of contract.[8] Under *Rule 26.01*, the Court "shall grant leave to amend a pleading on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment".[9] Reilly J. found that the proposed amendments were so substantial that they amounted to an entirely new statement of claim and refused leave to amend the plaintiff's pleading on the grounds that to do so would prejudice the defendants by not giving them the benefit of the two year limitation period.

The plaintiff relied on the principle of discoverability, arguing that the limitation period should not start running until February 21, 2007 – the date the plaintiff sought an accounting of funds received for the condominium project pursuant to sections 7, 8, and 9 of the *Ontario Construction Lien Act*. The plaintiff argued that it did not know of all of the possible defendants until this had taken place. Reilly J. found that it was clear from the correspondence between the parties that the plaintiff had identified every defendant and the claims against them at an earlier date. The court therefore held the additional claims, and in particular the Breach of Trust claims, to be statute barred. I understand that this decision is currently under appeal.

The 15 Year Ultimate Limitation

Until the 2002 *Act*, there was no ultimate time period for bringing an action in Ontario. The new *Act* created a 15 year period after which no action may be brought regardless of when the cause of action is discovered. In 2007, the Ontario Court of Appeal in *York Condominium*[10] confirmed that if the act or omission took place before January 1, 2004, the ultimate limitation period starts to run as if the act or omission had taken place on January 1, 2004, notwithstanding the particular exceptions outlined in the *Act*.

Establishing the date from which the ultimate limitation period begins to run was also recently discussed by the Alberta Court of Appeal in *Bowes v. Edmonton (City)*.[11] In this case, the land under the plaintiffs' homes collapsed in 1999 due to an unforeseeable instability deep underground. The plaintiffs sued the city alleging that building permits were negligently issued for the land 20 years earlier. The Court was called upon to determine whether the ultimate 10 year limitation period under the Alberta statute had expired by the time the plaintiffs commenced their claim and determined that the ultimate limitation period starts to run from the date the negligent act or omission occurred, not from the date that the harm occurred.[12] In this case, the alleged negligent act occurred when the city granted the building permits. The Court remarked that, although it seems unfair to deem that the plaintiffs had lost their right to sue before they had even learned of that right, this reading is consistent with the purpose of the limitations statute.[13]

Commenting on the lower court decision upheld by the Alberta Court of Appeal in *Bowes*, the Ontario Court of Appeal in *York Condominium* noted that neither the British Columbia nor the Alberta limitations statutes contain the equivalent of the "transition" provision found in s. 24(5) Rule 1 of the new Ontario *Act* which states: "If the claim was not discovered before the effective date, this Act applies as if the act or omission had taken place on the effective date."[14] The "effective date" is defined in s. 24 of the *Act* as "the day on which this Act comes into force."

For Whom the Bell Tolls?

Prior to the 2004 amendments, it was common for parties to agree to suspend the operation of the limitation period in order to extend the time for commencing an action while settlement discussions continued. This was done by inserting a "Tolling Agreement" into the contract. The word "toll" has a number of meanings. Two of these meanings appear somewhat inconsistent on their face; however, when examined together, the juxtaposition of these definitions helps us visualise the purpose of the tolling agreement. These define "toll" as "a general term for permission to pass somewhere, do some act, or perform some function" as well as to "take away, bar, defeat, annul … to take away the right of, or bar entry."[15] Likewise, a tolling agreement creates "freedom from" in order to allow "freedom to"; it extends the time available for bringing an action so as to postpone the applicability of an otherwise operative limitation period. In effect, it bars entry to litigation temporarily to facilitate other initiatives. This gives parties time to assess their claims without being forced to commence litigation. A controversial aspect of the new *Act*, as it was first enacted, was that it specifically denied the availability of tolling arrangements when it came into force in 2004. No clear rationale supporting the prohibition was given. The change created numerous commercial problems.

On October 19, 2006, a welcomed revision to the new *Act* came into force, once again allowing contracting parties to suspend, extend, shorten or exclude limitation periods. The relevant section states:

> 22 (1) A limitation period under this Act applies despite any agreement to vary or exclude it, subject only to the exceptions in subsections (2) to (6).
>
> (2) A limitation period under this Act may be varied or excluded by an agreement made before January 1, 2004.
>
> (3) A limitation period under this Act, other than one established by s. 15, may be suspended or extended by an agreement made on or after the effective date.
>
> (4) A limitation period established by s. 15 [the ultimate 15 year rule] may be suspended or extended by an agreement made on or after the effective date, *but only if the relevant claim has been discovered.* [emphasis added]
>
> (5) The following exceptions apply only in respect of business agreements:
>
> 1. A limitation period under this Act, other than one established by section 15, may be varied or excluded by an agreement made on or after the effective date.
>
> 2. A limitation period established by section 15 may be varied by an agreement made on or after the effective date, except that it may be suspended or extended only in accordance with subsection (4).
>
> (6) In this section,
>
> "business agreement" means an agreement made by parties none of whom is a consumer as defined in the *Consumer Protection Act, 2002*;
>
> "effective date" means the day the *Access to Justice Act, 2006* receives Royal Assent;
>
> "vary" includes extend, shorten and suspend.

Another method of extending the limitation period is through s. 11 of the *Act*. Section 11 may function as a *de facto* way of extending limitation periods by having an independent third party assist in resolving disputes:

11. (1) If a person with a claim and a person against whom the claim is made have agreed to have an independent third party resolve the claim or assist them in resolving it, the limitation periods established by sections 4 and 15 do not run from the date the agreement is made until,

(a) the date the claim is resolved;

(b) the date the attempted resolution process is terminated; or

(c) the date a party terminates or withdraws from the agreement.

2) For greater certainty, a person or entity that provides resolution of claims or assistance in resolving claims, on an impartial basis, is an independent third party no matter how it is funded.

Note that from the date the contract is made, the limitation period never starts to run, even if the parties never resort to the third party to resolve the claim, until one of the requirements in 11(1) is met. Subsection 11(1) came into force on 1 January 2004, while subsection 11(2) was later added to the *Act* and came into force on October 19, 2006.

Construction contracts often appoint independent third parties to help settle disputes as they arise. It is unclear, however, whether a consultant under the Canadian Construction Documents Committee (CCDC) 2 is included in the definition of an independent third party under section 11. The CCDC 2 – 2008 is a standard form to be used in Stipulated Price Construction contracts. Under the CCDC 2, the parties to a contract must appoint a consultant responsible for interpreting the contract. According to the CCDC 2 criteria, it would appear that a consultant meets the definition of an independent third party. The addition of subsection s. 11(2) also appears to demonstrate a legislative intent to make the definition of independent third parties as broad as possible.

Although it is not yet clear whether a consultant under the CCDC 2 falls under this section of the *Act*, if it did, this would have a significant impact on limitation periods for construction claims. Take, again, the introductory example of your client the subcontractor. If the parties had employed a consultant to help resolve their dispute after the claim was discovered, the clock would not have started running until the date that the consultant failed to adequately resolve the issue, or the date that one of the parties withdrew from the contract. If this were the case, your client probably would not have been barred from proceeding with his claim because the limitation period would have been pushed back. Similar questions have also arisen in other areas of law where dispute resolution mechanisms employing independent third parties are built into contracts.[16] Clarification of these provisions will give all parties involved a better idea of when the bell tolls on the life of their claim.

** Donald E. Short, Fasken Martineau DuMoulin LLP. With assistance from Brendan Gray and Caolan Moore.*

[1] *Limitations Act,* S.O. 2002, C. 24, Sched. B. [the *Act*] It was revised through the *Justice Statute Law Amendment Act*, 2002, S.O. 2002, c. 24 - Bill 213.
[2] John J. Chapman, "Eight (Unanswered) Questions on the New Limitations Act," (2008), 34 *The Advocates' Quarterly* 287 at 292.
[3] See *A v Hoare* [2008] UKHL 6. See also s. 10 of the *Limitations Act,* S.O. 2002, C. 24, Sched. B.
[4] *Denis v. Truemner* (2007), 84 O.R. (3d) 260; [2007] O.J. No. 79 at para. 22 [*Truemner*].

[5] The decision in *Truemner* was upheld by the Ontario of Appeal, which only corrected an error in the Trial Judge's calculation of costs. See *Denis c. Truemner*, [2007] O.J. No. 3535; 2007 ONCA 640.
[6] See *Grey Condominium Corporation No. 27 v. Blue Mountain Resorts Limited,* 2008 ONCA 384 (CanLII) at para. 71 [*Grey Condominium Corporation No. 27*].
[7] *Cast-Con Group Inc. v Alterra (Spencer Creak) Ltd., The Effort Trust Company, and Alterra Developments (Dundas) Ltd.,* [2008] O.J. No. 842. This case is currently under appeal to the divisional court.
[8] See s. 21 of the *Limitations Act,* S.O. 2002, C. 24, Sched. B on whether or not defendants can be added after the expiry of a limitation period. See also *supra* note 2 at 313*ff.* The date from which the limitation period starts to run may also be established by contract as a date other than that upon which the act or omission was discovered or should have been known to the plaintiff. In one British Columbia case, the limitation period began to run from the date the Substantial Performance of the Work was completed as set out in the agreement. See *Howe Sound School District No. 48 v. Killick Metz Bowen Rose Architects and Planners Inc.,* 2008 BCCA 1995 (CanLII).
[9] *Rules of Civil Procedure,* R.R.O. 190 Reg. 194. Rule 26.01.
[10] *York Condominium Corp. No. 382 v. Jay-M Holdings Ltd.*, [2007] O.J. No. 240 at para. 39 [*York Condominium*]. Application for leave to the Supreme Court of Canada dismissed. See *City of Toronto v. York Condominium Corporation No. 382*, 2007 CanLII 37188 (S.C.C.).
[11] *Bowes v. Edmonton (City),* 2007 ABCA 347 [*Bowes*].
[12] *Ibid.,* at para. 151.
[13] *Ibid.,* at para. 156.
[14] *York Condominium, supra* note 10 at para. 37.
[15] *Shorter Oxford English Dictionary*, (*Oxford University Press*: 1969) at 2206.
[16] *Supra* note 2 at 318*ff.*

Upcoming Programs

Mark these Dates in Your Calendar

October 2, 2008 - The *Building Code*: Issues in Practice

Joint Construction Law Section and Municipal Law Section Dinner Program. Come out and hear from two of the GTA's most experienced and knowledgeable Chief Building Officials on the Building Code: Issues in Practice! Join Co-Chairs Andrew Heal and John Mascarin, and Speakers Ann Borooah, CBO City of Toronto, and John DeVries CBO, Town of Richmond Hill, as they discuss the current state of the objective based Building Code regime in practice, what it means for those in the construction and development industries, and what further changes they see coming around the corner. 5:45 p.m. - registration and cash bar. 6:00 p.m. - dinner and program.

November 25, 2008 – Evening with the Masters

Put this date in your calendar for an evening dinner and program involving the Toronto Lien Masters. This evening always proves to be interesting and informative. 5:30 p.m. - registration and cash bar. 6:00 p.m. - dinner and program.

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