**FALL 2025**
ISSUE 30

GLAHOLT BOWLES
CONSTRUCTION LAWYERS

# BUILDING INSIGHT

GLAHOLT BOWLES LLP
NEWSLETTER

## IN THIS ISSUE



# Construction Law Across the Provinces: Key Legislative Moves, Cases, and Practice

**Implications**

Canada's construction law landscape continues to evolve at a brisk pace, with significant legislative reform, new adjudication and prompt payment regimes, and appellate guidance shaping day-to-day project delivery and dispute resolution. This article canvasses notable developments across Canada and offers practical takeaways for both lawyers and industry professionals.

This article provides a summary of, and take aways from, the CBA Construction & Infrastructure 2025 Conference as well as the 2025 OBA: A Year in Review.

**British Columbia: Prompt Payment Arrives; Lien Reform Tightens the Regime**

British Columbia is poised to align with other western and central provinces through the *Construction Prompt Payment Act* (Bill 20-2025), which introduces statutory prompt payment and adjudication, and complements, rather than replaces, the *Builders Lien Act*. Once proclaimed, parties should expect Ontario-style payment timelines and fast-track adjudications to manage interim disputes. In parallel, targeted *Builders Lien Act* amendments reduce the basic holdback release period from 55 to 46 days, abolish *Shimco*[1] liens, and expand "improvement" to include demolition and removal. These changes will compress cash-flow cycles, require updated

1. A Shimco lien is a type of construction lien unique to British Columbia that is a claim specifically against the statutory holdback fund retained by a project owner or contractor. It is a separate from a lien against the property itself. For more information on *Shimco* liens see, *Shimco Metal Erectors Ltd v. North Vancouver (District)*, 2003 BCCA 193, and *Kingdom Langley Project Limited Partnership v. WQC Mechanical Ltd*, 2025 BCCA 169.

contract administration procedures for proper invoices and notices, and refocus lien strategy around a shorter release window.

Against this statutory backdrop, BC is rife with large transport and social infrastructure projects, such as BC's project pipeline, major health-care redevelopments, the Fraser River Tunnel, Highway 1 Fraser Valley upgrades, and the Broadway Subway extension. Large-scale water and wastewater treatment upgrades are underway, while LNG projects, NEBC connector pipelines, Enbridge's Aspen Point Program, and emerging wind energy builds highlight the province's diversified energy agenda. Sophisticated contract forms, early readiness for adjudication, and refined holdback practices will be essential for delivery teams and owners navigating this volume.

**Alberta: Public Works Joins Adjudication; Limitations and Risk Allocation Clarified**

Alberta has extended adjudication to provincial public works, incorporating the *Prompt Payment and Construction Lien Act's* framework under the *Public Works Act* and using the same nominating authority. The regime requires proper invoices every 31 days through each tier of the contract chain and disallows "pay when paid" arrangements, but limits adjudication to claims at or below $200,000 and maintains the no-lien/no-holdback status quo for these projects. Notably, the ability to issue non-payment notices to stop payments does not apply, which will sharpen focus on timely defenses and payment workflows. Adjudicator orders are directly enforceable in court, and adjudication can proceed alongside litigation or arbitration unless a court orders otherwise.

Two recent decisions offer concrete guidance to practitioners in Alberta:

- In *Living Waters v. UFA*, 2025 ABKB 319, the Court emphasized that the 10-year ultimate limitation generally runs from the discrete, first actionable breach causing loss, rejecting a "continuing course of conduct" theory absent evidence of subsequent, independent breaches. Counsel should identify early, singular points of failure and calibrate limitation strategy accordingly.

- In *Brandt Industries v. EVRAZ*, 2025 ABKB 542, the Court permitted termination for cause but denied completion-cost damages where the agreements were not fixed-price. Brandt recovered a reasonable amount for time-and-materials work performed. This case underscores that precise risk allocation, especially price structure and termination remedies, will drive damages exposure even when termination is valid.

**Saskatchewan: Tariff Realignment, Major Capital, and Clarifying Lien and Cost-Plus Principles**

Saskatchewan's 2025 budget invests $4.6 billion across health, education, and power transmission, complemented by a first-ever energy security plan centered on nuclear generation and emissions reduction. The province also stood down certain retaliatory trade measures in mid-2025, seeking to stabilize procurement and supply chains in the wake of tariff volatility.

On the legal front, *JV&M Civil Constructors v. Farnham*, 2025 SKCA 72 narrows exposure for exaggerated liens; section 53 damages claims for exaggerated liens lie against the lien claimant alone, reinforcing the personal accountability of lien registrants.

In *Ace Burger v. G & I Construction*, 2025 SKCA 82, the Court refined the contractor's burden under open-ended cost-plus arrangements. Where no estimate is requested or provided, an implied term prohibits charging for wasteful or uneconomical effort but does not impose a strict "reasonableness" proof standard for every cost item. Owners should document expectations and estimates; contractors should preserve contemporaneous records and avoid inefficiency signals that could invite disallowance.

**Manitoba: Appellate Guidance on Lien Discharge and Change Authority; Prompt Payment in Force**

Manitoba's prompt payment regime came into effect on April 1, 2025, and aligns substantially with Ontario, Saskatchewan, and Alberta: 28 days from proper invoice to prime contractor, followed by seven-day pass-throughs down the chain, structured notice-of-non-payment requirements, and 30-day adjudicator determinations that are immediately binding subject to later court or arbitration outcomes. Differences in triggering, scope, extension mechanics, and certain exemptions remain province-specific, making contract templates and playbooks a priority for national builders.

With respect to recent notable caselaw within the province, the Manitoba Court of Appeal has issued two practical decisions:

- In *Sterling Parkway Residences v. Gypsum Drywall*, 2024 MBCA 46, the Court of Appeal held that discharging a lien without posting security under section

55(3) of The *Builders' Liens Act* is reserved for the clearest of cases, where material facts are undisputed and no lien right could possibly exist. Where owners have benefited from work and engaged directly with subcontractors, "good faith" defences face a high bar.

- In *Transcona Roofing v. Marrbeck Construction*, 2024 MBCA 83, the Court of Appeal recognized that conduct can waive formal change-order signature requirements, even in the face of no-waiver clauses, where owners knowingly accept and benefit from the work; determinations by a consultant under CCDC forms are binding unless promptly challenged. These decisions emphasize disciplined change management and timely dispute notices under the standard forms of contract.

**Ontario: Adjudication Enforcement, Review Standards, and CCDC 2025 Contract Overhauls**

The latest round of changes to the Construction Act and Regulations are discussed in a separate bulletin.

Ontario continues to set national benchmarks for statutory adjudication. Three recent decisions capture the state of play:

- In *Integricon v. Stevens*, 2025 ONSC 4688, the Court enforced an adjudicator's determination through garnishment and rejected attempts to sidestep payment absent a stay or judicial review, reaffirming the "pay now, argue later" ethos.

- By contrast, *Feldt Electric v. Gorbern Mechanical*, 2025 ONSC 4150 exposes an enforcement gap: a non-compliant party escaped significant consequences despite an adjudicator's award, with the Court signaling jurisdictional concerns at the enforcement stage. Practitioners must plan for parallel lien actions, targeted judicial review where appropriate, and settlement leverage that acknowledges variable enforcement outcomes.

- *Jamrik v. 2688126 Ontario Inc.*, 2024 ONSC 2854 adds conceptual uncertainty, with the Divisional Court distinguishing physical completion from payment metrics for jurisdictional purposes and articulating a hybrid approach to standard of review. The message is that adjudication tolerates "rough justice," but jurisdictional edges will attract correctness scrutiny.


In the transactional sphere, the CCDC's 2025 suite introduces material changes to construction management and IPD forms:

- CCDC 5A/5B/17 add "Ready-for-Takeover" as a milestone distinct from Substantial Performance, enable early occupancy with trade consent, impose limits on uninsured-loss liability, and delineate construction manager and consultant roles in trade contractor coordination. The forms also acknowledge prompt payment obligations and formalize termination-for-convenience rights, including break-fee constructs in preconstruction.

- CCDC 30 expands collaboration tools, clarifies the Validation Phase, and tightens termination mechanics. Owners and contractors should revisit supplementary conditions, especially around milestone definitions, notice machinery, liability caps, and payment mechanics to harmonize with local lien and prompt payment statutes.

Ontario's 2025 tariff volatility also rippled through procurement and project finance. Rapid, shifting tariffs on steel, aluminum, select vehicles, and broad non-CUSMA goods increased costs and disrupted schedules. While many standard forms allocate tax risk, relief is uneven, and time relief may not follow cost relief. The experience reinforces the value of explicit tariff clauses, allowances, early procurement and storage where feasible, and clear change-in-law pathways tailored to cross-border inputs.

**Québec: Modernizing the Industry, Diversifying Procurement, and Early Case Trends**

Québec's legislative agenda is active on multiple fronts:

- Bill 51 modernizes the construction industry, with a focus on quality and safety enhancements alongside collective bargaining reform.
- Public procurement is diversifying through Bill 62, which equips provincial bodies with more agile acquisition strategies and legitimizes collaborative delivery models; municipal contracting is restructuring under a new statute not yet fully in force.
- A new agency, Mobilité Infra Québec, has been created to lead complex transportation initiatives, and the Société québécoise des infrastructures has published guidance on Progressive Design-Build and IPD. Major projects—from Montréal's Metro Blue Line extension to the Port of Montréal expansion, the Gatineau-Ottawa tram, bridge programs, and Hydro-Québec's growth plan—are advancing under a wider array of delivery models.
- A provincial prompt payment and dispute-resolution regulation adopted in July 2025 will further reshape public project cash flow and interim dispute management. Early Superior Court decisions in 2024-2025, now on appeal in part, will help define the contours of contractual risk allocation and interim remedies under these modernized frameworks.

**Nova Scotia: Prompt Payment Enabled, Regulations Pending; Contract Performance Cases**

Nova Scotia has amended its *Builders' Lien Act* to incorporate prompt payment (2019) and establish an adjudication authority (2022), with implementing regulations pending.

Two recent Supreme Court decisions underscore the primacy of contract performance:

- In *Brooks v. FH Development Group*, 2025 NSSC 174, a contractor's attempt to reprice due to pandemic-era supply shocks failed; frustration did not apply, and the contractor's breach led to damages measured by the increased cost of a comparable home.

In *Caldwell v. Jones Co Contracting*, 2025 NSSC 299, a contractor who performed significant unnotified extra excavation work was required to reimburse the owner; quantum meruit could not rescue a breach of agreed notice and approval pathways. Together, these cases reaffirm the importance of price-change protocols, written change management, and clear allocation of supply-chain risk in Atlantic housing and small-project markets.

**Newfoundland and Labrador: Procurement Alignment, Lien Reform Consultations, and Churchill Falls Momentum**

Newfoundland and Labrador has updated its *Public Procurement Act* to apply expressly to the amalgamated NL Hydro and its subsidiaries (subject to specific exceptions) and raised Open Call thresholds. The province's 2024 consultation on lien reform indicates strong support for extending the 30-day registration window, adding a 90-day perfection period, and adopting prompt payment and expedited dispute mechanisms. Meanwhile, NL Hydro and Hydro-Québec signed a late-2024 memorandum of understanding to replace the 1969 Churchill Falls contract, with new builds at Gull Island and Churchill Falls, capacity upgrades, and market-based pricing—subject to political and execution risk and targeted for definitive agreements by April 2026.

On lien technicalities, *Sam Design v. Environmental Applications Group*, 2024 NLSC 174 shows that strict compliance with perfection deadlines remains the rule; however, the Court accepted the use of a curative provision to adjust the "last supply" date stated on the lien, thereby saving perfection timing. Lien claimants should draft with precision, and owners should still scrutinize perfection strictly.

**Northwest Territories: *Builder's Lien Act* in Force**

In the Northwest Territories, the Builder's Lien Act received Royal Assent on October 6, 2023, and came into force on September 1, 2025. Replacing the Mechanics Lien Act, it contains prompt payment provisions intended to ensure that contractors and subcontractors are

paid in a timely manner. However, unlike some of the other provinces' legislation, it does not mandate or provide for adjudication in the event of disputes over payment. This new Act will apply to new contracts entered on or after September 1, 2025; it does not apply to previously existing contracts.

**Practice Takeaways: Harmonize Contracts, Prepare for Adjudication, and Document Relentlessly**

The throughline across provinces is convergence around prompt payment and adjudication, paired with local variations that materially affect timing, scope, exemptions, and enforcement. National players should maintain province-specific schedules and notice protocols in their standard forms, train project teams on proper-invoice content and issuance cadence, and pre-plan adjudication playbooks that integrate with lien and arbitration strategies.

Court decisions this year re-emphasize that risk allocation in the written contract—price structure, termination remedies, milestones, and change-process discipline—will heavily influence outcomes.

Finally, external shocks such as tariffs can upend fixed-price economics; explicit change-in-law and tariff relief, alongside supply-chain mitigation and early procurement, are now table stakes for major works.

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# Jail for Misusing an Engineer's Seal

## *Engineers and other professionals working in Ontario beware!*

**Key takeaways**

- Using someone else's engineering seal can lead to jail.
- You cannot "borrow" status as an engineer in Ontario. Even if you are an engineer elsewhere, you cannot hold yourself out as an "engineer" or offer engineering services to the public in Ontario without a licence.
- Court orders and undertakings to regulators are not suggestions. If you agree not to use the title or not to practise, but keep doing so anyway, you are risking jail time.
- You are liable for your websites and marketing materials. Stock photos, vague references to "engineering", and misused seals can all be treated as misrepresentation to the public.

**A cautionary tale**

For engineers and related professionals working in Ontario without a licence from the Professional Engineers Ontario ("**PEO**"), *Association of Professional Engineers of Ontario v. Chouchaoui et al.*, 2025 ONSC 5850 ("***Chouchaoui***") is a cautionary decision.

In *Chouchaoui*, the Ontario Superior Court of Justice imposed 14 days' jail on Mr. Chouchaoui for civil contempt after repeated misuse of a licensed engineer's seal and continued holding out as an engineer, despite a standing injunction. The court emphasised that seals signify professional responsibility; using one to mask unlicensed practice, coupled with defiance of court directions, warranted jail time and substantial indemnity costs.

Prior to 2011, Mr. Chouchaoui, who is not an Ontario licensed engineer, had been committing several acts that all require a licence or other authorization from PEO. Those acts included describing himself as an

engineer; engaging in the practice of professional engineering in Ontario; offering to the public and engaging in the business of providing to the public services that are within the practice of professional engineering; and using an engineering seal. In 2011, the court issued a permanent injunction barring him from those acts.

Despite this, years later, PEO discovered that drawings submitted to the City of Windsor for building permits carried a certain engineer's seal. Out of 48 pages, only 19 were truly sealed by that engineer; the others had the engineer's seal copied or applied by Mr. Chouchaoui and his company.

**Why does this matter?**

The court was at pains to impress the gravity of the offence.

The court emphasized that fraudulently using the Ontario engineering seal and holding oneself out as an engineer in Ontario was very dangerous from a public safety perspective. The conduct is not a private matter but engages the broader public interest related to preventing unlicensed individuals from engaging in the practice of engineering. Unlicensed practice can result in significant harm to members of the public.

The court made it crystal clear that the seal is a public safety tool, a signal of competence and responsibility, and part of the promise the profession makes to the public.

Most people, whether homeowners, municipalities or businesses, cannot independently judge the technical quality of engineering drawings. They rely instead on the regulatory system. When you place a licensed engineer's seal on a document that they did not prepare or review, you are representing to the public and the authorities that a qualified person has taken responsibility, when they have not, and hiding the fact that unlicensed practice is occurring behind the scenes.

**Why jail?**

Even though incarceration is a penalty of last resort, the court considered jail time appropriate in the circumstances despite several factors which might provoke sympathy for Mr. Chouchaoui.

The court was especially troubled by Mr. Chouchaoui's:

1. **Deliberate misuse of the seal.** This was not an accidental misclick in some drawing software. The court found a pattern of copying or reusing the seal on drawings that had not actually been sealed by the engineer, even after the 2011 court order.

2. **Concealment and misrepresentation.** By using the seal, Mr. Chouchaoui made it look like the work had been done, or at least properly overseen, by a licensed engineer. A city official checking the seal would see a real P.Eng. listed with PEO and have no reason to suspect anything was wrong.

3. **Continuing to "hold out" to the public.** The company website and materials continued to suggest engineering services and expertise. Even when some changes were made, they were not enough to eliminate the misleading impression.

4. **Lack of genuine remorse.** In court, the judge gave Mr. Chouchaoui multiple chances to acknowledge the seriousness of what he had done. Instead, he minimized the conduct ("[I] was working on one internal project that was for [me], not for someone else", "I use the word engineering but not meant to be engineering services", "nothing [I did] harmed the public"); blamed others, including PEO and the city; and insisted he had done nothing truly wrong.

This told the judge that he did not accept the authority of the court or

the regulator, and would likely keep pushing the limits.

**What might this mean for you?**

The court's decision in *Chouchaoui* is important not just for lawyers and regulators, but for anyone working in or around engineering in Ontario, including:

- foreign-trained engineers who have recently immigrated;
- engineers licensed elsewhere in Canada who assume the rules are identical;
- technical consultants and designers who work under or alongside engineers; and
- companies that market "engineering" services without fully understanding the licensing requirements.

If you are an engineer or other professional working in Ontario, but not licensed here (or you are thinking of doing so), *Chouchaoui* has some important practical lessons:

a. **Do not use the title "engineer" (or similar) unless you are actually licensed in Ontario.** Even if you are fully and legitimately qualified in another country or province, or if you have a PhD in an engineering field, you cannot market yourself to the public as an "engineer" in Ontario, or offer services that fall within the regulated scope of "professional engineering", unless you have the appropriate licence or authorization from PEO.

   If you want to use your qualifications, the safe route is to speak with PEO about full licensure (P.Eng.); temporary, provisional or limited licences; or working strictly in roles that do not amount to practising professional engineering.

b. **Never touch someone else's seal.** Even if a licensed engineer gives you their digital seal to help "speed things up", or fails to supervise as closely as they should, you must not place their seal on documents they have not actually reviewed and approved.

   If you are involved in preparing drawings or reports, make sure the licensed engineer is directly involved; make sure they control their own seal; and ensure they know exactly what they are sealing.

   If a client or employer pressures you to "just put the seal on it" – that is a major red flag. Walk away and get independent advice.

c. **Be careful how you market yourself online.** Websites and professional social media profiles are part of the picture. If your site or marketing materials call you an "engineer" without being licensed; use stock images of engineers and stamps; or claim expertise that implies you are practising engineering, you are at risk of regulatory action.

   If you're unsure, it's worth having the language reviewed by someone who understands the Ontario rules.

d. T**ake regulators and court orders seriously.** Even if you disagree with PEO or another regulator, ignoring them is not a strategy. If you receive a letter from PEO, are investigated, enter into an undertaking or are made subject to a court order, you need to understand the conditions and comply with them strictly. Breaking an order, especially deliberately, can escalate very quickly into contempt of court, which is what opens the door to jail.

   If you feel you have been treated unfairly, the answer is to get legal advice and use proper appeal/review mechanisms, not to quietly carry on as before.

**The upshot**

If your work touches engineering in Ontario and you are not licensed in Ontario, Chouchaoui is a reminder to clarify your status, be honest and precise in how you describe what you do, stay on the right side of both the regulator and the courts, and when in doubt seek expert or legal advice.

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# Demolition Ordered: A Cautionary Tale for Unpermitted Above-Grade Construction

## *The Corporation of the Town of Ajax v. 1940475 Ontario Inc.*, 2025 ONSC 5325

The decision in *Ajax v. 1940475 Ontario Inc.* concerns a municipal enforcement application brought under section 38 of the *Building Code Act*, 1992 (the "***Act***"). The Town of Ajax (the "**Town**") sought a court order requiring the removal of all above grade work that had been constructed on a mixed use development without a building permit and in the absence of mandatory inspections. The case arose after a series of directives issued by the Town were ignored and after construction was advanced beyond the limits of a conditional permit. The application required the court to examine the purpose of the permitting and inspection regime and to determine whether demolition was necessary to uphold the integrity of that framework.

**Background**

The dispute involves the redevelopment of a property that was historically used as an automotive sales and repair facility, which resulted in documented soil and groundwater contamination.

In 2015, 1940475 Ontario Inc. and First Avenue Properties (collectively the "**Developer**"), acquired the site to construct a four-storey mixed-use building, with commercial uses at grade and residential units above.

Over the following years, the Developer submitted multiple site plan applications and environmental reports. The Town approved the site plan conditionally in April 2021 and later executed a Site Plan Agreement ("**SPA**") that included Condition 31: no above-grade building permit could be issued until a Record of Site Condition ("**RSC**") had been filed with the Ministry of the Environment, Conservation and Parks ("**MECP**"). The Town expected that the site would be remediated prior to an RSC being issued.

To allow limited early construction during remediation, the Town and the Developer entered into a Conditional Building Permit Agreement ("**CBPA**") on September 14, 2021. The CBPA permitted only footings, foundations, and site services. The Developer expressly acknowledged that an RSC was required to obtain a full building permit and agreed to obtain one by April 15, 2022. Under the Town's Building Code requirements, mandatory inspections were required before pouring footings, upon completion of foundations, and prior to backfilling.

Within weeks, these limits were violated. A Town inspector observed above-grade construction underway on October 13, 2021, despite:

1. the absence of a full building permit for above-grade elements, and

2. the fact that mandatory below-grade inspections had not been performed.

The Developer admitted both points.

On October 13, 2021, the Town issued an Order to Comply, being a formal enforcement directive issued by a municipal building official under the *Act*. Such an order requires a property owner or contractor to stop unauthorized work and to correct identified non-compliance. In this case, the Order required the Developer to immediately cease all above-grade construction and to provide the inspection and testing reports that were mandatory prerequisites under the Town's building code requirements. The Developer did not comply.

The Town then escalated enforcement by issuing a Stop Work Order, a further statutory measure under the *Act* that requires all construction activity at the site to halt until the violation is remedied. The Town's legal counsel also wrote to the Developer's project manager advising that, if construction continued, the Town would apply to the Superior Court for injunctive relief.

A third inspection on November 17, 2021, confirmed that construction had continued despite these directives and warnings, and that exterior walls were nearing completion. Work then continued into late 2022.

In response, the Town brought an application for injunctive relief. On November 25, 2021, the Superior Court of Justice issued a mandatory injunction on consent. The injunction required the Developer to immediately cease all construction until a building permit had been issued and permitted only such work as the Town might specifically authorize in writing to address the safety concerns. Despite the injunction and its clear terms, the Developer proceeded on the following day to direct the installation of core slabs

on the second floor without first obtaining the Town's written authorization, placing the Developer in direct breach of the court order.

**Environmental Compliance Issues**

Parallel to the permitting violations, the Developer repeatedly failed to satisfy the environmental conditions required to obtain an RSC.

The first RSC submission (November 2021) contained "significant deficiencies". A second submission (June 2022) was again deficient.

The MECP inspected the site under the Environmental Protection Act, finding contamination in soil and groundwater and highlighting that construction had occurred without a proper RSC. It required a subsurface investigation plan by October 31, 2022, a deadline that passed unmet.

The MECP also identified that of 19 monitoring wells originally installed:

- only 5 were located,
- the remaining 14 were damaged, destroyed, or buried during construction, and
- access to some wells was impossible because of the partially constructed building.

In mid-2023, the Developer proposed a pivot from remediation to a Risk Assessment ("RA") approach. The Town expressed concern about this shift, noting the site's longstanding contamination issues. The Town imposed a deadline of September 19, 2024 to obtain an RSC, warning that failure would result in a demolition application. The deadline passed without compliance.

In February 2025, the Developer submitted a Tier 3 Risk Assessment estimating an additional 12–18 months of work before any RSC could be filed. Meanwhile, the building remained partially constructed and exposed.

**Legal Framework**

Once it became clear that above grade work had continued in defiance of the Town's directives and in breach of the conditional permit, the Town invoked its enforcement powers under section 38 of the *Act*. Section 38 permits a chief building official to apply to the Superior Court of Justice for an order compelling compliance with the *Act* or any order made under it. It also authorizes the court to make any further order the judge considers appropriate, which includes the power to order that construction completed without proper authorization be removed.

The Town commenced this application seeking a court order that would require the Developer to demolish the above grade structure that had been built without a permit. The proceeding therefore came before the Superior Court as a statutory compliance and enforcement matter rather than as a private dispute. The legal question before the court was whether it should exercise its discretion under section 38 to direct demolition of the work constructed in breach of the permitting and inspection requirements.

In considering that question, the court turned to the established authorities that interpret the purpose of the statutory scheme. The Supreme Court of Canada in *Ingles v. Tutkaluk Construction Ltd.*, 2000 SCC 12 confirmed that the permit and inspection system serves to protect public safety by ensuring that construction proceeds only in accordance with approved plans and technical standards. The Divisional Court in *Cavan Monaghan v. Kings Custom Homes Inc.*, 2022 ONSC 1888 further held that once unlawful construction is established, factors such as the cost of demolition, the extent of work completed, or the potential benefits of the project cannot be used to excuse noncompliance. Earlier decisions such as *Gravenhurst (Town) v. Brunton*, 2011 ONSC 1799 and *Smith-Ennismore-Lakefield (Township) v Tarala*, 2016 ONSC

7109 also support the proposition that demolition is an appropriate remedy when the permitting and inspection framework has been ignored.

The legal context for the court's analysis was therefore clear. If the Town established that the Developer had advanced construction without the required permit and in the absence of mandatory inspections, the court had full authority to order that the work be removed in order to uphold the integrity of the statutory regime.

**Court's Analysis**

Justice Casullo found that the Developer repeatedly disregarded both the Town's regulatory framework and the statutory requirements governing safe construction. The court noted that the Developer proceeded with above-grade work in the absence of a full building permit, despite knowing that mandatory inspections had not been completed and despite multiple warnings and stop-work directives from the Town. These breaches were compounded by the fact that a mandatory injunction, issued on consent to halt construction until permitting was regularized, was ignored almost immediately, with the Developer directing the installation of core slabs the very next day without written authorization.

The court emphasized that this conduct occurred against the backdrop of longstanding and unresolved environmental issues. Multiple deficient RSC submissions, missed deadlines, damaged monitoring wells, and a late pivot to a Risk Assessment underscored the Developer's failure to satisfy the conditions necessary for the issuance of an above-grade permit. Justice Casullo rejected the argument that the Developer was being punished for circumstances beyond its control. Instead, the court concluded that the Developer, an experienced entity with decades of industry knowledge, made a deliberate and calculated decision to advance construction in defiance of its obligations under the CBPA and the *Act*.

In the court's view, allowing the unlawfully constructed structure to remain would undermine the integrity of the regulatory scheme and reward a "seek forgiveness rather than permission" approach incompatible with public safety. Relying on established jurisprudence, Justice Casullo held that demolition was the only remedy capable of reinforcing respect for the law and upholding the purposes of the *Act*.

**Practical Takeaways**

The decision provides several important lessons for the construction industry that extend far beyond the context of contaminated sites. The central point is that conditional building permits must be treated as narrow and specific authorizations. They allow construction teams to perform only the precise work described in the permit. Advancing beyond that scope, even for practical reasons such as crew availability or schedule pressure, creates a significant compliance risk. The remedy imposed in this case confirms that unauthorized work may not only be stopped but may also be subject to demolition even where substantial progress has been made.

The reasoning in the decision also underscores the importance of mandatory inspections in the permitting framework. These inspections are not administrative steps that can be bypassed. They are statutory safeguards that ensure critical building components such as footings, foundations and below grade systems are constructed safely. When a construction team proceeds to later stages of the project before required inspections take place, it may become physically impossible to verify compliance. Once concealed, an uninspected element can compromise the legality of all subsequent work. The court made clear that this type of sequencing failure can jeopardize the entire project.

Another practical lesson relates to the culture of risk management on construction sites. Some project participants adopt an approach that assumes work can continue and that issues can be resolved after the fact. The court reaffirmed that this approach is not acceptable. Proceeding with work in the face of unresolved compliance issues, ignoring orders from building officials or attempting to obtain approvals retroactively exposes the project to the most serious enforcement measures. The court explicitly rejected the idea that financial investment or the amount of work completed can shield an unauthorized structure from demolition.

The decision also highlights the need for clarity within project teams regarding responsibility for compliance. Owners, contractors and consultants must establish internal procedures to confirm that every required approval, inspection and authorization has been obtained before the next stage of work begins. Contractors should not proceed in circumstances where the scope of a permit is unclear or where required inspections have not taken place. Written communication and clear records are essential to protect all participants from regulatory and contractual consequences.

In addition, the case illustrates how quickly compliance problems can

escalate. What begins as a missed inspection or an early stage permitting issue can lead to stop work orders, court proceedings and ultimately the removal of completed work. Large and complex builds are particularly vulnerable to these cascading effects. The decision therefore serves as a reminder that project scheduling must integrate regulatory requirements directly into the critical path.

Finally, the case confirms that unilateral construction activity undertaken in the name of safety does not remedy noncompliance. In this case the Developer argued that it needed to install core slabs to stabilize partially constructed walls. The court held that any such measures required written authorization. Construction teams must have a process for raising urgent safety issues with building officials rather than proceeding on their own initiative.

**Conclusion**

The decision in *Ajax v. 1940475 Ontario Inc.* affirms that compliance with permitting and inspection requirements is fundamental to lawful construction. Conditional permits allow only the specific work they describe, and mandatory inspections must occur before further stages begin. When a project advances without these approvals, the resulting work is vulnerable to the strongest enforcement measures available, including demolition. Experience, investment and partial completion do not mitigate unauthorized construction. For the construction industry, the case stands as a reminder that disciplined adherence to permit conditions and inspection sequences is essential for project certainty and risk management.

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# Rule 49.14: Partial Settlement Disclosure

On June 16, 2025, new Rule 49.14 of the *Rules of Civil Procedure* came into force. The rule codifies a line of case law which imposed significant consequences on parties who failed to disclose partial settlements. This article reviews the requirements of the new rule and provides practical guidance for practitioners navigating the transition.

**Rule 49.14 Requirements**

According to subrule 49.14(1), a "partial settlement agreement" is a binding written or unwritten agreement between at least one plaintiff and at least one defendant in an action, where at least one defendant is not party to the agreement, and the agreement does not settle the action in its entirety.

The crux of the new rule is found in subrules 49.14(4) and (5): the obligation to promptly disclose. This obligation belongs to the settling plaintiff(s), who must disclose the terms of the settlement agreement, excluding monetary value, to every other party to the proceeding who is not party to the settlement agreement. Disclosure must be made immediately if the hearing has commenced, or otherwise within 7 days (earlier if another step occurs in the proceedings). A new form, Form 49E, must be served and filed with the court.

Importantly, parties cannot contract out of the disclosure obligation, pursuant to subrule 49.14(6).

Subrule 49.14(7) allows the court to impose a range of consequences for non-compliance, including but not limited to: orders for costs, further examinations for discovery, striking out evidence, staying proceedings, and such other orders as are just. This marks a departure from previous jurisprudence which required the courts to stay the proceedings if a party failed to disclose (see *Handley Estate v. DTE Industries Ltd,* 2018 ONCA 324 [Handley]).

Although they go beyond the scope of this article, counsel and litigation guardians should be aware of the additional requirements relating to settlement agreements involving parties under disability, found in subrules 49.14(8) and (10).

**What are the limits of disclosure?**

The rule appears straightforward: if you are a plaintiff and involved in a partial settlement, you must disclose the terms of that agreement within the prescribed timeline. In *Smialek v. Status Construction Ltd.*, 2025 ONSC 5229, the court confirmed rule 49.14 now applies more broadly to all partial settlement agreements regardless of their impact on the adversarial landscape, which was the previous test grounded in the abuse of process doctrine (see *Gowing Contractors Ltd. v. Walsh Construction Co Canada*, 2025 ONSC 2671 [Gowing]; *Poirier v. Logan*, 2022 ONCA 350; Handley).

The new rule is less clear regarding the obligation to disclose when there is, for example, an agreement in principle but the parties have not agreed to or executed Minutes of Settlement. There is not yet a bright line as to how concrete the terms need to be before the disclosure obligations arise. On one hand, the rule seems to state that it does not arise until the terms are certain, since the terms themselves must be disclosed. On the other hand, the court may wish to prevent parties from dragging their feet in agreeing to precise terms in order to push back the disclosure obligation. While this question remains unanswered, prudent counsel should disclose the settlement as early as possible after an agreement in principle has been reached.

Further, is the duty owed to anyone who isn't party to the litigation? In Gowing, the court considered the scope of the partial disclosure rule prior to rule 49.14's enactment. The court confirmed that parties not directly involved in the litigation but who are connected to related proceedings must receive disclosure from the settling parties, following the principles set out in *Aecon Buildings v. Stephenson Engineering Limited*, 2010 ONCA 898 [*Aecon*].

It is uncertain whether *Gowing* and *Aecon* remain good law under the new rule. In the meantime, prudent counsel should err on the side of caution and consider whether any parties in related actions may be affected by the partial settlement and whether disclosure is appropriate.

**Consequences for non-disclosure – a word of caution**

Although the new rule broadens the range of relief available for non-disclosure, the court in *Smialek* made it clear that harsher consequences are not off the table. In *Smialek*, the court found that rule 49.14 does not overturn *Handley*, which mandated a stay of proceedings for failure to disclose a partial settlement which changes the adversarial landscape.

Notably, the disclosure in *Smialek* was made prior to the enactment of rule 49.14. The court declined to comment on whether the new rule applies retroactively. For now, it appears that a stay of proceedings remains the default remedy for partial settlements that were disclosed late, or not at all, before June 16, 2025.

As a result of the decision in *Smialek*, the test for whether the settlement changes the adversarial landscape may not be entirely moot. Justice Schabas clarified that *Handley* continues to apply where the circumstances reflect the previous doctrine. It follows that the lesser consequences provided under the rule are only available where the partial settlement does not change the adversarial landscape.

The Ontario Court of Appeal has, however, granted leave to hear the issue of whether *Handley* is mandatory before a five-judge panel. But until that decision is released, it appears that *Handley* continues to be the dominant authority regarding partial settlements despite the introduction of the new rule.

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# Making the Best Use of AI for Construction Contract Drafting and Review

**Introduction**

Artificial intelligence (AI) is now a common tool in a construction lawyer's kit. For those working with construction contracts, which are often dense, detailed, and bespoke, AI can be both a blessing and a trap. This article offers practical tips to get the benefits of AI while avoiding the pitfalls.

**First Things First: Privacy and Confidentiality**

Before using any AI tool, consider confidentiality. Many platforms use inputs to train models unless settings are changed. Do not upload client-sensitive material unless you're sure of the data-handling terms. Prefer firm-approved or "walled" tools. When in doubt, strip identifiers, paraphrase, or get approval. Many AI tools allow users to prevent the AI from training itself on your data—use those settings.

**Where AI Excels**

AI can meaningfully speed up contract drafting and review:

- **Compare and contrast.** Rapidly summarize differences between clauses or forms and flag risk shifts (e.g., delay, site conditions, indemnity).
  - ◊ Prompt example: "Compare these two indemnity clauses (CCDC 2 vs. owner SCs). Summarize differences and impacts on the contractor."
- **Brainstorming.** Generate alternatives to spur thinking, even if not final.
  - ◊ Prompt example: "Suggest edits to delay and liquidated damages clauses in a CCDC 2 contract to reduce contractor schedule risk while remaining reasonable for a public-sector owner in Ontario."
- **Quality checks.** Catch inconsistencies, missing definitions, and broken cross-references.
  - ◊ Prompt example: "Review the General Conditions, Supplementary Conditions, and Milestones. Identify inconsistencies in 'Substantial Performance' and 'Ready-for-Takeover.'"

**Where You Excel (and AI Doesn't)**

AI lacks client, project, and political context. It cannot gauge risk tolerance, interview stakeholders, or exercise judgment. Construction matters are multi-party and document-heavy; deciding who truly bears design, geotechnical, or coordination risk often requires reading across the prime, consultant, and subcontracts and understanding delivery models.

AI can surface issues, but only a lawyer can decide if the allocation fits the client.

**Getting the Best Out of AI: Tips and Tricks**

Treat AI like a capable junior who takes everything you say literally. Good input yields good output, as programmers say: GIGO (Garbage In, Garbage Out).

- **Provide context.** In law, context is everything. To get useful responses, AI needs the same context you would need to avoid the reflexive: "It depends." It is helpful to tell the AI who it is acting for, the project delivery model, etc. Those facts dramatically change what 'good' drafting looks like.
    - ◊ Prompt example: "You're assisting counsel for a design-build contractor on a public infrastructure project in Ontario (CCDC 14 with owner SCs). Flag owner changes that increase contractor risk and propose contractor-friendly alternatives."
- **Work step by step.** Break tasks into stages.
    - ◊ Prompts sequence example: "1) Give a high-level risk summary of owner amendments to CCDC 2 (time, price, scope, termination, dispute resolution). 2) Now focus only on time-related changes and propose three negotiation priorities for a low-float contractor."
- **Correct its mistakes.** Iterate and clarify. Beware of errors and hallucinations.
- **Ask for sources (and check them).** Request citations for legal or jurisdiction-specific claims, then verify. Do not rely on summaries alone.

**What Not to Do: Common Pitfalls**

- **For lawyers:** Don't copy-paste blindly. You remain responsible for accuracy, context, and judgment.
- **For non-lawyers:** Don't treat AI as legal advice. In construction, a flawed contract can cost millions. Early expert input is cheaper than mid-project fixes.

**Disclose AI Use Where Appropriate**

Courts and regulators increasingly emphasize transparency about AI. For contracts, disclosure may not be mandatory, but openness builds trust if you remain in control of outcomes.

**Final Thoughts**

AI is a powerful, imperfect tool. For construction lawyers, it enhances efficiency and creativity but demands better data hygiene, clearer instructions, and sharper judgment. Use AI to think with you, not for you.

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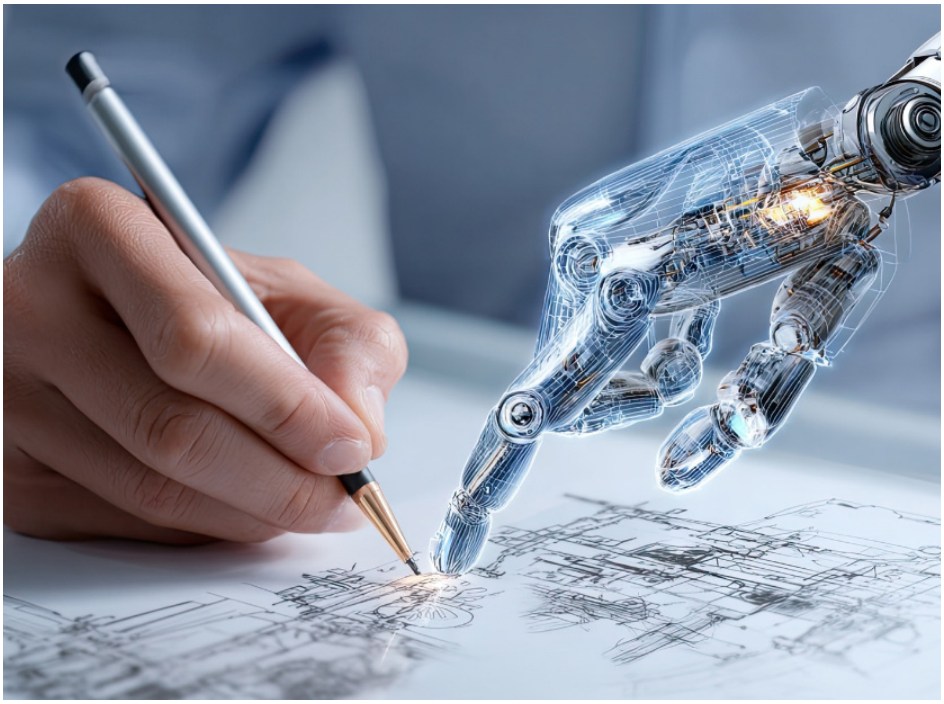

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# Notable Case Law

***1579959 Ontario Inc. v. Sheikh*, 2025 ONCA 688**

Where an appeal from a matter governed by the *Construction Act* is inadvertently brought to the Court of Appeal instead of the Divisional Court, the Court of Appeal can transfer the appeal to the Divisional Court under s. 110 of the *Courts of Justice Act* if three criteria are met:

- the proposed appeal must have some merit;
- the respondent will not suffer undue prejudice as a result of further delay while the appeal is waiting to be heard; and
- the appellant has moved expeditiously once it became aware that jurisdiction was in dispute.

The required "merits" is not a high threshold. The court considers the merits of the appeal merely in its role as gatekeeper, ensuring that further judicial resources are not wasted on a frivolous appeal that obviously has little or no prospect of success.

Any prejudice must be balanced against the fact that the moving parties have a right of appeal and if the appeal is not transferred, they will be deprived of that right due to an error by their counsel in filing the appeal in the wrong court.

A one-month period between the realization that the appeal was in the wrong court and the filing of the transfer motion was held to be reasonably expeditious.

***Urban Electrical Contractors v. Urban Integrated Group Inc.*, 2025 ONSC 5164 (A.J.)**

Security for one lien is security for all liens. It follows that security posted for one lien claim cannot be returned without first considering whether other lien claimants are affected by that return. For that reason, prior to ordering the return of lien security, the court routinely requires evidence on whether there are any other liens and, if so, whether those other liens have been satisfied, discharged, released, or vacated with sufficient separate security under s. 44(1) of the *Construction Act*. That is the case even if the return of lien security is requested on consent of all parties to a lien action.

***Morin Bros. Building Supplies Inc. v. Bond Group Ottawa 2018 Inc.*, 2025 ONSC 5561**

The rule in *Clayton's* Case - that in the absence of an agreement to the contrary, it is presumed a payment on current account is to be applied against the oldest account - does not apply to monies that are impressed with a trust under the *Construction Act*. In *Colautti Construction Ltd. v. Ashcroft Development Inc.*, 2011 ONCA 359, the Court of Appeal held that to be the case for trust monies paid by developers to a contractor, and there was no principled reason to apply a different rule to trust monies paid by a contractor to a supplier. In both cases, the monies are impressed with a statutory trust under ss. 7 and 8.

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