




Contracts Committee

Builders' Lien Act Subcommittee

A silhouette of a construction site at dusk or dawn. In the background, a large tower crane stands prominently. In the foreground, several construction workers are silhouetted against the bright sky, engaged in various tasks. Some are standing near vertical rebar structures, while others are bent over or working with tools on the ground. The overall scene is a busy, active construction site.

Best Practices Workshop: Builders' Lien Act Initiatives May 19, 2010

Vote: Your Role

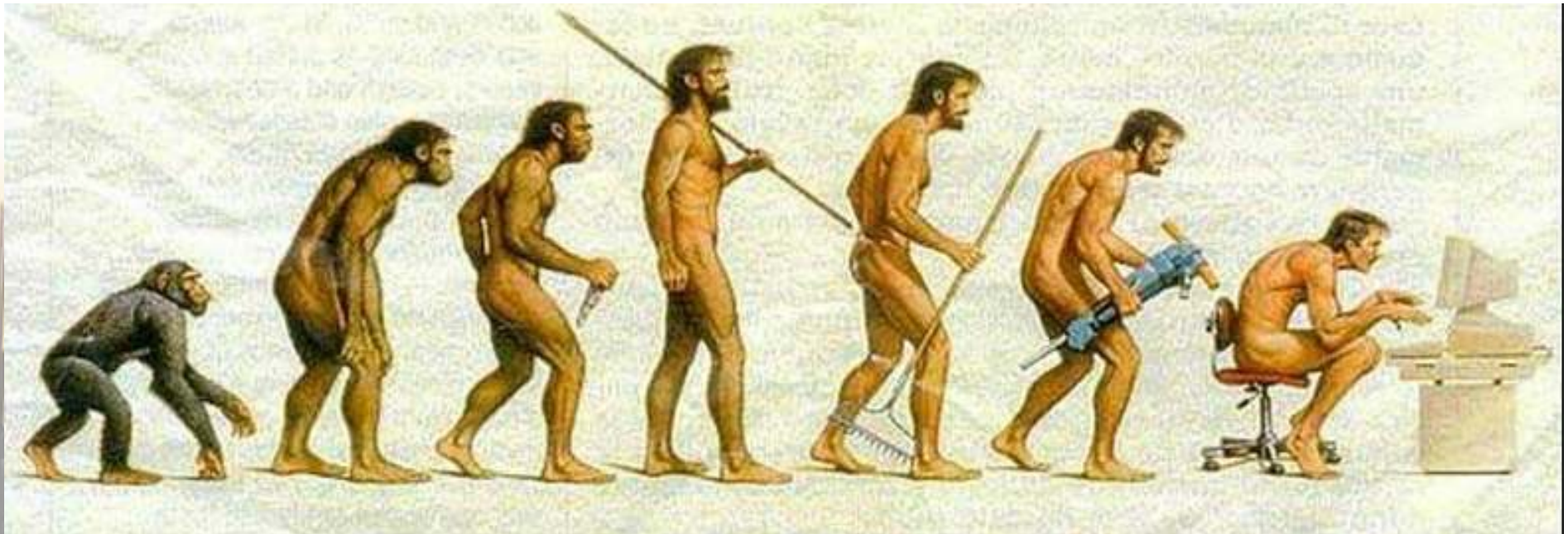
Which best describes your role in the Alberta heavy construction industry:

- a Owner
- b Construction Contractor
- c Labour provider
- d Designer/engineer/planner
- e Other consultant
- f Material supplier
- g Government
- h Other



The Panel

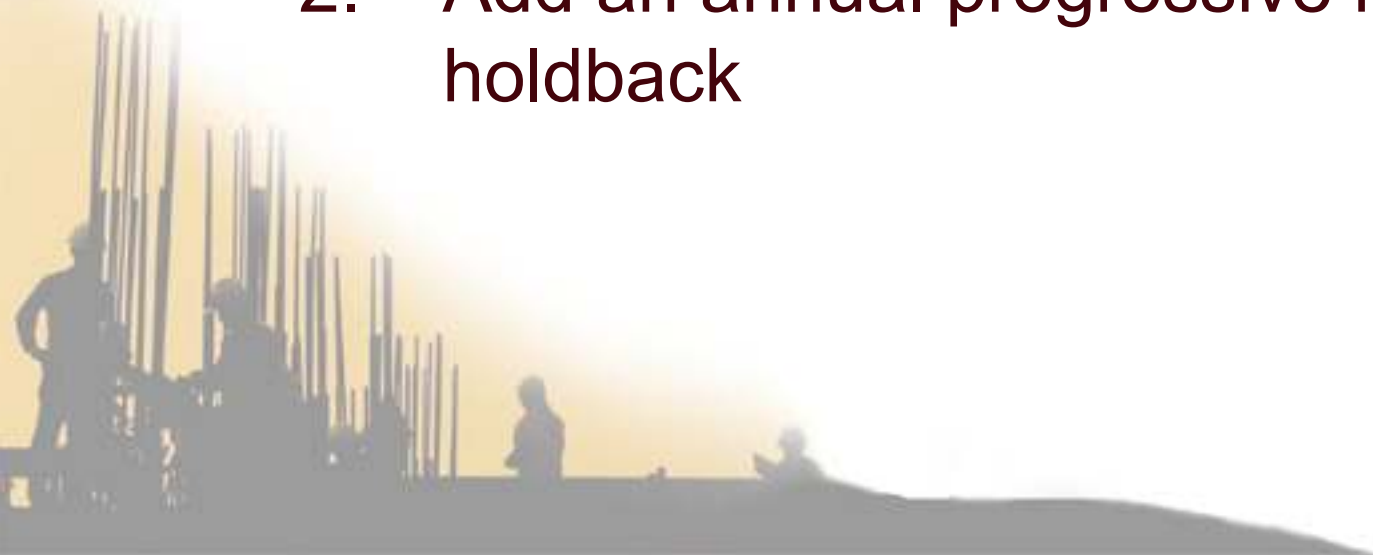
- Ron Genereux, COAA President
- Dan Mowat, AMEC
- Jane Sidnell, Fraser Milner Casgrain
- Garrett Eisenbraun, Enbridge
- Fiona Fjeldheim, Miller Thomson



The Initiatives

The goal is to achieve legislative reform in the following areas:

1. Add a definition of “*oil or gas well*” and “*oil or gas well site*”
2. Add an annual progressive release of holdback



How did we get here?



If we don't look forward, we
may have a disconnect ...





What is COAA's Role?

- Ron Genereux, COAA President





Vote: New definition

Should the terms “*oil or gas well*” and “*oil or gas well site*” be defined in the *Builders’ Lien Act*?

a yes

b no





Progressive Release

- Dan Mowat, AMEC



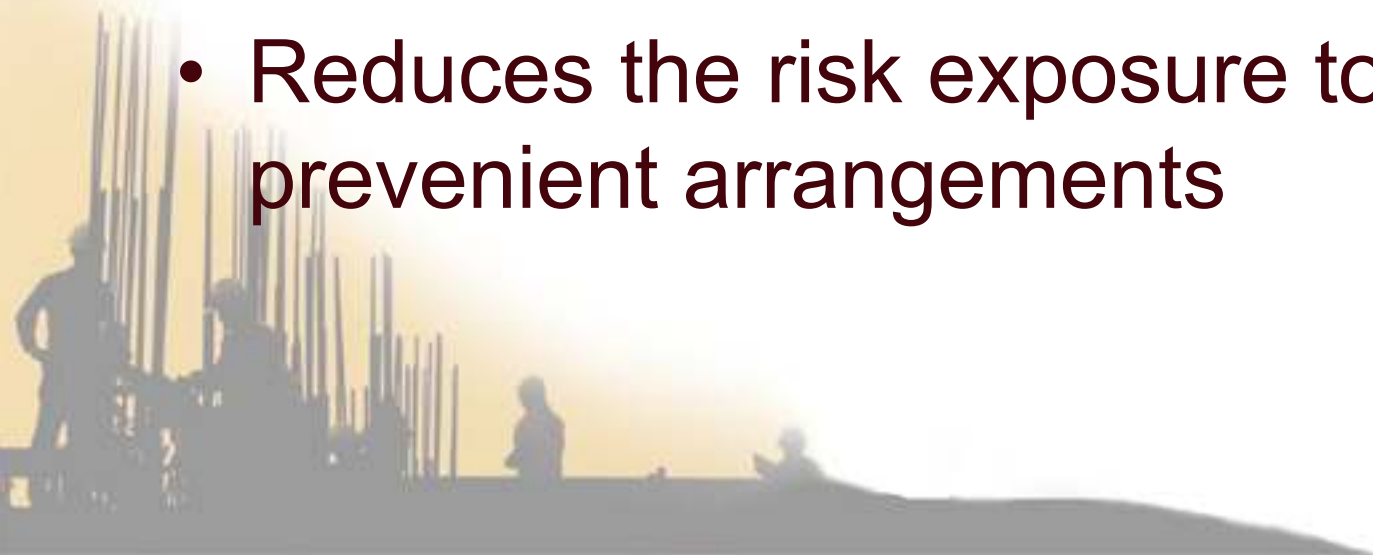


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Advantages of Progressive Release

- Improves cash flow
- Reduces carrying/financing costs
- Allows closure of identifiable portions of work
- Reduces the risk exposure to the Owner for prevenient arrangements





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Advantages of Progressive Release

- Reduces the number of occasions in which contractors may prefer to post security in lieu of holdback
- Can uncover previously unspecified claims
- Progressive release can reduce risk exposure to Owner (or anyone holding back funds under BLA)



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Disadvantages of Progressive Release

- Owners often don't arrange to fund holdbacks until due; funding will be required annually
- Administrative work to effectively manage holdback releases will increase





Prevenient Arrangements

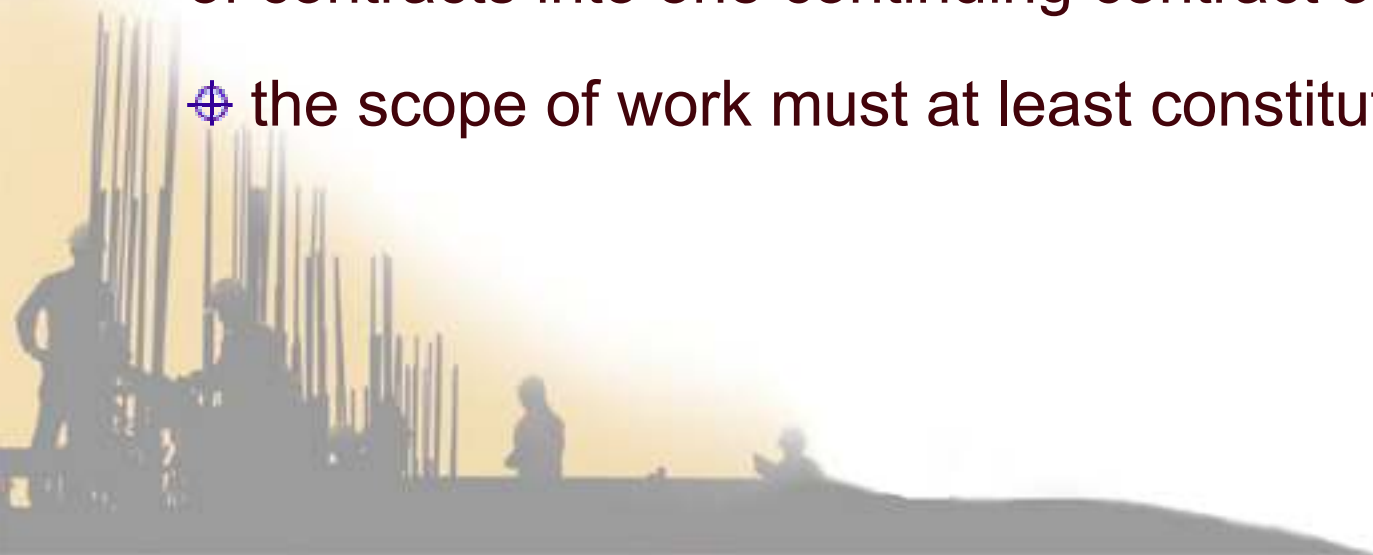
- Jane Sidnell, Fraser Milner Casgrain



Prevenient Arrangements

What is a prevenient arrangement?

- ⊕ a preliminary understanding of an ongoing relationship
- ⊕ not necessarily a contract – but could be a master contract
- ⊕ links together what would otherwise appear to be a series of contracts into one continuing contract or open account
- ⊕ the scope of work must at least constitute a “thread”





Prevenient Arrangement Exposure

Project 1 Completion March 1, 2009		Project 2 Completion June 1, 2009		Project 3 Completion September 1, 2009	
Contract Price	\$900,000	Contract Price	\$2,000,000	Contract Price	\$130,000
Holdback paid to Contractor on April 16, 2009	\$90,000	Holdback paid to contractor on July 16, 2009	\$200,000	Holdback to be paid to contractor on Oct. 16, 2009	\$13,000
Last day to file 45 or 90 days after March 1, 2009	Regular Lien Fund \$90,000	Last day to file 45 or 90 days after June 1, 2009	Regular Lien Fund \$200,000	Last day to file 45 or 90 days after September 1, 2009	Regular Lien Fund \$13,000
				Last day to file 45 or 90 days after Sept. 1, 2009	Prevenient Lien Fund \$303,000



Vote: Greater than one year

What percent of the construction work that your company does (based on cost) is on projects that have a duration greater than one year?

- a >50% of all of its projects
- b >20% to 50% of all of its projects
- c >0% to 20% of all its projects
- d 0%



Vote: Progressive Release

What types of projects should progressive release of holdback apply to?

- a all construction projects
- b only construction projects that have an aggregate value of more than \$100 million
- c only construction projects that will be performed over a period of one year or longer
- d only construction projects that have an aggregate value of more than \$100 million and will be performed over a period of one year or longer
- e no construction projects



Anniversary Release

- Garrett Eisenbraun, Enbridge



Anniversary Release

Pros	Cons
Gives one full year to deal with any issues before having to worry about any releases	Might have trouble deciding on or proving the “anniversary” date (is it first day worked on site, date of agreement, date of MOU, etc.)
Eliminates small holdback releases	What if no agreement is signed?
Gives owners with multiple generals or generals with multiple subcontractors a staggered timeframe to deal with issues	Might start work before the effective date of a contract
Have one year to finalize what the actual anniversary date is - we could put a proposal forward that would specify which anniversary date would apply: first day worked on site, date of agreement, date of MOU, etc.	Anniversary date would have to be communicated to subcontractors and labourers via jobsite postings (difficult on some projects)



Calendar Release

- **Fiona Fjeldheim, Miller Thomson**



Calendar Release

- 45 or 90 days after December 31 (i.e. Feb. 15 or Mar. 31)

Pros	Cons
Dates are clear for all parties; owner, general contractors, subcontractors and labourers	Could have numerous liens filed at one time
A posting of holdback release dates on the jobsite is not required	Due to volume, could be onerous on owner and delay payment or resolution of issues
Potentially easier for owner to check for clear titles before release of payment as all done at one time	Work starting late in the calendar year would be able to apply for small holdback releases
Potentially easier for owner to deal with lien issues and payments all at one time of the year	

Vote: Timing of Release

If there is a progressive release of holdback, when should it occur?

- a on the same calendar date for all projects every year (i.e. February 16)
- b on the anniversary of the contract between the owner and the general contractor or construction manager
- c on the anniversary of each individual contract (i.e. trades would have releases on their individual anniversary dates)

Are we going to sit back and watch?





Questions and Comments

Thank you for attending

