



SURETY
ASSOCIATION OF
CANADA
YOUR BONDING RESOURCE

Construction & Design Alliance of Ontario

The Construction Act of Ontario

A New World for Surety Bond Users

May 14, 2018

Overview

- Quick Review of the Part XI.1 (Section 85)

- ❑ Focus on Changes as they Apply to Subtrades, Suppliers and Sureties.

- Review of Bond Forms

- For more details SAC Webinars

Sureties – June 6th, 7th

G.C's – June 14th

Trades – June 19th

Owners – June 20th

Register on the SAC website

www.suretycanada.com

How We Got Here

- Reynolds/Vogel Report: Striking the Balance
 - ❑ 100 Recommendations
- Four Recommendations Regarding Bonds:
 - ❑ Mandatory ***Broad Form*** Bonds on Public Contracts – in conjunction with SAC
 - ❑ Sureties required to pay undisputed amounts of payment bond claims promptly
 - ❑ Claims Protocol included in the regulations
 - ❑ No change to 3rd Party Beneficiary Rule

The Act

- New Section on Surety Bonds Part XI.1 (Section 85)
- 50% Performance and Payment Bonds Mandatory on all “Public Contracts” > \$500 K
- Public Contracts – Broadly defined; Owner is Crown, Municipality or Broader Public Sector.
- Doesn't apply to architects or engineers
- Bonds to be issued on Prescribed forms.
- L&M Claimants have right of action against the Surety as per 85.2 (1)

Prescribed Bonds

- Bond Language and Schedules 11 to 15 pages:
- More Clarity and Responsiveness
- Built-in Claims Protocol
 - Schedules bring consistency and reduce delay.
 - Timelines for Acknowledgement and Response
 - Undisputed amounts paid promptly.

The Performance Bond

- Triggering the Bond
- “Written Notice” (Schedule A)
- Surety Acknowledge & Request Information (Schedule B) - 4 Business Days
- Surety’s Position (Schedule D) – 20 Bus.Days:
 - Accept Liability
 - Deny Liability (with reasons)
 - Unable to Determine (with explanation)
- Owner’s Direct Expenses (articulated)
- Pre and Post Notice Meeting

The L&M Payment Bond

- Protection extended to 1st and 2nd tiers
- Public Owner is NOT the Trustee
- Any Claimant may submit a “Notice of Claim” (Schedule A or B); 120 Calendar days Notice
- Surety to Acknowledge and Request Information (Schedule C) - 3 business days
- Timelines for Response (Schedule D)
- Pay Undisputed Amounts within 10 Days
- Payment Bonds Can be Adjudicated

So...What Does it Mean?



For Owners, Trades & Suppliers

- More Certainty and Responsiveness around claims process.
 - ❑ Prompt Acknowledgement and Response from Surety.
 - ❑ Prompt Payment of Undisputed Amounts
 - ❑ Clarity around coverage (e.g. direct expenses)
- Access to Interim Binding Adjudication for fast-tracked resolution of disputes (payment bond)

For Public Owners

A Few Tips

- Communication
- Read the Bond and Understand what it does and does not provide.
- Work with the Surety in the event of a claim:
 - ❑ Provide the Surety with requested documentation (the Information) promptly.
 - ❑ Allow Surety access to work site and key personnel.

For Trades & Suppliers

A Few Tips

- Protect Your Rights
- Read the Bond and Comply with its terms
 - ❑ Claim within Notice Period (120 days)
 - ❑ Submit Notice of Claim as per Schedule A or B
- Provide requested documentation to the Surety promptly and thoroughly
- Ensure Files are Documented

For General Contractors

A Few Tips:

- Ensure Key Staff understands the terms of the bond and the enhanced requirements for clarity and quick response.
- Consult with your Broker and Surety about what happens after July 1st.
- Work with the Surety in the event of a claim:
 - PROMPTLY** Provide key information and documentation.
 - Ensure that knowledgeable staff is available

For Sureties

- The clock is ticking; Several clocks at once.

A Few Tips:

- Ensure Your Rapid Response Systems are Ready
- Engage and educate clients; Bonded Contractor's input is critical
- Ensure Files are documented.

And Remember...

This is unexplored territory; new to all participants. The list of suggestions here is not exhaustive or even necessarily authoritative. It's strongly recommended that you consult Brokers Sureties, knowledgeable consultants and counsel for advice on how to proceed.

Questions ???

