New law will further revise construction industry rules

Industry had lobbied for an adjudication to settle contract disputes as an alterntive to going through the court system

BY JOHN MINER
Ontario Farmer

Stratford - The latest changes to Ontario's construction law didn't give the industry everything it wanted, but the sector got what it needed most, the Canadian Farm Builders Association conference was told.

Passed by the legislature last fall, Bill 216 revises rules for adjudicating disputes, paying out holdbacks, and prompt payment requirements.

The legislation is expected to be proclaimed late this spring or in early summer, said Ted Dreyer, chair of the board of directors of the Council of Ontario Construction Associations, and a lawyer with Bennett Grant LLP in Kitchener.

Dreyer said he thought previous legislation passed in 2017, Bill 142, would solve some longstanding issues within the construction industry.

It turned out to be "glitchy."

"It was great in theory, not so great in practice," he said.

The industry had lobbied for an adjudication system to settle contract disputes as an alternative to going through the court system.

"Anybody who has been through litigation will know it can often take up to five years, 10 years, to enforce a claim, which is just not realistic for most businesses that operate in the construction sector," he said.

"It doesn't matter what rights you have if you can't enforce them in a timely and cost effective manner."

In contrast to the court system, adjudication is over in less than 60 days and is much cheaper, he said.

The 2017 legislation provided for adjudication, a major step forward, but the right to refer a claim to adjudication ended when the work was complete.

Ted Dreyer: "In the last six years I don't think I've seen a proper invoice yet"

"That is just so dumb because the vast majority of claims in payment disputes arise immediately after the work is complete," Dreyer said.

The new legislation extends the period of time a claim can be referred to adjudication by 90 days after the contract or subcontract work is complete.

Another issue within the industry has been owners stretching out payment terms, going from 30 days after receiving an invoice to 60 and 90 days.

Added to that, some general contractors were including clauses in agreements that specified subcontractors would be paid when the contractor was paid.

Bill 142 attempted to address the problem with prompt payment provisions, mandating that payment terms were 28 days regardless of what the contract said.

"Once again great theory, not so great in practice," Dreyer said.

The problem was in order to trigger the prompt payment requirement the contractor was required to deliver a "proper invoice" to the owners. The statute's requirements for a proper invoice are unconventional, he said.

The requirements include specifying the period during which the services or materials were supplied; information identifying the authority under which the services were supplied; and the name, title, telephone number and mailing address of the person to whom the payment is to be sent.

"These are the requirements as they exist today and as they have existed for the last six years," Dreyer said. "In the last six years I don't think I've seen a proper invoice yet."

The new legislation still contains the proper invoice requirements, but has added a feature.

If an owner doesn't object to the invoice within seven days, the invoice is considered proper and prompt payment rules apply.

Drever said he suspects contractors will continue to submit improper invoices, but owners are unlikely to respond within seven days.

"It is not an elegant solution, but I think it will work," he said.

Bill 216 when enacted will also change the rules for holdbacks, requiring an annual release of the money instead of when the project is finished.

Canadian canola still subject to politics and fuel rules

Amid tariffs and alternative fuel regulations, domestic processing expansion has slowed down

BY IAN CUMMING
Ontario Farmer

The 100 per cent tariff that China put on Canadian canola meal and oil imports on March 20th represented a large portion of the Canadian export market.

A March 31 USDA Global Agricultural Information Network (GAIN) report states that, in 2024, Canada sent 67.7 per cent of its canola seed exports to China, 34.7 per cent of total meal exports, and 0.4 per cent of its canola oil exports.

These tariffs are distinct from China's investigation into alleged Canadian anti-dumping of Canadian canola, which commenced on September 10, 2024 and is projected to be wrapped up in September this year, stated the report.

From 2019 to 2023 China revoked the export licenses of Canada's two largest canola exporters but "industry speculates that some of the canola may have made its way to China" through the EU and the Middle East, it stated.

"Strong canola oil demand from the United States is expected to continue," with lower export prices and a weak Canadian dollar, will help offset any potential tariff cost, stated the report.

"U.S. importers will likely cover the tariffs for canola oil and pass any increased cost onto U.S. fuel consumers."

Total vegetable and soybean oil exports into America are forecast to increase to 5.2 million MT this year. This is over and above a 43 per cent canola oil export increase into the US over 2023 since the Environmental Protection Agency (EPA) changed its renewable fuel standards to embrace canola/rapeseed oil.

The 2024 exports of canola oil into the U.S. increased by 23 per cent to $4.8 billion (US).

"Canadian canola exports continue to benefit from EPA's revision," stated the report.

Canadian oil processing capacity has increased from 8.2 million MT in 2011 to 14.56 million MT in 2025, still short of the forecast 16.86 million MT by 2025, to be processed in Canada, which has fallen short due to, "political risk, a struggling economy and regulatory uncertainty in both Canada and the United States."

Canola crush capacity will increase to 14.46 MMT when a new Cargill facility in Regina finishes construction later this year.

Soybean oil production is expected to be slightly below the past two years output due to decreased demand from Canadian biodiesel producers and increased demand in America for soybeans from crushers, supplying feedstock.

Within Canada, the regulatory change for biomass-based diesel (BBD) caused the domestic use of vegetable oil (mainly canola and less soybean oil) to increase by 146 per cent in 2024 for its manufacturing. BBD production increased 120 per cent.

There was also an increased demand into the U.S., to get as much shipped in prior to the end of 2024, so they could still collect on the American tax credit.

"Canadian BBD production and vegetable oil feedstock use dropped significantly in January 2025," stated the report. Today many Canadian facilities are, "operating at lower capacity since January 2025 or are temporarily shuttered," stated the report.

> Canola crush capacity will increase to 14.46 MMT when a new Cargill facility in Regina finishes construction later this year

Ongoing BBD production "is not available to corroborate."

"The vegetable oil and fuel trade dynamic will likely change," predicted the report. Canadian canola oil is produced in Canada but is "not the bulk used in Canada," it stated. "Historically, biodiesel produced in Canada is exported to the United States and U.S. fuel suppliers benefitted," from the now expired blended tax credit, which has changed to an American producer tax credit.

"Meanwhile, the majority of BBD consumed in Canada was imported from the U.S."

"This trade dynamic with the United States likely changed in January 2025," it stated.

There was supposed to be expanded BBD manufacturing within Canada, "however, fuel investors withdrew their funding stating that Canadian BBD prices cannot compete with U.S. pricing," stated the report. "Canada has an oversupply of canola oil."

If Canada wishes to become a value added exporter, that, "is challenged by the cancellations of crush and renewable fuel facilities within Canada," it stated.

"Canadian railway lines and vessel ports are unequipped to handle canola oil export diversion away from the United States."

A heavily government subsidized, renewable diesel manufacturing facility in Braya, Newfoundland, started commercial production in February 2024, "using Argentine soy oil as a feedstock," stated the report.

Canola is grown by 43,000 Canadian farmers, mainly in Western Canada.