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*As a result, BBR has built a solid reputation for delivering creative, cost-effective and valuable solutions to various litigation issues which our clients are involved.*

## ***In This Issue:***

**February 2011**

***Changes to the Construction Lien Act***  
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With the passing of the *Open For Business Act, 2010*, in Ontario there will be substantive changes to the *Construction Lien Act* that should not go unnoticed by the construction industry.

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## Definition of “Improvement”

*The Court of Appeal decision in Kennedy Electric held that the supply and installation of an assembly line unit weighing 500,000 tons did not fall within the former definition of an “improvement” under the Construction Lien Act and accordingly did not give rise to a lien.*

*In response to this decision, the Construction Lien Act has been amended and now expressly includes the “installation of industrial, mechanical, electrical or other equipment on the land or on any building, structure or works on the land that is essential to the normal or intended use of the land, building, structure or works”.*

*In addition, the definition of “improvement” has also been amended with respect to demolition services. As a result, the definition now includes the “complete or partial” demolition or removal of any building, structure or works on the land.*

## Condominium Liens

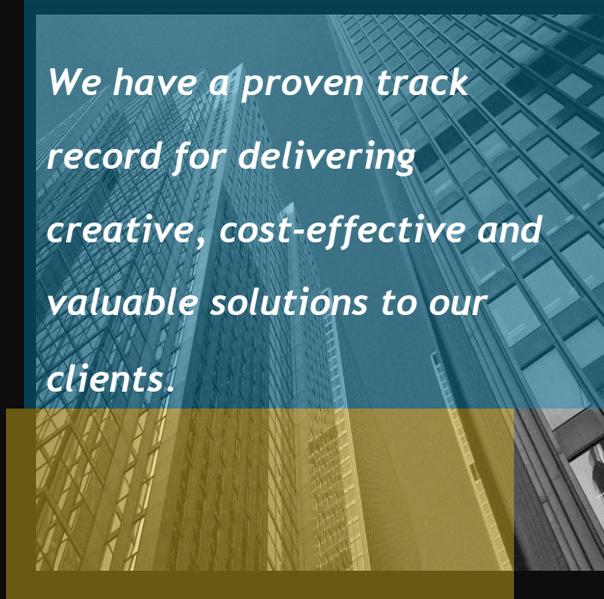
*In accordance with the Condominium Act, 1998, condominium developers will soon have to publish their intention to register a condominium development in a construction trade newspaper.*

*Condominium developers will need to publish notice of the intended registration in a construction trade newspaper at least 5 days and not more than 15 days, excluding Saturdays and holidays, before the description is submitted for approval under subsection 9 (3) of the Condominium Act, 1998.*

*The publication of the notice is intended to provide, those involved with the construction of a specific condominium development, the opportunity to register a lien upon the subject condominium land before it is legally divided into separate units and title is transferred to the individual unit holders.*

*If used in an efficient and effective manner, such an amendment will avoid the complex and costly method of registering construction liens against title to every unit of the condominium.*

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## Sheltered Liens

*Once in force, this new amendment will allow a sheltered lien claimant to proceed with its action to enforce its claim for lien even if the Certificate of Action which it is sheltering under has been vacated.*

*As a result, this amendment will serve to facilitate the vacating of liens regardless of whether there are sheltering liens registered against title.*

## Affidavits of Verification

*This new amendment and the advent of the electronic registration system (“e-reg”), dispenses with the requirement that a claim for lien be verified by an affidavit of the person claiming the lien.*

*As a result, the lien claimant, the agent or assignee of the lien claimant or a trustee of the workers’ trust fund, where applicable, is liable to be cross-examined on the claim for lien.*

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