

# ENDING THE CSP CONFUSION

Why Link2Build.ca  
is a compliant and valid platform  
for publishing certificates  
of substantial performance.

*Article originally published February 14, 2020*

The date of publishing a certificate of substantial performance (CSP) under the Construction Act provides a precise date for contractors and suppliers to know exactly when their lien rights expire as well as when they can expect their holdback. As a result of this importance, there are approximately 14,000 CSPs paid for and published annually. This is a tidy little piece of business which, until recently, was held in a monopoly position by the *Daily Commercial News*.

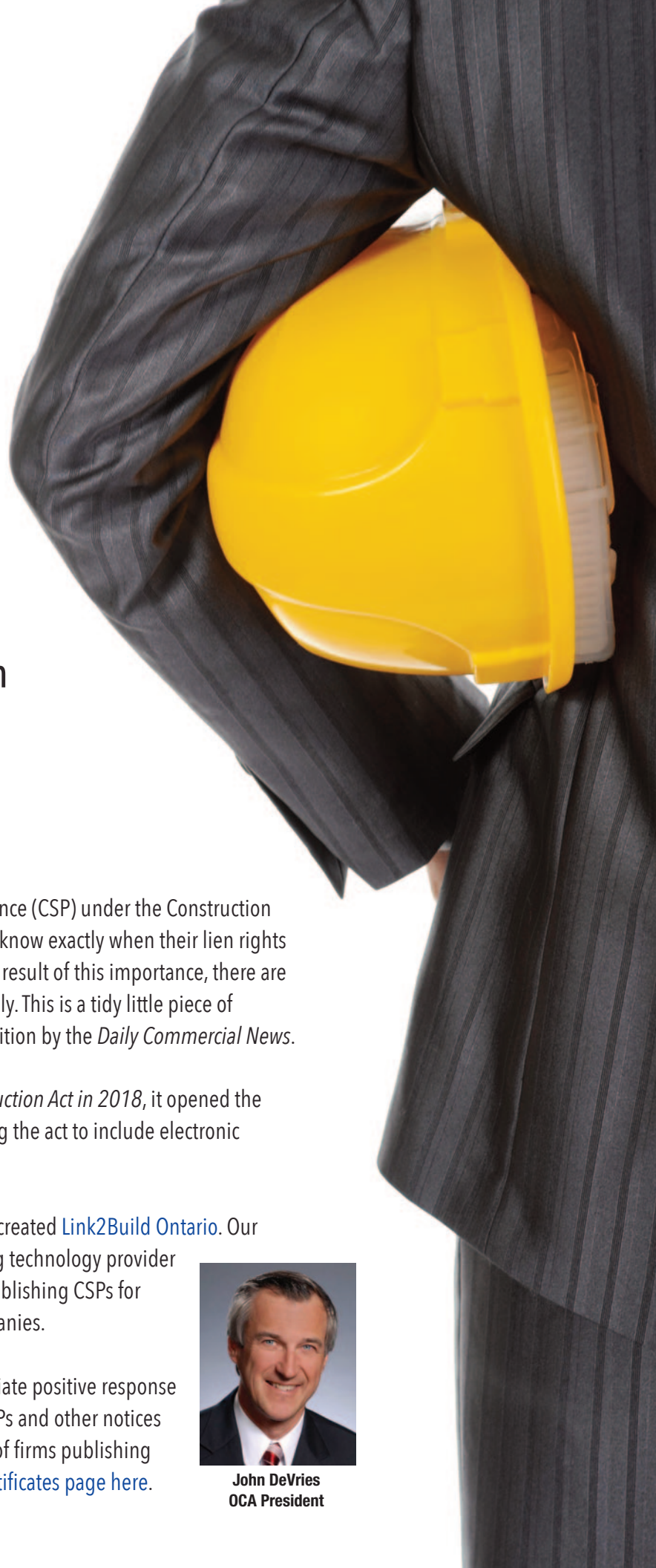
When the Ontario government introduced the new *Construction Act in 2018*, it opened the door to competition for this monopoly market by amending the act to include electronic publishing of CSPs as a reflection of the changing times.

In 2019, seven of Ontario's local construction associations created [Link2Build Ontario](#). Our group of associations partnered with eSolutions – a leading technology provider based in Waterloo – to create a best in class platform for publishing CSPs for \$199. This is less than half the rate charged by other companies.

Link2Build's launch in October 2019 witnessed an immediate positive response from the membership. Hundreds have since published CSPs and other notices on our site – with complete confidence – and the number of firms publishing CSPs on our platform continues to grow. [Check out the Certificates page here.](#)



**John DeVries**  
OCA President



This market success has not gone unnoticed by the competition - DCN. They have directed two negative campaigns to-date against Link2Build. Their argument: the Link2Build site is not compliant with the Construction Act. They could not be more wrong, as I and our legal counsel, lawyer Dan Leduc of Norton Rose Fulbright demonstrate below in our Q & A interview.

On February 12, Mark Casaletto, President of the *Daily Construction News* published an opinion piece titled, *CSP Publication: Change is good....only when done right*.

The article flows into a question-and-answer session with Glenn Ackerley of WeirFoulds LLP. The segment seeks to discredit the legal underpinnings of Link2Build as a publisher with a specific very detailed discussion on the legislative definition of newspaper. Casaletto and Ackerley argue that the legal definition of a newspaper under *Ontario's Legislation Act* must also be considered in this discussion.

Our short answer to the reader is that the Legislation Act and its definition of newspaper has no application here. The *Construction Act* is very clear: a newspaper can be published in electronic format.

The bottom line to this discussion is that Link2Build publishes newspaper content online in electronic format daily. [Check out our daily NEWS feed at www.Link2Build.ca](http://www.Link2Build.ca). This approach satisfies the legal definition of a newspaper in the *Construction Act*. Link2Build is therefore entirely compliant with the *Construction Act*, and readers should be assured that the trust they place in us when publishing CSPs and other notices is entirely well placed.

**Readers, I understand that this back and forth between two organizations over the precise legal definition of something as common as a newspaper is confusing and at-times tiresome. Rest assured that we have taken steps to make sure that Link2Build is fully compliant with all applicable legislation.**

Our organization is a new entrant into the market. We are challenging the business base of an existing foreign-owned monopoly, and one that depends on old-fashioned approaches to conduct its affairs. It is only natural that that organization would respond with challenges to our business model – in much the same way that taxi companies have challenged the legality of ride-sharing applications, for example.

As a very new entrant into the market, Link2Build has an innovative approach to publishing. We are disrupting the status quo. We are proud to do so, and pleased to offer this service – and its many benefits – to you.

Should you have any further questions about this matter, or about Link2Build's exciting new product, I encourage you to please reach out to me or any of my colleagues among our seven founding Link2Build member associations. Each would be happy to speak further with you.

# Q&A

with Dan Leduc  
of Norton Rose Fulbright



## John DeVries

Dan, the Daily Commercial News article I reference above challenges Link2Build's status as a construction trade newspaper as required by the *Construction Act*. The article suggests that Link2Build has not taken into account the definition of a newspaper in *Ontario's Legislation Act*. This is confusing. Can you respond to the article's assertion, and clarify which definition applies?

## Dan Leduc

I would be happy to.

Let me begin with the question of whether Link2Build is a "construction trade newspaper". My review here may seem tedious, but it is important in demonstrating why Link2Build is compliant with the requirements of the *Construction Act*.

The definition of a "newspaper" under the *Legislation Act* is not applicable to the interpretation of "construction trade newspaper" because they are inconsistent with each other.

Although we respect Mr. Ackerley and his experience, we remain uncertain if he considered Sections 47 and 50 of the Legislation Act. Those sections specifically exclude the application of the *Legislation Act* if, "the application would give to a term or provision a meaning that is inconsistent with the context."

46. Every provision of this Part applies to every *Act* and regulation. 2006, c. 21, Sched. F, s. 46.

47. Section 46 applies unless,  
(a) a contrary intention appears; or  
(b) its application would give to a term or provision a meaning that is inconsistent with the context. 2006, c. 21, Sched. F, s. 47.

50. The interpretation and definition provisions in every *Act* and regulation are subject to the exceptions contained in section 47.

"Newspaper" is defined in the Legislation Act as the following:

**"newspaper", in a provision requiring publication, means a document that,**

- (a) is printed in sheet form, published at regular intervals of a week or less and circulated to the general public, and
- (b) consists primarily of news of current events of general interest; ("journal")

The *Construction Act* regulations, however, expressly provide that a "construction trade newspaper" can be in electronic format:

1. In this Regulation, "construction trade newspaper" means a newspaper,
  - (a) that is published either in paper format with circulation generally throughout Ontario or in electronic format in Ontario,
  - (b) that is published at least daily on all days other than Saturdays and holidays,
  - (c) in which calls for tender on construction contracts are customarily published, and
  - (d) that is primarily devoted to the publication of matters of concern to the construction industry.

The requirements that a "newspaper" must be in printed form and consist of news of general interest are clearly inconsistent with the context of the definition of a "construction trade newspaper." The latter includes newspapers published in electronic format and is limited to those primarily devoted to construction matters. The definitions are inconsistent because there are "construction trade newspapers" that would not qualify as "newspaper" under the *Legislation Act* (e.g., electronic publications).

Second, subparagraph (a) of the definition of "construction trade newspaper" – "that is published either in paper format with circulation generally throughout Ontario or

in electronic format in Ontario" – was not included in the previous definition under the *Construction Lien Act*. It was specifically added when the *Construction Act* and its regulations came into force in July 2018. This shows that the legislative intent of the amendment was to broaden the scope of what would qualify as a "construction trade newspaper" and have it evolve to electronic formats and platforms. Furthermore, the wording of subparagraph (a) clearly indicates that it is sufficient to publish in electronic format only, and does not require publication in a paper format in addition to electronic format.

Moreover, the Legislation Act came into force in 2006 while Construction Act and its regulations came into force, as noted, in July 2018. Although the *Legislation Act* applies to future legislation, its narrower definition of a "newspaper" would be inconsistent with the context (using the wording from the *Legislation Act*) and legislative intent of the *Construction Act* to expand the definition of "construction trade newspaper" to include electronic publications.

The bottom line is this: the *Legislation Act* definition of a "newspaper" that is the foundation of the *Daily Commercial News's* argument against Link2Build's validity cannot apply. The definition is inconsistent with the context of the more recent *Construction Act* regulations definition of "construction trade newspaper".

Finally, by referring to the *Libel and Slander Act* and *John v. Ballingall*, we are not saying that the definition of "newspaper" in the *Libel and Slander Act* should be taken as the definition as "newspaper" in the context of a "construction trade newspaper." Rather, we are saying the definition and its common law interpretation should inform our interpretation of "newspaper". In other words, we thought that we would look at how courts and in particular the Ontario Court of Appeal have interpreted what

would qualify as a "newspaper". "Newspaper" is defined under the *Libel and Slander Act* as:

**"newspaper" means a paper containing public news, intelligence, or occurrences, or remarks or observations thereon, or containing only, or principally, advertisements, printed for distribution to the public and published periodically, or in parts or numbers, at least twelve times a year. ("journal")**

This definition is similar to dictionary definitions of "newspaper." The Merriam-Webster Dictionary, for example, defines "newspaper" as "a paper that is printed and distributed usually daily or weekly and that contains news, article of opinion, features and advertising". The Black's Law Dictionary defines "newspaper" as "a publication for general circulation, usually in sheet form, appearing at regular intervals, usually daily or weekly, and containing matters of general public interest, such as current events".

In *John v. Ballingall*, the article in question was published on the Toronto Star's website first – and later in print edition under a different title (the issue of libel related to the title of the online version). The Ontario Court of Appeal held that the *online version of the article was published "in a newspaper"*.

It is also worth noting that the online version of Toronto Star is also in a website format and not in a "multi-sheet PDF format" as suggested by *Daily Commercial News* to be a requirement for an electronic publication to qualify as a "newspaper". This suggests that the online publication of newspaper content would qualify as publication in a "newspaper".

**John DeVries**

Thank you for that analysis, Dan.





# Publish Certificates of Substantial Performance (CSPs) and other notices

## FOR JUST \$199

Link2Build.ca is a new construction-industry portal owned and operated by seven of Ontario's local construction associations, including OCA. In addition to publishing daily news articles about goings-on in and around our industry, Link2Build will be a hub for plans and specifications posted across the province, and will offer contractors and owners a new forum to publish mandatory legal notices, such as Certificates of Substantial Performance—at a price of less than half of what other publications charge.

All the fees charged for publishing CSPs on our site are returned directly to the seven members of the Link2Build alliance.

### Turn to Link2Build.ca first for publishing:

- Certificates of Substantial Performance
- Notices of Non-Payment of Holdback
- Notices of Termination
- Certificates of Completion of Subcontract
- Notices of Intention to Register a Condominium

Learn more at [www.link2build.ca](http://www.link2build.ca)

