

GUEST ARTICLE



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CHANGE IS BAD: NAVIGATING THE NEW WEBSITE FOR THE DAILY COMMERCIAL NEWS

In Ontario, the *Construction Lien Act* requires certificates of substantial performance (“CSPs”) to be published in “a construction trade newspaper”. In practice, all CSPs are published in the *Daily Commercial News* (DCN).

While this effective monopoly has resulted in steep prices for the publication of CSPs, until recently, it offered the advantage of making it easy for industry participants or their legal counsel to determine whether a CSP had been published on a project. The website of the DCN had a link at the top left on the front page called “CSPs”, which took readers to a simple search form. You could put in the name of a project, owner, or general contractor and get an easy-to-read list of results going back years.

In mid-2014, however, the DCN modified its website. Now, finding a CSP is an exercise in guesswork and frustration. There is no link to CSPs, or anything else resembling them. Instead, readers have the two options analyzed below.

The first way to find a CSP is to enter one’s search term into the *Search* bar on the front page. This will return search results from any section of the website, the vast majority of which will not be useful. Readers can then filter the results by looking under the *Refine Results* column on the right and under the *Sections* heading (clicking *More* at the

bottom to expand if necessary). Readers then have a choice of two sections that appear to be the main repositories for Ontario Certificates of Substantial Performance: *Certificate of Completion* and *Certificates and Notices*. Note that depending on the search term and the results it returns, both of these section names might not be appearing. If you do see both, you will need to check them to be certain of your search.

Several other sections appear to deal with notices published pursuant to legislation in other provinces: Certification of Substantial Completion, Notice of Substantial Completion, Notice of Partial Substantial Completion, Certificate of Substantial Performance, and Notice of Substantial Performance.

Those familiar with the Act will note that the correct terminology—*Certificate of Substantial Performance*—is not used in connection with Ontario projects. CSPs are usually found under *Certificates of Completion*, which could lead one to think that what is being certified is completion of a subcontract under s. 33 of the Act, when, in fact, substantial performance of a contract is being certified under s. 32. (You will need to click through and read the details to be certain.) This terminological inexactitude—to borrow a phrase from Winston Churchill—is difficult to understand coming from the only trade paper publishing CSPs.

The second way to find a CSP is to click on the *Legals* link that appears on the right of the menu bar at top of the DCN homepage above the DCN's banner and *Search* bar. The *Legals* link takes the reader to a page that at first glance on most screens has nothing to do with CSPs. But scroll down and you find a graphic with the words *Certificates and Notices under the Construction Lien Act*. Click on

this graphic, and you are taken to a page that, at the bottom, has a list of published certificates, organized by date. There is no search function. You can see the 20 most recent certificates published, and page back manually in time. This layout is useful if you know that the CSP you are looking for has been published in the last few days; otherwise, given the volume of CSPs published in Ontario, it is useless.

It is to be hoped that the DCN's new website will not turn into an incubator for missed lien deadlines, lost lien rights, and negligence claims against lawyers who have not figured out how to navigate its interface.