Over the past few years, a number of provinces in Canada have implemented, or worked on launching, prompt payment and adjudication in their lien legislation. This page summarizes the differences by province and region, outlining current measures in place and future measures expected to come.

British Columbia

Overview

On November 27, 2025, the *Construction Prompt Payment Act* (CPPA or the Act) received Royal Assent.

Once in effect, the CPPA will implement a prompt payment regime and introduce changes to the *Builders Lien Act*. Key points include:

- Prompt payment timelines will be triggered by the owner's receipt of a "proper invoice", which must be paid unless required notices are delivered within the stipulated deadlines;
- Under a new dispute adjudication process, adjudicators may render decisions that may be binding until the parties reach a written agreement or the dispute is finally determined by a court or through arbitration;
- The holdback period is amended to expire at the end of 46 days after a certificate of completion is issued or the head contract is completed, abandoned or terminated or the improvement is completed or abandoned;
- The stand-alone "*Shimco*" lien against the holdback is abolished; and
- The deadline to register a lien remains unchanged from the *Builders Lien Act*;

The new Act, and the amendments to the *Builders Lien Act* and lien provisions of the *Strata Property Act*, will come into force on a date to be prescribed by regulation, which has not been announced. Draft regulations have not been circulated.

Transition

Any contract entered into on or after the coming into force date of the *CPPA* must comply with its provisions. It is expected that the regulations will provide more information about transition as have regulations in other prompt-payment jurisdictions.

Prompt Payment Timeline

The CPPA sets out prompt payment timelines that owners, contractors and subcontractors will be required to follow, which include:

1. An owner must pay a contractor within 28 days of receiving a “proper invoice”;
2. Contractors and subcontractors must pay their respective sub- and sub-subcontractors within seven days of receipt of payment, or within the time frame determined by their position in the chain of contracts.
3. If the owner disputes any invoiced amount, the owner must issue a notice of non-payment within 14 days of receiving the proper invoice;
4. If a contractor disputes any amount in a subcontractor’s invoice or receives a notice of non-payment, the contractor must issue a notice of non-payment to the subcontractor by the earlier of seven days after receiving a notice of non-payment or the deadline determined by the subcontractor’s position in the chain of contracts;
5. A contractor may rely on an owner’s notice of non-payment as a ground to withhold payment from a subcontractor (but the contractor is required to provide a copy of the owner’s notice of non-payment and to undertake to refer the non-payment to adjudication); Otherwise, if a contractor receives partial payment from the owner, the contractor must within seven days rateably pay its subcontractors the amounts owing that were paid by the owner for the work performed or materials furnished; and
6. Subject to giving a notice of non-payment, if a subcontractor receives partial payment from the contractor, the subcontractor must rateably pay its sub-subcontractors the amounts owing that were paid by the contractor for the work performed or materials furnished within the time frame determined by the subcontractor’s position in the contractual chain.

What is a Proper Invoice?

The CPPA sets outs the minimum requirements of a “proper invoice” as follows:

1. Written bill or other request for payment for the work done or materials furnished in respect of an improvement under a contract.
2. Must be given to an owner at least every month unless the contract provides for a different period of time or provides for a proper invoice to be given on a milestone or other basis.
3. The contractor’s name and business address.
4. The date of the proper invoice and the relevant period of time, milestone or other basis.
5. Information identifying the authority, whether in the contract or otherwise, under which the work was done or materials were furnished.
6. A description of the work done or materials furnished, including quantity if appropriate.
7. The amount requested for payment and the corresponding payment terms broken down for the work done or materials furnished.
8. The name, title and contact information of the person to whom payment is to be sent.
9. Any other information that may be prescribed by the regulations.
10. The invoice must meet any other requirements as specified in the contract.

Disputing a "Proper Invoice"

Adjudication, is a streamlined process similar to arbitration that requires a determination within 30 days, followed by payment within 15 days of the determination. Under the CPPA, disputes about whether a payment is required under a contract, including in relation to a change order, whether approved or not, may be determined by adjudication. Other matters disputes that an adjudicator may hear include: a failure to make payment, the value of services or materials supplied, a failure to give a proper invoice, notices of non-payment, matters prescribed by regulation, or other agreed matters.

Adjudication

Adjudication is a form of streamlined dispute resolution process outside of court. A party to a contract may initiate adjudication under the CPPA by delivering a notice of adjudication to the other party. A notice of adjudication must be delivered within 90 days of certain prescribed triggering events otherwise adjudication cannot be commenced. If the dispute relates to the head contract, the notice must be given within 90 days after the head contract is completed, abandoned, or terminated. If the dispute relates to a subcontract, the notice must be given within 90 days of the earliest of the date the head contract was completed, abandoned, or terminated, the date the subcontract was certified, or the date the subcontractor last supplied services or materials to the improvement under that subcontract.

An adjudication authority will be established to register adjudicators and administer adjudications. An adjudicator must be registered as such by the authority. An adjudicator will be appointed to hear a dispute either by consent or by the authority. Parties cannot contract in advance to name a specific adjudicator in the event of an adjudication.

When an unpaid contractor sends a notice of non-payment to a subcontractor based on non-payment by the owner, the contractor must also undertake to commence adjudication against the owner for non-payment of its invoice no later than 21 days after giving notice.

An adjudicator may conduct the adjudication in any manner considered appropriate by the adjudicator under the circumstances and has been granted several powers for this purpose, including, but not limited to, issuing directions regarding the conduct of the adjudication, drawing inferences from the parties' conduct, obtaining the assistance of an expert, and conducting on-site inspections.

Types of disputes that can be adjudicated are set out in CPPA and include, among other things, disputes about whether a payment is required under a contract, including in relation to a change order, whether approved or not, a failure to make payment, the value of services or materials supplied, a failure to give a proper invoice, notices of non-payment, matters prescribed by regulation, or other agreed matters.

Parties may terminate an adjudication after the notice of adjudication is given, but before the determination is issued. The adjudicator may also resign or be terminated in accordance with the regulations.

Prompt Payment Checklist

Are you ready for British Columba's prompt payment and adjudication? Things to consider preparing in advance:

- updated contracts - construction contracts, subcontracts, purchase orders and consulting agreements;
- updated forms of invoices that contain the required information for "proper invoices";
- template notices of dispute;
- template notices of non-payment;
- reminder systems to track the date of delivery or receipt of a "proper invoice", deadlines for payments
  and notices;
- accounting protocols to satisfy the mandated payment timelines;
- project filing systems to organize documents to support or defend adjudication claims; and
- claims teams who can respond rapidly, within the new tight timelines, to document your

position with factual and legal support when notice of non-payment or notice of adjudication is received.

Contractual Updates and Considerations

The CPPA brings a number of changes that will require participants in the British Columbia construction industry to update their contracts:

Proper Invoices: There are minimum requirements for a “proper invoice” under the CPPA, but parties are free to specify additional requirements for a “proper invoice” in their contracts (for example, by requiring a “proper invoice” to include a certificate of insurance, statutory declaration or WCB certificate).

Payment Timelines: Unless the parties contract otherwise, the CPPA requires contractors to issue a “proper invoice” to an owner at least every month. An owner is required to pay a contractor within 28 days of receiving a “proper invoice” (unless the owner issues a notice of non-payment within 14 days of receipt). Contractors are required to pay subcontractors within seven days of receiving full payment from an owner (unless the contractor issues a notice of non-payment) and so on and so forth down the chain of contracts.

Adjudication: the CPPA creates an adjudication process to resolve certain types of disputes as set out in the regulations, which include the validity of proper invoices, valuation of services or materials, change orders, and non-payment, or any other matters that the parties agree to adjudicate. Adjudication becomes mandatory once either party issues a notice of adjudication. An adjudicator’s decision will be binding on the parties unless:

- a court order is made;
- a party applies for a judicial review;
- the parties agree in writing to resolve the dispute; or
- the parties enter into a written agreement to appoint an arbitrator.

However, nothing in the CPPA restricts parties from participating in mediation, arbitration, or court proceedings.

Holdback period shortened: The holdback period will be shortened from 55 days to 46 days. This change would also apply to the holdback on condominium purchases under the *Strata Property Act*.

Abolition of the ‘*Shimco* lien’: The new Act expressly states that “A person does not have a lien under this Act against a required holdback.” While the holdback remains charged with payment of claims of lien filed by persons engaged by or under the person from whom the holdback was retained, these amendments abolish the stand-alone lien against the holdback previously recognized in B.C. in the *Shimco Metal Erectors Ltd. v. Design Steel Constructors Ltd.* decision.

Demolition Work Lienable: Demolition work is now expressly included in the definition of an “improvement” in section 1(1) of the *Builders Lien Act*.

Prompt payment may apply to professional services and material suppliers: Based on the definition of ‘contractor’ as a ‘person who supplies services or materials for an improvement’ it appears that service providers, such as architects and engineers, as well as materials suppliers, will be subject to the prompt payment regime, unless it is decided to exempt these categories of contracts by regulation.

Please contact a BLG Construction lawyer with any questions you may have about how the CPPA will affect your business.

Key Contacts: Krista Johanson and Celine Conly

Alberta

Overview

On August 29, 2022, the changes to *Alberta Builders' Lien Act* took effect, making Alberta the third province in Canada to implement prompt payment and adjudication in its lien legislation. The new act – called the Prompt Payment and *Construction Lien Act* (the PPCLA or the Act) – introduced a number of key changes, including:

- prompt payment timelines and requirements, triggered by the receipt of a "proper invoice" by the owner, which must be followed unless required notices are delivered by the stipulated deadlines;
- a new dispute adjudication process, under which adjudicators may hear disputes and render decisions, which may be binding in certain circumstances;
- the general deadline to register a lien for materials or the performance of services, not provided with respect to an oil or gas well or well site, was extended to 60 days from the last day the materials were furnished or the services were provided, or the contract was abandoned;
- a new lien period of 90 days was created for work or materials provided with respect to improvements primarily related to the furnishing of concrete; and,
- the introduction of a progressive release of the statutory holdback for projects and contracts that meet the required conditions.

New regulations were implemented which included, amongst other requirements, the form of notices of dispute and notices of non-payment to be used by the parties.

On April 1, 2025, further amendments to the PPCLA took effect (the 2025 PPCLA Amendments), which included the ability for consulting professionals (such as engineers and architects) to have the option to waive their lien rights and avoid lien holdback requirements if their contract expressly contemplates such a waiver, and added clarity to adjudication timing and allowance for concurrent dispute resolution methods to the adjudication process.

Transition

All contracts entered into before the coming into force of the new Act were required to be amended to conform with the new provisions by August 29, 2024.

The 2025 PPCLA Amendments took effect immediately on April 1, 2025.

Prompt Payment Timeline

The PPCLA sets out prompt payment timelines that owners, contractors and subcontractors will be required to follow, which include:

1. an owner must pay a contractor within 28 days of receiving a "proper invoice";
2. if the owner disputes any of the amount in the invoice, the owner must issue a notice of dispute within 14 days of receiving the proper invoice;
3. the owner must still pay any undisputed amount within 28 days after receipt of the proper invoice;
4. subject to giving a notice of non-payment, if a contractor is paid in full by the owner, the contractor must pay its subcontractors within 7 days;
5. subject to giving a notice of non-payment, if a contractor receives partial payment from the owner, the contractor must within 7 days pay its subcontractors the amounts owing that were paid by the owner for the work performed or materials furnished;
6. if the contractor does not deliver a notice of non-payment to its subcontractors within 7 days, the contractor must pay its subcontractors in full within 35 days of issuing the "proper invoice" to the owner, even if it did not receive full or partial payment from the owner;
7. subject to giving a notice of non-payment, if a subcontractor is paid in full by the contractor, the subcontractor must pay its sub-subcontractors within 7 days;
8. subject to giving a notice of non-payment, if a subcontractor receives partial payment from the contractor, the subcontractor must pay its sub-subcontractors the amounts owing that were paid by the contractor for the work performed or materials furnished; and,
9. if the subcontractor does not deliver a notice of non-payment to its sub-subcontractors, the subcontractor must pay its sub-subcontractors in full within 42 days from when the "proper invoice" was delivered to the owner.

What is a Proper Invoice?

The PPCLA sets outs the minimum requirements of a "proper invoice" as follows:

1. Written bill or other request for payment for the work done or materials furnished in respect of an improvement under a contract.
2. Must be given to an owner at least every 31 days unless the contract provides for the testing and commissioning of the improvement or work done and the testing or commissioning has not been done.
3. The contractor's name and business address.
4. The date of the proper invoice and the period during which the work was done or materials were furnished.
5. Information identifying the authority, whether in the contract or otherwise, under which the work was done or materials were furnished.
6. A description of the work done or materials furnished.
7. The amount requested for payment and the corresponding payment terms broken down for the work done or materials furnished.
8. The name, title and contact information of the person to whom payment is to be sent.
9. A statement indicating that the invoice provided is intended to constitute a proper invoice.
10. Any other information that may be prescribed.
11. The invoice meets any other requirements as specified in the contract.

Disputing a "Proper Invoice"

The receipt of a “proper invoice” by an owner from a contractor triggers the prompt payment regime in Alberta. The PPCLA sets the minimum requirements for what constitutes a “proper invoice” and additional requirements can be set out in the contract. If the owner determines the payment application received does not constitute a “proper invoice” or if it disputes the validity of the invoice, the owner must deliver a notice of dispute to the contractor within 14 days, which must be in the prescribed form set out in the regulations. The notice of dispute must specify if the owner is disputing all or a portion of the invoice and it must detail the reasons for non-payment. The undisputed portion of the invoice must be paid to the contractor within 28 days after receiving the “proper invoice”.

With respect to a contractor who disputes the entitlement of a subcontractor to payment, the contractor must provide the subcontractor a notice of non-payment in the form set out in the regulations. The notice of non-payment must be provided within 7 days after the contractor receives a notice of dispute from the owner or, if no notice of dispute was given by the owner, within 35 days of giving a proper invoice to the owner. The notice of non-payment must specify the amount that is not being paid and it must detail the reasons for non-payment. The process for a subcontractor disputing its subcontractors’ invoices is nearly identical, but the deadlines are within 7 days of receiving a notice of non-payment from the contractor or, if no notice of non-payment is given, within 42 days of the proper invoice being given to the owner.

Adjudication

Adjudication is a form of streamlined dispute resolution process outside of court. An adjudicator, appointed by a Nominating Authority, presides over an adjudication. Parties can contractually designate a Nominating Authority, but cannot agree to appoint a particular adjudicator. Decisions made by the adjudicator are arguably interim binding; however, a recent controversial court decision has held that they may in fact be “final and binding”.

An adjudication process is not available if the notice of adjudication is given more than 30 days after the date of final payment under the contract, unless agreed by the parties. When an unpaid contractor sends a notice of non-payment to a subcontractor based on non-payment by the owner, the contractor must also undertake to commence adjudication against the owner for non-payment of its invoice no later than 21 days after giving notice.

An adjudication must be conducted in accordance with the procedures in the regulations or established by the Nominating Authority. Adjudication procedures can also be contemplated in the contract to the extent they do not conflict with the regulations or the Nominating Authority.

Types of disputes that can be adjudicated are set out in the regulations, which include valuation of services or materials, change orders, non-payment, and major or minor lien fund amounts owed at the end of a contract or subcontract, or any other matters that the parties agree to adjudicate.

Parties may terminate an adjudication after the notice of adjudication is given, but before the determination is issued. The adjudicator may also resign or be terminated in accordance with the regulations.

The 2025 PPCLA Amendments allow concurrent dispute resolution methods (*e.g.* adjudication, arbitration, and litigation in court) to proceed at the same time; however, an arbitration or court order will take precedence over an adjudicator’s order.

Prompt Payment Checklist

Are you compliant with Alberta’s prompt payment and adjudication? Things to consider:

- updated contracts - consulting agreements, construction contracts, subcontracts and purchase orders;

- updated forms of invoices that contain the required information for “proper invoices”;
- template notices of dispute;
- template notices of non-payment;
- reminder systems to track the date of delivery or receipt of a “proper invoice”,
- deadlines for payments and notices;
- accounting protocols to satisfy the mandated payment timelines; and,
- project filing systems to organize documents to support or defend adjudication claims.

Contractual Updates and Considerations
The PPCLA brings a number of changes that requires participants in the Alberta construction industry to ensure their contracts are compliant with the PPCLA:

Application: The PPCLA applies to the vast majority of construction contracts in Alberta, with the exception of:

1. “public works” as defined in the *Public Works Act* – however, the PWA was recently amended on April 1, 2025 which introduced prompt payment and adjudication to government-owned construction projects;
2. agreements to finance and undertake an improvement with the provincial Crown or its agents; or
3. projects on lands administered by the federal government.

Proper Invoices: There are minimum requirements for a “proper invoice” under the PPCLA, but parties are free to specify additional requirements for a “proper invoice” in their contracts (for example, by requiring a “proper invoice” to include a certificate of insurance, statutory declaration or WCB certificate).

Payment Timelines: The PPCLA requires contractors to issue a “proper invoice” to an owner at least every 31 days. An owner is required to pay a contractor within 28 days of receiving a “proper invoice” (unless the owner issues a notice of dispute within 14 days of receipt). Contractors are required to pay subcontractors within 7 days of receiving full payment from an owner (unless the contractor issues a notice of non-payment) and so on and so forth down the construction chain. The only exception to the payment timelines set out in the Act is where payment is contingent on testing and commissioning an improvement.

Pay-When-Paid Clauses: Although pay-when-paid clauses were expressly prohibited in earlier versions of the PPCLA, the prohibition was removed in the version of the legislation that received royal assent. In essence, the PPCLA’s prompt payment framework inserts a statutory paid-when-paid clause into every construction contract, with significant differences. Under a traditional paid-when-paid clause, the timing for payment is triggered when an owner pays the contractor. Under the PPCLA, the paid-when-paid mechanism is only activated if a contractor delivers the required notice of non-payment to its subcontractors by the statutory deadline, regardless of whether it has received payment from the owner.

Lien Registration Deadlines: The PPCLA extends the general deadline for registering a lien to 60 days (or 90 days for concrete work). However, the Act does not change the 90-day deadline for oil and gas work.

Progressive Holdbacks: Under the PPCLA, parties may agree to release holdback funds on pre-determined dates or construction milestones. For projects with a completion schedule of more than one year and a contract price over $10M, the Act requires that holdback funds be released annually or on some other phased basis if specified in the contract.

Dispute Resolution: The PPCLA creates an adjudication process to resolve certain types of disputes as set out in the regulations, which include valuation of services or materials, change orders, non-payment, and major or minor lien fund amounts owed at the end of a contract or subcontract, or any other matters that the parties agree to adjudicate. Adjudication becomes mandatory if one of the parties issues a notice of adjudication to the other. Decisions made by the adjudicator are arguably interim binding; however, a recent controversial court decision has held that they may in fact be "final and binding".

However, nothing in the PPCLA restricts parties from participating in mediation, arbitration, or court proceedings occurring at the same time; however, an arbitration or court order will take precedence over an adjudicator's order.

Statutory Forms: The PPCLA prescribes a number of statutory forms that can be found in the Prompt Payment and Construction Lien Forms Regulation.

The PPCLA introduced a number of significant changes to the Alberta construction industry that requires participants to carefully review their contracts and internal processes to ensure they comply with the Act.

Please contact a BLG Construction lawyer with any questions you may have about how the PPCLA affects your business.

Key Contacts: Patricia (Trish) L. Morrison, Bill Woodhead, Erin Cutts, Rodney A. Smith, Gus da Roza

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Saskatchewan

Overview
On March 1, 2022, Saskatchewan's amendments to *The Builders' Lien Act* (the BLA or the Act) were proclaimed into force.

The amendments to the BLA implemented a prompt payment regime and introduced changes to *The Builders' Lien Act*. Key points include:

- Prompt payment timelines will be triggered by the owner's receipt of a "proper invoice", which must be paid unless required notices are delivered within the stipulated deadlines;
- Under a new dispute adjudication process, adjudicators may render decisions that may be binding until the parties reach a written agreement or the dispute is finally determined by a court or through arbitration;
- The arbitration provisions under the BLA have been repealed;
- If a matter that is the subject of a lien is also the subject of an adjudication, the deadline to register a lien is extended to the later of: (a) the date on which the lien would expire pursuant to section 49 of the BLA; and (b) the conclusion of the 45 day period following the date of

receipt by the adjudicator of documents pursuant to section 21.41 of the BLA.

New regulations were implemented which included the form of notices of non-payment to be used by the parties.

Transition

Applies to any contract entered into on or after March 1, 2022.

Exemptions from Prompt Payment / Adjudication

The BLA exempts the following parties from the application of the prompt payment provisions:

a. Mining/mineral resource contracts (other than oil or gas);
b. Contracts with architects, engineers and land surveyors; and,
c. Contracts for improvements related to infrastructure for Saskpower.

Prompt Payment Timeline

The BLA sets out prompt payment timelines that owners, contractors and subcontractors are required to follow, which include:

1. An owner must pay a contractor within 28 days of receiving a “proper invoice”;
2. If the owner disputes any invoiced amount, the owner must issue a notice of non-payment within 14 days of receiving the proper invoice;
3. subject to giving a notice of non-payment, if a contractor is paid in full by the owner, the contractor must pay its subcontractors within 7 days;
4. subject to giving a notice of non-payment, if a contractor receives partial payment from the owner, the contractor must within 7 days pay its subcontractors the amounts owing that were paid by the owner for the work performed or materials furnished;
5. if the contractor does not deliver a notice of non-payment to its subcontractors within 7 days, the contractor must pay its subcontractors in full within 35 days of issuing the “proper invoice” to the owner, even if it did not receive full or partial payment from the owner;
6. subject to giving a notice of non-payment, if a subcontractor is paid in full by the contractor, the subcontractor must pay its sub-subcontractors within 7 days;
7. subject to giving a notice of non-payment, if a subcontractor receives partial payment from the contractor, the subcontractor must pay its sub-subcontractors the amounts owing that were paid by the contractor for the work performed or materials furnished; and,
8. if the subcontractor does not deliver a notice of non-payment to its sub-subcontractors, the subcontractor must pay its sub-subcontractors in full within 42 days from when the “proper invoice” was delivered to the owner.

What is a Proper Invoice?

The BLA sets outs the minimum requirements of a “proper invoice” as follows:

1. Written bill or other request for payment for services or materials with respect to an improvement under a contract.
2. Must be given to an owner on a monthly basis, unless the contract provides otherwise.
3. The contractor’s name and address.
4. The date of the invoice and the period during which the services or materials were

supplied;

5. Information identifying the contract or other authority under which the services or materials were supplied;
6. A description, including quantity if appropriate, of the services or materials that were supplied;
7. The amount payable for the services or materials that were supplied, and the payment terms;
8. The name, title, telephone number and mailing address of the person to whom payment is to be sent;
9. Any other information that may be prescribed by the regulations.
10. The invoice must meet any other requirements as specified in the contract.

Disputing a “Proper Invoice”

The receipt of a “proper invoice” by an owner from a contractor triggers the prompt payment regime in Saskatchewan. The PPCLA sets the minimum requirements for what constitutes a “proper invoice” and additional requirements can be set out in the contract. If the owner determines the payment application received does not constitute a “proper invoice” or if it disputes the validity of the invoice, the owner must deliver a notice of non-payment to the contractor within 14 days, which must be in the prescribed form set out in the regulations. The notice of non-payment must specify if the owner is disputing all or a portion of the invoice and it must detail the reasons for non-payment. The undisputed portion of the invoice must be paid to the contractor within 28 days after receiving the “proper invoice”.

With respect to a contractor who disputes the entitlement of a subcontractor to payment, the contractor must provide the subcontractor a notice of non-payment in the form set out in the regulations. The notice of non-payment must be provided within 7 days after the contractor receives a notice of dispute from the owner or, if no non-payment was given by the owner, within 35 days of giving a proper invoice to the owner. The notice of non-payment must specify the amount that is not being paid and it must detail the reasons for non-payment. The process for a subcontractor disputing its subcontractors’ invoices is nearly identical, but the deadlines are within 7 days of receiving a notice of non-payment from the contractor or, if no notice of non-payment is given, within 42 days of the proper invoice being given to the owner.

Adjudication

Adjudication is a form of streamlined dispute resolution process outside of court. An adjudicator, appointed by the Saskatchewan Construction Dispute Resolution Office (the SCDRO), presides over an adjudication. Parties can jointly select an adjudicator, but cannot agree to appoint a particular adjudicator in their contract. Decisions made by the adjudicator may be binding in certain circumstances.

An adjudication process is not available after contract completion, unless agreed by the parties. When an unpaid contractor sends a notice of non-payment to a subcontractor based on non-payment by the owner, the contractor must also undertake to commence adjudication against the owner for non-payment of its invoice no later than 21 days after giving notice.

An adjudication must be conducted in accordance with the procedures in the regulations or established by the SCDRO. Adjudication procedures can also be contemplated in the contract to the extent they do not conflict with the regulations or the SCDRO.

Types of disputes that can be adjudicated are set out in the regulations, which include valuation of services or materials, change orders, non-payment, and major or minor lien fund amounts owed at the end of a contract or subcontract, or any other matters that the parties agree to adjudicate.

Parties may terminate an adjudication after the notice of adjudication is given, but before the determination is issued. The adjudicator may also resign or be terminated in accordance with the regulations.

Prompt Payment Checklist

Are you compliant with Saskatchewan’s prompt payment and adjudication? Things to consider:

- updated contracts - construction contracts, subcontracts, purchase orders and consulting agreements;

- updated forms of invoices that contain the required information for “proper invoices”;
- template notices of dispute;
- template notices of non-payment;
- reminder systems to track the date of delivery or receipt of a “proper invoice”, deadlines for payments
  and notices;
- accounting protocols to satisfy the mandated payment timelines;
- project filing systems to organize documents to support or defend adjudication claims; and
- claims teams who can respond rapidly, within the new tight timelines, to document your position with factual and legal support when notice of non-payment or notice of adjudication is received.

Contractual Updates and Considerations
The BLA brings a number of changes that requires participants in the Saskatchewan construction industry to ensure their contracts are compliant with the BLA:

Proper Invoices: There are minimum requirements for a “proper invoice” under the BLA, but parties are free to specify additional requirements for a “proper invoice” in their contracts (for example, by requiring a “proper invoice” to include a certificate of insurance, statutory declaration or WCB certificate).

Payment Timelines: Unless the parties contract otherwise, the BLA requires contractors to issue a “proper invoice” to an owner at least every month. An owner is required to pay a contractor within 28 days of receiving a “proper invoice” (unless the owner issues a notice of non-payment within 14 days of receipt). Contractors are required to pay subcontractors within 7 days of receiving full payment from an owner (unless the contractor issues a notice of non-payment) and so on and so forth down the chain of contracts.

Adjudication: the BLA creates an adjudication process to resolve certain types of disputes as set out in the regulations, which include the validity of proper invoices, valuation of services or materials, change orders, and non-payment, or any other matters that the parties agree to adjudicate. Adjudication becomes mandatory once either party issues a notice of adjudication. An adjudicator’s decision will be binding on the parties unless:

- a court order is made;
- an arbitration decision is made;
- the parties agree in writing to resolve the dispute; or
- an application is made to the court for judicial review on the grounds stipulated in the BLA.

However, nothing in the BLA restricts parties from participating in mediation, arbitration, or court proceedings.

Exemptions to prompt payment: BLA exempts the following parties from the application of the prompt payment provisions: (a) Mining/mineral resource contracts (other than oil or gas); (b) contracts with architects, engineers and land surveyors; and, (c) contracts for improvements related to infrastructure for Saskpower.

Repeal of the BLA arbitration provisions.

Extension to time to file a lien if dispute subject to adjudication: If a matter that is the subject of a lien is also the subject of an adjudication, the deadline to register a lien is extended to the later of: (a) the date on which the lien would expire pursuant to section 49 of the BLA; and (b) the conclusion of the 45 day period following the date of receipt by the adjudicator of documents pursuant to section 21.41 of the BLA.

Please contact a BLG Construction lawyer with any questions you may have about how these changes will affect your business.

Key Contacts: Krista Johanson, Celine Conly, Gus da Roza

Manitoba

Overview
On April 1, 2025, Manitoba's amendments to *The Builders' Lien Act* (the BLA or the Act) were proclaimed into force.

The amendments to the BLA implemented a prompt payment regime and introduced changes to *The Builders' Lien Act*. Key points include:

- Prompt payment timelines will be triggered by the owner's receipt of a "proper invoice", which must be paid unless required notices are delivered within the stipulated deadlines;
- Under a new dispute adjudication process, adjudicators may render decisions that may be binding until the parties reach a written agreement or the dispute is finally determined by a court or through arbitration;
- Similar to previously where an architect or engineer did not have a right to lien, the application of the new prompt payment and adjudication provisions do not apply to architects and engineers.
- The general deadline to register a lien for materials or the performance of services, was extended to 60 days after the substantial performance or abandonment of the contract, or within 60 days after the supplying of the last materials so supplied (whichever first occurs); and
- Correspondingly the holdback period is extended to 60 days, which applies to all contracts regardless of when they were entered into.

New regulations were implemented which included, amongst other requirements, the form of notices of non-payment to be used by the parties.

Transition

Applies to any contract entered into on or after April 1, 2025.

However, the new holdback period (which was extended to 60 days) applies to all contracts regardless of when they were entered into.

Exemptions from Prompt Payment / Adjudication

The BLA exempts architects and engineers from the application of the prompt payment and adjudication provisions, along with continuing prior exemptions under the older BLA (*i.e.* pre-existing exceptions for certain provincial highways and Manitoba Hydro contracts).

Prompt Payment Timeline

The BLA sets out prompt payment timelines that owners, contractors and subcontractors are required to follow, which include:

1. An owner must pay a contractor within 28 days of receiving a “proper invoice”;
2. If the owner disputes any invoiced amount, the owner must issue a notice of non-payment within 14 days of receiving the proper invoice;
3. subject to giving a notice of non-payment, if a contractor is paid in full by the owner, the contractor must pay its subcontractors within 7 days;
4. subject to giving a notice of non-payment, if a contractor receives partial payment from the owner, the contractor must within 7 days pay its subcontractors the amounts owing that were paid by the owner for the work performed or materials furnished;
5. if the contractor does not deliver a notice of non-payment to its subcontractors within 7 days, the contractor must pay its subcontractors in full within 35 days of issuing the “proper invoice” to the owner, even if it did not receive full or partial payment from the owner;
6. subject to giving a notice of non-payment, if a subcontractor is paid in full by the contractor, the subcontractor must pay its sub-subcontractors within 7 days;
7. subject to giving a notice of non-payment, if a subcontractor receives partial payment from the contractor, the subcontractor must pay its sub-subcontractors the amounts owing that were paid by the contractor for the work performed or materials furnished; and,
8. if the subcontractor does not deliver a notice of non-payment to its sub-subcontractors, the subcontractor must pay its sub-subcontractors in full within 42 days from when the “proper invoice” was delivered to the owner.

What is a Proper Invoice?

The BLA sets outs the minimum requirements of a “proper invoice” as follows:

1. Written bill or other request for payment for work, services or materials under a contract.
2. Must be given to an owner on a monthly basis, unless the contract provides otherwise.
3. The contractor’s name and address.
4. The date of the invoice and the period during which the work, services or materials were provided;
5. Information identifying the contract or other authority under which the work, services or materials were provided;
6. A description of the work, services or materials that were provided by the contractor and its sub-contractors, including quantity if appropriate;
7. The amount invoiced for the work, services or materials that were provided and the payment terms;
8. The name, title, telephone number and mailing address of the person to whom payment is

to be sent;

9. Any other information that may be prescribed by the regulations.
10. The invoice must meet any other requirements as specified in the contract.

Disputing a “Proper Invoice”

The receipt of a “proper invoice” by an owner from a contractor triggers the prompt payment regime in Manitoba. The PPCLA sets the minimum requirements for what constitutes a “proper invoice” and additional requirements can be set out in the contract. If the owner determines the payment application received does not constitute a “proper invoice” or if it disputes the validity of the invoice, the owner must deliver a notice of non-payment to the contractor within 14 days, which must be in the prescribed form set out in the regulations. The notice of non-payment must specify if the owner is disputing all or a portion of the invoice and it must detail the reasons for non-payment. The undisputed portion of the invoice must be paid to the contractor within 28 days after receiving the “proper invoice”.

With respect to a contractor who disputes the entitlement of a subcontractor to payment, the contractor must provide the subcontractor a notice of non-payment in the form set out in the regulations. The notice of non-payment must be provided within 7 days after the contractor receives a notice of dispute from the owner or, if no non-payment was given by the owner, within 35 days of giving a proper invoice to the owner. The notice of non-payment must specify the amount that is not being paid and it must detail the reasons for non-payment. The process for a subcontractor disputing its subcontractors’ invoices is nearly identical, but the deadlines are within 7 days of receiving a notice of non-payment from the contractor or, if no notice of non-payment is given, within 42 days of the proper invoice being given to the owner.

Adjudication

Adjudication is a form of streamlined dispute resolution process outside of court. An adjudicator, appointed by the Manitoba Prompt Payment Adjudication Authority (the MPPAA), presides over an adjudication. Parties can jointly select an adjudication, but cannot agree to appoint a particular adjudicator in their contract. Decisions made by the adjudicator may be binding in certain circumstances.

An adjudication process is not available after contract completion, unless agreed by the parties. When an unpaid contractor sends a notice of non-payment to a subcontractor based on non-payment by the owner, the contractor must also undertake to commence adjudication against the owner for non-payment of its invoice no later than 21 days after giving notice.

An adjudication must be conducted in accordance with the procedures in the regulations or established by the MPPAA. Adjudication procedures can also be contemplated in the contract to the extent they do not conflict with the regulations or the MPPAA.

Types of disputes that can be adjudicated are set out in the regulations, which include valuation of services or materials, change orders, non-payment, and major or minor lien fund amounts owed at the end of a contract or subcontract, or any other matters that the parties agree to adjudicate.

The parties may refer a matter to even if the matter is the subject of a court action or an arbitration unless the action or arbitration has been finally determined.
Parties may terminate an adjudication after the notice of adjudication is given, but before the determination is issued. The adjudicator may also resign or be terminated in accordance with the regulations.

Prompt Payment Checklist

Are you compliant with Manitoba's prompt payment and adjudication? Things to consider:

- updated contracts - construction contracts, subcontracts, purchase orders and consulting agreements;
- updated forms of invoices that contain the required information for "proper invoices";
- template notices of dispute;
- template notices of non-payment;
- reminder systems to track the date of delivery or receipt of a "proper invoice", deadlines for payments
and notices;
- accounting protocols to satisfy the mandated payment timelines;
- project filing systems to organize documents to support or defend adjudication claims; and
- claims teams who can respond rapidly, within the new tight timelines, to document your position with factual and legal support when notice of non-payment or notice of adjudication is received.

Contractual Updates and Considerations
The BLA brings a number of changes that requires participants in the Manitoba construction industry to ensure their contracts are compliant with the BLA:

Proper Invoices: There are minimum requirements for a "proper invoice" under the BLA, but parties are free to specify additional requirements for a "proper invoice" in their contracts (for example, by requiring a "proper invoice" to include a certificate of insurance, statutory declaration or WCB certificate).

Payment Timelines: Unless the parties contract otherwise, the BLA requires contractors to issue a "proper invoice" to an owner at least every month. An owner is required to pay a contractor within 28 days of receiving a "proper invoice" (unless the owner issues a notice of non-payment within 14 days of receipt). Contractors are required to pay subcontractors within 7 days of receiving full payment from an owner (unless the contractor issues a notice of non-payment) and so on and so forth down the chain of contracts.

Adjudication: the BLA creates an adjudication process to resolve certain types of disputes as set out in the regulations, which include the validity of proper invoices, valuation of services or materials, change orders, and non-payment, or any other matters that the parties agree to adjudicate. Adjudication becomes mandatory once either party issues a notice of adjudication. An adjudicator's decision will be binding on the parties unless:

- a court order is made;
- an arbitration decision is made;
- the parties agree in writing to resolve the dispute; or
- an application is made to the court for judicial review on the grounds stipulated in the BLA.

However, nothing in the BLA restricts parties from participating in mediation, arbitration, or court proceedings.

Exemptions to prompt payment: The BLA exempts architects and engineers from the application of the prompt payment and adjudication provisions, along with continuing prior exemptions under the older BLA (*i.e*. pre-existing exceptions for certain provincial highways and Manitoba Hydro contracts).

Lien registration and holdback deadlines: The BLA extends the general deadline for registering a lien to 60 days. Correspondingly, the holdback period is extended to 60 days, which applies to all contracts regardless of when they were entered into.

Please contact a BLG Construction lawyer with any questions you may have about how these changes will affect your business.

Key Contacts: Bill Woodhead, Gus da Roza, Laura Delemere, Rodney Smith, Doug Sanders, Kasim Salim

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Ontario

Overview

A 5-year review of *Ontario's Construction Act* (the Act) led to Bill 216: *Building Ontario for You Act* (Budget Measures), 2024, and Bill 60: *Fighting Delays, Building Faster Act*, 2025, which came into force on January 1, 2026 and provided for several amendments to the *Construction Act*, R.S.O. 1990, c. C.30 (the *Construction Act*). The *Construction Act* includes prompt payment and adjudication regimes.

Transition

The recent amendments to the *Construction Act* applied immediately, upon coming into force on January 1, 2026, to construction "improvements", "except as otherwise provided" in the transition provisions. There are various exceptions set out in the transition provisions.

Prompt Payment Timeline

The *Construction Act* sets out prompt payment timelines that owners, contractors and subcontractors will be required to follow, which include:

1. the owner may refuse payment of a proper invoice by giving a notice of non-payment within 14 days after receiving the proper invoice;
2. the owner must pay the proper invoice within 28 days after receiving the proper invoice, other than amounts refused in a notice of non-payment given within the above 14 day timeline;
3. the contractor may refuse a corresponding payment to the subcontractor by giving a notice of non-payment within 7 days after the contractor received a notice of non-payment or payment from the owner or, if no notice was given by the owner then within 35 days after giving the proper invoice to the owner, as applicable;
4. the contractor must make the corresponding payment to the subcontractor within 7 days after receiving the payment from the owner or 35 days after giving the proper invoice to the owner, other than amounts refused in a notice of non-payment given within the above contractor timeline;

5. the subcontractor may refuse a corresponding payment to a sub-subcontractor by giving a notice of non-payment within 7 days after the subcontractor received a notice of non-payment or payment from the contractor or, if no notice was given by the contractor then within 42 days after giving the proper invoice to the owner, as applicable;
6. the subcontractor must make the corresponding payment to the sub-subcontractor within 7 days after receiving the payment from the contractor or 42 days after the proper invoice was given to the owner, other than amounts refused in a notice of non-payment given within the above subcontractor timeline;

What is a Proper Invoice?

Under the *Construction Act* a "proper invoice" means a written bill or other request for payment for services or materials in respect of an improvement under a contract, if it contains the following information and meets any other requirements that the contract specifies (other than a prior certification requirement which is prohibited by section 6.3(2) of the *Construction Act*):

1. The contractor's name and address.
2. The date of the invoice and the period, milestone or other contractual payment entitlement to which the invoice relates.
3. Information identifying the contract or other authorization under which the services or materials were supplied, such as a contract number, contract line item number or purchase order number.
4. A description, including quantity where appropriate, of the services or materials that were supplied.
5. The amount payable for the services or materials that were supplied, and the payment terms.
6. The name, title, mailing address and telephone number of the person to whom payment is to be sent or, if payment is to be sent to an office or department, its name, mailing address and telephone number.
7. Any other information that is necessary for the proper functioning of the owner's accounts payable system that the owner reasonably requests.
8. Any other information that may be prescribed.

Disputing a "Proper Invoice"

The receipt of a "proper invoice" by an owner from a contractor triggers the prompt payment regime in Ontario. The *Construction Act* sets the minimum requirements for what constitutes a "proper invoice" and additional requirements can be set out in the contract.

As a result of the January 1, 2026 amendments to the *Construction Act*, an invoice that does not meet the requirements for a "proper invoice" will be deemed to be a proper unless, no later than seven days after receiving the invoice, the owner notifies the contractor in writing of the deficiency and of what is required to address it.

If the owner disputes a proper invoice, the owner must deliver a notice of non-payment to the contractor within 14 days, which must be in the prescribed form and manner set out in the regulations. The notice of non-payment must specify the amount of the proper invoice that is not being paid and it must detail all of the reasons for non-payment. The undisputed portion of the invoice must be paid to the contractor within 28 days after receiving the "proper invoice".

With respect to a contractor who disputes the entitlement of a subcontractor to payment, the contractor must provide the subcontractor a notice of non-payment in the form and manner set out in the regulations. The notice of non-payment must be provided within 7 days after the contractor receives a notice of non-payment from the owner or, if no notice of non-payment was given by the owner, within 35 days of giving a proper invoice to the owner. The notice of non-payment must specify the amount that is not being paid and it must detail the reasons for non-payment. The process for a subcontractor disputing its sub-subcontractors' invoices is nearly identical, with the deadline to issue a notice of non-payment of 7 days following the receipt of receiving a notice of non-payment from the contractor, or, if no notice of non-payment is given, within 42 days of the proper invoice being given to the owner.

Adjudication

The adjudication regime under the *Construction Act* provides for a streamlined dispute resolution process. An adjudicator is authorized to make determinations regarding construction contract disputes, and may only address a single dispute, unless the parties to the adjudication agree otherwise. Parties can engage a "registry adjudicator" from the Ontario Dispute Adjudication for Construction Contracts (ODACC), or mutually agree to select a qualified "private adjudicator". Decisions made by the adjudicator are binding in certain circumstances.

Adjudication is available if notice is given by no later than the 90th day after the earlier of the date on which the contract is completed, abandoned, or terminated. In the case of subcontracts, adjudication is available if notice is given by no later than the 90th day after the earliest date on which (a) the contract is completed, abandoned or terminated, (b) the subcontract is certified to be completed, and (c) the subcontractor last supplies services or materials to the improvement. If notice is not given within the required timeline, adjudication cannot be commenced unless the parties agree otherwise.

An adjudication must be conducted in accordance with the procedures in the *Construction Act* and regulations, and as set out in the construction contract or subcontract, provided those are not in conflict with the *Construction Act* or the regulations.

Types of disputes that can be adjudicated are set out in the regulations, which include valuation of services or materials, change orders, scope of work, non-payment, holdback, labour and material payment bonds, or other amounts retained under the contract. Parties can also agree to adjudicate any other matter.

Parties may terminate an adjudication after the notice of adjudication is given, but before the adjudicator's determination is issued.

Prompt Payment Checklist

Are your internal systems and processes set up to guide you through Ontario's prompt payment and adjudication regimes? Things to consider:

- updated contracts - consulting agreements, construction contracts, subcontracts and purchase orders;
- updated forms of invoices that contain the required information for "proper invoices";
- template notices of dispute;
- template notices of non-payment;
- reminder systems to track the date of delivery or receipt of a "proper invoice", deadlines for payments
  and notices;
- accounting protocols to satisfy the mandated payment timelines; and,

- project filing systems to organize documents to support or defend adjudication claims.

Contractual Updates and Considerations

The January 1, 2026 amendments to the *Construction Act* bring a number of changes that will require participants in the Ontario construction industry to update their contracts and to take proactive steps to prepare for these changes, including:

Transition: A number of additional “transition” provisions will be incorporated into the *Construction Act*. The amendments will apply immediately upon coming into force to construction “improvements”, “except as otherwise provided” in the transition provisions. There are various exceptions set out in the transition provisions.

Deemed “proper invoice”: The list of information required in a “proper invoice” will be amended (s. 6.1). In addition, an invoice that does not meet the requirements for a “proper invoice” will be deemed to be a “proper invoice” unless, within seven days after receiving it, the owner notifies the contractor in writing of a deficiency in the invoice and what is required to address it (s. 6(2)).

Adjudication: The deadline for starting any adjudication will be extended. The current deadline of “completion” of the contract will be changed to the 90th day after the contract is completed, abandoned or terminated (s. 13.5(3)). The new deadline for a subcontract will be the above 90-day deadline for the related contract or, if earlier, the 90th day after the date the subcontract is certified complete or the date of last supply of services or materials by the subcontractor (s. 13.5(3.1)). The parties may agree to an extension of these deadlines (s. 13.5(3)).

Definition of “price”: Regulations to the *Construction Act* will be permitted to set out how the “price” of a contract or subcontract is to be determined when not agreed upon by the parties. The definition of “price” affects the operation of various other requirements under the *Construction Act*, such as the mandatory bonding requirements.

Mandatory annual release of holdback: The annual release of holdback will become mandatory (s. 26). The owner will be required to publish a notice of annual release of holdback on a prescribed form (s. 26(3)).

Design professionals: If an owner retains holdback in respect of the supply of a design, plan, drawing or specification for the making of a planned construction improvement this is not commenced, that supply of design services will be lienable unless the owner proves that the value of its interest in the land has not been enhanced (s. 14(4)).

Key Contact: Laura Delemere

Québec

Overview

On April 23, 2025, the Québec government published the new draft *Regulation respecting prompt payments and the prompt settlement of disputes with regard to construction work* (the Draft Regulation) in the Gazette officielle du Québec. This follows the *Pilot project to facilitate* *payment to enterprises that are parties to public construction work contracts and related public subcontracts* (the Pilot Project), conducted between Aug. 2, 2018, and Aug. 1, 2021.

This is a second draft of an initial regulation, which, when it was published on July 3, 2024, sparked feedback from various Québec construction industry stakeholders.

On July 30, 2025, the Draft Regulation was officially published in the Quebec Official Gazette. The *Regulation on Payments and Rapid Settlement of Construction Disputes* (the "Regulation") came officially into force, for the most part, on September 8, 2025.

The Regulation supplements An Act mainly to promote Québec-sourced and responsible procurement by public bodies, to reinforce the integrity regime of enterprises and to increase the powers of the Autorité des marchés publics by introducing a scheme for prompt payment and the prompt settlement of disputes for public contracts for construction subject to the Act respecting contracting by public bodies (ARCPB).

Prompt Payment Scheme
The Regulation introduces a mandatory payment calendar for amounts claimed by parties to public construction work contracts subject to the ARCPB. This calendar was established to address the problem of late payments.

The contents of the request (s. 5): Requests for payment must be made in writing, dated, and signed, and contain all required information (name and address of contractor, number of the public contract, a description of the work, the total amount claimed, etc.).

Presumption of validity (s. 7): To ensure that substance prevails over form, a request for payment is presumed to be valid (unless sent on a date that renders it invalid) if the debtor fails to raise the question of its invalidity before the deadline for submitting a notice of refusal to pay.
Exclusions from the prompt payment scheme (ss. 32 and 33):

The following contracts and requests for payment are excluded from the scheme:

- Public contracts entered into in an emergency because of a threat to human safety or property;
- Public contracts concluded for the purpose of foreign activities of a delegation or another form of representation of Québec abroad;
- Requests for payment to compensate for loss of profit, productivity or a business opportunity that a contractor attributes to a change relating to the scope of the work specified in a public contract or public subcontract or to the conditions for its performance.

Prompt Dispute and Settlement Scheme
The Regulation also sets out a process for the prompt settlement of disputes applicable to all disputes that cannot be settled amicably, except for those expressly excluded under section 33 and those arising from a contract concluded for the foreign activities of a delegation or another organization representing Quebec abroad.

This process involves the intervention of a third-person decider and can be summarized as follows:

Notifying a notice of intervention (s. 35): A party wishing to have recourse to a third-person decider must notify a notice of intervention to the other contracting party within at most 90 days of the following:

- For the main public contract: the date on which the public body accepted the work without reservations or, if accepted with reservations, the date on which it declared it was satisfied with the repairs or corrections made;
- For a public subcontract: the end date for the work agreed on by the parties.

Exclusions from the prompt dispute resolution scheme (s. 36):

The following disputes are also excluded from the scheme:

- Disputes that have already been settled by a third-person decider following an intervention;
- Disputes for which a party has previously submitted a request for intervention concerning the same dispute and:

    a) voluntarily withdrew after the designation of a third-person decider;

    b) is deemed to have withdrawn;

    c) a third-person decider has already ruled, in a decision, that the party was not entitled to exercise the right to have recourse to a third-person decider for the dispute concerned or that it abused that right;

- Disputes that have already been the subject of judicial or arbitral proceedings between the same parties.

The Regulation no longer sets a monetary cap on disputes eligible for prompt settlement by a third-person decider. In the previous version of the Draft Regulation published on July 3, 2024, the prompt settlement scheme only applied to disputes with a maximum value of $500,000.

The contents of the request (s. 38): The request for intervention must include the nature of the dispute, its monetary value, the grounds invoked, the conclusions sought, and the names of three proposed third-person deciders.

A request for intervention may concern only one disputed matter. However, if an applicant considers that several disputes arise from events that are connected and contemporaneous within the meaning of section 52, it may submit a request to consolidate the disputes into one.

Other contracting party’s answer (s. 41): The other contracting party has five days to respond and send a notice indicating:

- The name of the third-person decider chosen from among those proposed, or the fact that none were chosen along with the names of three other third-person deciders;
- Its acceptance or rejection of the consolidation of disputes proposed by the applicant;
- If applicable, its own intention to submit a request to consolidate several disputes.

Response to the request to consolidate disputes (s. 42): The applicant has five days to respond in writing to the other party's request to consolidate the disputes, either accepting or rejecting the consolidation.

Designation of the third-person decider (ss. 44 and 45): If the parties are unable to agree on the choice of a third-person decider, they proceed to a random draw. Once designated, the third-person decider will be sent the request for intervention and the response to the request.

Third-person decider's decision on consolidating disputes (s. 52): The third-person decider must rule on any request for the consolidation of disputes within five days of being designated.

Detailed outlines from the parties (s. 53):

- The party that requested the intervention has five days after the designation of the third-person decider to send the third-person decider and the other party a detailed outline of its claims and supporting documents;
- The other party then has 15 days to send a detailed response to the applicant's outline, along with supporting documents, with a copy sent to the third-person decider.

Procedure for the intervention (ss. 51 and 55):

- The third-person decider conducts the intervention using the procedure he or she determines while ensuring the process is equitable and complies with the principle of proportionality;
- Though the parties may consult a lawyer, the lawyer may not make representations on their behalf.

Decision (s. 63): The third-person decider must render a reasoned decision in writing within 50 days of being designated and notify it to the parties. The third-person decider may extend the deadline by up to 15 days as needed, provided he or she informs the parties before the expiry of the initial deadline, or by a longer period if the parties consent.

Payment (s. 67): A party required to pay a sum of money has 20 days to comply from the date the decision is notified.

Fees of the third-person decider (s. 71): The fees of the third-person decider and the costs incurred for the conduct of an intervention are allocated equally between the parties, unless the third-person decider determines otherwise because a party was abusive or failed to comply with the deadlines.

Other Key Takeaways
Deductions and withholdings (ss. 16 and 17):

- A contractor may deduct, from a payment owed to one of its subcontractors, an amount equivalent to a sum claimed for work that was refused by another debtor in the contracting chain, provided the contractor has first sent a copy of the notice of refusal to pay;
- A public body or contractor may deduct from a payment the amount of a penalty stipulated in a contract.

Withholding at the initiative of a public body (ss. 20, 22, 23, 25, 26, 28 and 29):

A public body may withhold money owed to a contractor in the following circumstances:

- Up to 10 per cent of the sum owed can be withheld to ensure a public contract is carried out if the right to withhold payment is specified in the contract. A contractor subject to a withholding can, in turn, withhold a partial sum owed to its subcontractor provided the right to withhold payment has been agreed upon in writing by the parties;
- A sufficient amount may be withheld to cover the reservations made as to the apparent defects or apparent poor workmanship in the work;
- A sufficient amount may be withheld to repair any damage caused by the contractor or by a subcontractor;
- A sufficient amount may be withheld to ensure that the claims of subcontractors are paid, regardless of whether the subcontractor can invoke a legal hypothec on the immovable property;
- A sufficient amount may be withheld to pay the claims of persons other than the contractor's subcontractors who can invoke a legal hypothec on the immovable;
- The entire amount payable to a contractor may be withheld if the contractor has not provided all the required closeout documents.

If the contractor does not fulfill the obligation that led to the withholding within a reasonable time, the public body is not required to pay the withheld amount to the contractor. The public body may then use this amount to perform the obligation itself or have it performed by a third party.

Some of these withholdings can be avoided if the contractor provides the public body with sufficient security to mitigate the risks these measures target. Though the Draft Regulation does not expressly reference surety bonds for construction, they may apply here.

Withholding by a contractor (s. 30):

- A contractor that is a party to a public subcontract may withhold all or part of a sum payable to a creditor, provided that this right is specified in a written agreement between the parties and that the withholding does not duplicate a withholding of payment by the public body.

Confidentiality (ss. 68 and 70):

- The parties to the dispute and the third-person decider must ensure the details of the intervention remain confidential, including the decision rendered by the third-person decider;
- This decision may be filed in later proceedings before a court of common law or an arbitrator, if the intervention and the proceedings concern the same disputed matter and involve the same parties.

Scope of the third-person decider's decision:

- Section 21.48.27 of the ARCPB provides that the decision rendered by a third-person decider is binding on the parties until, as applicable, a judgment by a court of general jurisdiction is made or an arbitration award is rendered on the same subject matter;

- The parties must comply with the decision rendered on the terms and conditions indicated in the decision;
- The party required to pay a sum of money must do so, or the creditor may force its execution by filing a copy of the decision with the office of the competent court in accordance with section 21.48.28 of the ARCPB.

Annulment of a decision rendered by a third-person decider:

- On October 8, 2024, the National Assembly adopted Bill 62, An Act mainly to diversify the acquisition strategies of public bodies and increase their agility in carrying out infrastructure projects (Bill 62);
- Bill 62 introduces a new procedure to apply to the court for the annulment of a decision rendered by a third-person decider in a prompt dispute settlement;
- The proposed procedure is similar to an arbitration appeal or an application for judicial review;
- Thus, the new section 21.48.28.1 of the ARCPB provides that a party may apply to the court for the annulment of a decision rendered by a third-person decider for any of the following reasons:

  1. one of the parties did not have the capacity to participate in the dispute settlement process before the third-person decider;
  2. the dispute arises from a public contract or subcontract that is not valid;
  3. the decision pertains to a dispute that could not be submitted to a third-person decider or contains a conclusion entirely unrelated to the subject matter of the dispute that was pending before the third-person decider;
  4. the dispute settlement process was led by a person who was not certified to act as a third-person decider;
  5. the rules applicable to the selection of the third-person decider were not complied with;
  6. the rules applicable to the dispute settlement process before the third-person decider were not complied with and that non-compliance compromised the fairness of the process.

- An application for annulment must be presented before the Court of Québec or the Superior Court, according to their respective jurisdictions, within 30 days after receipt of the decision;
- An application for annulment does not postpone the execution of the decision, unless the court orders otherwise. If the court annuls the decision in whole or in part, it may order the reimbursement of all or part of the amount paid in execution of the annulled decision.

Conclusion
In accordance with section 21.48.20 of the ARCPB, the new scheme for prompt payments and the prompt settlement of disputes is mandatory for public contracts. Even if the parties agree to depart from the scheme, such an agreement will be declared null.

The Regulation thus marks a significant shift in the construction industry. It builds on the lessons learned during the Pilot Project, improving public bodies' flow of capital to contractors, subcontractors, and service providers executing the public contract. Disputes arising on the worksite will be quicker to resolve now that a third-person decider can be called in. Not all disputes can be settled under this scheme, however, given the exclusions that apply to loss of profits and productivity.

The true impact of this major regulatory change has yet to be measured in the context of the financial and legal realities of public contracts for construction, but there is no doubt that it will mark a major turning point in how claims and disputes are settled in the Quebec public construction sector.

If you have any questions about the *Regulation respecting prompt payments and the prompt settlement of disputes with regard to construction work*, reach out to Montréal-based members of BLG's Construction Group.

Key Contacts: Simon Daigle, Pascale Dionne, François Nolet-Lévesque

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Nova Scotia

Overview

In Nova Scotia, Bill 119 (*Builders' Lien and Prompt Payment Act (*the BLPPA) and Bill 211 (*An Act to Amend Chapter 277 of the Revised Statutes, 1989, the Builders' Lien Act*) have not yet come into force. Once in force, this legislation will provide a prompt payment regime and Adjudication Authority framework.

Transition

While the BLPPA has received royal assent, it is not yet in force. BLG continues to monitor for key updates relating to this legislation.

Prompt Payment Timeline

The BLPPA does not set out specific timelines for its prompt payment regime, which will instead be prescribed by regulation. The BLPPA sets out the following prompt payment obligations of owners, contractors, and subcontractors:

1. Upon receiving a "proper invoice", an owner must pay a contractor within the prescribed time period.
2. If the owner disputes any of the amount in an invoice, the owner must issue a notice of dispute delivered in the prescribed form, manner and timeline, setting out the reasons for non-payment.
3. The owner must still pay any undisputed amount within the prescribed time period.
4. Subject to giving a notice of non-payment, if a contractor is paid in full by the owner, the contractor must pay its subcontractors within the prescribed time period.
5. Subject to giving a notice of non-payment, if a contractor receives partial payment from the owner, the contractor must pay its subcontractors within the prescribed time.
6. Where more than one subcontractor is entitled to payment and where the amount at dispute is specific to work or services performed or materials placed or furnished by a particular

subcontractor or subcontractors, the remaining subcontractors must be paid and any amount paid by the owner with respect to the particular subcontractor or subcontractors is payable to them on a proportionate basis, as applicable, and in any other case, subcontractors must be paid on a proportionate basis.

7. Where the owner does not pay some or all of a proper invoice within the time required, the contractor shall, within the prescribed time, pay each subcontractor who performed work or services or placed or furnished materials under a subcontract with the contractor that were included in the proper invoice the amount payable to the subcontractor to the extent that the subcontractor was not fully paid. This does not apply if a contractor provides the subcontractor with a notice of non-payment stating that some or all of the amount payable to the subcontractor is not being paid due to non-payment by the owner, specifying the amount not being paid, and providing an undertaking to refer the matter to adjudication within the prescribed time, and providing a copy of non-payment give by the owner.
8. A contractor who disputes, in whole or in part, the entitlement of a subcontractor to payment of an amount under the subcontract may refuse to pay all or any portion of the amount within the time required if the contractor gives the subcontractor a notice of non-payment in the prescribed form and manner within the prescribed time, specifying the amount that is not being paid and the reasons for non-payment.
9. Subject to giving a notice of non-payment, if a subcontractor is paid in full by the contractor, the subcontractor must pay its sub-subcontractors within the prescribed time.
10. Subject to giving a notice of non-payment, if a subcontractor receives partial payment from the contractor, the subcontractor must pay its sub-subcontractors the amounts owing that were paid by the contractor for the work performed or materials furnished.
11. Where more than one subcontractor is entitled to payment and where the amount in dispute is specific to work or services performed or materials placed or furnished by a particular subcontractor or subcontractors, the remaining subcontractors must be paid and any amount paid by the contractor with respect to the particular subcontractor or subcontractors is payable to them on a proportionate basis, as applicable, and in any other case, subcontractors must be paid on a proportionate basis.
12. Where the contractor does not pay some or all of the amount payable to a subcontractor with respect to a proper invoice within the prescribed time, the subcontractor shall, within the prescribed time, pay each subcontractor who performed work or services or furnished or placed materials under a subcontract between them that were included in the proper invoice the amount payable to the subcontractor to the extent that the subcontractor was not fully paid. This does not apply if a subcontractor provides the subcontractor with a notice of non-payment stating that some or all of the amount payable to the subcontractor is not being paid due to non-payment by the contractor, specifying the amount not being paid, and providing an undertaking to refer the matter to adjudication within the prescribed time, and providing a copy of a notice of non-payment given by the owner.
13. A subcontractor who disputes, in whole or in part, the entitlement of another subcontractor to payment of an amount under the subcontract may refuse to pay all or any portion of the amount within the prescribed time, as the case may be, if the subcontractor gives to the other subcontractor a notice of non-payment, in the prescribed form and manner and within the prescribed time, specifying the amount that is not being paid and the reasons for non-payment.
14. On the request of a subcontractor who is required to make payments, a contractor must provide to the subcontractor confirmation of the date on which the contractor gave a proper invoice to the owner.

What is a Proper Invoice?

Under the BLPPA, a “proper invoice” will mean “written bill or request for payment for performing work or service or placing or furnishing materials under a contract.” The bill or request must meet the requirements of the contract and contain the following:

1. the contractor’s name and address;
2. the date the invoice is prepared and the period during which the work or service was performed or the materials were placed or furnished;
3. information identifying the authority under which the work or service was performed or the materials placed or furnished;
4. a description, including the quantity where appropriate, of the work or service performed or the materials placed or furnished;
5. the amount payable for the work or service performed or the materials placed or furnished and the payment terms,
6. the name, title, telephone number and mailing address of the person to whom payment is to be sent, and
7. such other information as may be prescribed.

The BLPPA provides that a proper invoice must be given to an owner at the prescribed times or intervals unless the contract provides otherwise. Under s. 4B(2) of the BLPPA, any contractual term that makes the giving of a proper invoice conditional on the prior certification of a payment certifier or on the owner’s prior approval is of no effect. There are some exceptions, including for provisions in a contract that provide for the certification of a payment certifier or the owner’s approval after a proper invoice is given and for provisions in a contract that provide for the testing or commissioning of the work or service performed or the materials placed or furnished under the contract.

The BLPPA provides that a proper invoice may be revised by a contractor after it has been provided to the owner if:

1. the owner agrees in advance to the revision;
2. the date of the proper invoice is unchanged; and
3. the proper invoice continues to meet the above-noted criteria of a proper invoice.

Once an owner receives a proper invoice, and subject to a notice of non-payment, the timeframe within which they must make payment to the contractor comes into effect.

Disputing a “Proper Invoice”

The receipt of a “proper invoice” by an owner from a contractor will trigger the prompt payment regime under the BLPPA. The BLPPA sets the minimum requirements for what constitutes a “proper invoice” and additional requirements may be set out in the contract.

An owner who disputes a proper invoice may refuse to pay all or any portion of the amount payable under the proper invoice if the owner gives the contractor a notice of non-payment, in the prescribed form and manner and within the prescribed time, specifying the amount of the proper invoice that is not being paid and the reasons for non-payment.

Adjudication

Bill 211 provides for an Adjudication Authority framework and that a dispute that is the subject of a court action or other proceeding pursuant to the *Builders’ Lien Act* may only be referred to adjudication if the court action or proceeding has not been finally determined. A dispute may only be referred to an adjudication if it pertains to:

1. the valuation of services or materials provided under the contract between the parties;
2. payment under the contract between the parties, including with respect to a change order,

   whether it has been approved or not, or a proposed change order or;
3. a prescribed matter.

The determination of an adjudicator of a dispute is binding on the parties to the adjudication until

1. an order is made with respect to the matter by the court;
2. it is set aside on grounds set out in Section 4O of Bill 211;
3. a decision is made on the matter through an arbitration conducted pursuant to the parties' contract or the *Arbitration Act*; or
4. there is a subsequent written agreement between the parties on the matter.

Under section 4O of Bill 211, a party to an adjudication may apply to the court to set aside the determination by an adjudicator if

1. a party participated in the adjudication while under a legal incapacity;
2. the contract or subcontract between the parties is invalid or did not exist at the time the dispute arose;
3. the determination dealt, in whole or in part, with a matter not subject to adjudication under this Act or the regulations;
4. the determination dealt with a matter unrelated to the dispute referred to adjudication;
5. the adjudicator made a mistake of law;
6. the adjudicator did not have jurisdiction over the matter;
7. the prescribed adjudication procedures were not followed;
8. there is a reasonable apprehension of bias on the part of the adjudicator;
9. the determination was made as a result of fraud; or
10. the determination falls under a prescribed ground.

A party may ask the court to set aside an adjudicator’s determination on the specific grounds listed in section 4O of Bill 211. However, courts and arbitrators remain free to consider the underlying merits of the dispute. Finally, any application for judicial review must follow the Civil Procedure Rules, and filing for judicial review does not automatically stay the adjudicator’s decision unless the court orders otherwise.

Prompt Payment Checklist
Are you ready for Nova Scotia’s prompt payment and adjudication? Things to consider preparing in advance:

- updated contracts - consulting agreements, construction contracts, subcontracts and purchase orders;
- updated forms of invoices that contain the required information for “proper invoices”;
- template notices of dispute;
- template notices of non-payment;
- reminder systems to track the date of delivery or receipt of a “proper invoice”, deadlines for payments
  and notices;
- accounting protocols to satisfy the mandated payment timelines; and,

- project filing systems to organize documents to support or defend adjudication claims.

Contractual Updates and Considerations

The BLPPA brings a number of changes to the Nova Scotia construction industry, which are important to be mindful of when entering into new construction engagements and contracts:

Transition: The BLPPA is not yet in force.

Proper Invoices: There are minimum requirements for a “proper invoice” under the BLPPA, but parties may specify additional requirements for a “proper invoice” in their contracts.

Payment Timelines: The BLPPA does not set out specific payment timelines (which will be prescribed by regulation), but outlines a process through which owners, contractors, and subcontractors have payment obligations. The regulations to the BLPPA will supplement the BLPPA, and will provide prescribed timeframes.

Interest begins to accrue on an amount that is not paid when it is due to be paid at the prime rate of interest then commonly charged by chartered banks plus two percent, or where the contract or subcontract specifies a different interest rate for that purpose, the greater of the prime rate of interest plus two per cent and the interest rate specified in the contract or subcontract.

Adjudication: A party to a contract may refer a dispute that is the subject of a notice of non-payment to adjudication pursuant to the procedure set out in the regulations

The PPCLA will introduce a number of significant changes to the Nova Scotia construction industry that will require participants to carefully review their contracts and internal processes to ensure they comply with the province’s lien legislation.

Please contact a BLG Construction lawyer with any questions you may have about how these changes will affect your business.

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