Alberta legislators introduce new Prompt Payment and Construction Lien Act

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Earlier this week the Minister of Service Alberta proposed amendments to the Alberta *Builders' Lien Act* that could result in significant changes in the province's construction industry, including the implementation of prompt payment rules and the requirement that many construction disputes be resolved under the jurisdiction of a new adjudication body empowered to make binding decisions. Bill 37, known as the *Builders' Lien (Prompt Payment) Amendment Act, 2020*, received first reading on October 21, 2020. Regulations setting out many of the details regarding the new adjudication process have yet to be published. This development follows recent steps taken by other governments across Canada, such as the Province of Ontario and the Government of Canada, to adopt prompt payment legislation and signals what could become a nation-wide change to the construction industry.

The proposed amendments would bring about a number of key changes in Alberta, including:

- A change in the name of the *Builders' Lien Act* to the "*Prompt Payment and Construction Lien Act*";
- The deadline to register a lien for materials or the performance of services, which are not provided with respect to improvements to an oil or gas well or oil or gas well site, would be extended to 60 days from the last day the materials were furnished or the services were provided, or the contract was abandoned, and owners would be required to maintain the lien fund for the same period of time;
- Much like work done with respect to improvements to an oil or gas well or to an oil or gas well site, a new lien period would be created for work or materials provided with respect to improvements primarily related to the furnishing of concrete. This would allow such lien claimants to register a lien within 90 days from the last day the materials were furnished or the services were provided, or the contract was abandoned, and owners would be required to maintain the lien fund for the same period of time;
- The introduction of a progressive release of the statutory holdback for projects and contracts which meet the required conditions;
- Any provision in a contract which purports to operate as a pay-when-paid or pay-if-paid clause would be of no force or effect;

- An owner, contractor or subcontractor who owes money under a proper invoice must pay the amount payable no later than 28 days after receiving the proper invoice, other amounts which are disputed in accordance with the Act;
- A notice of dispute for all, or a portion, of a proper invoice must be delivered within 14 days of receipt of the proper invoice;
- A new dispute adjudication process would be created under which adjudicators, qualified by a nominating authority, may hear disputes and render final and binding decisions, subject only to a limited scope of judicial review, with no automatic stay of the adjudicator's determination during the judicial review process. The regulations or procedures established by the nominating authority for the resolution of these disputes have yet to be published;
- Adjudication procedures set out in the contract or subcontract would only apply to the extent that they do not conflict with the procedures set out in the regulations or procedures established by the nominating committee;
- The right to make a demand for information under the Act would expand to include a lienholder, a beneficiary of a trust, and a contractor or subcontractor currently working under a contract for an owner, contractor or subcontractor, if requesting information about a particular project under the contract;
- The minimum amount for which a lien may be registered would be increased from $300 to $700; and,
- Any contract or subcontract entered into on or after the amendments come into force would be required to conform to the new provisions and any contract or subcontract entered into prior to the amendments coming into force would remain governed by the old *Builders' Lien Act*. Pre-existing contracts could, if the parties so agreed, be amended to conform to the amended provisions.

We will continue to monitor the progress of Bill 37 as it receives further consideration by the Alberta legislature and will provide further updates as they become available.

By

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