Alberta's Builders' Lien Act - one step closer to prompt payment and adjudication

June 22, 2021

In BLG's October 23, 2020, November 4, 2020, November 11, 2020 and May 3, 2021 articles, we discussed changes coming through **Bill 37**, the *Builders' Lien (Prompt Payment) Amendment Act*, 2020 (the Prompt Payment Amendment), and **Bill 62**, the *Red Tape Reduction Implementation Act*, which further amends important sections of the Prompt Payment Amendment. Bill 37 and Bill 62, combined, will have a significant impact across the construction industry in Alberta, including changing the very name of the *Builder's Lien Act* to the *Prompt Payment and Construction Lien Act* (the PPCLA). Bill 37 received royal assent on December 9, 2020 and the Government of Alberta previously announced that it plans for the PPCLA to come into force in July 2021.

Between June 3 and June 9, 2021, Bill 62 received its third reading in the Alberta Legislature. During third reading, concerns about the speed in which Bill 62 moved through the legislative process arose. Specifically, Legislators questioned whether the Government of Alberta did its due diligence in further amending the Prompt Payment Amendment. Moreover, a concern was raised about exempting the Province of Alberta from the requirements of the PPCLA when, like any other entity, the Province of Alberta should also pay its bills promptly.

On June 10, 2021, Bill 62 passed third reading and on June 17, 2021, it received royal assent without any amendments. While unclear, it is possible that further amendments to the PPCLA are forthcoming. However, with Bill 62 receiving royal assent, the Government of Alberta is one step closer to making the PPCLA the law in Alberta by its stated goal of July 2021.

It is important to note that, unlike the amendments made to the *Construction Act* in Ontario in 2017 which came into effect over a two year period, the PPCLA does not currently contain provisions which stagger the coming into force of the prompt payment and adjudication requirements. Rather, as currently drafted, all of the amendments come into force on proclamation and will apply to all construction contracts and subcontracts entered into after that date.

As discussed in our prior updates, despite the multiple amendments to the PPCLA, significant uncertainty still exists regarding its application and scope. Notwithstanding the now-codified guidance provided by Bill 62 regarding the adjudication provisions in

the PPCLA, it remains unclear whether the adjudication provisions will actually result in the faster and more efficient resolution of disputes during a construction project or whether, as drafted, the adjudication provisions in the PPCLA will create confusion, delays, and inconsistent results.

The exemptions to the adjudication process that Bill 62 adds to the PPCLA create some further confusion regarding applicability. As discussed in our May 3, 2021 update, the exemptions under Bill 62 create the potential for inconsistent results and races to the courthouse. Pursuant to the exemptions, filing a court action is a bar to initiating an adjudication process. In the event a court action and an adjudication are commenced on the same day, the adjudicator must discontinue the adjudication to allow the court action to continue. In addition, questions linger about the enforceability of orders originating from adjudication processes, which are subject to an order made by a court, are subject to judicial review and are not binding if the parties have agreed to appoint an arbitrator.

Based on the nature of the debate during Bill 62's third reading and assuming no further amendments will be made to the PPCLA, it appears that the Government of Alberta will lean on the judicial system to iron out the uncertainties created by the PPCLA. Or, further clarity and guidance may be provided through the regulations, which have not yet been released.

Conclusion

Bill 62's royal assent crystalizes existing uncertainty about the applicability of the PPCLA and the adjudication process specifically. Given the number of amendments made to the PPCLA to date, and the legislative concern regarding the extent of the due diligence performed ahead of amendments such as Bill 62, it is possible that the Government of Alberta may further amend the PPCLA or delay its goal of bringing the PPCLA into force in July 2021, in order to fully consider the impact of the disruption that the PPCLA will cause to the construction industry in Alberta. In any event, Bill 62's royal assent further underscores the need for construction industry players, of all sizes, to take proactive steps to prepare for and mitigate against the uncertainty and new risks generated by these legislative changes which appear to be on the cusp of transforming the *Builder's Lien Act* in Alberta.

We will continue to monitor the progress of Bill 37 and Bill 62 and provide further updates as they become available.

By

Patricia L. Morrison, Marin Leci, Rodney A. Smith, Bill Woodhead

Expertise

Construction

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.