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# Here's The Drill: Ontario to Implement Important Updates to the Construction Act in 2025

December 2, 2024

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Recently, the *Building Ontario For You Act* (" **Bill 216**") received Royal Assent resulting in important updates to the *Construction Act* which will soon come into force in Ontario.[1] The impetus for these updates has been a commitment by the Ontario government to address issues in current legislation identified by industry stakeholders and echoed in a recent independent review of the *Construction Act* commissioned by the Ministry of the Attorney General.[2]

The amendments made under Bill 216 have not yet come into force but will be in effect as of the date to be proclaimed.

Industry members should be aware of the following changes which may have major implications for the performance of existing construction contracts as well as the development of new agreements moving forward.

**1) Invoices Deemed "Proper Invoices" Without Written Notice Within 7 Days**

Under the new s.6.1(2), an invoice which does not meet the requirements prescribed by contract or s.6.1(1) of the *Construction Act* will be deemed a "proper invoice" unless the owner provides written notice to the contractor of a deficiency in the contractor's submission within 7 days. This change comes in response to concern throughout the industry that the current *Construction Act* provides significant discretion to an owner to prescribe potentially onerous invoicing requirements (including, for example, various additional submittals and documentation) but does not require owners to notify contractors if their applications for payment are deficient. Owners should now take particular care in reviewing contractors' invoice submissions and ensuring that proper notice of any identified deficiencies is communicated to contractors within the required time period.

**2) Clarification of the Meaning of "Price"**

The current *Construction Act* defines "price" as the amount agreed upon by the parties in their contract or subcontract or, if no specific price has been agreed upon, the actual market value of the services or materials that have been supplied to the improvement under the contract or subcontract. Industry stakeholders have highlighted that this is not a workable definition in the context of various project delivery models (including those where the contract is based upon a cost-plus compensation structure), creating confusion, expense and potential disputes. Recently introduced amendments will allow for an amended definition to be provided in the regulations allowing for the determination of "price" in a different way than market value.

**3) Access to Statutory Adjudication Expanded**

Various changes are made to the current adjudication regime resulting in an expansion of the types of disputes which may be adjudicated as well as the time periods in which a dispute may be referred to adjudication.

Presently, industry members may refer a dispute to adjudication only if it falls within the list of categories defined by the *Construction Act*. The *Construction Act* will soon allow for "any prescribed matter" to also be referred to adjudication. While we will have to see what will be prescribed in the regulations, we anticipate the regulations will provide for additional types of disputes to be capable of being adjudicated.

Additionally, under the new amendments, unless the parties agree otherwise it will be possible for parties to commence an adjudication within 90 days of the date on which the contract was completed, abandoned or terminated (and disputes under subcontracts may be referred to adjudication within 90 days of the earlier of that same date, the date the subcontract is certified completed, and the date the subcontractor last supplied services or materials to the improvement).

These amendments are significant as they will likely allow for additional matters to be capable of being adjudicated and also potentially provide parties with a longer period of time within which to commence adjudications. This may, among other things, result in an increase in the number of adjudications.

**4) Updates to Ontario's Holdback Regimes**

Significant amendments are being made to the *Construction Act*'s holdback regimes, particularly with respect to mandatory annual release of holdback.

Amendments to s.26 of the *Construction Act* make the annual release of holdback mandatory beginning on the one-year anniversary of the contract. Every year (starting on the one-year anniversary of the date the contract was entered into), the owner will be required to publish a notice of their intention to release holdback within 14 days of the anniversary. Lien rights for parties that perform work within the applicable contract year will now expire within 60 days following the publication of this notice. After the conclusion of that lien expiry period, the owner will be required to pay out the holdback that accrued during that contract year (unless a lien has been preserved or perfected and not discharged, vacated or otherwise satisfied). Contractors will then be required to pay holdback to their subcontractors within 14 days of receiving the payment from the owner. In addition, the current system in the Act that allows (but does not require) for optional phased and annual release of holdback for contracts that exceed certain sizes will be removed.

In addition to the introduction of mandatory annual release of holdback, s.27.1 of the *Construction Act* will be repealed. This is important as it currently provides that if the owner publishes a notice of non-payment of holdback it may refuse to make payment of the holdback.

Taken together, these are very impactful changes that mark a significant departure from the *Construction Act*'s (and its predecessor statutes') treatment of holdback. These changes should see holdback funds moved more readily on projects. However, it will also be important for contractors and subcontractors to be vigilant and cognizant of the expiration of their lien rights on an annual basis.

**5) Holdback and Lien Rights with Respect to Design Services**

These amendments also include the addition of s.14(4) of the *Construction Act*, which is intended to address persistent confusion or disagreement in the industry regarding how holdback is (or is not) to be retained and managed with respect to design services where the "improvement" has not yet commenced.

Under this new section, where an owner has retained holdback on payments for design services but the planned improvement is not yet commenced, the designer is *deemed* to have a lien upon the owner's interest in the land for the services provided. The provided exception to this is if the owner can prove that the value of the owner's interest in land has not been enhanced by the design services.

As a result of these changes, designers and owners will need to clearly understand their respective rights and obligations and how

they may change in the event holdback is or is not retained during the design period. Both parties should carefully review and assess the implications of the contractual terms related to holdback during the procurement and contract implementation stages. Additionally, unique project delivery models, such as progressive design-build, introduce further complexities that will warrant special attention when addressing this issue.

**6) Transition Rules**

In most instances, these amendments will apply to an improvement under the updated *Construction Act* immediately upon its coming into force. There are, however, specific transition rules prescribed for certain amendments or that will be subject to regulations which have not yet been finalized. One notable example is with respect to the new mandatory release of holdback provisions, which provide for a one-year transition period for contracts entered into before the coming into force of the new rules.

**Conclusion**

These new statutory changes present both opportunities and new challenges or risks that must be carefully addressed. While they largely respond to concerns raised across the industry regarding the practical application of the *Construction Act*, which came into force in 2019, these amendments are likely to introduce fresh complexities for parties administering construction contracts in Ontario. Industry members must not only familiarize themselves with these changes but also assess their potential impact on the execution of ongoing projects as well as those planned for the future. Proactive consideration will be key to effectively navigating these amendments and mitigating associated risks.



[1] Bill 216, *Building Ontario For You Act* ("Bill 216") received Royal Assent on November 6, 2024.

[2] In 2024, the Ministry of the Attorney General commissioned an independent review of the *Construction Act* which can be accessed here: "Independent review of the *Construction Act*".

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