

The New Construction Act: Coming to a Jobsite Near You

June 11, 2017

By Glenn Ackerley

For many years construction industry groups have been demanding changes in the law about payment on construction projects and how disputes are resolved. In response, the Attorney-General has now introduced Bill 142, *An Act to amend the Construction Lien Act*, for first reading. If Bill 142 gets passed into law later this year, as expected, then the way contractors get paid for their work will change drastically in Ontario and anyone involved in the construction industry will be significantly affected.

Bill 142 is the result of a two-year industry consultation process. An expert review panel, made up of lawyers Bruce Reynolds and Sharon Vogel, listened to the concerns of industry leaders and stakeholders over how the current system is broken, and heard suggestions about how to fix it. With those submissions in mind, and with additional input from an experienced advisory group, the experts prepared a 400-page report for the government entitled, "Striking the Balance". In that report, they made 101 recommendations for improvements to payment rules, payment security, and resolving payment disputes on construction projects. The government's proposed legislation introduced last week implements almost every recommendation made by the experts.

Under the newly re-named *Construction Act*, the key proposed changes fall into three broad categories:

1. Prompt Payment of Invoices

Project owners will have to pay contractors within 28 days after receiving a proper invoice, and contractors will then have 7 days to pay their subcontractors. If a payer doesn't agree with all or part of the invoiced amount, a payer must give a notice of non-payment together with an explanation for the non-payment. The undisputed amount must still be paid according to these mandatory timelines.

2. Timely Adjudication of Disputes

The new Act will create an interim dispute adjudication process to resolve payment disputes on construction projects as they arise. A qualified adjudicator appointed by the parties will determine a dispute, such as a dispute over the amount of an invoice, and the adjudicator's ruling will generally be issued within a month. Until the end of the project, the parties are bound to act in accordance with the adjudicator's decision, and if payments aren't made as ordered, contractors can stop work on the project until they are.

3. Modernization of the *Construction Lien Act*

A large number of changes are proposed to modernize many aspects of the current 35-year old *Construction Lien Act* and bring it in line with the industry's needs in the 21st century. These include:

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- extending the lien period from 45 days to 60 days
- making the release of holdback funds mandatory
- enhancing the rules about handling trust funds
- changing the formula for substantial performance of the contract

permitting phased projects
recognizing the unique nature of public-private partnership projects
requiring surety bonds on public projects

Bill 142 is critical reading for everyone involved in construction and can be found [here](#).

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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