

Ontario's Construction Act Changes – What You Need to Know in 2026

February 11, 2026

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On January 1, 2026, numerous major amendments to Ontario's *Construction Act* came into force. These changes reflect years of legislative reform aimed at modernizing payment practices, dispute resolution, holdback administration, and other foundational aspects of construction law in Ontario.

For industry stakeholders who manage projects – whether you are an owner, contractor, subcontractor, or supplier – understanding these changes is essential for cash-flow planning, as well as the avoidance of legal disputes under the *Construction Act*.

Mandatory Annual Release of Holdback

The most impactful of the new *Construction Act* changes is likely to be the move to mandatory annual release of holdback.

Under the previous version of the *Construction Act*, annual or phased release of holdback was permitted only if the contract explicitly provided for it and met certain monetary thresholds. Starting in 2026, owners must now release accrued holdback annually on all applicable contracts.

Some key elements of new regime are:

- 1) **Notice Requirement:** Within 14 days of the anniversary date of the contract, the owner must publish a Notice of Annual Release of Holdback specifying the amount to be released and the planned payment date.
- 2) **Timing of Payment:** After publishing the Notice of Annual Release of Holdback, the owner must then pay the accrued holdback at least 60 days but not more than 74 days after the notice date – unless a lien has been preserved or perfected.
- 3) **Payment Downstream:** Contractors must release their portion of the accrued holdback within 14 days of receiving their payment, subject to the same lien preservation considerations. Furthermore, the substantial performance holdback release (i.e. the portion of holdback not released on a phased, annual basis) must also be released within 14 days of receipt.

Under the previous version of the *Construction Act*, parties had the ability to refuse payment of holdback after delivering a Notice of Non-Payment of Holdback under section 27.1 of the *Act*. This section has now been repealed from the *Act*. Owners can no longer set-off against the contractor's holdback for claims such as incomplete or deficient work.

For projects commenced after January 1, 2026, the first annual release of holdback will be made following the first anniversary date of the contract; however, for contracts entered before January 1, 2026, the first annual release of holdback will follow the *second* anniversary date of the contract subsequent to January 1, 2026 (i.e. if the anniversary date is April 5, 2025, the first annual release of

holdback will be made following April 5, 2027). The practical effect of the transition rules is that most projects will have at least a 1-year moratorium before annual holdback becomes due.

The goal of the new holdback regime is to improve cash flow on projects and give contractors access to funds earlier during the lifecycle of projects. The amended *Act* goes further to facilitate early payment by significantly amending the adjudication process that was introduced during the previous round of major amendments to the *Construction Act* in 2018.

Adjudication Expansion

The new amendments broaden both the scope of adjudication, and access to adjudication.

1) Expanded scope: Previously, adjudication was limited to relatively narrow questions directly related to a party's entitlement to payment. While entitlement to payment remains the overarching focus of adjudication, amendments made to section 19 of the *Act* now provide for adjudicator to adjudicate extension of time requests as part of resolving other adjudicable matters.

2) Private adjudicators: Since the establishment of Ontario's new adjudication framework, adjudicators have been trained and certified by Ontario Dispute Adjudication for Construction Contracts (ODACC) and listed on an ODACC roster. The new amendments create a new class of "private adjudicators" who will still be certified by ODACC but will not be part of the ODACC roster. This is expected to increase the number of experienced lawyers acting as construction adjudicators in Ontario.

3) Extended filing window: Under the previous version of the *Act*, parties lost their ability to initiate an adjudication following completion of a construction contract. Under the new amendments, the time to initiate an adjudication has been extended to 90 days following completion, abandonment, or termination of a construction contract.

Additional Changes

The new amendments include other changes that alter the rights and obligations of construction industry participants. Some of the most significant additional changes are as follows:

1) Joinder of lien and trust claims: Parties who are owed money under a construction contract often preserve a construction lien to secure the debt (and perfect the lien by starting a lawsuit), and also commence a second action against the payor's officers and directors for breach of trust. The previous version of the *Act* required these claims to be commenced separately. As a practical matter they would often later be joined together by way of a court order. The *Act* now provides for lien claims and breach of trust claims to be commenced within the same proceeding.

2) Proper invoice reforms: The 2018 *Construction Act* amendments introduced the concept of a "proper invoice" to Ontario. A "proper invoice" is an invoice that meets certain criteria prescribed under section 6.1 of the *Act*. Delivery of a "proper invoice" initiates an owner's prompt payment obligations, including the giving of a Notice of Non-Payment in instances where an owner intends to withhold payment that may otherwise be owed to a payee. Under the previous version of the *Act*, it was open for an owner to allege that an invoice was not "proper", and did not initiate their prompt payment obligations, even if the owner did not appear to take issue with the invoice at the time of its delivery. Under the new amendments, if an owner does not dispute the form or content of an invoice within 7 days of its delivery, it will be deemed to be a "proper invoice".

3) Termination notice timing: While the previous version of the *Act* required publication of a Notice of Termination under section 31, the amended *Act* specifies that the Notice must be published within 7 days after the contract is terminated, and that the date of publication stands as the legal termination date unless it is contested by the parties.

4) Deemed lien rights: While it has long been the case that architects and engineers have lien rights if their services have enhanced the value of the subject property, the amended *Act* now creates a rebuttable presumption in the design consultants' favour. If an owner retains holdback for design services on a project that has not yet started, it is presumed that those services have enhanced the value of the land and given rise to lien rights, and puts the onus on the owner to demonstrate that there has been no improvement to the land in question.

While the ultimate impact of the new amendments will not be fully experienced on most projects until 2027, it is essential that owners and contractors familiarize themselves with their new obligations in order to satisfy trades, keep projects on schedule, and avoid disputes.

As Ontario's *Construction Act* continues to evolve, the construction law team at WeirFoulds is ready to help participants at all levels of the construction pyramid navigate the complex challenges of Ontario's growing, modern construction industry.

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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