

New Year, New Rules: Construction Act Amendments Explained

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Several amendments to the Ontario *Construction Act* (the “**Act**”) came into force on 1 January 2026, pursuant to Bill 216, *Building Ontario For You Act*, and Bill 60, *Fighting Delays, Building Fact Act*. These amendments include changes to the definitions, prompt payment provisions, adjudication process and most impactful, mandatory annual holdback releases. We highlight a few of the notable changes that developers, owners, contractors and subcontractors should be aware of.

New Mandatory Annual Releases from Holdbacks

Sections 26, 26.1, 26.2, 27 and 27.1 of the Act have been repealed and replaced with a new framework governing holdback payments. There are now mandatory annual holdback payments for owners, contractors and subcontractors. The following process is to be followed:

- Publication of notice by owner: Owners must publish, within 14 days of the anniversary of the contract date, a Form 6 notice setting out the holdback amount to be paid and the intended payment date.
- Payment by owner: Owners must, no sooner than 60 days and no later than 74 days after the publication of the notice, pay all of the accrued holdback to the contractor relating to the year prior to the anniversary of the contract (unless a lien has been preserved or perfected and certain requirements under the Act are met).
- Payment by contractor: Contractors must, within 14 days after receiving a holdback payment, pay all of the accrued holdback to the subcontractor relating to the year prior to the anniversary of the contract (unless a lien has been preserved or perfected and certain requirements under the Act are met).

The Act has also been amended to prohibit the application of a holdback to work or materials obtained as substitution for those under the original contract or subcontract, where the original contract is abandoned or terminated. Payers also cannot apply a holdback to satisfy claims against a contractor or subcontractor unless any liens that could be claimed against the holdback have expired, been satisfied or discharged.

For contracts and subcontracts entered into prior to 1 January 2026, the new holdback payment requirements will become effective on the second anniversary of the contract or subcontract falling after 1 January 2026. For example, if a contract is dated 15 June 2024, the first anniversary falling after 1 January 2026 would be 15 June 2026, so the second anniversary after which the new mandatory annual payment rules will apply would begin on 15 June 2027. The first holdback payment made under the new regime must include all holdback accrued prior to date in which the new regime begins to apply.

Prompt Payment: Owners Now Bear a Higher Burden to Reject Deficient Invoices

Prompt payment provisions have been amended to clarify what a “proper invoice” is. One contractor-friendly amendment adds subsection 6.1(2) to the Act. This subsection deems an invoice to be a “proper invoice” even where it fails to meet the formal requirements of a “proper invoice”, unless the owner gives written notice to the contractor stating that the invoice is deficient and how the deficiency can be remedied. This notice must be delivered within seven days of receiving the invoice.

Expanded Adjudication Rights May Increase Early Stage Resolution

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Various amendments have been made to the adjudication provisions of the Act. Parties may now choose to have their dispute heard by a private adjudicator, as opposed to being required to choose one from the Authorized Nominating Authority's adjudicator registry.

The regulations also set out a wider variety of matters that may be referred to adjudication. Existing matters which can trigger adjudication include, among other things, valuations, payments and holdbacks. The new matters include determining the scope of work required to be performed, a request for change in the contract price and an extension request for completion of work.

The time for requesting adjudication has been extended from the date the contract or subcontract was completed, to 90 days after it is completed, abandoned or terminated. It has also become easier for one party to request the consolidation of multiple adjudications in relation to the same matter or related matters, provided the adjudicator is in agreement.

Definitions

The definitions of "price" and "written notice of a lien" have both been expanded by the amendments.

"Price" now includes an amount specified by the regulations to the Act, where the parties are unable to reach an agreement on the actual market value of the services or materials supplied. To date, no such regulation has come into effect, so there are no practical changes resulting from this amendment.

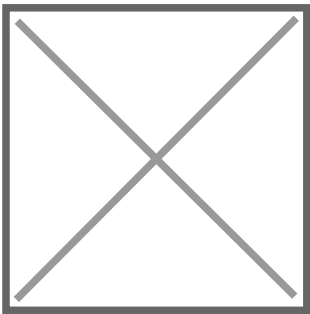
"Written notice of a lien" now includes a copy of a claim for a lien registered under clause 34(1)(a) or given under clause 34(1)(b) of the Act, expanding the definition by including the process for preserving a lien.

Conclusion

These amendments reflect a significant shift in Ontario's construction law landscape. The changes affect payment certainty, dispute resolution, and cash flow at every level of the construction pyramid, while introducing new procedures and timelines. Owners and contractors should review their contracts and ensure holdback release timelines are updated. While this article provides an overview of some of the critical changes, the Act should be reviewed in its entirety and legal advice should be sought if you have any questions. A PDF version is available for download [here](#).

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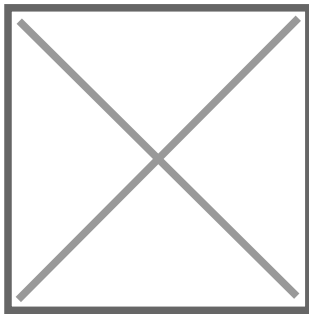
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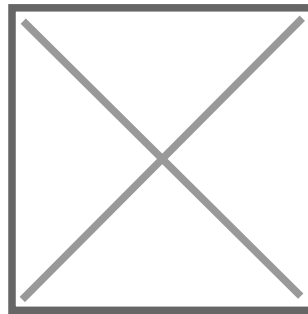
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