

# The New *Construction Act* Preparing for Prompt Payment & Adjudication

September 27, 2019



# OUTLINE

1. Introduction
2. What are the Amendments?
3. How do the Amendments Impact You?
  - a) Prompt Payment
  - b) Adjudication
  - c) Lien Modernization
  - d) Release & Non-Payment of Holdback
  - e) Trust Accounting
  - f) P3 Projects & Special Purpose Entities
4. Quick Reference Forms



"Information overload. It's never a pretty sight."

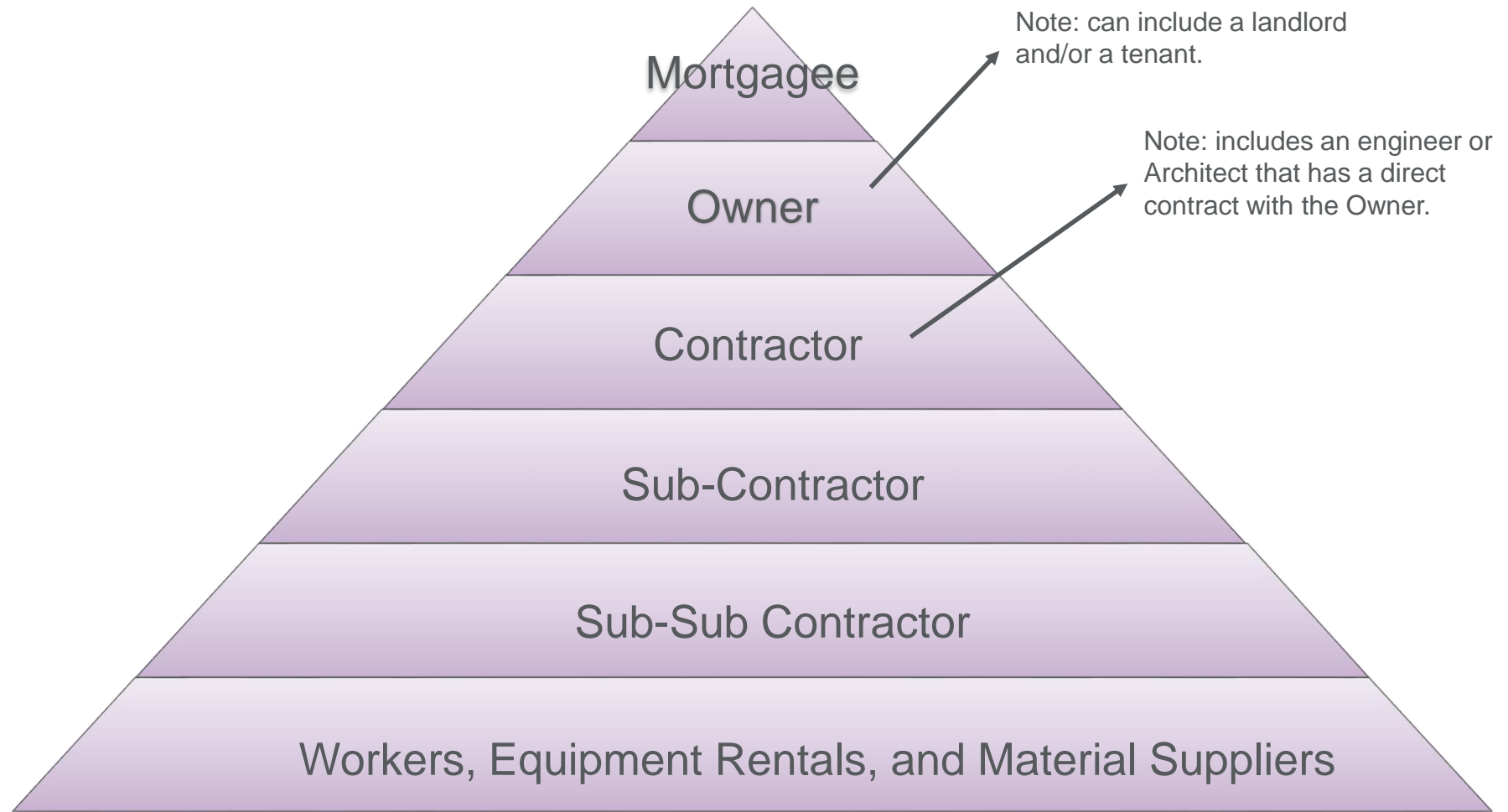
# Amendments to the Act

- On December 12, 2017, *Bill 142, Construction Lien Amendment Act, 2017* received Royal Assent. The Bill amends the *Construction Lien Act* (Ontario), and it is now the *Construction Act*. The substantive amendments modernizing the new Act also came into force on **July 1, 2018**.
- Other amendments including the introduction of prompt payment, adjudication, regulations and forms will come into force on **October 1, 2019**. The prompt payment and adjudication amendments will apply to contracts that are entered into on or after October 1, 2019.

# Introduction to the UK Experience

- The UK experience with the *Construction Act (UK)*.
  - *Types of matters that have been referred to adjudication include large complex disputes concerning various issues?*
  - *Who are the adjudicators in the UK?*
  - *Unique procedural characteristics and challenges?*

# The Construction Pyramid





# 1. What are the Amendments?

- The *Construction Act* changes can be grouped into two distinct categories:
  1. The lien modernization provisions; and
  2. Prompt payment and adjudication.

# How Do the Changes Impact Your Projects?

- Due to the “grandfathering provision” in the new *Construction Act*, you may now have three distinct categories of contracts that you will be administering:
  1. Contracts which are governed by the old *Construction Act*,
  2. Contracts governed by the lien modernization provisions; and
  3. Contracts governed by the new *Construction Act*, to which the lien modernization and prompt payment & adjudication provisions will apply.

# How Do I Know What Type of Contract I Have?

1. Was the contract entered into, or the procurement process for the improvement commenced by the owner, **prior to July 1, 2018**?
  - Yes: Contract is fully governed by the old *Construction Act*, amendments do not apply.
  
2. Was the contract entered into, or the procurement process for the improvement commenced by the owner, **after July 1, 2018** but **before October 1, 2019**?
  - Yes: Lien modernization provisions will apply. Prompt payment and adjudication provisions will not apply.



# How Do I Know What Type of Contract I Have?

3. Was the contract entered into, or the procurement process for the improvement commenced by the owner **on or after October 1, 2019?**
  - Yes: Your contract will be fully governed by the new Act. Prompt payment, adjudication, and lien modernization applies.

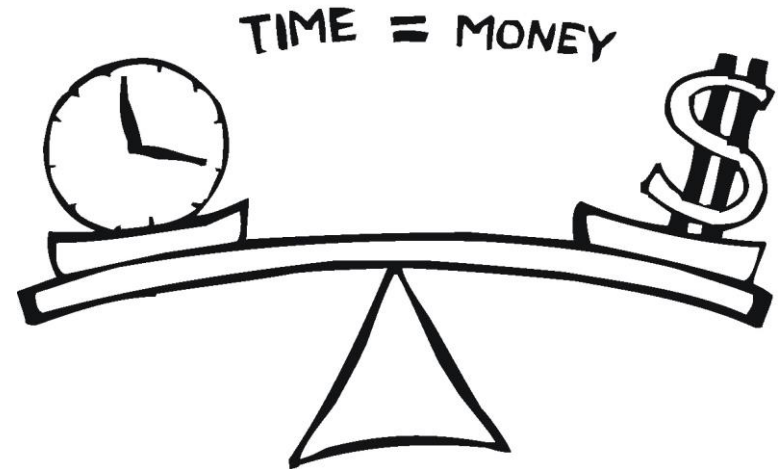
# Frequently Asked Questions

1. What if I do not have a written construction contract?
  - To determine which provisions of the *Construction Act* will apply the court may look to the timing of the invoices rendered, timesheets, or work or service authorizations as evidence of when the work commenced.
2. What if I bid on a project on July 10, 2018 but we did not finalize the contract until October 25, 2019?
  - It depends. If the procurement process was commenced prior to July 1, 2018, (i.e. you received an invitation to bid prior to that date) then the contract is fully governed by the old Construction Act.
  - If the procurement process was commenced after July 1, 2018, your contract will be governed by the lien modernization provisions of the new Construction Act.
  - If the contract was executed on or after October 1, 2019, the prompt payment and adjudication provisions will apply

## 2. How do the Amendments Impact You?

### a) Prompt Payment

- “A need to level the playing field in the industry”
- Prompt payment applies to public and private sector contracts pertaining to the supply of work, materials, labour and/or services to an improvement and is implied by law in all contracts pertaining to construction
- Applies to all levels of the construction pyramid.
  - Owner –Contractor
  - Owner – Architect
  - Owner Engineer
  - Contractor – Subcontractors
  - Subcontractor – Subcontractor



# Prompt Payment

- Applies to public sector, the crown, home renovations, residential and commercial projects and public-private partnerships (except for that part of the agreement pertaining to the operation and maintenance of the improvement)
- Prompt payment and Adjudication do not apply with respect to any portion of a project agreement that provides for the operation and maintenance of the improvement by the special purpose entity; or to any portion of an agreement between the special purpose entity and the contractor or any other subcontract made under the project agreement that pertains to the operation and maintenance of the improvement by the special purpose entity.

# Prompt Payment

## What is a 'Proper Invoice'?

- **Minimum requirements** for a proper invoice (s. 6.1):
  - Name and address of a contractor
  - Invoice date and the period during which the services/materials were supplied
  - Information identifying the authority under which the services/materials were provided (e.g. in the contract), approved extras (etc.)
  - A description of the services/materials that were supplied, including quantity where appropriate
  - The amount payable for services/materials supplied and payment terms
  - Name, title, telephone number and mailing address of person to whom the payment is to be sent
  - Any other information that may be prescribed (no other information has yet been prescribed)
  - Parties can include requirement such as the delivery of Statutory Declarations or proof of WSIB coverage

# Prompt Payment

## What is a proper invoice?

- Subject to (s. 6.3(2)):
  - Provisions that make the giving of a proper invoice conditional on the prior certification of a payment certifier or on the owner's prior approval are **of no force or effect**.
    - **Exception**: Section 6.3(2) does not apply to a provision in a contract that provides for the certification of payment certifier or owner's approval *after* a proper invoice is given.
    - **Exception**: Section 6.3(2) does not apply where the contract contemplates testing and commissioning of the improvement or of services or materials that have been provided (s. 6.2(4)) – therefore a provision in the contract that provides for release of final payment made subject to testing and commissioning being approved would be enforceable.
- Section 6.3(5) allows a contractor to revise a proper invoice after it has been given to the owner so long as the owner agrees to the revision, the **date of the invoice is not changed**, and it continues to comply with the formal requirements of a proper invoice.



# Are Your Invoices Compliant?

## INVOICE 123456 Ontario Inc.

123456 Ontario Inc.  
555 Canada Road  
Toronto, Ontario L4A 3X7  
Canada

Invoice #: 1|  
Invoice Date: November 1, 2019  
Due Date: November 29, 2019  
Project #: 777666  
Project Name: New Sports Arena

For mechanical services rendered from October 1, 2019 to October 30, 2019  
under contract XYZ-4FV.

	Contract Amount	To Date	Previous	Current
<b>Project Startup</b>				
1. Mobilization	\$235,100	\$180,000	\$180,00	\$34,000
2. Site Verification	\$10,700	\$0	\$0	\$0
<b>Current Bill:</b>			\$34,000	
<b>HST: 13.00%</b>			\$4,420	
<b>Total Amount Due:</b>			\$29,580*	

**\*\*Please make payment to:**  
Rob Robertson  
Director of Finance, 123456 Ontario Inc.  
(416)999-9999  
555 Canada Road  
Toronto, Ontario L4A 3X7  
Canada

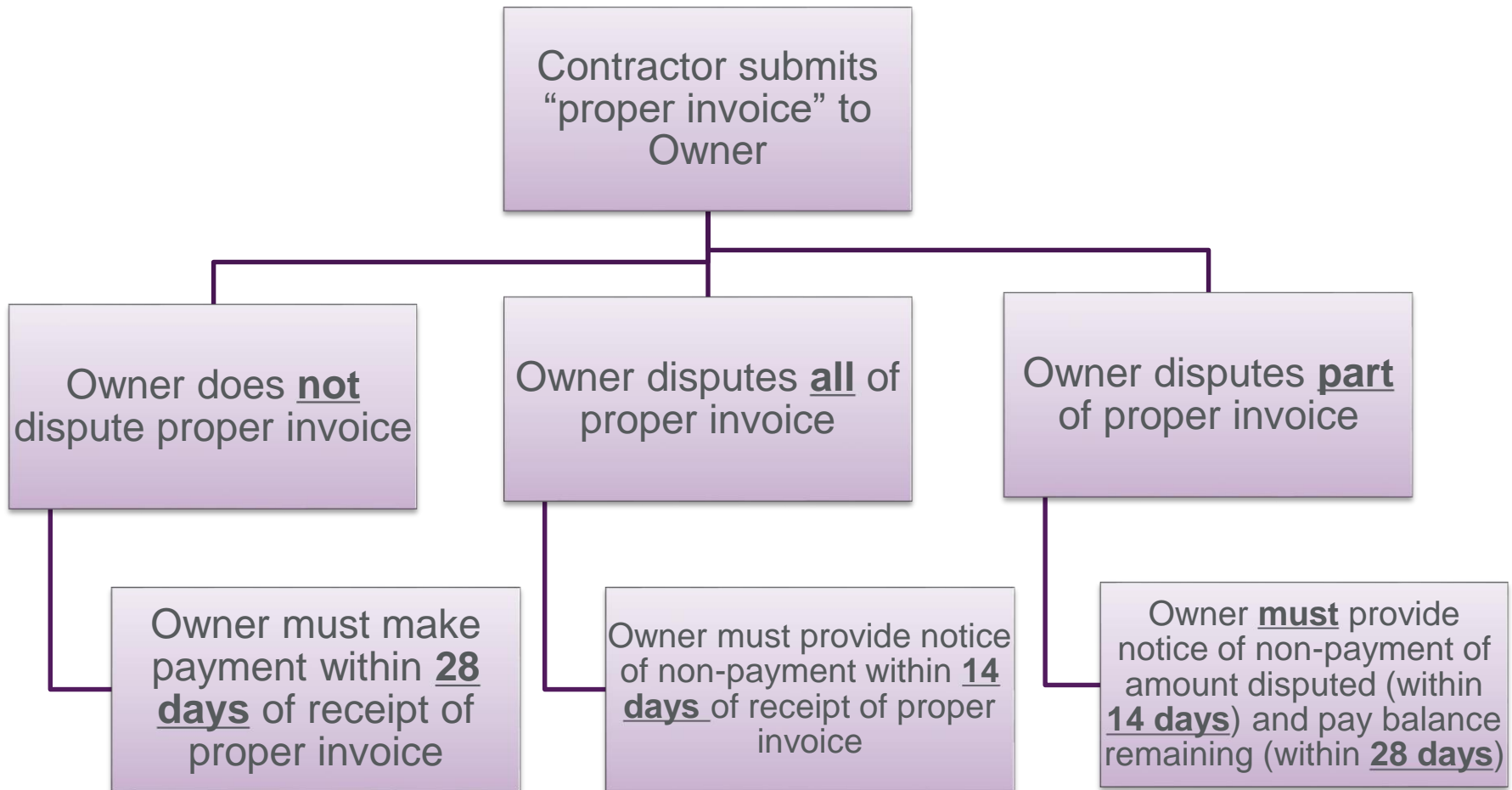
**\*\*Please note this is a mock invoice  
for demonstration purposes only.**

# Why is a Proper Invoice Important?

- A proper invoice triggers the obligations for “prompt payment” down the construction pyramid.
- A provision in a contract that makes the giving of a “proper invoice” conditional on the prior certification of a payment certifier or on the owner’s approval is of no force or effect
- An exception which permits the prior certification of a payment certifier pertains to a public-private contract between the special purpose entity and the contractor

# Quick Reference Timelines

## Contractor and Owner



Contractor submits “proper invoice” to Owner

Contractor receives full payment from Owner

Contractor must make payment to subcontractor within 7 days of being paid by Owner OR deliver notice of non-payment to subcontractor within 35 days of delivering proper invoice to Owner.

Contractor not paid by Owner and receives notice of non-payment from Owner

Contractor options:  
(i) deliver notice of non payment to subcontractor within 7 days of receipt of notice of non-payment from Owner and undertake to refer the matter to adjudication within 21 days of giving notice; OR  
(ii) pay subcontractor within 35 days of delivering proper invoice to Owner.

Contractor receives partial payment from Owner

Contractors options:  
(i) pay from amount received within 7 days of being paid by Owner, deliver notice of non-payment for the balance to subcontractor within 7 days of receipt of notice of non-payment from Owner and undertake to refer the dispute with Owner to adjudication; OR  
(ii) pay from amount received within 7 days of being paid by Owner and pay subcontractor balance (even if not received from Owner) within 35 days of delivering proper invoice to Owner; OR  
(iii) deliver notice of non-payment to subcontractor for entire amount within prescribed deadlines.

# Prompt Payment

## Owner to Contractor

- Payment Deadline (s. 6.4):
  - No later than **28 days** after receiving the “proper invoice”.
- **Exception** – If owner disputes a proper invoice, the owner may refuse to pay some or all of the amount payable under the proper invoice if:
  - The owner gives the contractor notice of non payment no later than **14 days** after receiving the proper invoice from the contractor. The notice must:
    - i. Specify the amount of proper invoice that they are not paying; and
    - ii. Detail the reason for non-payment.

# Prompt Payment

## Contractor to Subcontractor

- Payment Deadline (s. 6.5):
  - If a contractor receives full payment of a proper invoice within 28 days, the contractor shall pay each subcontractor who supplied services/materials under a subcontract **no later than 7 days after receiving payment.**
- Non or Partial Payment, Unpaid Amount (s. 6.5(4)):
  - If a contractor **does not** receive full payment of a proper invoice within 28 days, the contractor shall pay each subcontractor in full **no later than 35 days** *unless* the contractor has delivered a notice of non-payment within the requisite time.
- **Take Away** – if the contractor receives a notice of non-payment from the Owner, the contractor needs to then deliver a notice of non-payment to its subcontractors, such as any sub-consultant, in order to avoid making full payment.



# Prompt Payment

## Contractor to Subcontractor: Exceptions (6.5(5))

*If an owner does not pay the contractor, the contractor must deliver a notice of non-payment to its subcontractor.*

What should your Notice say?

- State that some, or all, of the amount payable to the subcontractor will not be paid within the specified time due to non-payment of the owner.
- State the amount that will not be paid.
- Provide an **undertaking to refer the matter to adjudication no later than 21 days after giving notice to the subcontractor.**
- Include a copy of any notice received from the owner regarding non-payment.

# Prompt Payment – Sample Notice Form 1.2

## Contractor to Subcontractor (Owner does not pay)

### FORM 1.2 NOTICE OF NON-PAYMENT UNDER SUBSECTION 6.5(5) OF THE ACT *Construction Act*

Name of contractor: Bob's Builders

Address: 101 - 410 Albert Street, Waterloo ON, N2L 3V3

Description of the premises:

Office tower new construction located at 123 Street Rd. in Toronto, Ontario, L5B 2Y6.

Name of subcontractor: Jones Ltd.

Address: 345 Road Street, unit 501, Mississauga, ON, 5B7 3O6

Address for service, if known: 345 Road Street, unit 501, Mississauga, ON, 5B7 3O6

The contractor submitted a proper invoice to the owner in respect of the improvement on October 25, 20 19.

The contractor has not received payment from the owner and will not pay the subcontractor the amount under the subcontract that was included in the proper invoice within the time specified in subsection 6.5(1) of the *Construction Act*.

Amount that will not be paid:

(Use A or B, whichever is applicable)

A. The full amount of the services or materials supplied by the subcontractor, being \$ 21,000.00.

B. A portion of the amount of the services or materials supplied by the subcontractor, being \$ \_\_\_\_\_.

The contractor hereby undertakes to refer the matter to adjudication under Part II.1 of the *Construction Act*, no later than 21 days after giving this notice of non-payment to the subcontractor.

A copy of the Notice of Non-Payment under Subsection 6.4(2) of the Act is enclosed.

Date: November 6, 2019

\_\_\_\_\_  
(Contractor)



# Prompt Payment – Sample Notice Form 1.3

## Contractor to Subcontractor

**FORM 1.3**  
**NOTICE OF NON-PAYMENT UNDER SUBSECTION 6.5(6) OF THE ACT**  
*Construction Act*

Name of contractor: Bob's Builders

Address: 101-410 Albert Street, Waterloo, ON N2L 3V3

Description of the premises:

Office tower new construction located at 123 Street Rd. in Toronto, Ontario, L5B 2Y6.

Name of subcontractor: Jones Ltd.

Address: 345 Road Street, Unit 501, Mississauga, ON, M5B 3O6

Address for service, if known: 345 Road Street, Unit 501, Mississauga, ON, M5B 3O6

The contractor submitted a proper invoice to the owner in respect of the improvement on October 25, 20 19.

The contractor disputes the entitlement of the subcontractor to payment of an amount under the subcontract that was included in the proper invoice. The contractor will not pay the following amount:

*(Use A or B, whichever is applicable)*

A. The full amount of the services or materials supplied by the subcontractor, being \$ \_\_\_\_\_.

B. A portion of the amount of the services or materials supplied by the subcontractor, being \$ 17,800.

The reasons for non-payment are as follows:

Contractor claiming 100% completion of mechanical room on 2<sup>nd</sup> floor, but mechanical room missing water pump #2 per drawing M-100.

Date: November 6, 2019

\_\_\_\_\_  
(Contractor)

# Prompt Payment

## Contractor to Subcontractor: Exceptions (6.5(6))

- **What if the contractor disputes some or all of the amounts the subcontractor is claiming?**
  - The contractor may refuse to pay if the contractor gives a notice of non-payment within:
    - **7 days** of receiving a notice of non-payment from the owner.
    - **35 days** of delivery of a “proper invoice” to the owner if no notice is given by the owner.
- **What does the Notice need to say?**
  - The amount that is not being paid.
  - The reason for non-payment.

# Prompt Payment

## Contractor to Subcontractor: Partial Payment (6.5(3))

- **What about partial payments?**

- If the contractor receives partial payment from owner, the contractor must pay each subcontractor whose amounts were included in the proper invoice no later than **7 days** after receiving payment on a pro-rata basis (s. 6(5)(3)1.)
- If the owner does not pay amounts owing for specific services or materials supplied by a particular subcontractor,
  - The remaining subcontractors shall be paid with any amounts paid by the owner in respect of the subcontractor or subcontractors who are implicated in the dispute, payable to them on a ratable basis.
  - The subcontractor(s) who are not implicated in the payment dispute shall be paid on a ratable basis.
  - In any other case, the subcontractors should be paid on a rateable basis.

# Prompt Payment

## Subcontractor to Sub-subcontractor/Supplier

- Payment Deadlines (6.6(1))
  - Subject to the giving of a notice of non-payment, a subcontractor shall pay each sub-subcontractor or supplier within **7 days** after receiving the payment.
- Partial Payment (6.6(2))
  - Upon receiving partial payment from a contractor a subcontractor shall pay each sub-subcontractor/supplier no later than **7 days** after receipt of payment.
  - **BUT** if more than one sub-subcontractor/supplier is entitled to payment the following payment rules must be followed:
    - 1) If the amount not paid by the contractor is specific to services or materials supplied by a particular subcontractor the remaining sub-subcontractors/suppliers shall be paid from the amount paid by the contractor on a ratable basis.
    - 2) The sub-subcontractors/suppliers whose payments are in dispute remain unpaid, provided that the contractor has delivered the notice of non-payment with the requisite time.
    - 3) In any other case, sub-subcontractors/suppliers shall be paid on a ratable basis.



# Prompt Payment

## Subcontractor to Sub-subcontractor/Supplier (6.6(6))

- Non-payment by Contractor
  - The subcontractor shall pay the sub-subcontractors/suppliers the amounts carried in the “proper invoice” no later than **42 days** after the proper invoices were given to the owner.
- **Exception** - If the subcontractor provides the sub-subcontractors/suppliers with:
  - A notice of non-payment which,
    - States that some or all of the amount payable is not being paid within the time specified due to non-payment by the contractor.
    - States the amount not being paid.
    - Unless the failure of the contractor to pay is as a result of non-payment by the owner, providing an undertaking to refer the matter to adjudication under Part II.1 no later than 21 days after giving the notice to the subcontractor; and
  - A copy of any notices of non-payment received by the subcontractor from the contractor in relation to the proper invoice.

# Prompt Payment

## Subcontractor to Sub-subcontractor

- Timing of Notice of Non-Payment by Subcontractor
  - **7 days** after receiving notice of non-payment from the contractor under section 6.5(5) or 6.5(6)
  - If no notice was given by the contractor, no later than **42 days** after the proper invoice was given to the owner.

# Prompt Payment

## Interest on Late Payments

- **Is interest charged on late payments?**
- Yes, if you do not deliver a Notice of non-payment interest on the owed amount will be prescribed as the **greater of**:
  - The rate for prejudgment interest as determined under the *Courts of Justice Act*
  - The rate specified in the Contract/Subcontract

# Frequently Asked Questions

## 1. What if we miss a deadline prescribed by the new Act?

- Your obligation to pay down the pyramid in the timelines prescribed is not automatically stayed if someone higher in the pyramid has sent you a notice of non-payment. Unless you send your contractors notices of non-payment, interest will accrue on the unpaid amount.
- You may lose the right to set-off or object to payment at a later date, of an invoice for which no objection is made regarding by delivery of a notice of non-payment.

## 2. How do the amendments impact you?

### b) Adjudication

- Adjudication will be implemented as a mandatory interim binding dispute resolution method, to provide a quick and dirty solution to disputes between owners, contractors, and subcontractors.



“I’m glad we settled our conflict this way.  
War is expensive.”

# The Authorized Nominating Authority

## Adjudicator Fees

- Where the parties and the adjudicator are unable to agree on the adjudicator's fee, ODACC will use the following table to set the fee:

Amount Claimed in Notice of Adjudication	Adjudication Fee
<\$9,999	\$800
\$10,000 < \$24,999	\$1,000
\$25,000 < \$34,999	\$2,000
\$35,000 < \$49,000	\$3,000
\$50,000 < \$249,999	\$250/hour
\$250,000 < \$499,999	\$400/hour
\$500,000 < \$1,000,000	\$500/hour
> \$1,000,000	\$750/hour



# The Authorized Nominating Authority

## Fees for Pre-Designed Processes

- An adjudicator may require parties to an adjudication to follow a pre-designed process. The ODACC provides some suggestions for adjudicators in this regard:

Adjudication Fee	Optional Pre-designed Process
\$800	Process 1
\$1,000	Process 2
\$2,000	Process 3
\$3,000	Process 4

# The Authorized Nominating Authority

- The Authorized Nominating Authority under the *Act* is Ontario Dispute Adjudication for Construction Contracts (ODACC).
- Based on the ODACC Adjudication Application there will be 5 pre-designed processes for adjudication:
  1. Process 1 – In writing only, and each party's submissions (and photographs) are limited to 2 pages (not including a copy of the contract and disputed invoice, both of which must be submitted). The determination will be approximately one to two pages.
  2. Process 2 – In writing only, and each party's submissions (and photographs) are limited to 5 pages (not including a copy of the contract and disputed invoice, both of which must be submitted). The determination will be approximately 1 to 2 pages.
  3. Process 3 – In writing only, and each party's submissions (and photographs) are limited to 5 pages (not including a copy of the contract and disputed invoice, both of which must be submitted). Parties will be entitled to provide additional documents or witness statements up to a maximum of 10 pages. The determination is expected to be approximately 5 pages.

# The Authorized Nominating Authority

4. Process 4 – Each party will be able to make submissions (and photographs) which are limited to ten pages (not including a copy of the contract and disputed invoice, both of which must be submitted). Parties will be allowed to submit additional documentation and witness statements up to a maximum of 25 pages. Parties will be able to make a half hour oral presentation via videoconference and teleconference (but not in person) and the determination is expected to be approximately 5 pages.
5. Process 5 – An adjudicator will convene a teleconference with the parties to the adjudication to determine the process and rules for the adjudication, together with a timeline.

# Who will the Adjudicators be?

- A natural person who:
  - Is not a party to the disputed construction contract and have no legal conflict of interest.
  - Is a member in good standing of a self-governing professional body.
    - i.e. engineer, architect, accountant, lawyer or quantity surveyor
  - Has at least 10 years of relevant experience servicing the Ontario construction industry.
  - Has successfully completed a standardized Ontario training course and received a certificate of authorization to adjudicate.
    - Periodic renewal upon proof of continuing education & clear record.
  - Has not been otherwise disqualified.
    - Bankruptcy, criminal conviction etc.

# Adjudication

## The Quick and Dirty

- What powers do adjudicators have?
  - power to issue directions respecting the conduct of adjudication;
  - taking the initiative in ascertaining the relevant facts and law;
  - draw inferences based on the conduct of the parties to the adjudication;
  - conduct on-site inspections of improvement that is the subject of the contract or subcontract, however the adjudicator can only do this with the consent of the owner of the premises if the premises is a home in which the owner resides, or the adjudicator is not a party to the adjudication, with the consent of any other person who has legal authority to exclude others from the premises (i.e. a landlord); and
  - obtain assistance from others (e.g. engineers, merchants, architects, actuaries in such a way as the adjudicator considers fit as is reasonably necessary to determine better any matter of fact in question).

# What Powers do Adjudicators Have?

- The legislation is not particularly clear as to whether an adjudicator would have the jurisdiction to determine a dispute where the contract has been terminated.
- Pursuant to section 13.5(3) an adjudication may not be commenced if the notice of adjudication is given after the date the contract or subcontract is **completed**, unless the parties to the adjudication agree otherwise; and
- Under section 13.18(5) a court has the power to set aside an adjudicator's decision on an application for judicial review if the applicant establishes that the contract or subcontract is invalid or has **ceased to exist**.

# What Powers do Adjudicators have?

- The wording of 13.18(5) of the *Construction Act*, is similar to the wording that appears at section 46(1) of the *Arbitration Act, 1991*. A contract or subcontract will likely be viewed as invalid when one of the three essential elements for the creation of a contract is not there (offer, acceptance, consideration).
- The term “ceased to exist” is not as clear, but based on jurisprudence under the *Arbitration Act, 1991* a contract will likely cease to exist where it is determined that there was no consideration for the entering into the contract and as such there is no “contract”.

# Adjudication

## What Kind of Disputes Will go to Adjudication?

- Disputes that may be referred to adjudication include:
  - Valuation of services/materials provided under the contract.
  - Payment disputes.
    - Including change orders (approved/not approved) or proposed change orders.
  - Disputes regarding notices of non-payment (Part I.1).
  - Amounts retained under set-off by trustee (s.12) or lien set-off (s. 17(3)).
  - Payment of a holdback under section 26.1 or 26.2.
  - Non-payment of a holdback (s. 27.1).
  - Others (as agreed by the parties or prescribed).
  - A person to whom payment is guaranteed under a labour and material payment bond required under subsection 85.1(4) of the Act may refer to adjudication any dispute with the principal and the surety in relation to the payment guaranteed under the bond.



# Adjudication

## Excluded Jurisdiction

- The following matters may not be subject to adjudication:
  - A determination of when a project agreement is substantially completed
  - An agreement between the special purpose entity and the contractor is substantially performed
  - A determination of whether a milestone in relation to the improvement has been reached, if reaching the milestone requires an amount to be paid

# Excluded Disputes

- Where a contract has been ***completed***
  - A contract is deemed to be completed when the price of completion, correction of a known defect or last supply is not more than the lesser of:
    - 1% of the contract price; and
    - \$5,000.

# Adjudication

## Blurred Lines

- Hypothesis: Imagine a situation where an architect carries out design work with respect to a project. After the design stage for matters unrelated to the architect's role, the project does not come to fruition and is not built?
- The architect remains unpaid? Can they bring the dispute for adjudication under the *Act*?

# Adjudication

## Blurred Lines

- One of the criticisms is that industry has noted is that while an adjudicator can terminate an adjudication for non-payment of their fee, an adjudicator is not allowed to withhold the issuance of their decision in the event of non payment.
- Practical Issue: One party refuses to pay the adjudicator, the adjudicator terminates the adjudication. In this regard, the non-paying party is reaping a benefit because no determination will be made against them so long as they continue to not pay the fees.
  - Potential enforcement loopholes?

# Adjudication

## Notice Must Be Given Before the Contract is Complete

- Notice of Adjudication must be given before the contract/subcontract is completed.
- Adjudication may not be commenced if notice is given after completion of the contract or subcontract unless the parties to the adjudication agree otherwise.

# Adjudication

## Commencing Adjudications

- Parties who want to refer a dispute to adjudication shall give notice in writing (s. 13.7). It must include:
  - Name and address of the parties.
  - Nature and brief description of the dispute.
  - Nature of redress sought.
  - Name of proposed adjudicator.
    - If the adjudicator named does not consent within 4 days the party shall request an adjudicator. The Authority must appoint an adjudicator within 7 days after to appoint.
    - A contract/subcontract **cannot** name a potential adjudicator in advance.
      - Such clauses would be of no force or effect.



# Adjudication

## Adjudicator's Fees

- Adjudicator's fees are to be agreed upon by the parties or if the parties cannot agree the fees will be determined by the Authority in accordance with the a schedule of fees to be publically available on the Authority's website.
- The parties to the adjudication shall split payment of the adjudication fee equally subject to a different determination under section 13.17

# Adjudication

## Selecting the Adjudicator

- Under the *Act*, the parties to the adjudication may agree on an adjudicator or may request that the Authority appoint one.
- Consider selecting an adjudicator free from conflicts of interest that has the requisite experience to address the nature and type of dispute.
- If you are the responding party to a dispute, timing is everything when it comes to selecting the adjudicator.
  - Once a notice of adjudication is sent, the adjudicator must respond within **4 days** to either accept or reject the appointment – therefore a party who objects to the appointment should object within **3 days** before the adjudicator accepts the appointment.
  - If an adjudicator does not consent to conduct the adjudication within **4 days** after the notice of adjudication is given, the party who gave the notice shall request the Authority to appoint the adjudicator within **7 days** of receiving the request for the appointment.



# Adjudication

## Commencing Adjudications – Sample Proper Notice

### NOTICE OF ADJUDICATION

**Date of Notice: December 1, 2019**

<b>NAME AND ADDRESS OF REQUESTING PARTY:</b>	01-410 Albert Street, Waterloo, ON N2L 3V3
<b>NAME AND ADDRESS OF RESPONDING PARTY:</b>	Owner Won't Pay Inc. 345 Road Street, Unit 501, Mississauga, ON, M5B 3O6
<b>NATURE OF DISPUTE &amp; BRIEF DESCRIPTION:</b>	The dispute between the                      and Owner Won't Pay Inc. concerns a payment dispute relating to Invoice No. 333444 which was sent on November 1, 2019, for which a Notice of Non-Payment (attached herein) was delivered for the full amount of the invoice, being \$52,000.00.
<b>NATURE OF REDRESS SOUGHT:</b>	A determination that                      is entitled to the sum of \$52,000.00, or such other amount as the adjudicator determines, arising from services provided under Invoice No. 333444, and payment of the amount determined to be due and owing within 10 days of the adjudicator's determination.
<b>NAME OF PROPOSED ADJUDICATOR:</b>	Ms. Judy A. <del>Wentworth</del> Cator

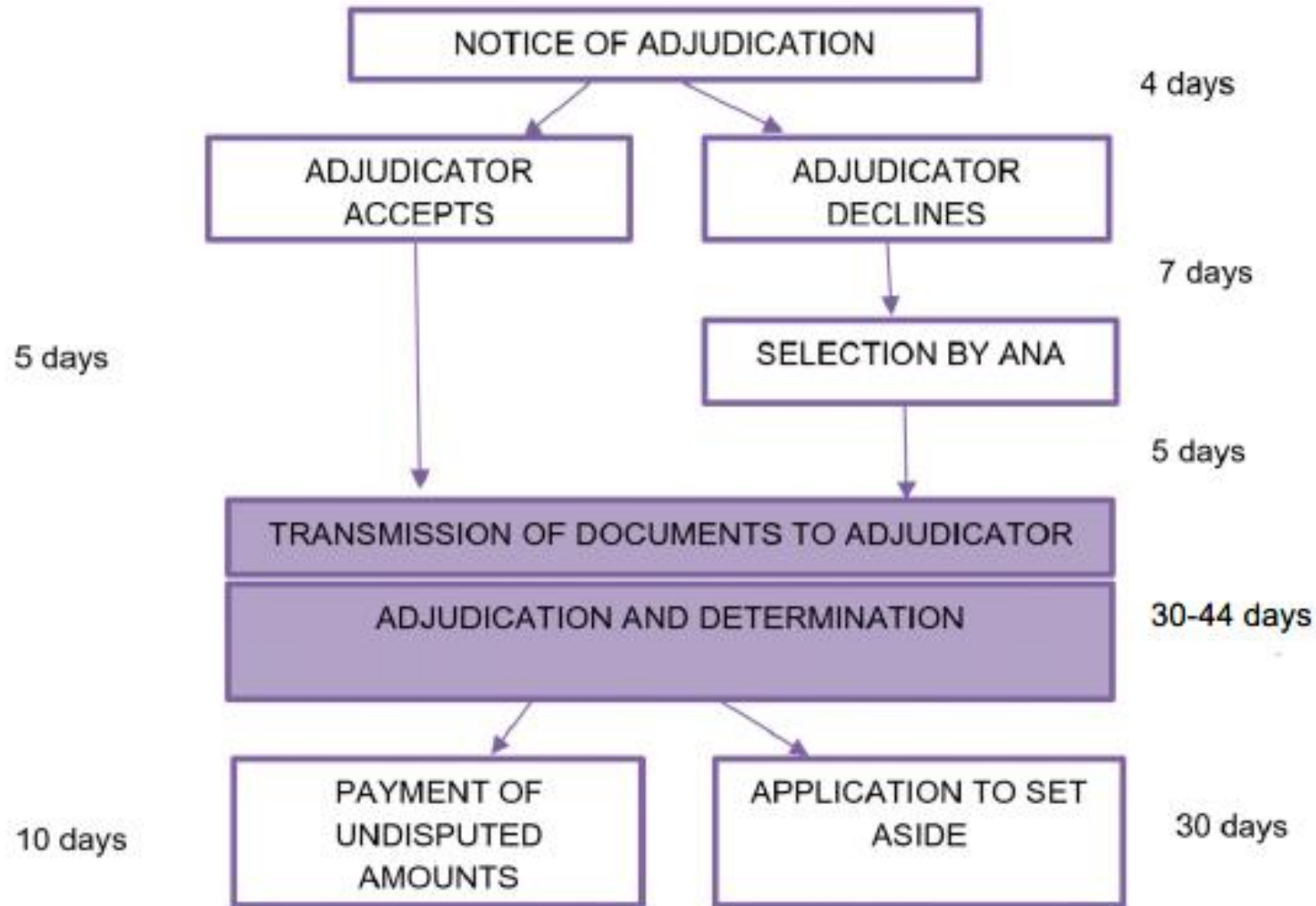
*Disclaimer: This is an example notice and should not be relied upon.*

# Adjudication

## Timeline

- **5 days** after the adjudicator is appointed the party who gave notice must give the adjudicator
  - The notice of adjudication
  - A copy of the contract/subcontract
  - Any documents the party intends to rely on during the adjudication
  - The right of a party to respond to a notice of adjudication is subject to any directions of the adjudicator as to time and manner of the delivery of a response.
- Decision must be made within **30 days** of the adjudicator receiving the documents.
  - Decision time can be extended before the expiration of 30 days
    - On the adjudicator's request, with written consent of the parties to the adjudication, for a period of no more than **14 days**, or
    - On written agreement of the parties, subject to the consent of the adjudicator, for a period specified in the agreement.
  - All parties who received a notice of non-payment must receive notice of any extension and its length
  - Decisions rendered after the deadline are of **no force or effect**

# Construction Dispute Interim Adjudication



# Explaining the Timelines

- If you receive a notice of adjudication, the timeline for the transmission of documents is very short.
- No later than 5 days after the adjudicator agrees or is appointed to conduct the adjudication, the party who gave the notice of adjudication shall give the adjudicator a copy of the notice together with:
  - (a) a copy of the contract or subcontract; and
  - (b) any documents that the party intends to rely on during the adjudication.

# Explaining the Timelines

- Note that references to number of days are not defined as “business days” but rather **calendar days**
- A responding party must deliver a response including any documents on which it intends to rely on the date set by the adjudicator
- Note that the adjudicator has the power to limit the number of documents or oral submissions or evidence taking into account the amounts in dispute

# Adjudication

## Decisions

- Decisions must be in writing.
- An adjudicator's decision (a “determination”) is admissible as evidence in court.
- Adjudicators' decisions are binding until:
  - A dispute is determined by legal proceedings (including lien proceedings) or arbitration; or
  - The parties agree that the decision is final and binding.
- **BUT** a court or arbitrator may reconsider the merits of a decision made by an adjudicator.
- Adjudicators' decisions are subject to judicial review on limited grounds.

# Judicial Review

- One of the grounds for judicial review includes a finding by the court that the adjudication did not accord with the procedures to which the adjudication was subject and the failure to comply prejudiced the applicant's right to a fair adjudication
- Note that fairness does not include the right to file an unlimited number of documents or to lead oral evidence - as long as the adjudicator acts fairly and impartially the ability to set aside a determination is extremely limited

# What to Include in your Notice of Adjudication

- The adjudicator, unlike a court, has no inherent power to grant remedies which have not been sought
- Your notice of adjudication should carefully frame the issues you wish the adjudicator to decide
- **Bad Example:**
  - Contractor claims as against the Owner that the sum of \$50,000 is owed pursuant to a notice of non-payment issued on October 2, 2019.
    - The adjudicator has no jurisdiction to award any finding above the amount of \$50,000 or a finding that the owner owes IBI \$45,000
- **Good Example:**
  - Contractor claims as against the Owner that the sum of \$50,000 is owed pursuant to a notice of non-payment issued on October 2, 2019 or any other such amount as the adjudicator determines is properly owed, and requests that the adjudicator directs the Owner to pay the Contractor the sum of \$50,000 or any other such amount as the adjudicator determines is properly owed.



# Frequently Asked Questions

## 1. Is this going to result in more litigation?

- The goal of the legislation is to facilitate prompt payment and reduce litigation, but it may increase the number of interim disputes and will require you to be more diligent with invoicing, tracking time lines and proper project management.

## 2. What if my client is not paying but I do not want to send them a notice of adjudication?

- You will not be able to defer the requirement to pay your subcontractors because you have not been paid, unless you send a formal notice of non-payment. Interest will accrue on unpaid invoices.
- You may be in a situation where you are not being paid, but your subcontractors have taken you to adjudication and it has been determined that you need to pay the invoice.
- An Adjudicator has no jurisdiction once the work is completed.
- Contractual dispute resolution requirements.

# Frequently Asked Questions

3. What is the best way to prepare for adjudication?
  - Stay organized – have a good documentary management system.
  - Listen to your gut – if you sense that a dispute might be around the corner start preparing your documentation so that you can deliver your materials first, as there are advantages to being first.
4. Is there an automated tool to manage tight timelines?
  - There is no software yet, but most people are creating their own internal systems for prompts and the tracking of timelines.
5. What are other firms doing?
  - Setting up internal payment structures to ensure their software will meet the timelines under the new Act.
  - Some firms are revising their supplementary conditions.

# Frequently Asked Questions

- Can an adjudicator determine more than one issue at a time?
  - Under section 13.8(1) if a matter or related matters in respect of an improvement are the subject of disputes to be adjudicated the parties to each of the adjudications may agree to the adjudication of the disputes together by a single adjudicator as a consolidated adjudication;
  - Where all the parties do not agree on a consolidated adjudication, the contractor may, in accordance with the regulations, require consolidation of the adjudication.

# Adjudication

## Lessons Learned from the UK Experience

- Prepare for the worst, hope for the best! Appoint representatives and experts early and let them guide strategy.
- “Play the game” – delaying crystallization of a dispute or an adjudication so you can prepare your own case. Every day makes a difference.
- Think tactically – scope of the dispute to be referred, manner in which dispute conducted (document dump!), persuading adjudicator to have a meeting where you know opponent will not present case well etc.
- Be proactive not responsive – is there a dispute you could refer which would neutralize the claim against you?

# Changes for Landlords

- Under section 19(1) of the *Construction Act*, if the interest of the owner to which a lien attaches is leasehold, and if payment for all or part of the improvement is accounted for under the terms of the lease or any renewal of it, or under any agreement to which the landlord is a party that is connected to the lease, the landlord's interest is also subject to the lien, to the extent of 10 percent of the amount of such payment.
- These changes mean that if the landlord funds an improvement through a tenant improvement allowance, or rent abatement or other tenant inducement, contractors performing the work will automatically have a lien right against the interests of both the tenant and the landlord

# Changes for Landlords

The landlord can also be fully liable for the lien amount (ie. the price of services or materials supplied by the contractor) if it meets the criteria set out in the definition of "owner".

The landlord is deemed to be an "owner" under the New Act if:

- (i) the landlord has an interest in the improved premises;
- (ii) the landlord requested the improvement; and
- (iii) the improvement was made on the landlord's credit or behalf, or with the landlord's privity or consent, or for the landlord's direct benefit.

If each of these criteria is met, the contractor may seek full payment from the landlord (as "owner") (to the extent that the contractor is not paid) using a construction lien, regardless of whether there is a direct contract between the contractor and landlord.

# Changes for Landlords

- Under section 39(1)4 any person having a lien who or who is the beneficiary of a trust under Part II of or is a mortgagee may, at any time, by written request, require information to be provided within a reasonable time not to exceed 21 days as follows:
  - By a landlord whose interest in a premises is subjection to a lien under subsection 19(1) with:
    - the names on the lease,
    - the amount of the payment referred to in section 19(1), and
    - the state of accounts between the landlord and tenant containing the information listed in subsection (4.1).

# Takeaways for Landlords

- Even where there is no tenant improvement allowance in the lease, under the definition of “owner” in section 1(1) of the *Construction Act*, a landlord may be viewed as a traditional owner where the improvement to the premises was done at the landlord’s request; **and**
  - with the landlord’s consent;
  - on the landlord’s behalf;
  - upon the landlord’s credit; or
  - for the landlord’s direct benefit;

**Takeaway: Carefully draft tenant inducement clauses to protect yourself with respect to lien claims.**

**Takeaway: Be vigilant in your record keeping since lien claimants may seek section 39 information, and the landlord must provide the documentation requested within 21 days.**



## 2. How do the Amendments Impact You?

### c) Lien Modernization

#### Substantial Performance:

- The improvement is “ready for use”; AND
- Where the improvement to be made is capable of completion, or where there is a known defect, correction, at a cost of not more than:
  - **OLD DEFINITION:** 3% of the first \$500,000 of the contract price; 2% of the next \$500,000 of the contract price, and 1% of the balance
  - **NEW DEFINITION:** 3% of the first \$1 million of the contract price; 2% of the next \$1 million of the contract price, and 1% of the balance
- A contract is deemed completed when the price of completion is not more than the lesser of:
  - 1% of the contract price; and
  - \$1,000 (old Act)/\$5,000 (new Act)

## 2. How do the Amendments Impact You?

### d) Non-Payment of Holdback

- Under the new Act (s. 27.1), an owner may refuse to pay some or all of the holdback amount to a contractor if:
  - Within 40 days after the publication of a certificate or declaration of substantial performance, the owner publishes a notice specifying the amount of holdback that it refuses to pay in the manner set out in the regulations; and
  - The owner notifies the contractor of the publication of the notice.
- Contractors or subcontractors may also refuse to pay some or all of the holdback amounts owing if the owner or contractor refuses to pay, the contractor or subcontractor refers the matter to adjudication, and notice is provided to the parties that are not being paid of that fact and that the matter is being referred to adjudication.
- Take-away, if the owner delivers a notice of non-payment of holdback, the contractor will have to lien to preserve its lien rights as against the holdback

# Sample Notice of Non-Payment of Holdback

## Form 6

**FORM 6**  
**NOTICE OF NON-PAYMENT OF HOLDBACK UNDER SECTION 27.1 OF THE ACT**  
*Construction Act*

Name of owner: Bob' Builders

Address: 101-410 Albert Street, Waterloo, ON N2L 3V3

Description of the premises:

Office tower new construction located at 123 Street Rd. in Toronto, Ontario, L5B 2Y6.

Name of contractor: Jones Ltd.

Address: 345 Road Street, Unit 501, Mississauga, ON, M5B 3O6

Address for service, if known: 345 Road Street, Unit 501, Mississauga, ON, M5B 3O6

The owner will not pay the following amount required to be paid under sections 26 and 27 of the *Construction Act*.

(Use A or B, whichever is applicable)

A. The full amount of the holdback, being \$ 190,000.

B. A portion of the amount of the holdback, being \$                     .

Date: November 6, 2019

\_\_\_\_\_  
(Owner)

☐

# Release of Holdback – Completion of Design Phase

- The new Act permits holdback to be paid out at the completion of the “design phase” if:
  - The contract provides for it; and
  - There are no preserved or perfected liens in respect of the contract (or all liens have been satisfied, discharged, or provided for under the legislation).

## 2. How do the amendments impact you?

### e) Trust Accounting

- Section 8 of the *Act* makes contractors and subcontractors trustees for funds owed by them to subcontractors or others who have supplied services or materials for the improvement:
  - 8. (1) All amounts,
    - a) owing to a contractor or subcontractor, whether or not due or payable; or
    - b) received by a contractor or subcontractor,on account of the contract or subcontract price of an improvement constitute a trust fund for the benefit of the subcontractors and other persons who have supplied services or materials to the improvement who are owed amounts by the contractor or subcontractor.

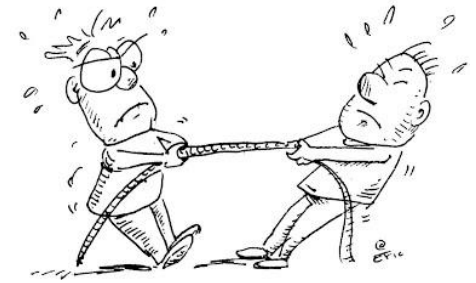


# Trust

- The new Act imposes additional obligations on contactor and subcontractor trustees (s. 8.1):
  - Funds must be deposited into a bank account in the trustee's name(s)
  - Trustee must maintain written records respecting the trust funds (amounts received and paid out, transfers of funds, other prescribed information)
- Funds from more than one trust may be deposited into a single bank account and are deemed to be traceable
  - Trust records must be maintained separately in respect of each trust fund deposited into the bank account

# Trust

## Section 12: Set-Off with Funds in Trust



- To set-off money owed as a result of outstanding debt claims or damages from the trust fund, under the new Act, the claims or damages **must be related to the improvement.**
  - The old Act allows a trustee to set-off money owed for any outstanding debt claims or damages “whether or not related to the improvement”.
  - Set-off of amounts only in relation to the specific Project not other Projects
- **EXCEPTION:** if the contractor or subcontractor becomes insolvent, set-off is permissible “whether or not related to the improvement.”

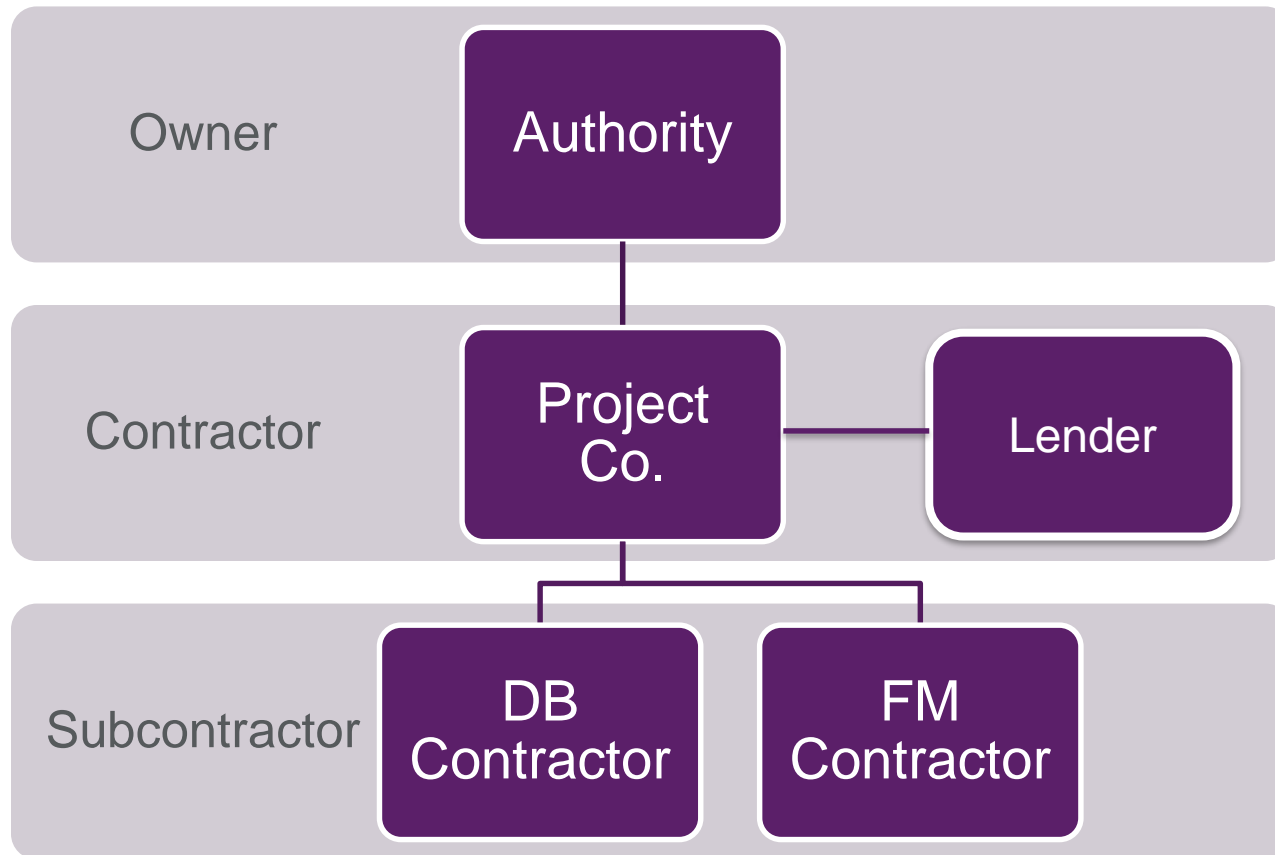
# How do the Amendments Impact You?

## f) P3 Projects and Special Purpose Entities

- The new Act applies to P3 arrangements where the Crown, a municipality, or a broader public sector organization enters into an agreement with a “special purpose entity” (“SPE”) to finance and undertake a project, which entity in turn enters into an agreement with a contractor to execute the work
  - Crown, municipality, or broader public sector organization is treated as owner
  - SPE is treated as contractor
  - Agreement between SPE and contractor is treated as a subcontract
- Holdback amounts are calculated in reference to agreement between SPE and contractor



# P3 Arrangements with Crown/Municipality or Broader Public Sector Organization



# Alternative Financing and Procurement Arrangements

- SPE is deemed to be owner, and contract between SPE and contractor deemed to be contract (not a subcontract) for purposes of:
  - Sections 2(1) and 2(2) (substantial performance)
  - Section 31 (expiry of liens)
  - Section 32 (certificate of substantial performance)
  - Section 33 (certificate of completion of subcontract)
  - Section 39 (information disclosure)
  - Any other provisions prescribed in the regulations
- References to “substantial performance” to be read as reference to substantial performance of agreement between SPE and contractor
- Prompt payment provisions do not apply to agreements for operation or maintenance of an improvement by the SPE, contractor, or a subcontractor

### 3. Quick Reference Forms

- As of October 1, 2019, there will be new forms dealing with notices of non-payment:
  - Form 1.1 – Notice of Non-Payment under s. 6.4(2) (owner to contractor)
  - Form 1.2 – Notice of Non-Payment under s. 6.5(5) (contractor to subcontractor if owner does not pay contractor)
  - Form 1.3 – Notice of Non-Payment under s. 6.5(6) (contractor to subcontractor)
  - Form 1.4 – Notice of Non-Payment under s. 6.6(6) (subcontractor to sub-subcontractor if contractor does not pay)
  - Form 1.5 – Notice of Non-Payment under s. 6.6(7) (subcontractor to sub-subcontractor)
  - The forms are fillable and can be found at:  
<http://ontariocourtforms.on.ca/en/construction-lien-act-forms/>

# Takeaways

- Determine which version of the Construction Act applies to each of your projects;
- Ensure that accounting systems comply with new trust provisions;
- Monitor lien deadlines and develop a reminder system;
- Familiarize yourself with the notice of non-payment forms;
- Monitor holdback release dates and deadlines for delivery of notices of non-payment;
- Ensure that your accounting department is aware of the prompt payment requirements;
- Remember that if you receive a notice of non-payment from the owner, you must also serve a notice of non-payment to your subcontractors within 7 days of receipt of the notice of non-payment and in any event no later than 35 days after the date of the proper invoice, otherwise you will need to pay the invoices or your subcontractors in accordance with the prompt payment deadlines; and
- Keep documents organized in the event that you receive a notice of adjudication and have to respond promptly.

# Any questions?

# Thank you

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# APPENDIX

## ADDITIONAL INFORMATION



# Extension of Lien Rights

- For contracts entered into, or in which the procurement process was commenced by the owner after July 1, 2018 the lien deadlines are extended.

# Construction Lien Deadlines for Contractors

Event	Old <i>Construction Lien Act</i>	New <i>Construction Act</i>
Preserving the Lien	<p>45 days from the earlier of:</p> <ul style="list-style-type: none"><li>• For materials/services provided on or before the date of substantial performance of the <u>contract</u>:<ul style="list-style-type: none"><li>• Certificate or declaration of substantial performance published</li><li>• Date that <u>contract is completed</u>, or abandoned</li></ul></li><li>• For materials/services provided after date of substantial performance of <u>contract</u>:<ul style="list-style-type: none"><li>• Date that <u>contract is completed</u>, or abandoned</li></ul></li></ul>	<p>60 days from the earlier of:</p> <ul style="list-style-type: none"><li>• For materials/services provided on or before the date of substantial performance of the <u>contract</u>:<ul style="list-style-type: none"><li>• Certificate or declaration of substantial performance published</li><li>• Date that <u>contract</u> is completed, abandoned, or terminated</li></ul></li><li>• For materials/services provided after date of substantial performance of <u>contract</u>:<ul style="list-style-type: none"><li>• Date that <u>contract</u> is completed, abandoned, or terminated</li></ul></li></ul>
Perfecting the Lien	<p>45 days from the last day on which the lien could be preserved</p>	<p>90 days from the last day on which the lien could be preserved</p>

**THESE DEADLINES ARE ABSOLUTE!**

# Construction Lien Deadlines for Subcontractor

Event	Old <i>Construction Lien Act</i>	New <i>Construction Act</i>
Preserving the Lien	<p>45 days from the earlier of:</p> <ul style="list-style-type: none"> <li>For materials/services provided on or before the date of substantial performance of the <u>contract</u>: <ul style="list-style-type: none"> <li>Certificate or declaration of substantial performance published</li> <li>Last date on which person supplies services or materials</li> <li>Date that <u>contract is completed or abandoned</u></li> <li>Date that <u>subcontract</u> is certified complete</li> </ul> </li> <li>For materials/services provided after date of substantial performance of <u>contract</u>: <ul style="list-style-type: none"> <li>Last date on which person supplies services or materials</li> <li>Date that <u>contract is completed or abandoned</u></li> <li>Date that <u>subcontract</u> is certified complete</li> </ul> </li> </ul>	<p>60 days from the earlier of:</p> <ul style="list-style-type: none"> <li>For materials/services provided on or before the date of substantial performance of the <u>contract</u>: <ul style="list-style-type: none"> <li>Certificate or declaration of substantial performance published</li> <li>Last date on which person supplies services or materials</li> <li>Date that <u>contract</u> is completed, abandoned, or terminated</li> <li>Date that <u>subcontract</u> is certified complete</li> </ul> </li> <li>For materials/services provided after date of substantial performance of <u>contract</u>: <ul style="list-style-type: none"> <li>Last date on which person supplies services or materials</li> <li>Date that <u>contract</u> is completed, abandoned, or terminated</li> <li>Date that <u>subcontract</u> is certified complete</li> </ul> </li> </ul>
Perfecting the Lien	45 days from the last day on which the lien could be preserved	90 days from the last day on which the lien could be preserved

**THESE DEADLINES ARE ABSOLUTE!**

# How do I know if there is Substantial Performance?

## Section 1: Definition of Price

Under the new Act, “**price**” means

- a. the contract or subcontract price
  - i. agreed on between the parties or
  - ii. if no specific price has been agreed on between them, the actual market value of the services or materials that have been supplied to the improvement under the contract or subcontract, and
- b. any direct costs incurred as a result of an extension of the duration of the supply of services or materials to the improvement for which the contractor or subcontractor, as the case may be, is not responsible.

# Substantial Performance

## What does “direct cost” really mean?

- “Reasonable costs” of performing the contract or subcontract during the extended period of time, including:
  - Costs related to the additional supply of services or materials (including equipment rentals);
  - Insurance and surety bond premiums; and
  - Costs resulting from seasonal conditions;

that, but for the extension, would not have been incurred, but **do not include** indirect damages suffered as a result, such as loss of profit, productivity or opportunity, or any head office overhead costs.

# Construction Liens – Substantial Performance

- The improvement is “ready for use”; AND
- Where the improvement to be made is capable of completion, or where there is a known defect, correction, at a cost of not more than:
  - **OLD DEFINITION:** 3% of the first \$500,000 of the contract price; 2% of the next \$500,000 of the contract price, and 1% of the balance
  - **NEW DEFINITION:** 3% of the first \$1 million of the contract price; 2% of the next \$1 million of the contract price, and 1% of the balance
- A contract is deemed completed when the price of completion is not more than the lesser of:
  - 1% of the contract price; and
  - \$1,000 (old Act)/\$5,000 (new Act)

# Changes to Holdback Provisions

- Any person obligated to make a payment under the general contract or a subcontract is obliged to retain 10% of the value of the services or materials actually supplied until the lien expiry period has lapsed.



# What are the changes to the holdback rules?

## Section 22 (1) & 22(4): Basic Holdback Provisions

- Holdbacks may now be retained using security (s.22(4)):
  1. A letter of credit in the prescribed form.
  2. A demand-worded holdback repayment bond in the prescribed form.
  3. Any other form that may be prescribed.
- The new Act makes payment of holdback mandatory after all liens that may be claimed against it have expired or been satisfied, discharged, or otherwise provided for under the legislation



# Holdback Provisions

## Mandatory Release of Holdback

- Payment of Basic Holdback (s.26.1)
  - Subject to the delivery by the owner of a notice of non-payment of holdback under section 27.1 of the Act, each payer (contractor, subcontractor or owner) is required to pay the basic holdback (s.22(1)) to discharge all claims against the holdback where all liens that may have been claimed against the holdback have expired or been satisfied, discharged or otherwise provided for under this Act.
- Payment of Finishing Holdback (s.27)
  - Each payer (contractor, subcontractor or owner) is required to pay the basic holdback (s.22(2)) to discharge all claims against the holdback where all liens that may have been claimed against the holdback have expired or been satisfied, discharged or otherwise provided for under this Act.

# Holdback Provisions

## Section 27.1: Non-Payment of Holdback

- Must **publish a notice** in a manner set out by the regulations:
  - Specifying the **amount** of the holdback the payer refuses to pay.
  - **No later than 40 days** after publication of the certification or declaration of substantial performance as prescribed by section 32.

# Release of Holdback – Annual

- The new Act permits holdback to be paid out on an **annual basis** for contracts with a completion schedule that is longer than one year if:
  - The contract provides for it;
  - The contract price is at least \$10 million; and
  - There are no preserved or perfected liens in respect of the contract (or all liens have been satisfied, discharged, or otherwise provided for under the legislation)

# Release of Holdback – Phased

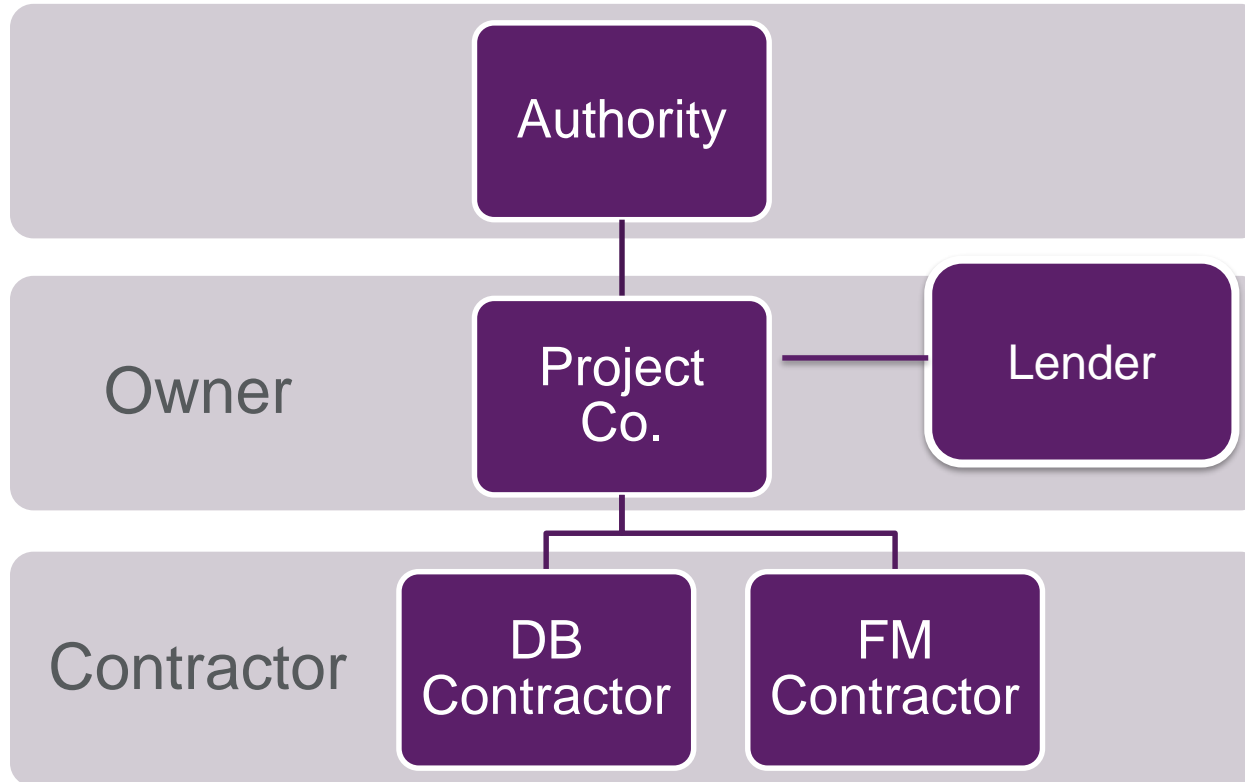
- The new Act also permits holdback to be paid out on a **phased basis** if:
  - The contract provides for it and identifies each phase;
  - The contract price is at least \$10 million (proposed amount); and
  - There are no preserved or perfected liens in respect of the contract (or all liens have been satisfied, discharged, or otherwise provided for under the legislation)

# Release of Holdback – Completion of Design Phase

- The new Act permits holdback to be paid out at the completion of the “design phase” if:
  - The contract provides for it; and
  - There are no preserved or perfected liens in respect of the contract (or all liens have been satisfied, discharged, or provided for under the legislation).

# P3 Arrangements with Crown/Municipality or Broader Public Sector Organization

Structure when SPE is deemed owner by the Act



# List of Forms

TABLE OF FORMS

Column 1 Form Number	Column 2 Form Name	Column 3 Date of Form
1	Written Notice of Lien under Subsection 1 (1) of the Act	2018/04
2	Notice to Contractor under Section 18 of the Act	2018/04
3	Notice to Lien Claimant under Subsection 19 (3) of the Act	2018/04
4	Letter of Credit under Subsection 22 (4) of the Act	2018/04
5	Holdback Repayment Bond under Subsection 22 (4) of the Act	2018/04
6	Notice of Non-Payment of Holdback under Section 27.1 of the Act	2018/04
7	Declaration of Last Supply under Subsection 31 (5) of the Act	2018/04
8	Notice of Termination under Subsection 31 (6) of the Act	2018/04
9	Certificate of Substantial Performance of the Contract under Section 32 of the Act	2018/04
10	Certificate of Completion of Subcontract under Subsection 33 (1) of the Act	2018/04
11	Notice of Intention to Register a Condominium in accordance with the <i>Condominium Act, 1998</i> under Section 33.1 of the Act	2018/04
12	Claim for Lien under Section 34 of the Act	2018/04
13	Notice of Preservation of Lien under Subsection 34 (9) of the Act	2018/04
14	Certificate of Action under Section 36 of the Act	2018/04
15	Notice Given by Defendant under Subsection 36 (4) of the Act	2018/04
16	Notice of Cross-Examination under Clause 40 (3) (a) of the Act	2018/04
17	Notice of Cross-Examination under Clause 40 (3) (b), (c) or (d) of the Act	2018/04
18	Withdrawal of Written Notice of Lien under Subsection 41 (2) of the Act	2018/04
19	Discharge of Lien under Section 41 or 42 of the Act	2018/04
20	Notice of Postponement of Lien under Section 43 of the Act	2018/04
21	Financial Guarantee Bond under Section 44 of the Act	2018/04
22	Order Directing a Reference for Trial under Section 58 of the Act	2018/04
23	Order Directing a Reference for Trial under Section 58 of the Act (Small Claims Court)	2018/04
24	Judgment at Trial under Section 62 of the Act if Lien Attaches to Premises	2018/04
25	Judgment at Trial under Section 62 of the Act if Lien Does Not Attach to Premises	2018/04
26	Report under Section 62 of the Act if Lien Attaches to Premises	2018/04
27	Report under Section 62 of the Act if Lien Does Not Attach to Premises	2018/04
28	Report under Section 62 of the Act if Lien Attaches to Premises (Small Claims Court)	2018/04
29	Report under Section 62 of the Act if Lien Does Not Attach to Premises (Small Claims Court)	2018/04
30	Financial Guarantee Bond under Subsection 78 (10) of the Act	2018/04
31	Labour and Material Payment Bond under Section 85.1 of the Act	2018/04
32	Performance Bond under Section 85.1 of the Act	2018/04
33	Notice of Trial	2018/04
34	Notice of Settlement Meeting	2018/04

# Thank you

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