

Update on prompt payment legislation in Canada

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Prompt payment legislation was first introduced in Canada in Ontario on December 12, 2017. The drafters of the legislation drew from the prompt payment requirements in other jurisdictions, including the United Kingdom and Australia. The legislation made substantial amendments to the Construction Lien Act, including a name change to the Construction Act, amendments to construction lien and holdback rules, which came into force on July 1, 2018, and prompt payment and adjudication requirements, which came into force on October 1, 2019.

The purpose of prompt payment rules is to ensure that cash flows down the construction pyramid quickly so that contractors, subcontractors and workers are paid in a timely way, and payment disputes are addressed quickly.

Since first introduced by Ontario, other jurisdictions have considered or introduced similar prompt payment rules:

- **Nova Scotia** – On April 12, 2019, a bill that was introduced to amend the Builders' Lien Act received Royal Assent. The act was later renamed to the Builders' Lien and Prompt Payment Act, and regulations prescribing payment timelines and adjudication are currently being drafted;
- **New Brunswick** – In May 2018, the government published Law Reform Notes proposing the replacement of the Mechanics' Lien Act with a modernized Construction Act that includes prompt payment rules;
- **Manitoba** – On June 3, 2019, a private members bill, called The Prompt Payments in the Construction Industry Act, was introduced after a previous attempt in 2018 had failed;
- **Saskatchewan** – On May 15, 2019, a bill introduced to amend the Builders' Lien Act received Royal Assent. The act was later renamed to the Builders' Lien (Prompt Payment) Amendment Act, 2018;
- **Québec** – On December 1, 2017, Québec began to implement pilot projects in relation to construction law reform, including prompt payment and adjudication;
- **British Columbia** - On May 28, 2019, a bill called the Builders' Lien (Prompt Payment) Amendment Act, 2019 was introduced in the Legislative Assembly for first reading; and
- **Federal** – On June 21, 2019, a bill includes the Federal Prompt Payment for Construction Work Act, received Royal Assent.

With these recent developments, the Canadian construction industry is anticipating a significant shift in its business practices, and prompt payment rules will require owners to provide payment within 28 days of receiving a proper invoice for construction services, and contractors will be required to provide payment to subcontractors within seven days of receiving a payment from the owner or developer. There are exceptions in the case of disputes, and in some jurisdictions, mandatory adjudication procedures will apply to those disputes.