

**Welcome to:**

**THE TIME IT IS A CHANGING**

*The Prompt Payment and  
Construction Lien Act*

We will be starting at 10 am MT

# Speakers



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# Introduction

- Existing Lien Rights in Alberta
- What is Alberta's new Prompt Payment legislation?
- A “Proper Invoice”
- The new Dispute Resolution Process
- New rules for concrete work

## Existing Lien Rights in Alberta

- Lien rights arise from work or the supply of materials to improvements that are attached to the land;
- Once created, a lien must be registered within 45 days from when:
  - the scope of work under a contract is completed;
  - the scope of work under a contract is abandoned.
- Lien registration period increased to 90 days if work or materials are supplied to a wellsite

## Alberta's new Prompt Payment Legislation

- Amends the Alberta *Builder's Lien Act*
- Now named the *Prompt Payment and Construction Lien Act*
- Brings Alberta's lien legislation in line with legislation in Ontario, Saskatchewan, Nova Scotia and the *Federal Prompt Payment for Construction Work Act*
- Received Royal Assent on December 9, 2020 but not yet in force

## **Amendments to the *Builders Lien Act***

- **Creates the concept of a “Proper Invoice”**
- **Creates a mandatory dispute resolution process for unpaid Proper Invoices**
- **Increases the general lien registration deadline from 45 days to 60 days**
- **Create new rules for “improvements primarily related to the furnishing of concrete as a material or work done in relation to concrete”**
- **Increases the lien registration deadline for concrete work from 45 days to 90 days**

## A Proper Invoice

- **Proper invoice must be in writing and must include:**
  - **The contractor's name and business address**
  - **The person to whom payment should be made**
  - **The date and the period during which work or materials were supplied;**
  - **Information identifying the authority under which the work or materials were supplied**

## Proper Invoice

- **Proper invoice must be in writing and must include:**
  - **A description of the work or materials that were supplied**
  - **The amount requested**
  - **A breakdown of the amount requested for work and the amount requested for materials**
  - **A statement indicating that the invoice is intended to be a Proper Invoice**



## Prompt Payment Provisions

- **Upon delivery of a Proper invoice**
- **Payment must be made by recipient within 28 days unless recipient issues a Notice of Dispute within 14 days of receipt**
- **Payment must be made by a Contractor to a Sub-contractor / Supplier within 7 days of payment from Owner**

## Prompt Payment provisions

- **Cannot opt out of payment regime**
- **Payment certification provisions of a contract not relevant to delivery date of Proper Invoice**
- **“Pay when paid” provisions of a contract are no longer enforceable**

# Prompt Payment Provisions

- **Adjudication**
  - **Parties to payment dispute may submit the dispute to an Adjudicator**
  - **Adjudication to proceed in accordance with regulations that are to be established**
  - **These regulations will supersede the Dispute Resolution provisions of the contract**

## Prompt Payment

- **Ongoing jurisdiction of the Court**
- **Adjudicator may refer dispute to the Court if the Adjudicator lacks jurisdiction or the Adjudicator considers it appropriate to do so**
- **The parties to an Adjudication may request Judicial Review**
- **Limited grounds for Judicial Review**

## New lien registration period

- **Increases the lien registration deadline for work on improvements that are not related to:**
  - **concrete work or the supply of concrete materials; or**
  - **an oil or gas well**

**from 45 days to 60 days**

## Concrete work

- **Increases lien registration deadline for concrete work or the supply of concrete materials from 45 days to 90 days**
- **New holdback period**
  - **The 10% holdback for concrete work must be retained for 90 days following the posting of a Certificate of Substantial Performance or the completion of the scope of work under a contract**
- **Increased from 45 days**

## Key messages

- Lien rights arise from work or the supply of materials to improvements that are attached to the land;
- Once created, a lien must be registered within 45 days from when:
  - the scope of work under a contract is completed;
  - the scope of work under a contract is abandoned.
- Lien registration period increased to 90 days if work or materials are supplied to a wellsite

## Key messages

- **Prompt Payment legislation is on the horizon**
- **Invoices must be Proper Invoices**
- **Payment must be made within 28 days**
- **14 days to issue Notice of Dispute**



## Key messages

- **Disputes resolved by Adjudication**
- **Right to Judicial Review but can only set aside decision of an Adjudicator on limited grounds**
- **Right to register a Lien still exists**
- **New rules for lien arising from concrete work and the supply of concrete materials**
- **Longer registration period**

# Questions



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