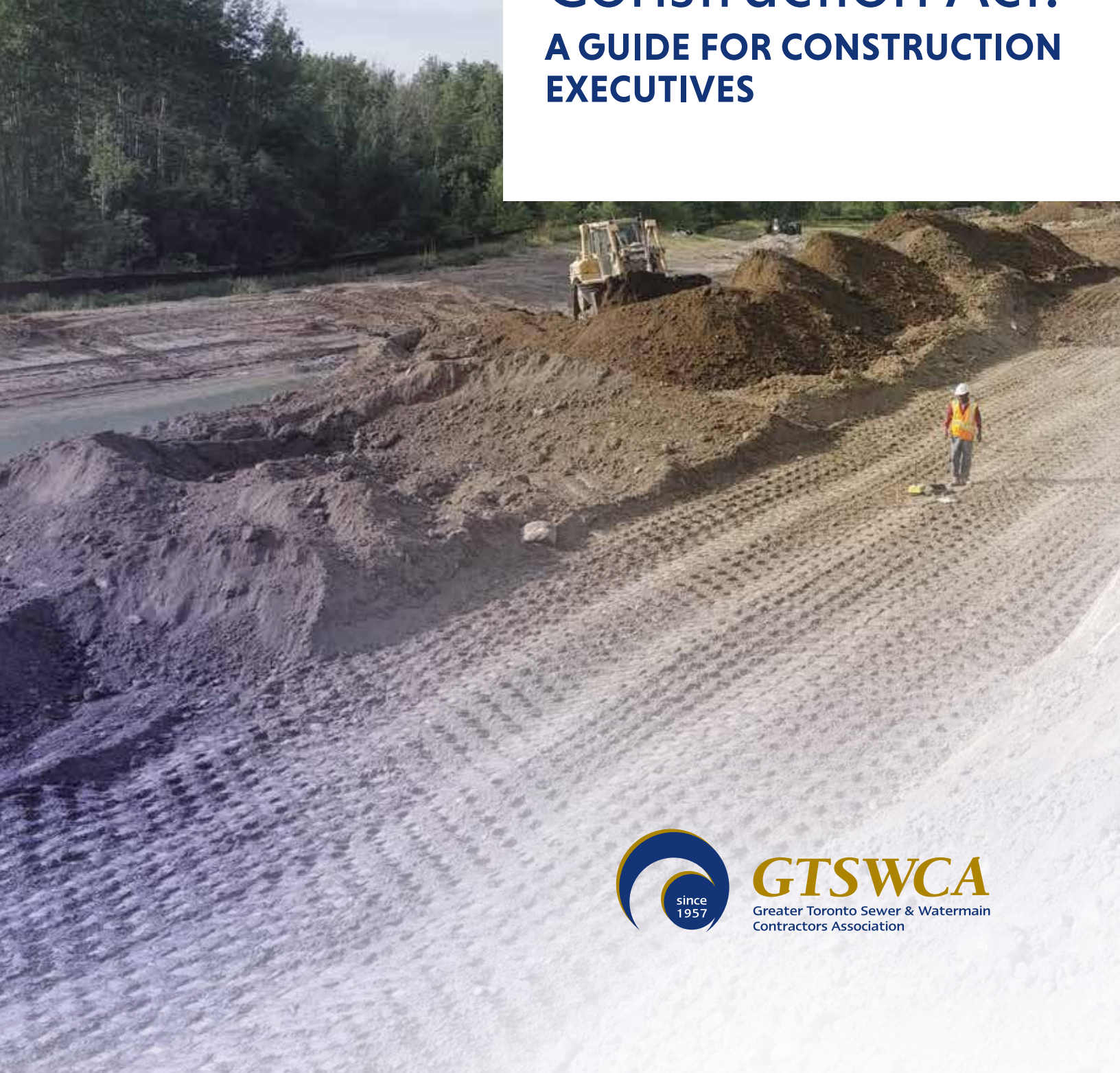




# Ontario's New Construction Act:

## A GUIDE FOR CONSTRUCTION EXECUTIVES



**GTSWCA**  
Greater Toronto Sewer & Watermain  
Contractors Association





# Table of Contents

Holdback	4
<b>Construction Act Changes FOR PUBLIC PROJECTS</b>	6
A Guide to Construction Act Changes <b>FOR CONTRACTORS</b>	8
<b>A Guide to Construction Act Changes FOR SUBCONTRACTORS</b>	14
Contractor's Check List	20
<b>Understanding What Rules Apply to Your Contract</b>	23

# Holdback



**Almost every party to a construction project has to deal with holdback. There are different forms of holdback that serve different purposes. Some forms of holdback are governed by the *Construction Act*, and other forms are established in contracts. There are different ways for a payer to retain holdback.**

As contractors and subcontractors, holdback applies to you in both directions – payments made to you are subject to holdback, and you must retain holdback on payments you make:

- › If you are a contractor (where you are in a contract directly with the owner), the owner will hold back funds from any payments made to you. You will also retain holdback from any payments you make to your subcontractors and suppliers.
- › If you are a subcontractor (where you are in a contract with the general contractor), the general contractor will hold back funds from any payments made to you. You will also retain holdback from any payments you make to your sub-subcontractors and suppliers.

## CONSTRUCTION ACT HOLDBACK

Every payer in a construction project (such as the owner paying the contractor, or the contractor paying subcontractors) must hold back 10 percent of every payment made as a form of security for any liens that may be registered against the project. This *Construction Act* holdback applies to every



construction project and is mandatory. You cannot opt out or waive this form of holdback.

The most common way that a payer retains holdback is by actually holding back 10 percent of the amount of any payments made. Under the new changes to the *Construction Act*, payers must now pay out holdback once the timeline to file liens has passed, which is 60 days from one of the triggering dates in the Act (the most common is the date of completion, abandonment, or termination of the contract), unless the owner publishes a “notice of non-payment” within 40 days and notifies the contractor. The *Construction Act* also allows for annual or phased release of holdback, which allows funds to be released sooner on large projects.

Payers can retain holdbacks in other ways. A payer may instead obtain a letter of credit, or may opt for a “Demand-Worded Holdback Repayment Bond”. Both must be in the proper government forms. The letter of credit or the bond takes the place of the holdback funds. Both of these methods of retaining holdback provide security for any liens that may be registered while also allowing for the full contract funds to flow.

## WARRANTY AND MAINTENANCE HOLDBACKS

Warranty holdback is an amount held back to secure a contractor or subcontractor’s warranty obligations. The funds can be used if the contractor or subcontractor fails to perform any post-construction repair work under the terms of the contract. Maintenance holdback is similar, but is used to secure a party’s post-construction maintenance obligations under the contract.

These forms of holdback are created in the contracts and are not governed by the *Construction Act*. Generally, the funds are retained for a defined period of time that is set out in the contract. As these are contractual forms of holdback, the amount and terms of the holdback can vary from contract to contract. The new *Construction Act* rules for holdback release do not apply to these forms of holdback.

# Construction Act Changes

**FOR PUBLIC PROJECTS**



## SURETY BONDS

Contractors performing work on public projects should be aware of the increased requirements for surety bonds. For most public projects with a contract price of \$500,000 or more, the contractor must obtain a labour and material payment bond and a performance bond that meet the requirements in the *Construction Act*.

The labour and materials payment bond must be in the government form, must be issued by a licensed insurer, must have a coverage limit of at least 50 percent of the contract price, and must extend protection to subcontractors and persons supplying labour or materials. The performance bond must be in the government form, must be issued by a licensed insurer, and must have a coverage limit of at least 50 percent of the contract price.

## ADJUDICATION

There are limitations to the availability of adjudications for public projects. Adjudication cannot be used to determine whether a public project has been substantially completed, whether an agreement between the owner and a contractor has been substantially performed, or whether a milestone in a contractor or subcontractor's work has been completed where payment is based on completion of the milestone.

## ALTERNATIVE FINANCING AND PROCUREMENT ARRANGEMENTS

There are specific *Construction Act* changes that apply to public projects with alternative financing and procurement arrangements, i.e. where the government or public sector organization enters into an agreement with a special purpose entity (or, "Project Co."). In these circumstances, Project Co. is deemed to be the owner of the project.

Project Co. can require payment certification or approval before accepting a "proper invoice" for prompt payment. The *Construction Act* prohibits this practice for private sector projects. Payment may be delayed or disputed because Project Co. can insist on payment certification or prior approval before the "proper invoice" is submitted. However, the prompt payment timelines will apply once the "proper invoice" is submitted.

The requirement for payment certification or approval must be either in the project agreement between the government and Project Co., or in the prime contract between Project Co. and the contractor. The requirement for payment certification or owner approval cannot be added once the project is underway.

Because the requirement for payment certification can be in either the project agreement or the prime contract, subcontractors will likely want to review both of these agreements to understand their rights for prompt payment.

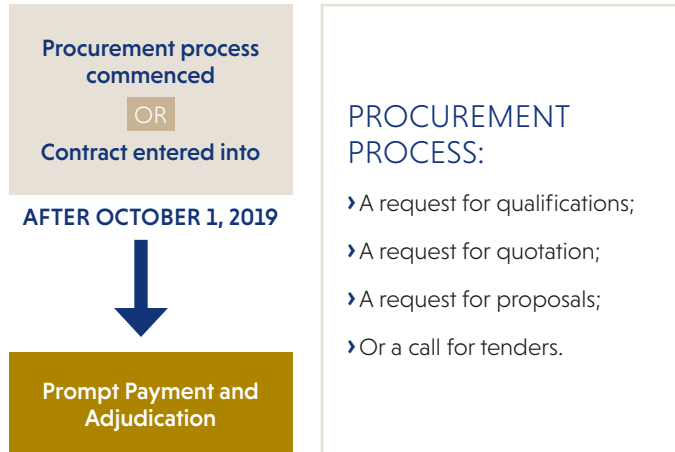


# A Guide to Construction Act Changes FOR CONTRACTORS





The *Construction Act* brings significant changes to the construction industry. The biggest changes are coming into force on October 1, 2019: prompt payment and adjudication. These changes apply to all construction projects, from home renovations to large infrastructure projects, and everything in between. Once in effect, prompt payment and adjudication will be mandatory. There is no need to sign up or opt in. However, there will be a transition period as these changes come into effect, so it is important to know whether these new rules apply to your project.



#### CASE STUDY:

On July 1, 2019, the owner issued a request for qualifications for contractors with respect to the construction of a new building. ABC Inc. was awarded the contract on August 29, 2019. ABC Inc. entered into contracts with one of its subcontractors, XYZ Corp. on October 15, 2019.

#### DOES PROMPT PAYMENT OR ADJUDICATION APPLY?

**ANSWER:** No. Since the RFQ was commenced before October 1, 2019, prompt payment and adjudication do not apply to the contract between the Owner and ABC Inc. and do not apply to the subcontract between ABC Inc. and XYZ Corp.

## DOES PROMPT PAYMENT OR ADJUDICATION APPLY?

Whether prompt payment and adjudication apply to a project depends on the timing of the commencement of the procurement process or the timing of entering into the prime contract (this means a contract entered into **directly** with an owner). It is **not** dependent on the timing of the procurement or contract with a subcontractor or supplier.

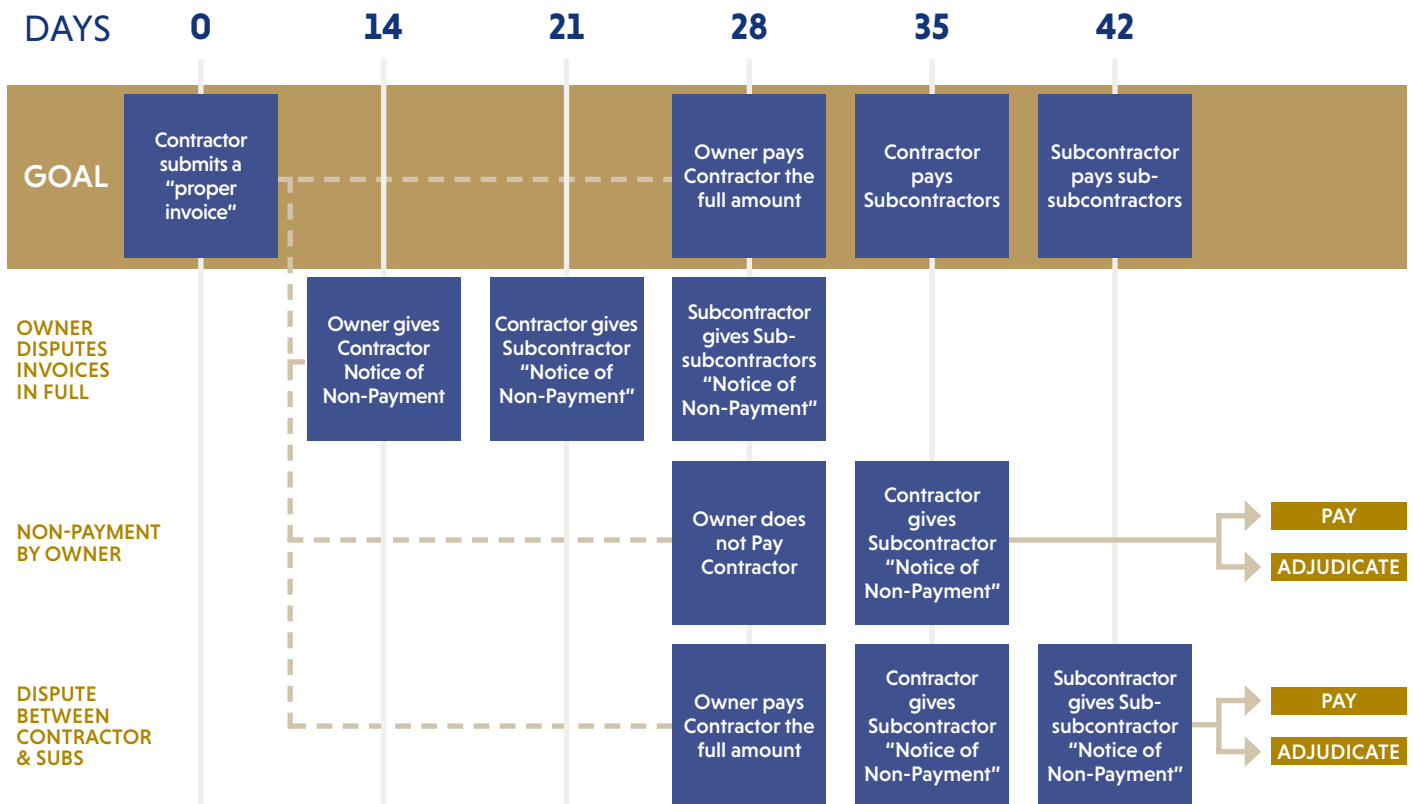


## HOW DOES PROMPT PAYMENT WORK?

Prompt payment operates on a series of rapid timelines for payments to flow down, starting from the owner down to the last supplier.

Prompt payment is designed to address late payment, underpayment and non-payment (for example “pay-if-paid” clauses) to try to force the owner to pay quickly or provide you with a reason that you are not going to be paid. The dates are in **calendar days**, which **include** holidays and weekends.

## WHAT ARE THE TIMELINES FOR PROMPT PAYMENT?



The prompt payment clock starts on the delivery of a “proper invoice” from the contractor to the owner. An owner **must** pay the contractor **within 28 calendar days** of receiving a “proper invoice”. Once the contractor receives payment from the owner, the contractor has **7 calendar days** to pay its subcontractors, who then have **7 calendar days** to pay their sub-subcontractors, and the cycle continues.

If an owner does not want to pay all or some of the “proper invoice” it must deliver a “notice of non-payment” to the contractor **within 14 calendar days** of receiving the “proper invoice”. The owner has to provide reasons for the non-payment. The contractor can either pay or dispute the amounts owing to the subcontractor, and can be forced to start an adjudication against the owner.

In situations of non-payment from the owner, contractors will no longer be able to rely on “pay-if-paid” clauses in their subcontracts to avoid paying their subcontractors. Despite not receiving funds from the owner, the contractor will either have to pay its subcontractors or deliver a notice of non-payment to the subcontractors. In some cases, the contractor will also have to undertake to commence an adjudication against the owner within 21 days.

## CASE STUDY:

The contractor gives the owner a proper invoice on January 2, 2020.

## WHEN WILL THE CONTRACTOR GET PAID?

**ANSWER:** The owner has until January 30, 2020 to pay the contractor (assuming the owner has not delivered a notice of non-payment by January 16, 2020). If the contractor is paid on January 30, 2020, it has until February 6 to pay its subcontractors.

## WHAT ARE THE REQUIREMENTS FOR A "PROPER INVOICE"?

A "proper invoice" needs to include the basic requirements set out in the *Construction Act* and can also include terms that the parties agree to in the contract. However, there are two key exceptions: (1) a "proper invoice" **cannot** include the requirement for payment certification; and (2) a "proper invoice" **cannot** be conditional on owner approval. The *Construction Act* requires that a "proper invoice" include:

- › the contractor's name and address;
- › the date of the proper invoice and the period during which the services or materials were supplied, information identifying the authority, whether in the contract or otherwise, under which the services or materials were supplied;
- › a description, including quantity where appropriate, of the services or materials that were supplied;
- › the amount payable for the services or materials that were supplied, and the payment terms; and
- › the name, title, telephone number and mailing address of the person to whom payment is to be sent.

As a contractor, you should expect major changes to your contracts about the requirements for a "proper" invoice. Some of these changes will likely incorporate standard terms, like the requirement for a statutory declaration and WSIB clearance certificate. However, expect owners to include additional requirements like the requirement to include an updated schedule, a statements of value and or certification of commissioning. The contract can also specify the timing for giving a "proper invoice", which means that a contractor may have to give the proper invoice on a particular date (for example the 28<sup>th</sup> of every month) or only after a milestone (for example after certain approvals are obtained).

As a contractor, you will need to make sure you can meet the requirements of a "proper invoice". Otherwise, if the requirements are too onerous and you are unable to give a "proper invoice" and the clock for payment will not start.

## STRATEGIES FOR PREPARING FOR PROMPT PAYMENT:

### WHAT TO INCLUDE (AND WATCH OUT FOR) IN CONTRACTS

- › Be aware of any clauses in contracts establishing further requirements for "proper invoices" beyond the requirements set out in the *Construction Act*.
- › Negotiate reasonable invoicing terms with the owner:
  - include a provision that requires the owner to notify you if your invoice is not a "proper invoice". (If the invoice is not a "proper invoice" the owner is not required to advise you or give you a notice of non-payment).
  - include a provision to confirm that change orders will be, when applicable, part of the "proper invoice" submission and related payment timelines.
  - ask the owner to pay you by electronic fund transfer so you can more easily meet the seven-day prompt payment timeline to pay your subcontractors.
- › Revise your subcontract terms
  - ensure the requirements for a "proper invoice" in the prime contract are mirrored in your subcontracts.
  - consider modified "paid when paid" clauses so that you do not have to pay subcontractors while in a dispute with the owner over payment.

### OTHER STRATEGIES

- › Give your invoices on time and with the required documentation.
- › Familiarize yourself with the new forms.
- › Keep track of your deadlines to deliver notices of non-payment.
- › Coordinate your office staff to be able to process payments quickly.

## WHAT IS ADJUDICATION?

Adjudication is a new dispute resolution process with structured timelines and is intended to swiftly resolve payment disputes during the project. This will force the parties to deal with payment disputes, change orders and payment of holdback disputes quickly. You will also still have your lien rights!

An adjudication can be brought at any time. You will need to be strategic about the timing and subject of your adjudication to best achieve your desired outcome. The following types of disputes can be referred to adjudication:

- › the valuation of services or materials provided under the contract;
- › payment under the contract, including in respect of a change order, whether approved or not, or a proposed change order;

- › disputes that are the subject of a notice of non-payment under the prompt payment scheme; and payment or non-payment of holdback.

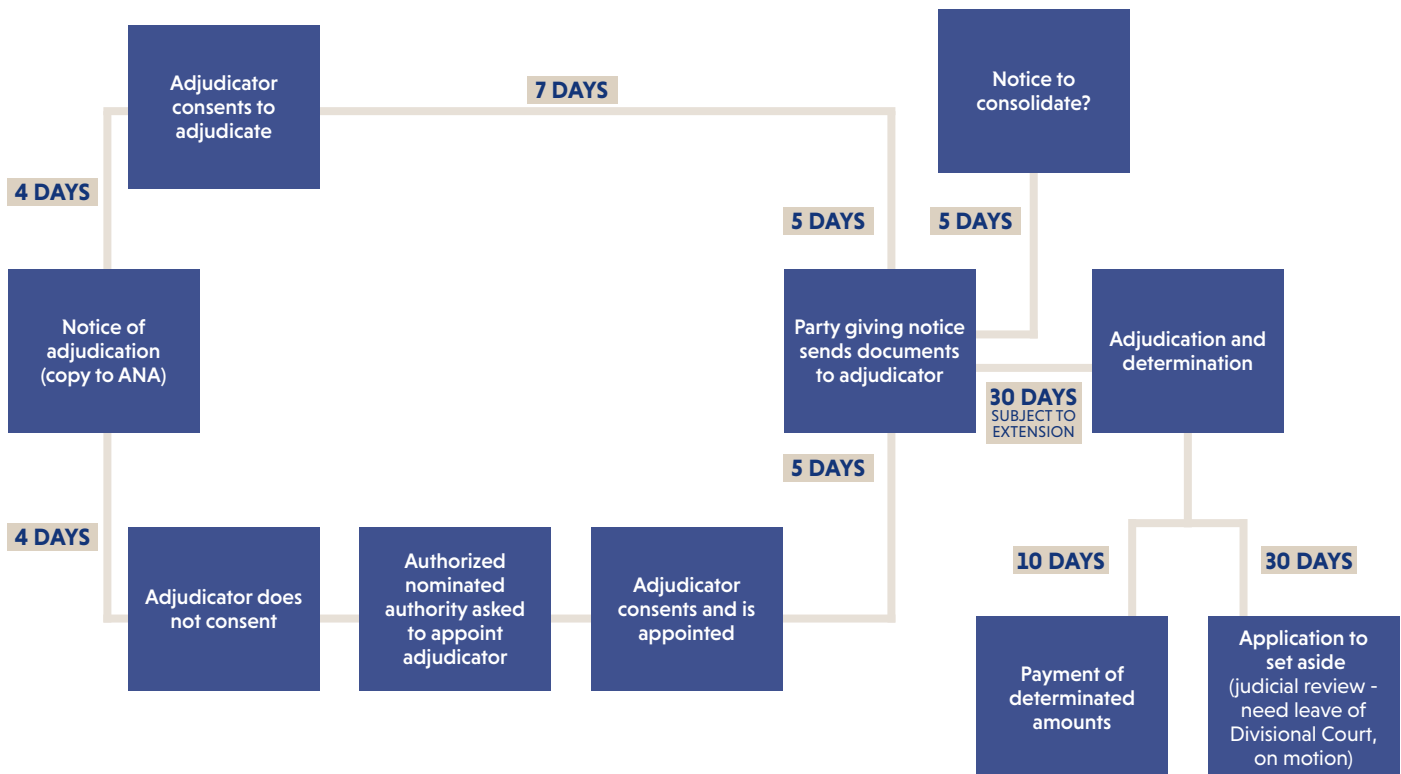
Parties can also agree to refer other types of disputes to adjudication.

The timing for an adjudication is as follows:

Once the determination is issued, payment must be made within **10 calendar days** or the successful party can suspend work and be entitled to demobilization and remobilization costs.

While adjudication is an interim step, the adjudicator's determination is *binding* for the life of the contract. In almost all circumstances, the parties share the cost of the adjudicator.

The Authorized Nominating Authority will be called the Ontario Dispute Adjudication for Construction Contracts.



More information on the ODACC can be found at [www.odacc.ca](http://www.odacc.ca).

### STRATEGIES TO PREPARE FOR AN ADJUDICATION:

- › Parties can create their own rules and procedures for adjudications. Review dispute resolution clauses carefully to see if the owner includes any extra rules. Include any rules that are important to you.
- › Parties can agree to refer other matters to adjudication. Make sure to include in your contract any types of disputes that you would like to have referred to adjudication, and be aware of any inclusions by the owner.
- › Organize documents so that they are easily accessible. Document the progress of the work through reports, photographs and videos. You may need to prepare for or respond to an adjudication on short notice.
- › Plan for vacations and holidays. Another party may strategically start an adjudication during holiday periods or when a key project person is on vacation.

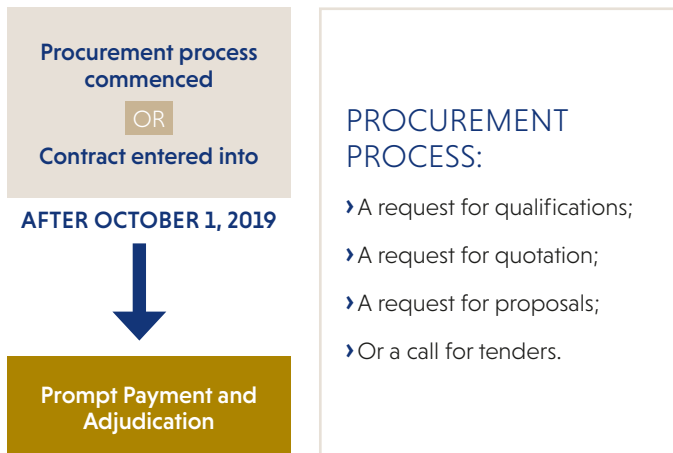


# A Guide to Construction Act Changes FOR SUBCONTRACTORS



The *Construction Act* brings significant changes to the construction industry. The biggest changes are coming into force on October 1, 2019: Prompt Payment and Adjudication. These changes apply to all construction projects, from home renovations to large infrastructure projects, and everything in between. Once in effect, prompt payment and adjudication will be mandatory. There is no need to sign up or opt in. However, there will be a transition period as these changes come into effect, so it is important to know whether these new rules apply to your project.

## DOES PROMPT PAYMENT OR ADJUDICATION APPLY?



### PROCUREMENT PROCESS:

- › A request for qualifications;
- › A request for quotation;
- › A request for proposals;
- › Or a call for tenders.

you likely have no information about the procurement process and/or prime contract date. If you are lucky, this information may be in your contract, or you can try to get the information during contract negotiations. You can also exercise your right to ask the owner for the information directly. You can send a letter asking for the procurement timing and date of the prime contract under section 39 of the *Construction Act*. The owner has 21 days to respond.

### CASE STUDY:

ABC Contractor Inc. entered into a subcontract with XYZ Corp. on October 15, 2019. The subcontract states that ABC Contractor Inc. entered into the prime contract with the owner on October 1, 2019.

### DOES PROMPT PAYMENT OR ADJUDICATION APPLY?

**ANSWER:** More information is needed. It is possible that a procurement process commenced before October 1, 2019. XYZ Corp. may want to send a request under section 39 of the *Construction Act* to obtain information about the timing of the procurement process.

Whether prompt payment and adjudication apply to a project depends on the timing of the commencement of the procurement process or the timing of entering into the prime contract (this means a contract entered into **directly** with an owner). As a subcontractor (meaning you have a contract with the general contractor for the project),



## HOW DOES PROMPT PAYMENT WORK?

Prompt payment operates on a series of rapid timelines for payments to flow down, starting from the owner down to the last supplier.

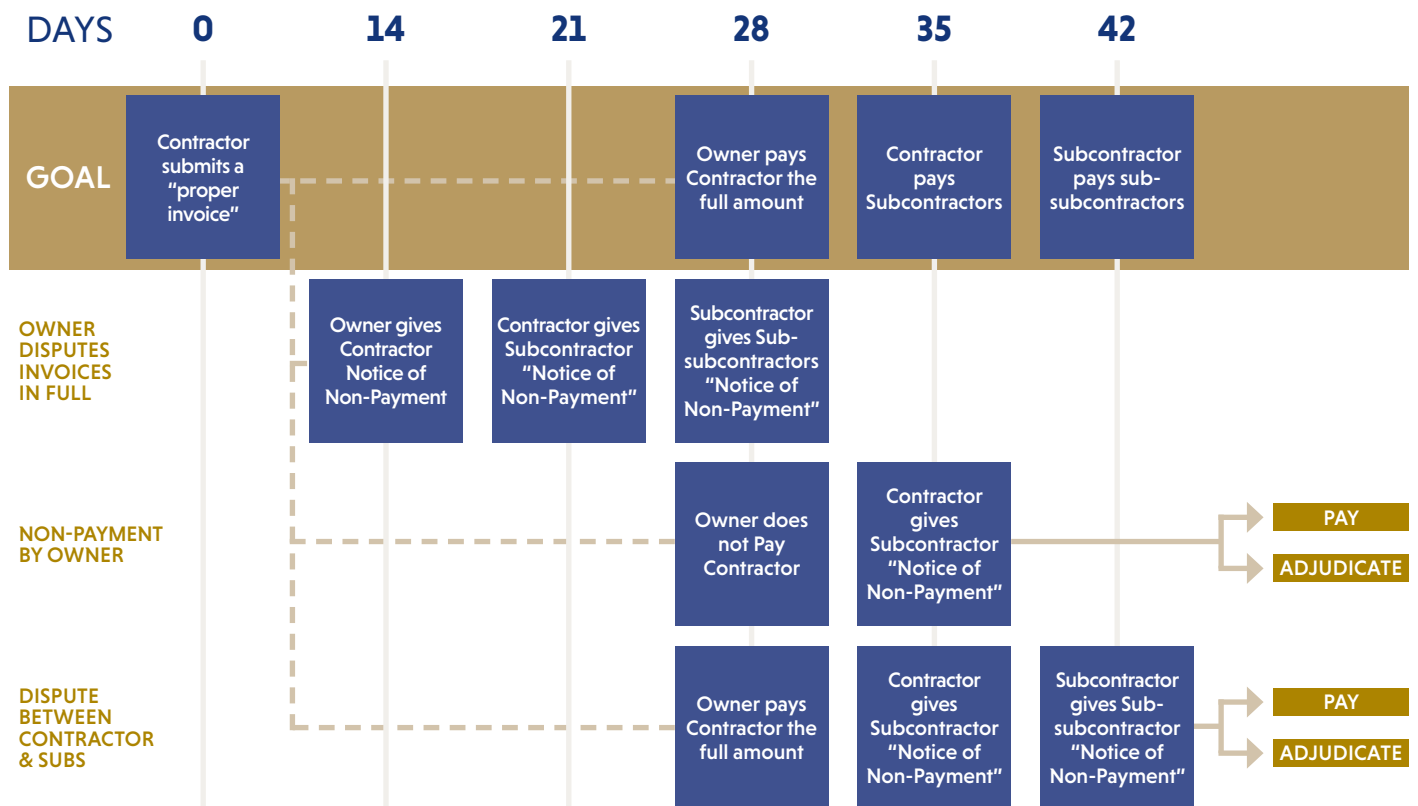
Prompt payment is designed to address late payment,

underpayment and non-payment (for example “pay-if-paid” clauses) to try to force the owner to pay quickly or provide you with a reason that you are not going to be paid. The dates are in calendar days, which include holidays and weekends.

## WHAT ARE THE TIMELINES FOR PROMPT PAYMENT?

The prompt payment clock starts on the delivery of a “proper invoice” from the contractor to the owner. An owner **must** pay the contractor *within 28 calendar days* of

In situations of non-payment from the owner, contractors will no longer be able to rely on “pay-if-paid” clauses in their subcontracts to avoid paying their subcontractors.



receiving a “proper invoice”. Once the contractor receives payment from the owner, the contractor has **7 calendar days** to pay its subcontractors, who then have **7 calendar days** to pay their sub-subcontractors, and the cycle continues.

If an owner does not want to pay all or some of the “proper invoice” it must deliver a “notice of non-payment” to the contractor *within 14 calendar days* of receiving the “proper invoice”. The owner has to provide reasons for the non-payment. The contractor can either pay or dispute the amounts owing to the subcontractor, and can be forced to start an adjudication against the owner.

Despite not receiving funds from the owner, the contractor will either have to pay its subcontractors or deliver a notice of non-payment to the subcontractors. In some cases, the contractor will also have to undertake to commence an adjudication against the owner within 21 days.

As a subcontractor, prompt payment **does not directly apply to your subcontract or the invoices you submit to the contractor**. It is very important that you include terms in your contract that require the contractor to include your invoice in its proper invoices to the owner.



## WHAT ARE THE REQUIREMENTS FOR A "PROPER INVOICE"?

A "proper invoice" needs to include the basic requirements set out in the *Construction Act* and can also include terms that the parties agree to in the contract. However, there are two key exceptions: (1) a "proper invoice" **cannot** include the requirement for payment certification; and (2) a "proper invoice" **cannot** be conditional on owner approval. The *Construction Act* requires that a "proper invoice" include:

- › the contractor's name and address;
- › the date of the proper invoice and the period during which the services or materials were supplied, information identifying the authority, whether in the contract or otherwise, under which the services or materials were supplied;
- › a description, including quantity where appropriate, of the services or materials that were supplied;
- › the amount payable for the services or materials that were supplied, and the payment terms; and
- › the name, title, telephone number and mailing address of the person to whom payment is to be sent.

As a subcontractor, you can expect that the contractor may add other requirements in your contract.

In your subcontracts, you also may want to insist on contractual language requiring the contractor to include (or "carry") your invoices with every "proper invoice" given to the owner. You may also want to find out more about the timing of payment terms in the prime contract (i.e. is the contractor invoicing the owner monthly, bi monthly or based on milestones).

## PRACTICAL TIPS FOR PROMPT PAYMENT FOR SUBCONTRACTORS

- › Negotiate reasonable invoicing terms.
- › Ensure your subcontracts with the contractor require the contractor to include or carry your invoices and change orders with every "proper invoice" given to the owner.
- › Deliver your invoices on time and with the required documentation.
- › Keep track of your deadlines to deliver notices of non-payment (and know which form applies).
- › If you have sub-subcontractors or suppliers, try to get paid by electronic fund transfer so that funds clear your account with enough time (you have **seven calendar days**) to pay your sub-subcontractors or suppliers.
- › Ensure the payment terms in your subcontract with the contractor are passed on to your sub-subcontractors.
- › Coordinate your office staff to be able to process payments quickly.

## WHAT IS ADJUDICATION?

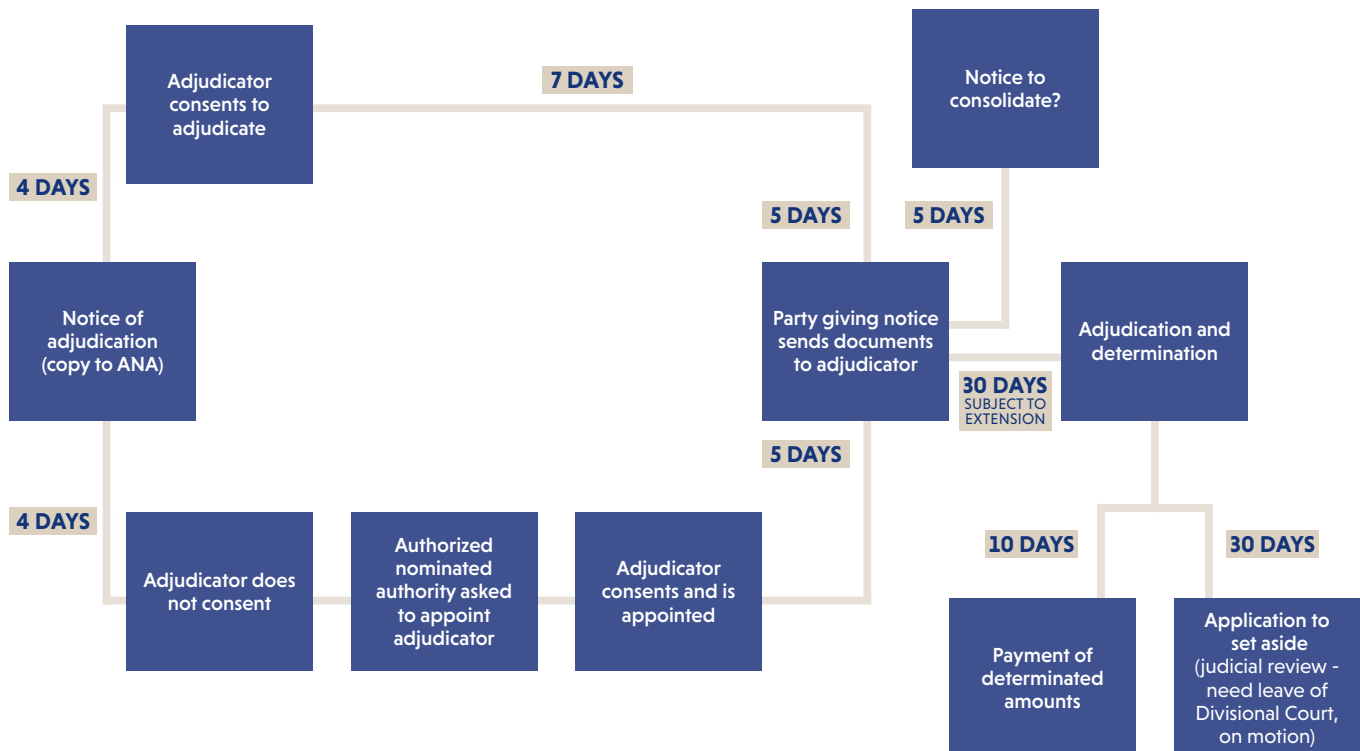
Adjudication is a new dispute resolution process with structured timelines and is intended to swiftly resolve payment disputes during the project. This will force the parties to deal with payment disputes, change orders and payment of holdback disputes quickly. You will also still have your lien rights!

An adjudication can be brought at any time. You will need to be strategic about the timing and subject of your adjudication to best achieve your desired outcome. The following types of disputes can be referred to adjudication:

- › the valuation of services or materials provided under the contract;
- › payment under the contract, including in respect of a change order, whether approved or not, or a proposed change order;
- › disputes that are the subject of a notice of non-payment under the prompt payment scheme; and payment or non-payment of holdback.

Parties can also agree to refer other types of disputes to adjudication.

The timing for an adjudication is as follows:



Once the determination is issued, payment must be made within 10 calendar days or the successful party can suspend work and be entitled to demobilization and remobilization costs.

While adjudication is an interim step, the adjudicator's determination is binding for the life of the contract. In almost all circumstances, the parties share the cost of the adjudicator.

The Authorized Nominating Authority will be called the Ontario Dispute Adjudication for Construction Contracts. More information on the ODACC can be found at [www.odacc.ca](http://www.odacc.ca).

## **STRATEGIES TO PREPARE FOR AN ADJUDICATION:**

- › Parties can create their own rules and procedures for adjudications. Review dispute resolution clauses carefully to see if the owner includes any extra rules. Include any rules that are important to you.
- › Parties can agree to refer other matters to adjudication. Make sure to include in your contract any types of disputes that you would like to have referred to adjudication, and be aware of any inclusions by the owner.
- › Organize documents so that they are easily accessible. Document the progress of the work through reports, photographs and videos. You may need to prepare for or respond to an adjudication on short notice.
- › Plan for vacations and holidays. Another party may strategically start an adjudication during holiday periods or when a key project person is on vacation.

# Contractor's Check List



## UPDATING YOUR CONTRACTS TO COMPLY WITH PROMPT PAYMENT AND ADJUDICATION

The Construction Act includes new requirements for owners and contractors under the prompt payment regime. It also includes adjudication, a new mandatory dispute resolution process. Contracts must be revised to reflect the changes to payment processes and dispute resolution clauses regardless of whether they are custom or standard form agreements. Note that most standard form contracts, such as the CCDC contracts, do not align with the new prompt payment and adjudication rules.

Since certain prompt payment obligations only arise between owners and contractors. The specific contract terms to consider will depend on whether you are a contractor (if you have a contract directly with the owner) or if you are a sub-contractor (if you have a contract with the contractor).

## CONTRACTS BETWEEN CONTRACTORS AND OWNERS

Below are some items that contractors should consider in contracts with owners:

- › Frequency of Payment:
  - Check the timing of when the contractor can submit its invoice to the owner (since invoices do not have to be submitted monthly and the frequency can be dictated by the contract). Owners may make invoices due on milestones or less frequently than monthly. The 28 day deadline for an owner to pay a contractor commences when the “proper invoice” is received.
- › “Proper Invoices” Requirements:
  - Ensure that the contractor can meet the “proper invoice” requirements. Although some basic mandatory requirements for a “proper invoice” are included in the Construction Act, owners are allowed to include additional requirements, for example WSIB clearance certificates, statutory declarations, updated works schedules, project reports, testing and commissioning reports, and possibly even claim waivers related to work billed in the previous payment period.

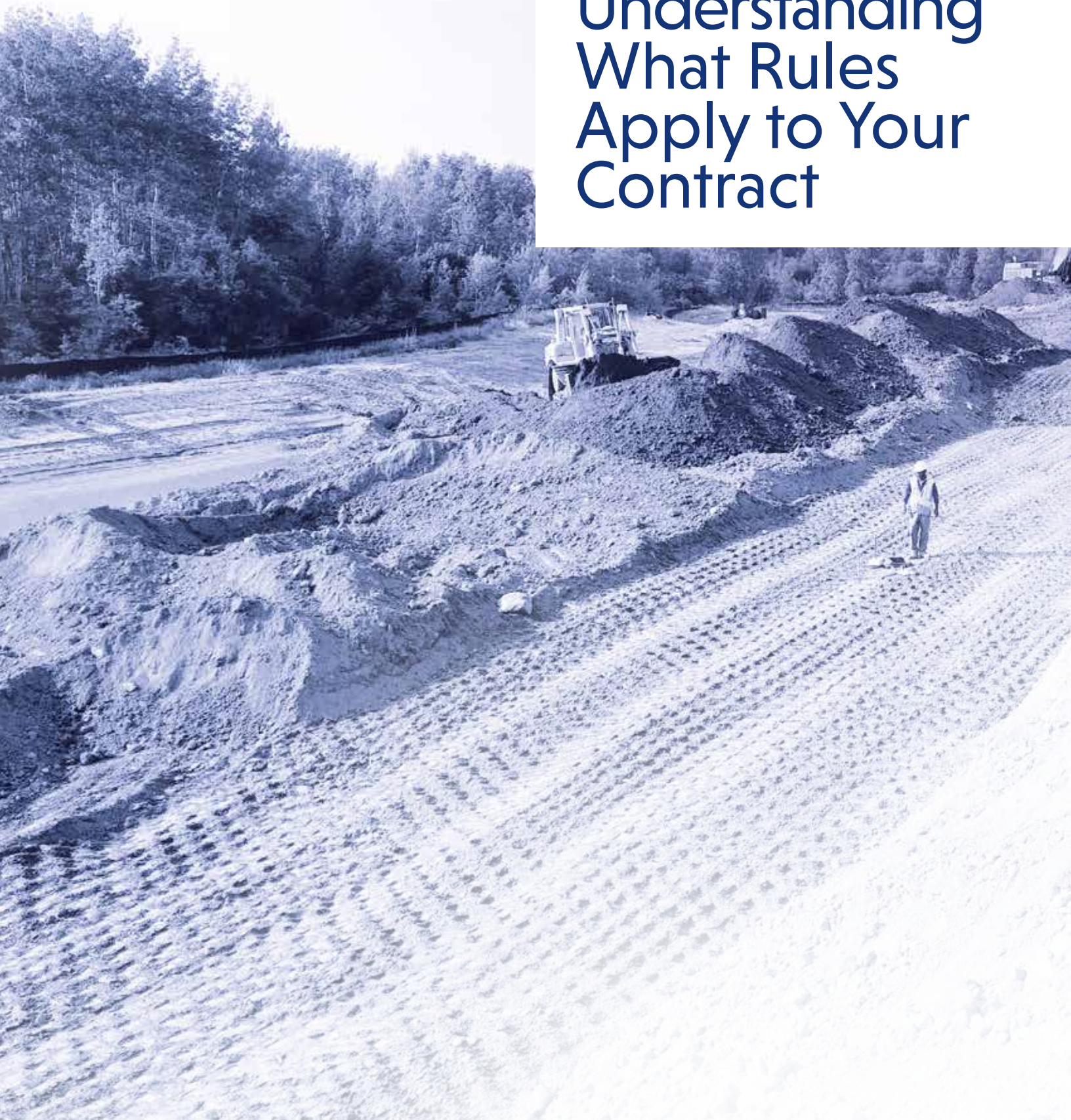
- Consider a clause that requires the owner to advise the contractor within a short period of time (perhaps 3 days) whether or not the invoice submitted is a “proper invoice”. The Construction Act does not require the owner to notify the contractor if the invoice is not a “proper invoice”. This is important because if the invoice is not a “proper invoice”, the deadlines for prompt payment will not apply.
- Ensure that the invoice delivery requirements are practical. The contract should specify who the invoice should be delivered to and how it is to be delivered.
- › Change Orders:
  - Consider including a clause in the contract that provides for change orders to be paid within the prompt payment deadlines. The Construction Act does not specifically set out that the prompt payment requirements apply to change orders.
- › Adjudication:
  - Review the adjudication process in the contract to ensure that the process is practical and fair. The owner may try to distinguish between “claims” and “disputes” to differentiate between when an adjudication can be triggered. It is important to consider whether the adjudication will be confidential and the types of matters that the owner and contractor will agree to adjudicate.
- › Holdback:
  - Owners can release holdback early if provided for in the contract. The contractor may want to have the opportunity to replace monies with a bond or on larger project, the possibility of releasing holdback on a phased or annual basis. If so, this should be included in the contract.

## CONTRACTS BETWEEN CONTRACTORS AND SUBCONTRACTORS

Below are some considerations for contracts between contractors and subcontractors.

- › Invoice Requirements:
  - Contractors should ensure that the subcontractor is required to provide all of the information or documents that the contractor is required to submit with the “proper invoice” to the owner. The contractor should ensure that the subcontractor is required to submit its invoice in advance of the date that the contractor has to submit the “proper invoice” to the owner. This will help the contractor carry the subcontractor’s invoice in each billing to the owner.
  - Subcontractors should consider whether they can meet the requirements of the invoices to be submitted to the contractor.
  - Subcontractors should require the contractors to carry their invoice (in a timely way) to the contractor with the contractor’s proper invoice to be provided to the owner. There is no requirement for the invoice to be carried to the owner. Prompt payment rules do not apply to subcontractor invoices that are not carried by the contractor in its billings to the owner.
- › Notification about the “Proper Invoice”:
  - Subcontractors should try to insist on a clause that requires the contractor to notify the subcontractor of the date that the proper invoice was submitted and the invoice or portion of the subcontractor’s invoice that was included with the contractor’s “proper invoice” to the owner.
  - Ensure that the invoice delivery requirements are practical. The contract should specify who the invoice should be addressed to and the method of delivery.
- › Timing of when the contractor has been paid:
  - Subcontractors should consider a provision that requires the contractor to notify the subcontractor of when it was paid by the owner whether the payment was for the full or part of the contract.
- › Adjudication:
  - Review the adjudication process in the contract to ensure that the process is practical and fair. The owner may try to distinguish between “claims” and “disputes” to differentiate between when an adjudication can be triggered. It is important to consider whether the adjudication will be confidential and the types of matters that the owner and contractor will agree to adjudicate.

# Understanding What Rules Apply to Your Contract



## WHEN THE CHANGES CAME INTO EFFECT:

- (a) The amendments to the construction lien and holdback rules and related regulatory changes came into force on July 1, 2018.
- (b) The prompt payment and adjudication processes, the amendments related to liens against municipalities, and related regulations came into force on October 1, 2019.

The transition rules are set out in section 87.3 of the amended legislation. In order to determine what rules apply to your situation, consider the following transition rules and when the changes came into effect.

## TRANSITION:

Continued application of Construction Lien Act and regulations

87.3 (1) This Act and the regulations, as they read on June 29, 2018, continue to apply with respect to an improvement if,

- (a) A contract for the improvement was entered into before July 1, 2018;
- (b) A procurement process for the improvement was commenced before July 1, 2018 by the owner of the premises; or
- (c) In the case of a premises that is subject to a leasehold interest that was first entered into before July 1, 2018, a contract for the improvement was entered into or a procurement process for the improvement was commenced on or after July 1, 2018 and before the day subsection 19 (1) of Schedule 8 to the Restoring Trust, Transparency and Accountability Act, 2018 came into force. 2018, c. 17, Sched. 8, s. 19 (1).

In sum,

Regime 1:

Contracts where the procurement was commenced prior to July 1, 2018.

These contracts are subject to the prior Construction Lien Act.

Regime 2:

Contracts where the procurement was commenced on or after July 1, 2018 but before October 1, 2019.

These contracts are subject to the new provisions of the Construction Act, which were enacted on July 1, 2018, but are not subject to Proper Invoice and Adjudication provisions.

Regime 3:

Contracts where the procurement was commenced on or after October 1, 2019.

These contracts are subject to the new provisions of the Construction Act, which were enacted on October 1, 2019, and are subject to Proper Invoice and Adjudication provisions.







**GTSWCA**  
Greater Toronto Sewer & Watermain  
Contractors Association

5045 Orbitor Drive, Unit 12, Suite 300, Mississauga, Ontario L4W 4Y4  
**GTSWCA.ORG**