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Prompt Payment Town Hall

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BC Office of the Attorney General

Chris Atchison
President, BCCA

October 28th & November 1, 2021

Hosted By



Agenda

- Overview of Prompt Payment Legislation in Canada
- Ontario Update and Outcomes
- The Industry Perspective in BC
- Ministry of Attorney General - Presentation
- Discussion

Please hold your comments and questions for the Discussion portion of the session.

Prompt Payment Legislation

- Prompt payment legislation is fundamentally about economic sustainability of construction and industry related businesses.
- Workers and contractors need to be paid on time for work that has been done in order to be solvent.
- Intent is to address the non (or unreasonably delayed) payment of contractors and subcontractors who perform & complete construction work on projects.

Prompt Payment Legislation

- Legislation would introduce timelines, rules and certainty for payments & liens in all construction industry sectors, ensuring contractors & subcontractors are paid on time.
- New market challenges for contractors due to COVID-19.
- Construction businesses are struggling with cash-flow, liquidity.

Federal Update

Federal Prompt Payment for Construction Work Act

“The purpose of this Act is to promote the orderly and timely carrying out of construction projects in respect of any federal real property or federal immovable by addressing the non-payment of contractors and subcontractors who perform construction work for the purposes of those projects.”

Tabled in April 2019, Royal assent in June 2019.

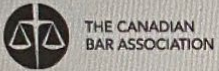
Current status: Federal regulations have been in draft for 18 months, not yet released

Across Canada

Construction, Surety and Design sectors strongly support Prompt Payment legislation as part of a comprehensive reform of the outdated lien legislation found in most provinces (including BC).

Economic crisis and the prioritization of infrastructure investment as a cornerstone of recovery plans make Prompt Payment more important than ever.

Across Canada



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Newfoundland, Labrador,
PEI, Yukon, NWT, Nunavut:
No legislation reform
initiatives underway

Federal
Federal Prompt Payment for Construction Work Act

Quebec
*Pilot project to facilitate payment
to enterprises that are parties to
public construction work contracts
and related public subcontracts
(chapter C-65.1, r. 8.01)*

Ontario
Construction Act

British Columbia
BCLI Report No. 89

Alberta
*Builders' Lien (Prompt Payment)
Amendment Act, 2020*

Saskatchewan
*The Builders' Lien
(Prompt Payment)
Amendment Act, 2018*

Manitoba
*Manitoba Law Reform
Commission's Report
(2018)*

New Brunswick
Bill 12

Nova Scotia
*Builders' Lien and
Prompt Payment Act*

Ontario

- Prompt Payment Legislation came into effect October 1, 2019.
- The only jurisdiction in Canada to enforce.
- Transition provisions have meant slow & gradual roll-out.
- There are signs that the desired culture shift to paying on time is starting to take hold.
- Ontario offers the only comprehensive legislation in Canada with both prompt pay and payment certainty (on larger public projects).

Ontario Update & Outcomes:



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Adjudications in Ontario

Update from ODACC – Report Not yet Published (exp. End of October)

- Top sector for adjudication: 1) Residential; 2) Transportation/Infrastructure; 3) Commercial; 4) Public projects (generally); 5) Industrial
- 45 determinations to date, roughly 105 adjudications commenced so far
- Range of adjudication values - \$1000 to \$3 million
- Most adjudications resolved by written submissions only
- Of 45 determinations, 26 adjudicators were appointed by ODACC and 19 by parties
- Nearly all adjudications resolved within timetable of the Act or as extended on consent



Ontario Update and Outcomes



Dan Leduc

Partner

Norton Rose Fulbright Canada LLP

- It's good for competition
- It's good for business
- It's good for our people and communities

"It's working."

British Columbia

United industry continues to advocate strongly for legislation.



British Columbia

Recent history of prompt payment advocacy in BC:

- Industry stakeholder's letters with 30+ signatories (2018) (2021)
- Private Members Bill (2019)
- Lien reform by BC Law Institute (2020)
 - did not address Prompt Payment
- Prompt Payment or Bust Podcast (Spring 2021)
- Ongoing meetings with the Ministry of the AG, Ministry of Transportation and Infrastructure, Ministry of Labour, Ministry of Jobs, Economic Recovery and innovation
- Private meetings with Premier (2020 & 2021)
- Radio Advertisements (October 2021)
- 5 Town Halls (October & November 2021)

British Columbia

Current Association perspective:

- Provincial government is waiting to take an official position
- BC was one of the first provinces to start consultation papers (2014) but now lags behind other jurisdictions.
- BCs' Standing Committee on Finance and Gov Services recommended the government to investigate in 2020.
- No visible progress

British Columbia

The process takes time:

- Consultation
- Legislative drafting
- Regulatory development including an adjudication authority

If we started today the legislation could be in force in 2023/24.

We need to get started.

Presentation from the Ministry of Attorney General

Tyler Nyvall

Legal Counsel

Legislation and Policy Division

Justice Services Branch

Ministry of the Attorney General

Discussion

Thank you

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