ECABC Response to the Construction Prompt Payment Act Discussion Paper

July 6, 2026

Honourable Bowinn Ma
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The Electrical Contractors Association of British Columbia (ECABC) represents more than 150 members around the province, including open shop and union signatory (IBEW) electrical contractors, line utility contractors, and industry suppliers. Our membership includes small businesses and large contractors, employing thousands of skilled tradespeople and construction professionals. Our members contribute to most construction projects in the province, including: housing, power generation and transmission, hospitals and healthcare, schools, community infrastructure, mines, electrical vehicle charging stations, industrial facilities, and more.

ECABC advocated for prompt payment legislation for approximately a decade. The introduction of the *Construction Prompt Payment Act* on October 7, 2025 and the legislation receiving Royal Assent on November 27, 2025 represent major landmarks and progress for British Columbia's construction sector.

The legislation must be supported by robust, practical and effective regulations in order to ensure the successful implementation of a prompt payment regime for BC's construction industry. ECABC appreciates the opportunity to provide our perspective on behalf of our members on the questions the provincial government is seeking industry feedback on.

The comprehensive implementation of prompt payment is an urgent need for the industry. Onerous and predatory contract clauses and payment timelines have put unreasonable risk and project financing obligations on construction contractors, particularly on trade contractors who sometimes wait months after completing work to be paid.

At the time of this submission, some sub-sectors of the construction industry are experiencing slower market conditions. It would be a misjudgment to exempt any segment of the industry due to a temporary slowdown. The protections and timelines provided by the *Construction Prompt Payment Act* are essential when work is less available, and owners and general contractors can impose unfavourable contract terms onto sub-contractors which are bidding a smaller pool of projects.

ECABC urges the government to expedite the review of feedback on the Discussion Paper, and announce the date the Act will come into force by regulation in Fall 2026.

ECABC's submission is endorsed by its Board of Directors, which consists of owners and senior leaders representing electrical and line utility contractors.

Sincerely

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1. Application and Coming into Force

1. Do you agree that for the Act to be as effective as possible, it should apply as broadly as possible?

Yes. ECABC has consistently advocated for universal prompt payment in BC's construction industry. Legislation should apply equally and evenly across all owners and all types of construction. Any carve outs for certain construction sectors (i.e. residential, etc.) would create unnecessary confusion and uncertainty. It would also likely become a source of conflict. As a principle of fairness, workers and contractors deserve to have the same rights and protections, regardless of the type of building or project they are working on.

2. Are there any unusual or limited instances where it would be impossible to meet the requirements of [the] Act and an exemption would be required? If so, please provide a detailed rationale.

> *a. Please also explain how, in the case of an exemption, any downstream effects (i.e., payment delays to parties down the construction chain) could be prevented or mitigated.*

There are no requirements that would require an exemption.

3. Do you agree with bringing the Act into force in full at one time versus a phased approach? If not, please provide reasons.

The *Construction Prompt Payment Act* should apply to the entire construction industry on the date the Act is determined in force by regulation. Any inconsistent application of the legislation, including the in force date, would create unnecessary confusion and negatively impact its successful implementation.

ECABC strongly discourages the government from considering a delayed implementation date because of a perception that current poor market conditions in a sector make it a "bad time" to change payment requirements. Contractors and skilled tradespeople deserve to be paid in a fair and reasonable timeframe regardless of market conditions. Legislated payment timelines are particularly important during down markets, when contractors are more likely to be forced into accepting onerous and predatory contract clauses due to highly competitive procurement processes.

2. When a Record is Given or Issued, or a Payment is Made

ECABC is supportive of a framework that is based on when invoices and payment have been delivered or received. This is important to ensure that the timelines depicted in the legislation begin in a fair, reasonable and predictable way. While there is significant adoption of electronic communication and payment methods across the industry, one concern is that payers may claim "the cheque is in the mail," when the key determining factor in the legislation should be when payment has been received by the payee, not a

difficult-to-confirm measurement based on when the payer has allegedly issued the payment.

The practical reality is there will always be an element of uncertainty of records being received if not conveyed through a method that includes confirmation/clear evidence, such as an online portal, email, courier, registered mail, etc. The regulations should make effort to curtail this ambiguity by building in fair assumptions for other methods of delivery when government and legal experts believe a deeming provision increases clarity.

There are existing pieces of BC legislation that include provisions of when notices are deemed to have been made and/or received, such as the *Residential Tenancy Act* and others. Of note for the construction industry, the *Builders Lien Act* also includes deeming provisions. This is not to suggest the *Construction Prompt Payment Act* should utilize those specific timelines, but is indicative that this approach has been considered in other legislation/regulations. Given that the purpose of the Act is to ensure the fair and prompt receipt of payment on construction projects[1], shorter prescribed timelines would be consistent with the intended outcome of the legislation. BC could adopt similar principles, updated to reflect widespread adoption of modern technologies.

For example, an invoice or payment transmitted electronically (software, online portal, EFT, e-transfer, etc.) that meets the conditions of the Act and contract terms could be considered "received" either the same day or one (1) day after it is sent. The same assumption could be made for records delivered physically with confirmation (courier/registered mail). A notice sent by regular mail could be presumed received after five (5) days.

Please note, these timelines have been included as examples, and are not intended to be prescriptive requests. ECABC recognizes that there have been some challenges associated with deeming provisions, and encourages the government to take care in developing deeming provisions related to the physical delivery of records or payment.

1. How does the construction industry generally determine when an invoice has been "given" or "delivered" to an owner?

Please refer to the content after the "When a Record is Given or Issued, or a Payment is Made" sub-header.

2. How does the construction industry generally determine when a payment has been "made"?

Please refer to the content after the "When a Record is Given or Issued, or a Payment is Made" sub-header.

[1] "By making sure they are paid promptly and fairly, we are helping projects move forward smoothly and supporting good jobs for people throughout the province," Infrastructure Minister Bowinn Ma (https://news.gov.bc.ca/releases/2025AG0052-000962)

3. If regulations are introduced to clarify these terms, should parties still be allowed to define these matters in their contracts?

No. The Act and supporting regulations should provide a rigid framework that's not open to potential abuse. There is a significant power imbalance between parties, which could be exploited to reduce the efficacy of the legislation. This is the dynamic that has resulted in contractors often being forced to accept onerous or predatory contract clauses.

3. Calculation of Days

The government proposes to keep the Act consistent with how other provincial legislation like the *Builders Lien Act* counts days, as per the guidelines in BC's *Interpretation Act*. Under the current provisions, if a deadline falls on a holiday or another day the business is not normally open (i.e. Saturday), the day does not count, and the deadline moves to the next day the office is open. For example, if a deadline falls on Saturday, March 21, but the office is closed on weekends, the deadline would move to the next normal business day, Monday, March 23.

1. Do you agree that the calculation of days should be based on the rules in the Interpretation Act?

Yes. The calculation of days rules in the *Interpretation Act* provides clear and consistent direction.

2. If not, how should they be calculated?

No further comments.

4. Interest on Late Payments

1. Are there impacts that we should be aware of with the interest rate on late payments being tied to the Supreme Court Registrar's guidelines?

Interest rates must be set at a threshold that sufficiently compensates victims of delayed or withheld payments. The standard Supreme Court Registrar's rate is significantly below the real cost contractors incur when they're forced to borrow at commercial rates (or pay credit card interest rates) to cover their costs while waiting for payment.

If the interest rate is too low, it will negate much of the intent of prompt payment legislation, as the consequences of late payment will not disincentivize poor behaviour.

2. If not tied to the Supreme Court Registrar, how should the rate be established?

ECABC is open to a made-in-BC established interest rate, if it is sufficiently punitive for those who fail to meet legislated payment timelines.

In the absence of creating a new mechanism to effectively disincentivize late payments, ECABC supports replicating the industry standard contracts published by the Canadian Construction Documents Committee (CCDC) and Canadian Construction Association (CCA). These standard contracts are widely used by the sector, and most contractors are already familiar with the terms. The contracts provide for prime plus two per cent for the first 60 days of delayed payment, and prime plus four per cent afterwards (based on the Bank of Canada rate), representing a meaningful increase over the current Supreme Court Registrar's rates.

5. Adjudicators' Qualifications and Fees

1. What minimum qualifications should adjudicators in B.C. be required to have?

ECABC believes the Ontario Dispute Adjudication for Construction Contracts (ODACC) provides a suitable framework for BC to replicate for the establishment of a local adjudication authority and guidelines for adjudicators. ECABC is supportive of 10 years of industry experience being used as a minimum threshold of relevant experience.

Ontario's regulations outline examples of qualifying industry experience (s. 3.(3) of *Ontario Regulation* 264/25), which includes "…an accountant, architect, engineer, quantity surveyor, project manager, arbitrator, or lawyer." ECABC would like to see that list of professional positions/qualifications be extended to also include estimators and superintendents. Individuals with experience in these roles would have extensive construction industry experience in areas commonly subject to adjudication (i.e. change orders).

2. Should B.C.'s qualification requirements be similar to those used in other Canadian jurisdictions?

Generally, yes, with the addition of estimators and superintendents as outlined in our response to Question 1 of this section.

3. Are there any qualifications or continuing education that should be required that are specific to B.C., such as cultural competency or other specialized training?

It is important that adjudicators receive meaningful initial and annual training to ensure they're staying educated on emerging industry trends and informed of any valuable lessons learned from the previous years' adjudications from both BC and other Canadian jurisdictions. Through ECABC's research with contractors and legal experts operating within Ontario's prompt payment regime, it was consistently recommended that B.C. ensure its training for adjudicators is more robust, particularly on an ongoing basis, than what's offered by ODACC.

ECABC does not believe that cultural competency training is relevant for adjudicators or the *Construction Prompt Payment Act*.

Fees

1. What factors should be considered in establishing appropriate fee amounts for adjudications?

The adjudication authority must be able to financially operate independently without undue restraints. In other words, the authority and its adjudicators should not be unable to meet the needs of industry, or be limited in its ability to adjudicate in an effective and timely manner consistent with the terms of the *Construction Prompt Payment Act*.

Both the filing (or referral, as called in Ontario) fee and adjudication fees should be set at rates which are generally consistent with the size of the dispute, which typically also align with the complexity of the issue. ECABC supports ODACC's fee matrix for adjudications when the two parties and adjudicator are not able to come to terms on a rate.

An affordable filing fee is particularly critical to the long-term success of the prompt payment system, as the filing fee cannot become a deterrent to justice – particularly for very small trade contractors.

2. What considerations should be made to ensure adjudication is accessible?

ECABC supports a $0 filing fee for disputes up to $100,000 in value (Ontario has no fee under $50,000 and charges $600 for all disputes over $50,000), provided the authority is

not financially jeopardized by this rate. ECABC believes this should be manageable; in 2025, approximately seven per cent of ODACC's revenue came from referral fees.

ECABC supports a similar principle for the certification fee, with disputes under $100,000 having no fee. Ontario currently charges a $120 fee for certification of determinations where the filing is over $50,000. We do not believe that lifting the threshold for certification would have a meaningful negative impact on the operating budget of the authority, as these fees currently only comprise roughly 0.5% of ODACC's revenue.

6. Readiness and Industry Support

1. What standardized forms should be developed under the Act at the outset?

ECABC believes the following government-produced standard forms would productively support the implementation and adoption of prompt payment:

- A required form for a notice of non-payment
- A required form for notice of an improper invoice
- A required form for a notice of adjudication
- A required form for a response to a notice of adjudication

2. What information should be part of the proper invoice?

The requirements of a proper invoice are outlined in the legislation in section 7(1). ECABC does not believe any further specification is required.

3. What, if any, considerations are missing from this discussion paper that would ensure the success of prompt payment legislation being implemented in B.C.?

ECABC has identified the following items for consideration that are not addressed by the Discussion Paper:

- The regulations must ensure that the content of the Act and the contract supersedes additional requirements imposed by an owner or contractor through the use of software. It is fairly common for submission of an invoice to be mandated in a contract through an online portal or software; however, this should not be a mechanism where the party submitting the invoice is required to provide information above and beyond what is prescribed in the Act/contract. If the portal requires additional information, the party should have the ability to submit its proper invoice by alternative means.

- Clarification is needed in Section 3 to ensure the clause is not used to circumvent the obligations of the Act. The regulations should ensure that the principles of the Act are consistently upheld and apply to all contract models and ownership structures.

- Regulations should clarify there will be a single adjudication authority in British Columbia. This model has been successful in Ontario with ODACC, and ECABC believes that multiple adjudication authorities operating at the outset of the prompt payment system would cause confusion. This could be amended in the future, if needed.

- Ensure there are sufficient protections that allow for contract clauses which limit or prohibit either party's ability to utilize adjudication.

- ECABC supports regulations that limit the length of notices or responses, and provides clear timelines for making a response as empowered by Section 42(2)(l) of the Act.

- ECABC does not support the regulations enabling section 33(1)(b) "subject to the regulations, amend the determination to correct an injustice caused by an oversight on the adjudicator's part." The lack of definition of the term "injustice," combined with the potential for a party to pressure an adjudicator after their decision, would open this clause up to potential abuse. ECABC's perspective is that the intent of the Act is to provide contractors with a means to timely justice through adjudication. Adding a layer of uncertainty through this clause would add a level of unnecessary

uncertainty. Parties who believe that an adjudicator has erred in their determination would have the ability to appeal the decision through arbitration or the courts.

4. *What tools, data, guidance materials, or engagement mechanisms would support effective implementation of the Act?*

ECABC recommends the following principles be embedded in regulations and/or operations of the authority:

- Requirement of the adjudication authority to publish a detailed annual report including: number of approved adjudicators, average length of adjudication, percentage of adjudications completed within legislated timelines, number and average length of extensions, number of adjudications exceeding certain thresholds (i.e. 60 days, 120 days, etc.), reporting on number of disputes by value, and analysis of determination broken down by dispute value.

- Adjudication decisions should be posted on the adjudication authority's website, with commercially sensitive and identifying information redacted (consistent with the application of BC's *Freedom of Information and Protection of Privacy Act*).

- Mandatory review of the legislation and regulations five years after the in-force date of the Act

- B.C. should formally begin the process of modernizing the *Builders' Lien Act*, including ensuring it is fully compatible with the *Construction Prompt Payment Act* and modern practices of BC's construction industry.