

Construction Law Webinar:
***Avoiding Pitfalls in the 2026 Amendments
to the Ontario Construction Act***

June 23, 2026

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Agenda - January 1, 2026 Amendments to the Ontario *Construction Act*, R.S.O. 1990, c. C.30:

1. Prompt Payment
2. Mandatory Annual Holdback Release
3. Notice of Termination
4. Interim Adjudication
5. Trust Provisions
6. Design Professionals

PROMPT PAYMENT

Prompt Payment: Recent History

- October 1, 2019: significant amendments to *Construction Act*
- Introduced Prompt Payment and Interim Adjudication provisions
- At that time, statutory requirements for “Proper Invoices” were introduced
- Such requirements, plus any additional requirements as per contract, have to be met in order to trigger the Prompt Payment timelines

Prompt Payment: Recent History

- Crucial to meet requirements - once Proper Invoice received by Owner, strict deadlines are triggered
- Owner required to pay invoiced amount within 28 days or issue Notice of Non-Payment within 14 days

Prompt Payment: 2026 Amendments

Requirements for Proper Invoices

- Several requirements were amended by introducing:
 - possibility of milestone payments
 - clarifications regarding necessary information to identify applicable contract or other authorization for the work
 - additional details regarding the delivery of payment
 - new requirement for “any other information that is necessary for the proper functioning of the owner’s accounts payable system that the owner reasonably requests”

Prompt Payment: 2026 Amendments

Requirements for Proper Invoices

PART I.1 PROMPT PAYMENT

Definition, “proper invoice”

6.1 (1) In this Part,

“proper invoice” means a written bill or other request for payment for services or materials in respect of an improvement under a contract, if it contains the following information and, subject to subsection 6.3 (2), meets any other requirements that the contract specifies:

1. The contractor’s name and address.
2. The date of the **proper** invoice and the period, milestone or other contractual payment entitlement **during to** which the ~~services or materials were supplied~~ invoice relates.

Prompt Payment: 2026 Amendments

Requirements for Proper Invoices

3. Information identifying the ~~authority, whether in the contract or otherwise,~~ contract or other authorization under which the services or materials were supplied, such as a contract number, contract line item number or purchase order number.
4. A description, including quantity where appropriate, of the services or materials that were supplied.
5. The amount payable for the services or materials that were supplied, and the payment terms.
6. The name, title, mailing address and telephone number ~~and mailing address~~ of the person to whom payment is to be sent or, if payment is to be sent to an office or department, its name, mailing address and telephone number.

Prompt Payment: 2026 Amendments

Requirements for Proper Invoices

- 6.1 Any other information that is necessary for the proper functioning of the owner's accounts payable system that the owner reasonably requests.
7. Any other information that may be prescribed.

Prompt Payment: 2026 Amendments

“Deemed” Proper Invoice

- Prior to January 1, 2026, an invoice that failed to contain each required element was not considered to be a Proper Invoice
- As a result, the Prompt Payment timelines would not be triggered
- Allowed Owners to stay silent regarding any inadequacies in the form of the invoice
- Owner could delay payment to Contractor based on technical deficiencies, without notice to Contractor

Prompt Payment: 2026 Amendments

“Deemed” Proper Invoice

- Section 6.1(2) – new provision introduced as part of 2026 amendments
- Affects consequences of deficient invoice
- If invoice does not meet requirements of Proper Invoice, Owner must notify Contractor in writing within 7 days of receipt
- Notification must specify alleged deficiency(ies) and what is required to address it(them)
- Otherwise, invoice will be deemed to be Proper Invoice

Prompt Payment: 2026 Amendments

“Deemed” Proper Invoice

- Imposes new procedural obligation on Owners
- Shifts burden of identifying invoice deficiencies to Owner
- Ensures technical invoice deficiencies are identified and addressed early in payment cycle
- Issue(s) with invoice can no longer be used by Owner as grounds to avoid or delay payment obligations

MANDATORY ANNUAL HOLBDBACK RELEASE

Holdback Release: Recent History

- Prior to January 1, 2026, annual or phased holdback releases were strictly optional
- Only triggered if expressly permitted by Contract, project timeline > one year, and Contract value = \$10 million or more

Holdback Release: 2026 Amendments

Mandatory Annual Holdback Release

- 10% statutory holdback must be released annually for all Contracts (subject to applicable transition provisions) – Section 26(2)
- Repealed provision that previously allowed Owners to refuse to pay part or all of holdback by publishing Notice of Non-Payment of Holdback – option no longer available
- Similarly, also repealed provisions that previously allowed Contractors and Subcontractors to rely on Owner's Notice of Non-Payment of Holdback to refuse payment of holdback to respective payees

Holdback Release: 2026 Amendments

Mandatory Annual Holdback Release

- Date of Prime Contract is of crucial importance
- Anniversary of this date triggers Owner's notice and payment obligations
- Determines deadlines for such steps each year
- Owner must now:
 1. within 14 days of Contract anniversary date, publish Notice of Annual Release of Holdback specifying amount Owner intends to pay – Section 26(3);

Holdback Release: 2026 Amendments

Mandatory Annual Holdback Release

2. between 60 – 74 days after publication of Notice of Annual Release of Holdback, pay Contractor entire holdback accrued over preceding year, unless Construction Lien has been preserved or perfected – Section 26(4)

AND

- (a) if Lien attaches to premises,
 1. Lien has not been discharged, and
 2. An Order declaring that Lien has expired, discharging Lien or vacating registration of Claim for Lien or Certificate of Action has not been registered

Holdback Release: 2026 Amendments

Mandatory Annual Holdback Release

OR

(b) if Lien does not attach to premises,

1. Lien has not been satisfied,
2. Lien has not been discharged, and
3. An Order declaring that Lien has expired or vacating Lien has not been made

Holdback Release: 2026 Amendments

Mandatory Annual Holdback Release

- Within 14 days after receiving holdback from Owner, Contractor must pay each Subcontractor their accrued holdback from preceding year, unless lien has been preserved or perfected in respect of Subcontract and Section 26(4)(a) or (b) circumstances apply
- Subcontractors have corresponding holdback payment obligations to Sub-Subcontractors (14 days)

Holdback Release: 2026 Amendments

Mandatory Annual Holdback Release

- Section 26(7)
- If Owner, Contractor or Subcontractor unable to pay holdback, payment must be made no later than 14 days after the circumstances preventing payment cease to apply

Holdback Release: 2026 Amendments

Mandatory Annual Holdback Release – Transition Provisions – Section 87.4(4)

- If Contract before Jan 1, 2026, mandatory annual holdback release provisions still apply with the following modifications:
 1. 1st Contract anniversary date = 2nd anniversary of Contract date that follows Jan 1, 2026
 - e.g. If Contract entered into July 31, 2025, 1st applicable Contract anniversary date = July 31, 2027

Holdback Release: 2026 Amendments

Mandatory Annual Holdback Release – Transition Provisions – Section 87.4(4)

2. Requirement to pay holdback by Owner, Contractor and Subcontractor on 1st Contract anniversary date includes all holdback accrued before that date
3. Paragraphs 1 and 2 apply to a Contract for an improvement regardless of any other Contract or Subcontract for the improvement entered into on or after January 1, 2026

Holdback Release: 2026 Amendments

Exceptions

- For balance of holdback remaining upon project completion or Contract completed prior to 1st anniversary date for annual release of holdback, pre-Jan 1, 2026 rules regarding payment of holdback following publication of Certificate of Substantial Performance continue to apply

Holdback Release: 2026 Amendments

Exceptions

- Section 26(8) - Payment of Holdback Not Otherwise Paid
- All holdback not paid/payable as per mandatory annual holdback release provisions must be paid by Owner within 14 days after all Liens have expired, or been satisfied, discharged or provided for under *Act*
- Contractor to pay Subcontractor within 14 days of payment by Owner
- Subcontractor shall pay Sub-Subcontractor within 14 days of payment by Contractor

NOTICE OF TERMINATION

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Notice of Termination: Recent History

- Prior to January 1, 2026, if a Contract was terminated, either the Owner or Contractor or other person whose lien was subject to expiry was required to publish a Notice of Termination in prescribed form
- The date on which the Contract was considered terminated was the termination date specified in the Notice of Termination

Notice of Termination: 2026 Amendments

- Within 7 days after Contract terminated, Owner or Contractor or other person whose lien is subject to expiry shall publish Notice of Termination in prescribed form
- Publication date of Notice of Termination is considered Contract termination date for the purposes of *Act*, including, determining start of applicable lien period
- Note: publishing Notice of Termination does not prevent a party from disputing validity of termination

INTERIM ADJUDICATION

Interim Adjudication: 2026 Amendments

Expanded Scope of Adjudication

- Prior to January 1, 2026, only disputes enumerated in ss. 13.5(1)–(3) could be adjudicated
- Parties may now adjudicate: disputes over scope of work, contract price changes, and extensions of time
- Payment bond claimants under s. 85.1(4) may now adjudicate payment disputes

Extended Availability – Post-Completion

- Previously, Notice of Adjudication had to be delivered before contract completion (unless parties agreed otherwise)
- Parties now have 90 days after completion, abandonment, or termination to commence adjudication

Interim Adjudication: 2026 Amendments

Private Adjudicators

- Parties may jointly appoint a private adjudicator (not from the ODACC roster), provided that individual is qualified and certified by ODACC
- Private adjudicators subject to the same code of conduct as roster adjudicators; fees governed by parties' agreement

Jurisdictional Objections – New Procedure

- New s. 13.12.1 introduces formal procedure for challenging an adjudicator's jurisdiction
- Jurisdictional objections must be raised at the earliest opportunity – failure to do so may need to be justified if judicial review is subsequently sought

TRUST PROVISIONS

Trust Provisions: 2026 Amendments

Holdback Confirmed as Trust Funds

- Amendments explicitly confirm that amounts held as statutory holdback constitute trust funds under the Act
- May have significant implications in insolvency proceedings and priority disputes

Joinder of Lien and Trust Claims

- O. Reg. 302/18 amended – lien claims and trust claims may now be combined in a single court proceeding where they arise from the same or related facts
- Resolves longstanding uncertainty that has been debated since the 2019 amendments; avoids need for parallel proceedings

Trust Provisions: 2026 Amendments

Annual Release and Cascading Trust Obligations

- Owner must publish Notice of Annual Release of Holdback within 14 days of each Contract anniversary date – Section 26(3)
- Owner must pay accrued holdback to Contractor between 60 – 74 days after publication of Notice – Section 26(4)
- Within 14 days of receiving holdback from Owner, Contractor must pay accrued holdback to each Subcontractor; Subcontractors have corresponding obligations to Sub-Subcontractors
- Failure to comply with cascading payment obligations may give rise to trust liability

DESIGN PROFESSIONALS

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Design Professionals: 2026 Amendments

The Gap in Prior Law

- s. 14(1) created a lien for persons who “supply services or materials to an improvement” – presupposed an improvement had actually commenced
- Architects, engineers and others performing pre-construction design work often had no lien rights if a project was cancelled before construction began

New s. 14(4) – Deemed Lien for Design Services

- A design, plan, drawing or specification is now deemed to be a supply of services to the improvement, even where the improvement never proceeds
- Triggered by Owner’s retention of a holdback for design services on a planned improvement that does not proceed – exceptions apply

QUESTIONS?

Wilson Vukelich LLP can help ensure that your construction matters are handled effectively and efficiently, and in a manner that is reflective of new legal developments and obligations. If you have any questions or require further information, please contact:

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