



Standard Canadian Construction Contract Revised – What Does this Mean for Construction Companies and Project Owners? (Part II)

July 2022 Construction Alert

Construction companies and project owners in Canada are well-acquainted with the Canadian Construction Documents Committee (“CCDC”), which establishes standard form construction contracts for use across Canada. The most commonly used standard form construction contract is arguably the CCDC 2 (2008). In December 2020, the CCDC released a 2020 version of the CCDC 2 to replace the 2008 version. As of Thursday June 30, 2022, the CCDC ceased supporting the 2008 version. As such, for those construction companies and project owners that have continued to use the 2008 version, it is time to switch.

As part of a three-part series, we will be reviewing the CCDC 2 (2020) and what the update means for construction companies and project owners. In this, Part Two of the series, we will be addressing four of the multiple revisions. Specifically, in this emailer we will be addressing amendments to the following sections of the contract: 1) Applications for Payment and Payments; 2) Payment of Holdback; 3) Cash Allowances; and 4) Change Directives.

Applications for Payment and Payments

In 2019, Ontario’s *Construction Act* underwent significant amendments, which included the addition of a prompt payment regime that introduced, among other things, strict deadlines for payments to be made to those who have supplied services or

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materials to an improvement. Since that time, prompt payment legislation is being enacted in other provinces across Canada.

The CCDC 2 (2020) has added "Payment Legislation" as a new defined term and various sections of the contract have been revised to align with the requirements of prompt payment legislation.

Payment applications are still required to be submitted monthly, however, the CCDC 2 (2020) now requires that they be submitted to the Owner and the Consultant "simultaneously" and that they comply with the applicable Payment Legislation, which in Ontario means that they must meet the requirements of a "proper invoice" under the *Construction Act*. The CCDC 2 (2020) now also specifies that evidence of compliance with workers' compensation legislation must be included with each application for payment and a CCDC 9A Statutory Declaration must be included with each application for payment submitted after the first payment has been made.

The CCDC 2 (2020) now specifies that the Owner provide payment to the Contractor on or before 28 calendar days after receipt of the payment application by the Owner and the Consultant, which reflects the same payment period as specified in the prompt payment provisions of the *Construction Act*. The CCDC 2 (2020) also requires the Owner (as opposed to the Consultant) to promptly issue to the Contractor a written notice in compliance with Payment Legislation if the Consultant rejects the payment application or certifies payment for a different amount than applied for, which aligns with the *Construction Act* requirement that the Owner provide a "notice of non-payment" to the Contractor in these circumstances.

Payment of Holdback

The 2008 version of the CCDC 2 specified that the statutory holdback was due and payable by the Owner on the first calendar day following the expiration of the holdback period stipulated in the applicable lien legislation. In contrast, the CCDC 2 (2020)

specifies that the statutory holdback shall become due and payable to the Contractor no later than 10 Working Days following the expiration of the holdback period stipulated in the applicable lien legislation, subject to the requirements of any Payment Legislation. Since the *Construction Act* requires the holdback to be paid upon expiry of the lien period, this means that the 10-day payment period specified in the CCDC 2 (2020) does not apply to Ontario construction projects.

Cash Allowances

The CCDC 2 (2020) allows unexpended cash allowances to be reallocated to cover any shortfall under any other cash allowance, at the direction of the Consultant. If this occurs, no additional amount shall be added to the Contract Price for overhead and profit. The Contractor shall only be entitled to compensation for any additional costs incurred, plus overhead and profit on the additional costs, where the actual cost of the Work under all cash allowances exceeds the total amount of all cash allowances.

Change Directives

The CCDC 2 (2020) includes revisions to the costs that can be claimed with respect to a Change Directive and now specifies that the cost of performing work under a Change Directive shall be limited to only those costs that contribute directly to the implementation of the Change Directive.

The Contractor is now entitled to claim the following costs:

- wages and benefits for trade labour in the direct employ of the Contractor;
- wages and benefits for the Contractor's office personnel engaged in a technical capacity;
- in the absence of agreed rates, cost less salvage value of Construction Equipment, Temporary Work and tools, exclusive of hand tools under \$1,000;
- rental cost of Construction Equipment, Temporary Work and tools, exclusive of hand tools under \$1,000;
- losses and expenses sustained by the Contractor for matters which are the subject of insurance under the policies prescribed in GC 11.1 – INSURANCE, when such

losses and expenses are not recoverable because the amounts are in excess of collectible amounts or within the deductible amounts;

- legal costs incurred by the Contractor in relation to the performance of the Work, provided that they are not relating to a dispute between the Owner and the Contractor, the result of negligent acts or omissions of the Contractor, or the result of a breach of the contract by the Contractor;
- cost of auditing when requested by the Owner; and
- cost of project specific information technology in accordance with the method determined by the parties to the contract.

The Contractor is no longer permitted to claim the cost of wages and benefits for personnel engaged in the preparation or review of Shop Drawings, fabrication drawings and coordination drawings, or for personnel engaged in the processing of changes in the Work.

Contact Us

Before switching over to the CCDC 2 (2020), we recommend that construction companies and project owners review and consider the implications of the changes to the standard form contract. If you would like more information or guidance in regard to using or amending the standard form construction contract, [please contact our firm](#).

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