

## Construction Act / Construction Lien Act

©2024, 2020, 2018 Ontario Association of Architects (OAA). OAA members in good standing may reproduce or distribute this Practice Tip provided this copyright notice is affixed to any reproduced or distributed copy. No rights are granted to any other person, except with express prior written consent from the OAA. The OAA reserves all other rights.

### Summary

The Practice Tip 10 series of Practice Tips covers procedures required under the *Construction Act (CA)* and the *Construction Lien Act (CLA)* related to the following situations:

1. Substantial performance of the contract
2. Total completion of a subcontract
3. Contract deemed completed
4. Early release of Holdback on:
  - (a) An annual basis
  - (b) Phased basis
5. Prompt payment

In order to provide services and prepare the prescribed documentation related to the various scenarios noted above, the Certificate of Practice holder must be retained to provide Construction Phase Services, including at a minimum General Review and Payment Certification for the entire phase.

6. Adjudication

Depending on the nature of what is being adjudicated, in order to provide services and prepare the prescribed documentation related to the various scenarios noted above, the holder may need to have been retained to provide Construction Phase Services. There are scenarios where a holder not providing Construction Phase Services may be requested, by a party to an adjudication, to provide an opinion about the intent of other holder's construction documents or their adequacy.

### General

#### PT.10.0 Construction Act / Construction Lien Act

Practice Tip PT.10.0 serves as an index to the other Practice Tips in the series, helping users to determine which are pertinent to their situation.

#### PT.10.1 Construction Lien Act – Procedures for the Release of Statutory Lien Holdbacks

Practice Tip PT.10.1 covers procedures under the *Construction Lien Act* as it read on June 29, 2018 for:

1. Substantial performance of the contract
2. Total completion of a subcontract
3. Contract deemed completed.

According to the transition rules in 87.3 subsection (1), the *CLA* as it read on June 29, 2018 continues to apply with respect to a project 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.
- (2) For greater certainty, clauses (1) (a) and (c) apply regardless of when any subcontract under the contract was entered into.

For the purposes of this Act, a procurement process is commenced on the earliest of the making of,

- (a) a request for qualifications;
- (b) a request for quotation;
- (c) a request for proposals; or
- (d) a call for tenders.

Note: As time passes, fewer and fewer projects being done under the CLA remain incomplete. At this point, it is only the largest projects, or projects which were delayed due to COVID-19, that likely remain. At some point, PT.10.1 will be withdrawn.

### **PT.10.2 Construction Act – Procedures for Release of Statutory Lien Holdbacks**

Practice Tip PT.10.2 covers procedures under the *Construction Act* for the same conditions as PT10.1:

1. Substantial performance of the contract
2. Total completion of a subcontract
3. Contract deemed completed,

Also, procedures related to:

4. Early release of Holdback on
  - (a) Annual basis
  - (b) Phased basis

According to the transition rules in 87.3 subsection (1), the CA applies with respect to a project which **does not** meet the following,

- (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.
- (2) For greater certainty, clauses (1) (a) and (c) apply regardless of when any subcontract under the contract was entered into.

For the purposes of this Act, a procurement process is commenced on the earliest of the making of,

- (a) a request for qualifications;
- (b) a request for quotation;
- (c) a request for proposals; or
- (d) a call for tenders.

### **PT.10.3 Construction Act – Prompt Payment**

Practice Tip PT10.3 covers procedures under the *Construction Act* (CA) Part 1.1 Prompt Payment provisions which came into force on October 1, 2019 and provide for payments related to an improvement to be made within 28 days of the receipt of a *proper invoice* unless a notice of non-payment is issued within 14 days.

Members need to be aware of the provisions as they relate to a contract between a Certificate of Practice holder and a client and the contracts with subconsultants in addition to those that affect the administration of construction contracts.

#### **PT.10.4 Construction Act - OAA Members Acting as Adjudicators**

Practice Tip 10.4 provides information to OAA members considering providing services as a certified adjudicator under the *Construction Act* provisions which came into force on October 1, 2019.

#### **PT.10.5 Construction Act – Interim Adjudication**

Practice Tip PT.10.5 covers procedures and changes related to *Construction Act* (CA) Part 11.1 Construction Dispute Interim Adjudication provisions came into force on October 1, 2019.

Holders may be involved in adjudications with respect to the architectural services contract between the holder and the client. Whether the adjudication is initiated by choice or because it is required following non-payment by the client, the holder will be a party to the adjudication.

Holders may find themselves involved as a respondent in adjudications with respect to any subconsultant contracts they are party to.

Holders may also be involved in assisting in adjudications with respect to the construction contract between the contractor and the owner. In such a case, the holder will be assisting one party or the other.

PT.10.5 addresses these and other scenarios. Interim adjudication was created as a quick means of keeping the cash flowing in a construction pyramid. To achieve this, the timelines are tight, and compliance may be disruptive of the normal workflow in a practice.

---

*The OAA does not provide legal, insurance, or accounting advice. Readers are advised to consult their own legal, accounting, or insurance representatives to obtain suitable professional advice in those regards.*

---