

Construction Act / Construction Lien Act

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Summary

Practice Tip 10 is a series of Practice Tips covering procedures required under the *Construction Act (CA)* and the *Construction Lien Act (CLA)* related to the following scenarios:

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 Architect or Licensed Technologist OAA 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 Architect or Licensed Technologist OAA may need to have been retained to provide Construction Phase Services. There are scenarios where an architect not providing Construction Phase Services may be requested by a party to an adjudication to provide an opinion about the intent of construction documents or their adequacy.

General

PT.10.1

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.

PT.10.2

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

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

plus 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

PT.10.3 covers procedures and changes related to 5. Prompt Payment.

It will be released at a later date as the CA contains Part 1.1 Prompt Payment and Part 11.1 Construction Dispute Interim Adjudication which came into force on October 1, 2019.

PT.10.4

PT.10.4 provides information to Architects and Licensed Technologists OAA considering providing services as a certified adjudicator under the *Construction Act* which came into force on October 1, 2019.

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.
