

Hearings, Holdbacks, and Housekeeping: Upcoming Changes to the Construction Act Regulations

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Key Takeaway

Proposed changes to the *Construction Act* regulations are now available for public consultation.

Application To Your Organization

As noted in [CCN No. 2024-12-03](#) released late last year, amendments to the *Construction Act* are forthcoming pending proclamation by the Lieutenant Governor. With the August 25, 2025, release of draft amendments to the *Construction Act* regulations¹ (Draft Regulations) the construction industry in Ontario is inching closer to another sea change in its legislative framework.²

The Draft Regulations are open for public comment until September 24, 2025.

In this Cassels Construction Note, we highlight the key changes that the Draft Regulations will bring to construction projects in Ontario:

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- [Matters Eligible for Adjudication](#)
- [Private Adjudicators](#)
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Public Access to Adjudication Determinations

One of the most significant changes in the Draft Regulations is the introduction of public access to adjudication determinations. The Draft Regulations propose that ODACC³ be required to publish a copy of every adjudication determination on its website. The public-facing adjudication determinations will be anonymized, removing any identifying information of the parties; however, the name of the adjudicator will be made public.

This requirement will apply only to determinations from adjudications that are commenced⁴ following the one-year anniversary of the date on which the Draft Regulations come into force.

We anticipate that the publication of adjudication determinations (which remain interim binding pursuant to section 13.15 of the *Construction Act*) will promote greater consistency and predictability in the adjudication process, as parties and adjudicators will be able to review past determinations on analogous disputes, and assess the risks and potential benefits of proceeding to adjudication.

Matters Eligible for Adjudication

As anticipated, the list of matters eligible to be adjudicated has been moved into the Draft Regulations. Despite this, the list of eligible matters has generally remained consistent – centering on disputes about payment – with two notable exceptions:

1. because the notice of non-payment of holdback concept and phased release of holdback concepts are being removed from the *Construction Act*, the list of adjudication-eligible matters now includes a general reference that any dispute about the payment of holdback can be referred to an adjudication; and
2. any of the following matters may be determined by an adjudicator if such a determination is necessary to resolve the primary dispute about payment: (a) the scope of work under a contract; (b) a request for a change in the contract price; and (c) a request for an extension of time to complete the work prescribed by the contract.

Private Adjudicators

As noted in our prior CCN, the amendments to the *Construction Act* will allow parties to select a private

adjudicator rather than someone from the ODACC registry.

The Draft Regulations set out additional requirements for the use of private adjudicators including that private adjudicators:

1. must charge minimum rates of \$1,000 per hour; and
2. cannot sit on the ODACC roster at the same time that they market themselves as private adjudicators. As a result, private adjudicators cannot be selected by ODACC if the parties cannot agree on the adjudicator.

The Discussion Paper, released concurrently with the Draft Regulations by the Ministry of the Attorney General, provides further context about requirements for use of private adjudicators, including that any adjudicator who charges \$1,000.00 or more per hour (whether from the ODACC registry or the private registry), will pay ODACC a fixed Administrative Fee of \$350 per hour, with this Administrative Fee for private adjudicators to be capped at \$30,000 per adjudication.

Ultimately, the ability to select a private adjudicator may provide parties with greater choice and flexibility when selecting an adjudicator. However, given the prescribed minimum charge out rate, we anticipate that parties will reserve the selection of private adjudicate for more complex, high-dollar value adjudications.

Joining Lien Claims and Trust Claims

If unchanged, the Draft Regulations would definitively clarify that parties can now include a lien claim and a claim for breach of trust in a single action. This amendment will remove the uncertainty and confusion over this topic that has permeated the industry since the last significant amendments to the *Construction Act* in 2018. Notably, to reinforce the authority of the court to control its own process, the Draft Regulations also clarify that this change does not affect the application of Rule 5.05 of the *Rules of Civil Procedure*, which allows the court to sever claims or require separate trials, if necessary.

Form of Notice of Annual Release of Holdback

As we explained in our prior CCN, the holdback release regime is being converted to a mandatory annual release of holdback. A key piece of this regime will be the owner's publication of an annual notice setting out the holdback that the owner intends to release. The Draft Regulations confirm that the (soon-to-be) former Form 6 – Notice of for Non-Payment of Holdback will be replaced by a new Form 6 – Notice of Annual Release of Holdback; however, a draft of the new Form 6 has not yet been published.

Sub-subcontractor Bond Claims

The Discussion Paper addresses an important amendment to Form 31 – Labour and Material Payment Bond. The proposal in the Discussion Paper is to amend Form 31 to confirm that sub-subcontractors have a right to claim under a labour and material payment bond for the recovery of their holdback, even if they do not preserve or perfect a lien. Currently, the language in Form 31 suggests that a sub-subcontractor may be required to first prove that it has a subsisting lien or a preserved lien to recover under the bond.

Eligible Construction Trade Newspapers

The Draft Regulations revise the definition of “construction trade newspaper,” to specifically reference three platforms that industry participants can use to publish certificates and notices as required by the *Construction Act*: the Daily Commercial News, Link2Build, and Ontario Construction News.

When the Draft Regulations come into force, certificates (e.g. a certificate of substantial performance) or notices (e.g., a notice of termination) that are published in any other “construction trade newspaper” will be invalid.

Here to Help

For more information on the changes set out above as well as other changes to the *Construction Act*, or to discuss the impacts of the Draft Regulations on your organization, do not hesitate to reach out to anyone on the [Cassels Construction Law Team](#). We are here to help.

¹ The Draft Regulations and the Ontario Government’s associated Discussion Paper can be viewed on the Ontario Regulatory Registry website at <https://www.regulatoryregistry.gov.on.ca/proposal/51633>.

² We anticipate that once the consultation process regarding the Draft Regulations is complete, proclamation to bring all of the proposed amendments to the *Construction Act* (including amendments to the regulations) will follow shortly thereafter.

³ Ontario Dispute Adjudication of Construction Contracts, the prescribed authorized nominating authority for the administration of adjudication proceedings in Ontario.

⁴ To commence an adjudication, a party to a contract or subcontract must issue a written notice of adjudication in accordance with Section 13.7 of the *Construction*

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