

The Construction Act: What's New in the New Year?

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Key Takeaways

Key amendments to the *Construction Act* came into force on January 1, 2026, including: mandatory annual release of holdback, adjustments to the rules for “proper invoices,” and adjudications.

Application To Your Organization

On January 1, 2026, certain amendments to Ontario's *Construction Act* (the Act) came into force, which were introduced by the *Building Ontario For You Act (Budget Measures), 2024* ([Bill 216](#)), and the *Fighting Delays, Building Faster Act, 2025* ([Bill 60](#)) (together, the Bills).

In this follow-up to our previous Cassels Construction Notes, [CCN No. 2024-12-03](#) and [CCN No. 2025-09-03](#), we drill down on the following key amendments that came into force on January 1, 2026 (the Amendments), and their impact on construction projects and contracts in Ontario:

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Deemed Proper Invoices

An invoice delivered by a contractor to an owner will be deemed a “proper invoice” unless, within 7 days receipt of the invoice, the owner issues a written notice to the contractor identifying:

- how the invoice does not satisfy the requirements for a “proper invoice” (as defined in Section 6.1 of the Act), and
- how the contractor can correct the deficiencies.¹

For owners that typically delegate evaluation of invoice submissions to a third-party consultant or payment certifier, it is critical that the obligation to promptly evaluate those invoices and report any deficiencies back to the owner within this 7-day evaluation period is built into the owner’s agreement with such third party.

Enhancements to the Proper Invoice Requirements

The Amendments also add the following requirements for a “proper invoice”:

- the invoice must reference describe the relevant payment period, payment milestone, or other contractual payment entitlement for which payment is being sought;²
- the invoice must reference the contract or other “authorization” giving rise to the contractor’s entitlement to payment (e.g., the contractor number, a purchase order number, work order number, etc.);³
- if the contractor requires that payment be sent to a specific office or department, the invoice must list the name, mailing address, and telephone number of the office or department;⁴ and
- other information reasonably requested by the owner – presumably in the contract – as being necessary for the “proper functioning” of the owner’s accounts payable system.⁵

Mandatory Annual Release of Holdback

For contracts lasting longer than one-year, annual release of holdback is now mandatory, subject only to two exceptions:

- the first procurement process for the project in question was commenced before July 1, 2018, in which case the former *Construction Lien Act* continues to apply to the contract,⁶ or
- the applicable contract was entered into prior to January 1, 2026, in which case the first “annual” release of holdback will occur on the second anniversary of the contract, followed by annual releases thereafter.⁷

The previous *optional* mechanisms permitting annual release of holdback or phased release holdback have been repealed.

To facilitate the annual release of holdback, owners are now required to:

- publish in one of three designate construction trade newspapers a notice of annual release of holdback, using the prescribed form (Form 6), within 14 days of the anniversary date of the contract, specifying the amount of holdback to be released and the intended payment date;⁸
- make payment of the accrued holdback after 60 days but not later than 74 days following publication of the notice of annual release of holdback, provided that on the day that holdback is to be released there are no liens preserved against the project.⁹

Contractors and subcontractors, in turn, also have an obligation to release holdback to their subcontractors and sub-subcontractors, respectively, within 14 days after receiving payment of annual holdback.¹⁰

Any holdback that is not paid as part of an annual release, must be released after the time period for the preservation of liens has expired (e.g., 60 days following publication of a certificate of substantial performance), in accordance with the following timelines:

- the owner must pay the remaining holdback to the contractor within 14 days after the lien preservation period has expired (or any preserved liens have been “satisfied, discharged, or otherwise provided for”);
- the contractor must pay the remaining holdback to its subcontractors within 14 days of receiving the holdback funds from the owner; and
- a subcontractor must pay the remaining holdback to its sub-subcontractors within 14 days after receiving the holdback funds from the contractor, and so on.¹¹

Limited Application of Holdback Funds

The opportunity to set-off against the holdback funds has been significantly diminished.

Withholding of holdback by publishing a notice of non-payment of holdback has been repealed. Holdback funds can now only be used to satisfy claims against a contractor or subcontractor in the narrow circumstance when a contract or subcontract is abandoned or terminated, and the lien preservation period has expired.¹²

The shift in the use of the holdback funds means that owners, contractors, and subcontractors that used to leverage the holdback fund as performance security will need to consider alternatives.

Expanded Definition of “Written Notice of a Lien”

The definition of “written notice of a lien” has been expanded to allow a lien claimant to provide notice of its lien by delivering a copy of its *registered* or *given* claim for lien to the targeted owner.¹³ This will trigger the

owner's obligation to retain the amount of the lien before making further contract payments.

This amendment merely reflects the practice that prudent owners have been taking for decades, which is to retain the full value of the lien upon becoming aware of a lien claimant's intent to enforce its lien.

Adjudication After Contract or Subcontract End

The Amendments expand the availability and accessibility of adjudication.

Adjudications in respect of a contract between an owner and a contractor can now be commenced up to 90 days after the contract has been "completed, abandoned, or terminated."¹⁴

For adjudications in respect of subcontracts, the notice of adjudication must be delivered within 90 days of the earlier of:

- the date on which the contract is completed, abandoned or terminated;
- the date on which the subcontract is certified as completed under the Act; or
- the date on which the subcontractor last supplies services or materials to the improvement.¹⁵

Matters Eligible for Adjudication

The list of matters eligible for adjudication has been moved to the regulations and is generally consistent with the previous version of the Act, with the notable addition of any of the following matters may now be referred to an adjudication, if a resolution of such matter is "reasonably necessary" to in order to make a subsequent determination:

- (a) the scope of work to be performed 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.¹⁶

However, these new matters are not available for adjudication on public-private-partnership projects.¹⁷

Private Adjudicators

The Amendments also give the parties to an adjudication the option of selecting a private adjudicator rather than using an adjudicator from the ODACC¹⁸ registry.¹⁹

Private adjudicators will still be trained and accredited by ODACC; however, unlike ODACC registry adjudicators, private adjudicators must charge a minimum rate of \$1,000.00 per hour.²⁰

Ultimately, the ability to select a private adjudicator may provide parties with greater choice and flexibility – although at a higher cost.

Public Adjudication Decisions

All adjudication determinations in which a notice of adjudication was provided on or after January 1, 2027, will now be made public on ODACC's website. Upon the parties' request, the public-facing adjudication determinations will be anonymized, removing any identifying information of the parties.²¹

Mandated Construction Trade News Website

The Act requires all certificates (e.g., certificates of substantial performance) and notices (e.g., notice of annual holdback release) to be published on one of the three following online platforms: the [Daily Commercial News](#), [Link2Build](#), or the [Ontario Construction News](#).²²

Notably, the use of any other online platform for publication will render the applicable certificate or notice invalid.

Joinder Availability

Amendments to the regulations now definitively clarify that parties can include a lien claim and a claim for breach of trust in a single action.²³ To reinforce the authority of the court to control its own process, the Amendments 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.

Applicability of the Amendments

The Amendments addressed in this Cassels Construction Note apply as of January 1, 2026, to all contracts and subcontracts, regardless of when they were entered into,²⁴ with the following considerations:

- for the Amendments related to prompt payment and adjudication, there is no “phasing-in”. If prompt payment and adjudication apply to a contract or subcontract,²⁵ then the Amendments affecting prompt payment and adjudication are applicable as of January 1, 2026.
- the Amendments do not apply if the first procurement process for the project was commenced, or the contract was entered into, before July 1, 2018.²⁶

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Here To Help

For more information on the changes to the Act that came into force on January 1, 2026, or to discuss the impacts of these changes on your organization, do not hesitate to reach out to anyone on the Cassels [Construction Law](#) Team. We are here to help.

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¹ See Section 6.1(2) of the Act.

² See Section 6.1(1)(2) of the Act.

³ See Section 6.1(1)(3) of the Act.

⁴ See Section 6.1(1)(6) of the Act.

⁵ See Section 6.1(1)(6.1) of the Act.

⁶ See Section 87.4(1)(a) of the Act.

⁷ See Section 87.4(4) of the Act.

⁸ See Section 26(3) of the Act.

⁹ See Section 26(4) of the Act.

¹⁰ See Section 26(5) and 26(6) of the Act.

¹¹ See Section 26(8) of the Act.

¹² See Section 30 of the Act.

¹³ See Section 1(1) of the Act.

¹⁴ See Section 13.5(3) of the Act.

¹⁵ See Section 13.5(3.1) of the Act.

¹⁶ See O. Reg. 264/25, at Section 19(1)(6).

¹⁷ See O. Reg. 264/25, at Section 19(3).

¹⁸ "ODACC" is the Ontario Dispute Adjudication for Construction Contracts.

¹⁹ See Section 13.9(2.1) of the Act.

²⁰ See O. Reg. 264/25, at Section 21(b).

²¹ See O. Reg. 264/25, at Section 16.

²² See O. Reg. 304/18, at Section 1.

²³ See O. Reg. 302/18, Section 3(3) and 3(4).

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²⁴ See Section 87.4(2) of the Act.

²⁵ See Sections 87.4(1)(b) and 87.3(4) of the Act.

²⁶ See Section 87.4(1)(a) of the Act.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.