

Prompt Payment

Date: May 16, 2022

Overview

Prompt payment is a business practice that requires businesses to agree on timely, fair, and reasonable payment terms with all parties involved. Prompt payment values include:

- **promptness**
- **transparency**
- **shared responsibility**

Prompt payment legislation is an effort to relieve the construction and related industries from payment delays and ensure the cash flow down the construction pyramid quickly.

Background

The issue of delayed payment was first brought to the attention of the federal government in early 2016. The review was initiated on January 30, 2018.

The **Federal Prompt Payment for Construction Work Act** was introduced and received royal assent in June 2019 but is not yet in force. Once in force, there will be a year deferral period for existing contracts to become compliant.

Provinces are making a similar effort to establish rules that address payment delays in construction and related industries.

Prompt Payment Across Canada

Ontario: The *Construction Act* came into force on October 1, 2019.

The prompt payment regime comprises swift payment deadlines, requiring the owner either to pay within 28 calendar days or to dispute within 14 calendar days, describing the reasons for non-payment.

Nova Scotia: The *Builders' Lien Act* received royal assent on April 12, 2019, but is not yet in force.

Once in force, it will be renamed the *Builders' Lien and Prompt Payment Act*. In its current state, it limits the availability of adjudication to disputes that are the “subject of a notice of non-payment.”

Saskatchewan: *The Builders' Lien (Prompt Payment) Amendment Act, 2019* (Amendment Act) and *The Builders' Lien Amendment Regulations, 2020* (SR 92/2020) (Amendment Regulations) came into force on March 1, 2022.

The legislation mirrors the rules introduced in Ontario. The owner must pay within 28 calendar days after receiving the invoice or dispute no later than 14 calendar days. A contractor who receives full payment must pay subcontractors within seven days of receiving payment.

Alberta: *The Builders' Lien (Prompt Payment) Amendment Act, 2020*, comes into force on August 29, 2022.

Proper invoices must be issued at least every 31 days. Owners must pay the contractors within 28 calendar days or dispute within 14 calendar days after receiving the first invoice. Contractors then have seven calendar days to pay subcontractors whose works or materials are included in the invoice.

Manitoba: On March 16, 2022, Bill 28, *The Prompt Payment for Construction Act* received its first reading in the legislature.

New Brunswick: The *Construction Remedies Act* (Act) came into force on November 1, 2021.

The Act modernizes security bond provisions, holdback, trust, substantial performance, and lien. In Law reform notes #42, concerns were raised about finding conflict-free adjudicators in a small province like New Brunswick, and it was recommended that the federal government explore cooperation with other provinces to find adjudicators and refer claims under \$20,000 to small claims court.

Key Considerations

- Review your contacts for compliance
- Know the rules for each province where you work
- Stay informed on which set of rules apply and the time deferrals if applicable
- Stay informed on the progress and the differences in prompt payment rules of all Canadian jurisdictions
- Review your billing practices and establish a process to navigate the adjudication process

Looking for more information? Contact us at policy@opencircle.ca.

Resources

- [Canadian prompt payment and construction law reforms](#)
- [Building a Federal Framework for Prompt Payment and Adjudication](#)