

Prompt Payment & Adjudication

New rules for Alberta's construction industry

Builders' Lien (Prompt Payment) Amendment Act

In fall 2020, the Government of Alberta passed changes to the *Builders' Lien Act* to address payment issues in Alberta's construction industry and introduce an adjudication process for non-payment that will provide business owners an alternative to court.

The goal is to reduce the need for liens and court actions, unlock cash flow, and provide certainty to this multi-billion dollar sector of Alberta's economy.

In spring 2021, additional changes are proposed as part of the *Red Tape Reduction Implementation Act* to address the proposed adjudication model and application of the Act to public-private partnerships and professional construction consultants.

If the additional changes are passed, all changes to the *Builders' Lien Amendment Act* will be proclaimed in force at the same time.

Establishing adjudication

Judgments will be interim and binding

Currently, the construction industry in Alberta does not have a formal adjudication process, and payment disputes are routinely resolved through the courts.

Once implemented, the new legislation will establish an adjudication system to resolve payment disputes. The Minister of Service Alberta will appoint Nominating Authorities (NAs), which will in turn appoint qualified, third-party adjudicators to resolve payment disputes in the construction industry.

The NAs will assign disputes to adjudicators, whose judgments would be interim and binding on all parties. Regardless of the adjudication outcome, parties will retain the option to file a lien with Service Alberta's Land Titles Office and enforce the lien through an action with the Alberta Court of Queen's Bench.

Applications to the adjudication system will require a reasonable fee, which will pay for costs of the adjudication services. These fees will be established in accompanying regulations that are currently being drafted. Other details, such as requirements for adjudicator qualifications, will be refined during the regulation development process as well.

Public-private partnerships

Proposed changes will clarify how prompt payment rules apply to public-private partnerships (P3s).

As provincial government P3s are governed by different legislation, prompt payment rules in the *Builders' Lien Amendment Act* will not apply to provincial P3s. Provincial government projects will still be subject to payment rules and timelines as outlined in Alberta Infrastructure's *Public Works Act* and their Ministry's contract policies.

Municipal public works projects, however, will be subject to the prompt payment timelines outlined in the *Builders' Lien Amendment Act*.

Additionally, proposed changes will clarify that prompt payment timelines apply only to construction, and not to ongoing maintenance and operations after construction is complete.

Certificate of Substantial Performance

A Certificate of Substantial Performance is a notice that verifies work on a construction site is substantially complete, and that the final period to file any liens will expire in 60 days.

The current legislation requires a signed copy of the Certificate of Substantial Performance to be posted in a visible place on the job site. The proposed change modifies this requirement and will also allow for electronic sharing of the Certificate of Substantial Performance.

Professional consultants

The proposed changes will provide clarifying language that prompt payment timelines in the legislation will apply to project contracts under professional consultants, such as engineers and architects.