

Canada's Federal Prompt Payment for Construction Work Act: Ensuring Fairness and Timeliness in the Construction Industry

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In the realm of construction projects, delays in payment can cause significant disruptions, strain relationships, and impede progress. Projects involving federal property are no exception. Accordingly, the *Federal Prompt Payment for Construction Work Act*, S.C. 2019, c. 29, s. 387 (the “Act”) was implemented to ensure prompt payment on federal projects. This article discusses key provisions and implications of the Act.

Implementation and Application

The Act came into force on December 9, 2023, and all existing construction contracts have one year to comply (i.e. by December 9, 2024). As stated in s. 4 of the Act, its purpose is

to promote the orderly and timely carrying out of construction projects in respect of any federal real property or federal immovable by addressing the non-payment of contractors and subcontractors who perform construction work for the purposes of those projects.

Ultimately, the Act aims to streamline payment processes within the construction industry by establishing clear timelines for payment and dispute resolution (i.e. adjudication). The legislation applies to federal construction projects, ensuring that contractors, subcontractors, and suppliers receive timely compensation for their work.

Pursuant to s. 2(1) of the Act, “construction project” is broadly defined to include any addition, alteration or capital repair, restoration, construction, erection, or installation, and includes “complete or partial demolition” and “installation of equipment that is essential to the normal or intended use of the federal real property or federal immovable”.

“Real property” includes land, mines and minerals, buildings, structures, improvements, and other fixtures, whether above or below ground.

“Immovables” include land and or anything permanently attached to land (such as buildings and structures) including the rights of a lessee.

Notably, the Governor in Council has authority to designate that provincial legislation will apply in lieu of the Act where a province has legislation similar to the Act (e.g. the Ontario *Construction Act* R.S.O. 1990, c. C.30).

Where the Act applies, the Federal Government (or its service provider) has a duty to inform the contractor that the Act applies to the contract, and the contractors and subcontractors have a duty to inform their subcontractors.

Prompt Payment Timelines

Central to the Act are its provisions outlining payment timelines, which are triggered by issuing a “proper invoice” to the federal entity that owns the project. Invoices may be issued monthly or as specified by the subject contract, and must include:

- a) The date of the invoice and the name, street and mailing address, telephone number and email address of the contractor that performed the construction work;
- b) The period during which the materials or services were supplied;
- c) The contract number or other authorization under which the materials or services were supplied;
- d) A description, including the quantity, if applicable, of the materials or services supplied;
- e) The amount payable for the services or materials supplied and the payment terms; and
- f) The name, title, street and mailing address, telephone number and email address of the person to which payment must be made.

As summarized below, the payment timelines under the Act mimic those of the Ontario *Construction Act*.

Event	<i>Federal Prompt Payment for Construction Work Act</i>	<i>Ontario Construction Act</i>
Payment: Owner to Contractor	28 days from invoice (s. 9(2))	28 days from invoice (s. 6.4(1))
Payment: Contractor to Sub	7 days after payment from owner (s. 10(1))	7 days after payment from owner (s. 6.5(1))
Payment: Sub to Sub-Sub	7 days after payment from contractor (s. 11(1))	7 days after payment from contractor (s. 6.6(1))

Disputes and Nonpayment

The only mechanism to avoid payment obligation is a notice of non-payment. The time to issue a notice of non-payment under the Act is based on when a proper invoice was issued to the owner. To facilitate this, s. 9(5) of the Act provides that on request, a contractor must inform any subcontractor in the subcontracting chain of the date on which a proper invoice was issued.

As summarized below, dispute timelines under the Act differ slightly from those under the Ontario *Construction Act*.

Event	<i>Federal Prompt Payment for Construction Work Act</i>	<i>Ontario Construction Act</i>
Pay Dispute: Owner to Contractor	21 days from invoice (s. 9(3))	14 days from invoice (s. 6.4(2))
Dispute: Contractor to Sub	28 days after invoice to owner (s. 10(3))	7 days after notice from owner or, if no notice, within 35 days of invoice to owner (s. 6.5(6) & (7))
Dispute: Sub to Sub-Sub	35 days after invoice to owner (and so on down the chain of subs in increments of 7 days) (s. 11(3))	7 days after notice from contractor or, if no notice, within 42 days of invoice to owner (s. 6.6(6) & (7))

Enforcement

The Act is self-enforced by referral to adjudication (see sections 15-21 of the Act, “Dispute Resolution”). Pursuant to s. 16(2) of the Act, adjudication must be commenced within 21 days of a certificate of completion being issued or expiry of time limit for payment under the last proper invoice.

Notices of adjudication are governed by s. 16(3) of the Act and must include:

- a) the names of the parties to the dispute;
- b) a brief description of the dispute, including details of how and when it arose;
- c) the amount requested to be paid;
- d) the name of a proposed adjudicator; and
- e) any other information prescribed by regulation.

Adjudication is administered by Canada Dispute Adjudication for Construction Contracts (“CanDACC”), which is run by Ontario Dispute Adjudication for Construction Contracts (ODACC).

Adjudicators must have at least 10 years of relevant working experience in construction and attend a CanDACC orientation program, as well as having not been convicted of an indictable offence or be an undischarged bankrupt.

Impact on Stakeholders

By ensuring timely payments, the Act fosters stability and enables contractors to confidently purchase equipment and materials, pay employees, and meet other financial obligations.

For contractors and subcontractors, the Act provides assurance that they will be promptly compensated, thereby reducing financial strain and uncertainty. With improved cash flow, these entities can operate more efficiently and pursue growth opportunities with greater confidence.

Project owners also benefit from the Act. Ensuring timely payments to contractors and subcontractors minimizes the risk of delays and cost overruns, such that project timelines are more likely to be met.

Suppliers and service providers within the construction supply chain also stand to gain from the Act. Timely payments enable these entities to maintain stable operations, fulfill orders, and deliver materials and services without disruptions, ultimately contributing to the smooth progression of construction projects.

Challenges and Future Outlook

While the Act represents a significant step forward for the construction industry, challenges remain in its implementation and enforcement. As mentioned, the Governor in Council has the authority to decide that provincial legislation will apply in lieu of the Act, and it is unclear how this discretion will be utilized.

Moreover, the interplay and potential conflict between the Act and provincial legislation creates the possibility of jurisdictional challenges, which may undermine the provincial objective of having construction disputes summarily resolved.

It is also notable that the Act largely relies on contractors and subcontractors being duly informed of its application and their understanding of how to enforce the Act. As industry stakeholders are still learning how to utilize the adjudication process most effectively, this adds another factor to be mindful of.

Conclusion

The Act strives to promote fairness, transparency, and timeliness within the construction sector. By establishing clear payment timelines and dispute resolution mechanisms, the Act fosters a more conducive environment for project delivery, thereby enabling stakeholders to navigate payment issues effectively and focus on advancing critical infrastructure initiatives. As the industry continues to evolve, the Act will hopefully play a beneficial role nationwide.