Toronto Law Journal

Jones et al. v. Manzon et al., 2024 ONSC 1205: The Basis for an Off-Coverage Position is Relevant in the Underlying Tort Action

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INTRODUCTION

In the recent decision of *Jones et al. v. Manzon et al.*, 2024 ONSC 1205,[2] Justice Daley held that there is a broad scope of discovery available to a Plaintiff where their uninsured or underinsured motorist insurer is a Defendant to the action. Justice Daley specifically held that a plaintiff may properly seek disclosure of the details of an insurer's investigation of a motor vehicle collision, as well as the circumstances of the insured's coverage, where the Plaintiff's OPCF 44R insurer is a named Defendant.[3]

Justice Daley also held that where documents relevant to the coverage issues are protected by privilege, the Plaintiff is still entitled to the factual information contained in those documents relevant to the coverage issues. The decision also contains helpful procedural guidance for these types of motions.

THE UNDERLYING ACTION

The underlying action arises from a tragic motor vehicle collision that occurred on August 4, 2018. Allison Jones was driving a vehicle with her son, daughter, and daughter's friend as passengers when the vehicle was struck at high speeds by Paul Manzon. Allison, her son, and her daughter's friend were all killed in the collision. Allison's daughter was seriously injured.

Mr. Manzon was insured by Aviva Insurance Company of Canada and had a policy with limits of $2,000,000. At the time of the collision, the Jones family had a policy of insurance with Security National Insurance Company ("SNIC") that included an OPCF 44R endorsement providing uninsured and underinsured coverage to the family with limits of $1,000,000. Mr. Manzon and SNIC are both named Defendants in the underlying action.

OFF-COVERAGE POSITION

After an investigation, Aviva took an off-coverage position and added itself to the action as a Statutory Third Party. A Statutory Third Party is a creature of statute, specifically s. 258(14) of

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[2] https://www.canlii.org/en/on/onsc/doc/2024/2024onsc1205/2024onsc1205.html
[3] OPCF 44R coverage is insurance coverage accessed through an insured's own policy of insurance. The available limits may be accessed if an at-fault defendant is uninsured or has insufficient insurance available to respond to the claim.

the *Insurance Act*. The goal of this provision is to balance the interests of insurers and accident victims. Essentially, even when an insurance company denies coverage to their insured, they still participate in the litigation (as a Statutory Third Party) and must compensate the plaintiff up to a maximum of $200,000. While $200,000 is not insignificant, it constitutes a large reduction when the available limits are reduced from $2,000,000.

A representative of Aviva underwent an examination for discovery and advised that Aviva was denying Mr. Manzon coverage based on a material change in the risk and other policy violations. However, the Aviva representative refused to disclose the particulars of the material change in risk and other policy violations that resulted in the denial of coverage position being taken. Aviva's position was that the coverage issue between itself and its insured, Mr. Manzon, is not an issue to be resolved in the underlying action, and as such, questions relating to the coverage issue were not relevant.

This issue prevented the parties from moving forward in the action, and the Jones family brought a motion to produce documents in the possession of Aviva connected to its investigation of the circumstances of the collision and any policy violations committed by Mr. Manzon that form the basis for its off-coverage position.

A determination of available coverage was of critical importance to the parties. If Aviva is successful in their denial of coverage to Mr. Manzon, the only insurance limits available to the Jones family from Aviva is the statutory minimum of $200,000, rather than the full policy of $2,000,000 held by Mr. Manzon. The off-coverage position also directly impacts SNIC's exposure in the litigation. Their exposure as a Defendant is entirely dependent on whether the off-coverage position has been taken "by operation in law" in accordance with the OPCF 44R policy. If it has, then the SNIC policy kicks in to cover the shortfall up to its policy limit of $1 million. In this case, SNIC's exposure would be $800,000. If Aviva's off-coverage position has not been taken "by operation in law", then the OPCF 44R policy is not engaged and SNIC is not exposed. To respond to the motion, Aviva was granted permission to appoint counsel to represent its interests on the coverage issue, distinct from counsel for Aviva as a statutory third party to the action. This created the unusual situation where two separate counsel were present for Aviva during the motion proceedings. Typically, the Plaintiff and their counsel will not have direct interaction with the coverage counsel involved with denial of the Defendant's coverage.

THE MOTION FOR PRODUCTIONS

The Procedure for Production

In the decision, Justice Daley provides helpful guidance as to how motions of this kind are to proceed. Prior to the hearing of the motion, Justice Daley directed Aviva to provide the court with an in-camera brief of all the records in Aviva's possession relating to the collision, including documents related to its investigation of the tort claims and coverage issues. A table listing all of the documents in the Aviva file was shared with all counsel. The table also included Aviva's

position with respect to production, and their brief grounds for objection, such as "irrelevance", "litigation privilege", or "solicitor client privilege".

At the initial hearing of the motion, coverage counsel for Aviva indicated that the insurer did not oppose the production of many documents listed, so long as the disclosure would not prejudice Mr. Manzon's ability to defend the tort claims. Aviva's position was that it was up to the court to determine whether the documents would prejudice Mr. Manzon's defence. Justice Daley disagreed and held that it is the responsibility of counsel for Aviva, in its capacity as a Statutory Third Party, to defend the insured driver and that the insurer must take all reasonable steps to defend the insured driver despite the off-coverage position taken. Justice Daley then directed counsel for Aviva in its role as a Statutory Third Party to review the documents and provide its position on production on a document-by-document basis.

The updated list of documents was then circulated to all of the parties, and written submissions were exchanged followed by oral submissions at the hearing of the motion. Following the hearing of the motion, Justice Daley reviewed the table of documents as well as the documents themselves, and determined which documents were to be produced.

The Legal Framework for Production

In his decision ordering production, Justice Daley provides clarity on the legal principles applicable to these types of motions. Justice Daley held that the scope of discovery of a Defendant's insurer differs where the Plaintiff has pursued its case against the Platintiff's uninsured or underinsured motorist insurer in the same action as a named Defendant. Specifically, Justice Daley held that there is a broader scope of discovery available where the OPCF 44R insurer is a defendant:

> [24] …the plaintiff may properly seek disclosure of the details of an insurer's investigation of an accident as well as the circumstances of the insured's coverage where the plaintiff's underinsured motorist insurer is a party defendant to the action. If the plaintiff's underinsured motorist insurer is not a defendant to the proceeding, the plaintiff's discovery rights would be limited to those provided for in rule 31.06(4) of the *Rules of Civil Procedure* and the jurisprudence related to that rule.

In this case, the Jones family's OPCF 44R insurer, SNIC, is named as a Defendant to the action. As such, Justice Daley concluded that the Jones family is entitled to disclosure of the details of the investigation leading to Aviva's off-coverage position and its denial of coverage to Mr. Manzon, as well as details of the investigation relation to the collision itself. Justice Daley subsequently ordered the production of many of the documents listed in Aviva's table, subject to specific claims of litigation or solicitor client privilege.

Where privilege was found to protect against disclosure, Justice Daley held that:

> [36] …when a claim of solicitor-client privilege is properly asserted to preclude disclosure of a protected document, that privilege cannot be used to avoid disclosure of material facts and information obtained in anticipation of litigation and for presentation to counsel: *Davies v. American Home Assurance Co.* (2002), 60 O.R. (3d) 512 (Div. Ct.), at para. 25.

As such, in addition to granting leave to the Jones family and SNIC to conduct a further examination for discovery of the Aviva representative to answer all reasonable and proper questions arising from the documents ordered to be produced, Justice Daley permitted the Jones family and SNIC to question the Aviva representative about the materials facts contained in the solicitor-client privileged documents that were not otherwise ordered to be produced.

THE TAKEAWAYS

This decision provides valuable guidance to personal injury litigants where coverage issues arise. The factual basis for an off-coverage position is relevant in the underlying tort action and a Plaintiff's scope of discovery is broader when examining a statutory third party in these situations. A Defendant's insurer is not entitled to deny coverage without any explanation for the basis of that position. A Plaintiff is entitled to that information, and where documents relevant to the coverage issues are protected by privilege, the Plaintiff is still entitled to the factual information contained in those documents relevant to the coverage issues. In practice, Plaintiff's counsel ought to request these documents well in advance of examinations for discovery. If still not provided by the time of discoveries, specific requests should be placed on the record, and *Jones* can be cited as the basis for the request. Should they be refused and the refusal maintained, a motion will need to be brought, as was done in this case.

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The Legal Implications of AI Hallucinations

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Background

A recent decision from the Supreme Court of British Columbia confirms that legal professionals must ensure the accuracy of their AI generated work products. In *Zhang v. Chen,*[1] two cases that were invented by ChatGPT were submitted in a notice of application. Costs were sought by the opposing party due to the time and expense incurred before discovering that the cases did not exist. The court commented on the risks associated with AI driven tools and held counsel personally responsible for the costs incurred as a result of the insertion of the fake cases. This decision is a reminder of the unique challenges posed by AI systems that reinforce the duty of care owed by legal professionals.

Zhang v. Chen

An application was submitted to the court to permit parenting time abroad. The application contained two non-existent cases that were the result of ChatGPT "hallucinations". Opposing counsel requested copies of the cases when they could not locate them using their citations. Counsel later objected to the inclusion of the new cases in the application and continued to demand copies of same. Eventually, a legal researcher was retained to assist but could not find the cases either. The opposing party subsequently received an apology letter from the lawyer advising that the two cases were invented by AI and erroneous. The cases were withdrawn before the hearing and were not relied upon when the matter was heard. Nonetheless, the opposing party argued that they had incurred expenses while attempting to find the two cases before determining that they were invented by ChatGPT.

The court held that special costs were appropriate for serious abuses of the judicial system or deliberate, dishonest or malicious misconduct, not mere mistakes or negligence. Despite finding counsel's actions alarming, the court did not find an intent to deceive. Instead, it noted her lack of awareness of the risks associated with ChatGPT and similar tools. Although the court dismissed the request for special costs, it recognized that counsel's use of non-existent cases necessitated additional effort and expense by opposing counsel. Therefore, the court found counsel personally liable for the costs incurred due to her conduct.

Given the increasing prevalence of AI, this decision sets a legal precedent that could influence future cases involving similar issues regarding the duty of care owed to clients and liability for lawyers using chatbots.

[1] *Zhang v. Chen*, 2024 BCSC 285.

The speed and scale of AI technology promises significant economic benefits. This promise contributes to its growth within various realms, including the practice of law. However, there are concerns about its reliability and accuracy. ChatGPT and other AI chatbots rely on an algorithm to process input and create output. The output is not always accurate. Accordingly, the chatbot cautions users to check important information.

A Legal Framework for AI

In the absence of a legal framework for governing AI, Canadian courts are left with interpreting existing laws to determine liability and accountability in such disputes. Due to the complexity of this technology, interpretation of traditional contract and torts law can present a challenge in addressing the harms caused by it. Implementing new AI laws can improve accountability, transparency, and due diligence among all of its users.

The European Union approved the EU *AI Act* (the "Act") in March 2024, marking the first comprehensive regulatory guidance addressing the development and use of AI systems. The proposed framework adopts a risk-based methodology by classifying AI systems into four tiers: unacceptable risk (such as emotion recognition at work, schools, social scoring, etc.), high-risk, medium-risk, and low-risk. The level of requirements and constraints escalates with the risk level. For high-risk AI systems, such as AI used to profile individuals (work performance, economic situation, health, preferences, interest reliability) more rigorous obligations are imposed, including the use of high-quality data, transparency provisions, and conformity assessments. Furthermore, the Act mandates transparency, necessitating that AI systems such as chatbots and deepfakes explicitly identify themselves as such during interactions with humans, unless their nature is already evident.

Breaches of the Act could result in fines of up to €15 million or 3% of annual global turnover for most violations. Violations related to prohibited AI systems, such as employing AI-enabled manipulative, subliminal, or deceptive techniques to distort behavior or using biometric categorization data to infer private information, could incur penalties as high as €35 million or 7% of annual global turnover.

The EU *AI Act* emphasizes some of the key concerns surrounding this technology. As Canada moves towards developing its own legislation and filling the legal void, it is important to heed the widespread calls for exercising caution while making use of AI generated content or tools in a professional capacity. While AI may offer time and cost savings for legal professionals and their clients, if left unchecked, it can lead to inadvertent harm.

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Against the Current: Acting for Preconstruction Buyers in a Downward Market

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The preconstruction condominium and newly built home markets have had a tough go of it for the past year or so and we're not out of the woods yet. Most of the transactions closing now were signed in 2021 and 2022 during the real estate boom fuelled by extremely low-interest rates and the fear of missing out ("FOMO") that was felt because of COVID-19 lockdowns, seemingly unstoppable stock and cryptocurrency markets and the desire to do something productive instead of watching another episode of Tiger King. Unfortunately, all the above, plus global supply chain issues, a resilient labour market, volatile energy prices, and other not-so-fun things led to hot inflation and a swift move upwards in interest rates and downwards for valuations of most assets, including the price of newly built homes that many people are now contractually obligated to purchase. In many cases, new build appraisals are coming in 20% lower than purchase prices, so financing, especially at these rates, has become hard to come by. This does not appear to be a "crash" (so far), but more of "deep correction" reminiscent of the real estate market in 2017 when the Office of the Superintendent of Financial Institutions announced changes to the mortgage stress test[1] and the announcement of the Non-Resident Speculation Tax.[2]

Although the resale home market has been under pressure too, for the same reasons, it is more nimble and able to adapt to these changes in market conditions. Buyers can test the waters of the resale market and wait on the sidelines as things play out, whereas purchasers of new builds are locked in both contractually and financially. In my own practice, I'm quickly approaching $1,000,000.00 in deposits forfeited by purchaser clients who either managed to settle with the builder to obtain a mutual release, have walked away from their deposit, and are waiting to see if they get served with a Statement of Claim or have been served and are now defending an action for damages.

One of the more challenging aspects of managing these situations has been setting and tempering client expectations. I will use a scenario I'm currently working on as an example. The clients failed to close on a newly built home due to a low appraisal and difficulties securing financing. They and their real estate lawyer (I was not on the transaction for this one) tried many different options with the builder to close, but they could not and walked away from a deposit well over $100,000.00. The builder served them with an action for damages and costs north of $500,000.00, and they are now defending it. These clients are younger individuals who would have been first-time home buyers. They are not real estate investors who could stomach this loss and move on to the next one. The deposit represents their life savings, and they are now being sued for more. It goes without saying it is a difficult and emotional situation for

[1] Final Revised Guideline B-20: Residential Mortgage Underwriting Practices and Procedures.
[2] Ontario - Non-Resident Speculation Tax.

them. Our first few discussions were challenging because they thought they could get their deposit back or at least a portion of it. Although there are loss mitigation and other factors at play that we are using to discuss a settlement, the fact is they are going to forfeit their deposit and pay more due to the numbers. Playing the sympathy or going public cards will not work. It is a harsh reality that needs to be set as the expectation early on.

Interestingly, it has been my discussions with counsel for builders that got me interested in writing on this topic. In the same scenario noted above, counsel for the builder explained to me during one of our discussions that her biggest challenge has been dealing with counsel for buyers/defendants who are demanding the deposit be returned in full while threatening counterclaims and the addition of real estate agents, lawyers, and others as defendants to the action. Admittedly, I mentioned Section 98 of the *Courts of Justice Act* and unconscionability in correspondence on files I was working on last summer and fall. In hindsight, doing so was not productive and likely moved discussions a step backwards instead of forwards. In the example I've referenced, counsel and I have had a few settlement discussions now, and we're inching closer to a number that makes sense based on the facts and economics of our scenario and the law.

Without further ado, that leads me to introduce this article, where we will examine the applicable test used by the court in determining whether to grant relief from forfeiture and the guidance to be found in recent case law. We will conclude that while relief from forfeiture may be available in narrow circumstances, it would likely take a serious case of unconscionability for the court to grant it.

Presumption in Favour of Forfeiture

In *Redstone Enterprises Ltd. v. Simple Technology Inc.,*[3] the Ontario Court of Appeal described the legal nature of deposits with the following quote from *Tang v. Zhang*:[4]

> A true deposit is an ancient invention of the law designed to motivate contracting parties to carry through with their bargains. Consistent with its purpose, a deposit is generally forfeited by a buyer who repudiates the contract, and this is not dependent on proof of damages by the other party. If the contract is performed, the deposit is applied to the purchase price.

As explained by the Court in *Benedetto v. 2453912 Ontario Inc.,*[5] a deposit is given by the buyer to the seller in order to secure the buyer's future performance of the contract and incentivizes the purchaser to complete the purchase for fear of the deposit's forfeiture. Therefore, if the buyer fails to close the transaction, forfeiture of the deposit is typically intended.

Furthermore, courts have stressed that a seller's entitlement to retain a deposit does not depend on any proof of damages. Even where the seller incurs no loss, it is entitled to a deposit.

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[3] 2017 ONCA 282 at 20.
[4] 2013 BCCA 52 at 30.
[5] 2019 ONCA 149 at 5-7.

As the Court of Appeal remarked in *Rahbar v. Parvizi:*[6] "if purchasers were allowed to reclaim their deposits in a rising real estate market simply because vendors resold their property at a higher price it would eviscerate the very purpose of deposits."

Relief from Forfeiture

However, all forfeiture under the law is subject to the equitable remedy of relief from forfeiture, codified under Section 98 of the *Courts of Justice Act,*[7] which provides that: "[a] court may grant relief against penalties and forfeitures, on such terms as to compensation or otherwise as are considered just." When considering the forfeitures of deposits, Section 98 has been applied according to the test set out in the English case *Stockloser v. Johnson*[8] and later adopted by the Ontario Court of Appeal in *Varajao v. Azish,*[9] which requires the party seeking relief to establish both of the following:

(1) that the deposit is "out of all proportion" to the damages suffered by the seller; and

(2) that it would be "unconscionable" for the seller to retain the deposit.

Step 1: Disproportionate to the Damages

The first branch of the test considers whether the deposit to be forfeited is disproportionately large as compared to the damages suffered by the seller as a result of the buyer's failure to close the transaction. Most often, these damages will result from the home being sold to a different buyer on a later date, but at a lower price than was originally bargained for.

If there is no evidence of damages provided, or the seller in reality suffered no damages, then this condition is easily met. However, this alone will not grant relief; the purchaser must show that allowing the seller to retain the deposit would be "unconscionable".

Step 2: Unconscionability

In determining whether the forfeiture of the deposit would be unconscionable, the court must "step back and consider the full commercial context" of the failed real estate transaction.[10] While the most relevant facts concerning unconscionability will be context-specific, the Court has set out a non-exhaustive list of factors, including:

- a grossly disproportionate deposit, as compared to the purchase price,
- inequality of bargaining power,
- a substantially unfair bargain,
- the relative sophistication of the parties,

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[6] 2023 ONCA 522 at 59.
[7] R.S.O. 1990, c. C.43, s. 98.
[8] [1954] 1 Q.B. 476 (Eng. C. A.)
[9] 2015 ONCA 218
[10] *Supra* note 3 at 18

- the existence of bona fide negotiations,
- the nature of the relationship between the parties,
- the gravity of the breach, and
- the conduct of the parties.[11]

The Ontario Court of Appeal has held that "the finding of unconscionability must be an exceptional one, strongly compelled on the facts of the case".[12] Consequently, the courts rarely find that unconscionability will result if the seller retains the deposit. As Chown J. reflected in *Gagliardi v. Al-Karawi*:[13]

> The reason it is so difficult to establish unconscionability in a deposit case is that the buyer has always agreed to pay the deposit. In addition, real estate deals rarely involve vulnerable parties or significant unequal bargaining power. If the deposit is for a reasonable amount in relation to the purchase price, and if the contract does not proceed due to the breach of the buyer, it is difficult to see how it could be unconscionable to make the buyer pay what it agreed and expected to pay.

Of the many deposit cases reviewed for the aforementioned case, Chown J. had yet to find a single one in which it was considered unconscionable for the seller to keep the deposit.[14] Unsuccessful arguments have included the raising a vulnerable mental state[15], the need to back out due to a falling market[16], or the inability to secure financing.[17]

Conclusion

In conclusion, while the doctrine of relief from forfeiture remains available for buyers seeking to reclaim their deposits after breaching a purchase agreement, the threshold for a court to exercise such discretion is exceedingly high. It is important to note there is a clear presumption in favour of forfeiture, emphasizing that the intention behind deposits as security for performance cannot be lightly set aside. It remains evident from recent rulings that only under extraordinary and truly unconscionable circumstances might the courts intervene to grant relief. In the interplay of contractual obligations and equitable remedies, the courts strive to uphold a careful balance of justice and predictability in transactions. It is a bitter pill to swallow, but this is the starting point for any failed transaction. Knowing and accepting this allows for the uphill journey towards a resolution to begin.

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[11] *Ibid*, at 30.
[12] *Ibid*, at 25.
[13] 2023 ONSC 6853 at 72.
[14] *Ibid*, at 65.
[15] *Mouralian v. Grouleau*, 2022 ONSC 2925, at 17.
[16] *Grandfield Homes (Kenton) Ltd. v. Li*, 2021 ONSC 2670, at 57.
[17] *Sinha v. Shabestari*, 2018 ONSC 298, at para. 2.

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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	*Federal Prompt Payment for Construction Work Act*	Ontario *Construction Act*
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	*Federal Prompt Payment for Construction Work Act*	Ontario *Construction Act*
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.