

Construction Act Amendments: Taking Effect January 1, 2026

Background

On October 23rd, 2025 the government introduced proposed legislative amendments to the *Construction Act* to refine the amendments made last year (Bill 216) on holdback in response to the 2024 OCAR report. These latest technical amendments were introduced as part of Bill 60, *Fighting Delays, Building Faster Act*, 2025. These technical amendments received Royal Assent on November 27th, 2025.

The legislative amendments to the *Construction Act* resulting from the OCAR report (Bill 216) will take effect on January 1, 2026.

The key legislative amendments are as follows:

1. Mandatory annual release of holdback;
2. Broadened access to adjudication;
3. Proper (vs. “improper”) invoices, and definition of “price” (vs. “contract price”).

How will Mandatory Annual Release Work?

Timing and Form

With respect to timeline of the annual holdback release, Bill 216 previously set out the requirements regarding the notice of annual release of holdback. Specifically, owners must publish notice within 14 days of the anniversary of the date the contract “was entered into” which specifies the amount of holdback the owner intends to pay. Unless a lien has been preserved or perfected, this notice must include the owner’s intention to release all holdback accrued to the anniversary date.

Once the notice of annual release of holdback is published in the prescribed form, Bill 60 now requires the holdback to be released “at least 60 days but not later than 74 days after the date on which the notice of annual release of holdback is published.” Note that Bill 216 previously required payment within 14 days of the anniversary the contract was entered into. Bill 60 therefore introduced changes to both the timing and trigger for the payment of annual holdback.

In terms of publishing requirements, the *Construction Act* requires the notice of annual release of holdback to be in the “prescribed form” (i.e., on a construction trade news website). The new form is Form 6.

Annual Release of Holdback & Expiry of Liens

Under Bill 216, the annual release of holdback was coupled with a new lien expiry for all services and materials supplied during that annual period. Bill 60 modifies this regime by removing the link between the annual holdback release and the lien expiry.

Therefore, although the annual release of holdback will remain, the timeline for preserving, perfecting, and the expiry of liens for the services and materials supplied during that period will no longer be tied to the timing of the annual holdback release. Instead, the timing of these steps will remain as it is – tied to performance and completion of the work. The idea is to prevent contractors or subcontractors from liening each year.

Transition Provisions

Note that there will be a one-year transition period before annual release of holdback rules apply to contracts entered into prior to the provision's effective date (ss.87.4(4)), January 1, 2026.

This means, where a contract was entered into before January 1, 2026 the requirement to release holdback on an annual basis would first arise on the second anniversary of the contract. For these contracts, such release of holdback would include all holdback accrued before that date. For contracts entered into on January 1, 2026 and later, the requirement to release holdback on an annual basis would first arise on the first anniversary of the contract.

Broadened Access to Adjudication

Several of the Bill 216 amendments are intended to broaden the availability of adjudication, including by permitting adjudication after completion of a contract or subcontract, and permitting consolidated adjudication of disputes under different contracts on the same improvement as more particularly described below.

As amended, the Act will no longer limit the matters which can be referred to adjudication to items are generally only payment-related. Instead, the Act will now permit adjudication of “any prescribed matter or any matter agreed to by the parties to adjudication”. The amended list of matters that may be adjudicated is yet to be specified by the regulations.

Under the amendments, any party may now require consolidation of adjudications respecting the same improvement. Previously, only a contractor could require such consolidation. Parties may also, if prescribed in the regulations, have the right to seek consolidation of adjudications between parties to different contracts or subcontracts where those agreements pertain to the same improvement. This amendment should help reduce the risk of contradictory findings of fact related to the same improvement or project and may offer cost and time savings opportunities.

The amendments should also remove much of the uncertainty as to when adjudication becomes unavailable. Previously, parties would have to refer a dispute to adjudication before the subject contract or subcontract was “complete” (unless the parties agreed

otherwise). As “completion” is tied to the last supply of services or materials, or cost of correction, this effectively meant that a party could not adjudicate a dispute over an unpaid final invoice (unless the other party agreed to adjudicate).

The amendments permit commencement of adjudication within 90 days after the date on which the contract is completed, abandoned or terminated, unless the parties to the adjudication agree otherwise. In the case of a subcontract, this is 90 days following the date the subcontract is certified complete or the date of last supply. The adjudication period is notably 30 days longer than the deadline to preserve a lien (at 60 days). This means that parties have the ability to continue dispute resolution proceedings even after the right to security via lien has expired – now, if a lien right has expired, a party is not only limited to bring a claim to the courts; it can also (for a limited time after lien expiry) pursue adjudication.

Given this, Bill 216 repealed ss.34(10), which extended the date for expiry of a lien where a matter was subject to adjudication. This subsection will continue to apply with respect to a lien if a notice of adjudication was given under s.13.7 until the amendments come into force.

In addition, the Act will now permit parties to retain a private adjudicator rather than being obligated to solely select from ODACC’s registry, much like parties do already when choosing an arbitrator.

With respect to an adjudicator’s jurisdiction, a new section provides for the making of objections to an adjudicator’s jurisdiction to conduct an adjudication, or on the basis that an adjudicator has exceeded their jurisdiction in the conduct of an adjudication. While jurisdictional questions have been fairly common, the scope of an adjudicator’s ability to address those questions was not clear. The amendments now expressly provide that adjudicators can determine their own jurisdiction.

The broadened availability of adjudication offers parties more latitude in resolving disputes. As a reminder, contracts and subcontracts are deemed to conform to the Act, meaning that adjudication is available regardless of a contract’s dispute resolution provisions. Subcontractors should also remain mindful that the limit on adjudication availability to the earliest of completion, 90 days after certification of completion, or last supply means that subcontractors cannot adjudicate non-payment of holdback.

Proper (vs. “Improper”) Invoices, and definition of “Price” (vs. “Contract Price”)

The Final Report notes the view of several stakeholders that the definition of “proper invoice” gives owners broad discretion to dictate what must be included and no corresponding obligation to notify the contractor when the payment application received is deficient of such requirements.

In response, the amendments update the definition of “proper invoice” by making changes to the criteria that must be met in order for an invoice to be considered a proper invoice. This includes stipulating that a proper invoice may include any other information reasonably needed by the owner.

The new subsection 6.1(2) will deem an invoice that does not meet the requirements of a “proper invoice” to be a proper invoice, unless the owner notifies the contractor, within 7 days of receipt of the invoice, in writing, of the alleged deficiency, and what is required to address it.

As a result, owners will need to be especially vigilant in reviewing submitted invoices from contractors to assess whether they are deficient and be prepared to provide written notice of any alleged deficiency within 7 days of receipt to avoid having to send a notice of non-payment.

Further, the amendments now clarify deeming of a “price”. Prior to the amendments, where a contract or subcontract did not stipulate a price, the price was deemed to be the market value of the services or materials supplied. The amendments now permit regulations to be passed that would specify a “price” other than market value. This change is intended to recognize that “price” may not have the same meaning across delivery models.