Amendments to the *Construction Act*

&

The 2025 CCDC Contract Updates

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PART 1:

Amendments to the Construction Act

Bill 216 to Bill 60 – A Timeline of Amendments

- Bill 216
- Proper Invoice
- Holdback Requirements
- Adjudication
- Deemed Lien
- Bill 60

Proper Invoices

Proper Invoicing

Deemed Proper Invoice

All invoices will be deemed to be “proper invoices” unless the owner notifies the contractor of the specific deficiencies within **7 days**.

Amended Definition of “Proper Invoice”

New requirement that proper invoices include “any other information that is necessary for proper functioning of the owner’s accounts payable system that the owner reasonably requests.”

Proper Invoices

Proper Invoice Requirements under Section 6.1 Table

Subsection	Pre-Amendment	Post-Amendment
1	The contractor's name and address.	No change.
2	The date of the proper invoice and the period during which the services or materials were supplied.	The date of the invoice and the period, **milestone or other contractual payment entitlement** to which the invoice **relates.**
3	Information identifying the authority, whether in the contract or otherwise, under which the services or materials were supplied.	Information identifying the contract or other authorization under which the services or materials were supplied, **such as a contract number, contract line item number or purchase order number.**
4	A description, including quantity where appropriate, of the services or materials that were supplied.	No change.
5	The amount payable for the services or materials that were supplied, and the payment terms.	No change.
6	The name, title, telephone number and mailing address of the person to whom payment is to be sent.	The name, title, mailing address and telephone number of the person to whom payment is to be sent or, **if payment is to be sent to an office or department, its name, mailing address and telephone number.**
6.1	-	Any other information that is necessary for the proper functioning of the owner's accounts payable system that the owner reasonably requests.
7	Any other information prescribed.	No change.

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Proper Invoices

Practical Considerations

Owners will only have **7 days** to challenge a contractor's invoice. After 7 days, owners cannot later argue in adjudication that the invoice wasn't "proper" based on those defects (they can still dispute valuation with a proper notice of non-payment).

Contractors will need to **carefully review contracts** to ensure they comply with any provisions regarding proper invoices under the contract.

Holdback

Annual Release of Holdback

New obligation to pay out accrued holdback amounts **annually**.

New section 26 requires that an owner give notice of an annual release of holdback within **14 days** of each anniversary date of the contract and then pay the accrued holdback within **60 days and no later than 74 days** from the date that the notice was published.

This annual payout of accrued holdback applies similarly to subsequent **contractors** and **subcontractors** in the construction pyramid within **14 days** of receiving payment from the owner, continuing down the subcontractor chain.

Holdback

Annual Release of Holdback

An owner may not pay out the accrued holdback as outlined in the *Act*'s new section 26(4) where:

1. A lien has been preserved or perfected against the contract that attaches to the premises, and it has not been discharged, nor is there an order stating that the lien has expired, been discharged, or vacated, or the certificate of action has not been registered.
2. A lien has been preserved or perfected against the contract that does not attach to the premises, and it has not been satisfied or discharged, nor is there an order declaring the lien expired or vacated.

Where such circumstances cease to exist, the owner must pay out the holdback at least **60 days but not later than 74 days** after the date on which the notice of annual release of holdback is published.

Holdback

Annual Release of Holdback – Transition and Timing

For contracts with procurement that started **on/after July 1, 2018** and entered into **before** the amendments take effect, **the mandatory annual release of holdback kicks in on the second Contract Anniversary Date after January 1, 2026.**

Example:

- **Amendments are in effect:** January 1, 2026
- **Contract entered into:** December 15, 2025
- **First contract anniversary:** December 15, 2026 (transition year - not yet mandatory)
- **Second contract anniversary:** December 15, 2027 → first mandatory annual holdback release

Applicability: The two-year transitional rule applies only to the annual release of holdback. All other amendments to the *Construction Act* are in effect as of January 1, 2026, and apply to active contracts.

Annual Release of Holdback – Applicable Contracts

Contracts that had procurement processes start before July 1, 2018, or were entered into before July 1, 2018	Contracts that had procurement processes start on or after July 1, 2018, or were entered into on or after July 1, 2018, but before January 1, 2026.	All construction contracts to which the Ontario Construction Act applies that are entered into after January 1, 2026.
Exempt from the mandatory annual holdback amendments.	Gradual transition into mandatory annual release of holdback.	Have mandatory annual payment of holdback.

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Holdback

Expiry of Lien Timelines

Bill 216, *Building Ontario For You Act, 2024,* initially established a new, separate lien expiry mechanism, tying the expiry of liens directly to the publication of the annual release of holdback.

Bill 60, *Fighting Delays, Building Faster Act*, 2025, subsequently repealed these specific not-yet-in-force amendments, severing the link between the annual release of holdback and the expiry of lien rights.

As a result, lien preservation and expiry timelines revert to the established triggers under the *Construction Act*, and are tied to project milestones such as substantial performance, completion, abandonment, or termination of the contract.

Holdback

Use of Holdback for Set-Off (Section 30)

Previous Rule: The former s. 30 prohibited a payer from applying holdback funds to remedy a "default" by a contractor or subcontractor until all potential liens against that holdback had expired or were discharged.

New Rule (Bill 60): The amended s. 30 replaces the term "defaults" with "**abandoned or terminated**."

Practical Implication: The prohibition on using holdback for set-off is now explicitly tied to the abandonment or termination of a contract or subcontract, not to general defaults in performance that may occur while the contract remains active. This narrows the circumstances under which the holdback fund is shielded, potentially allowing payers to set-off against progress payments for non-terminating defaults without touching the statutory holdback.

Before Amendments are Effective	Now that Amendments are Effective
Annual holdback payments optional, not mandatory.	Annual holdback payments mandatory.*
Expiry of liens is based on project milestones.	Expiry of liens remains based on project milestones.
Holdback protected from set-off in case of contractor/subcontractor default.	Holdback protected from set-off in case of contract/subcontract abandonment or termination.
Extension to lien preservation period during adjudication.	Removed (adjudications no longer affect lien expiry)

*(*subject to transition period for annual holdback release*)

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Holdback

Practical Considerations

Consider whether any of your active contracts will need to be amended to reflect the new mandatory annual release of holdback.

Be aware that the annual release of holdback is mandatory, but operates independently form lien timelines.

Adjudication

Expanded Scope for Adjudications

Access to adjudication has increased as “any matter” is subject to adjudication. Previously, adjudication was limited to disputes, predominantly, regarding payment.

Any of the parties now have the ability to require that disputes subject to separate adjudications are consolidated into one adjudication notwithstanding that the parties did not agree to the consolidation.

The parties to an adjudication may agree to appoint a private adjudicator that is outside of the the ODACC roster.

A party may object to the jurisdiction of an adjudicator, or on the basis that the adjudicator has exceeded their jurisdiction at the time when that party makes its first submissions.

The amendments provide adjudicators with the ability to correct their determinations within five (5) days.

Adjudication

Timing Expanded

The expiry of the adjudication period has been extended to 90 days following the completion of a contract.

Therefore, an owner can receive a notice of adjudication even after a contractor's right to lien has expired (a similar concept applies for subcontractors).

A party who is required under the determination of an adjudicator to pay an amount of said determination within 15 days. This payment period extends the current 10 day timeline.

Adjudication

Practical Considerations

Specific enumerated grounds are replaced; the *Act* now permits disputes on any prescribed matter or agreed matter.

Increased availability of adjudication may lead to a higher amount of adjudications on a project.

Adjudication scope expanded beyond limited grounds. Precedential Value: anonymized determinations will be published.

Extension of the expiry of the adjudication period means that adjudications will likely occur even after the completion of the contract.

Deemed Lien

Overview

The amendments introduce a **new subsection 14(4)**, which deems design services lienable unless the owner proves no improvement in value.

Deemed lien rights to apply to design and pre-construction services - including planning, drawings, and specifications - even if the project never proceeds.

Pre-construction services (such as design, engineering, and architectural work) are **not provided lien rights** in the current Act where the project does not proceed.

The amendments address the concern in the industry regarding this gap in the law.

Deemed Lien

Key Points

A Deemed Lien is **automatically created** if an owner retains a holdback for design services for a planned improvement that does not proceed.

Can be rebutted only if the owner proves that the value of the land has not been enhanced.

Legal Presumption is that **withholdings** for design services are linked to an improvement and therefore lienable.

Shift of **burden of proof to the owner** to demonstrate that the services did not enhance the value of the land, whereas pre-Bill 216 it was on the design consultant.

This change does not apply to holdbacks retained for design services before the amendments come into force.

Housekeeping Amendments

Definition of “price” Regulations may now prescribe amounts or valuation methods for ‘price,’ not merely default to market value.

Definition of "written notice of a lien" now includes a copy of any claim for lien registered or given under section 34.

Minor errors or irregularities: New s. 6(1) confirms that small technical errors (for example, listing the owner’s name in the wrong section of a lien claim) will not invalidate an otherwise valid lien.

Joinder of Trust and Lien Claims: New section 50(4), states that "the procedures prescribed for the purposes of this Part may provide for the joinder of a lien claim with another claim in an action, in which case this Part applies to the other claim as it does to the lien claim." As a result, it is anticipated that the amendments will allow for the joinder of lien and trust claims.

Multiple Improvements under one contract and those improvements are to lands that are not contiguous, then, if the contract so provides, each improvement will be considered as part of a separate contract, per the new section 1(5).

Housekeeping Amendments

Notice of Termination:

- The notice must now be published no later than 7 days after the termination of a contract.
- If multiple notices are issued, the first published notice will determine the effective date.
- The current notice provisions remain in effect if a valid notice was published before the *Act* amendments took effect.
- If a notice of adjudication regarding a lien was given before the Act amendments came into force, the previous lien expiry and adjudication provisions will apply.

PART 2:

The 2025 CCDC Contract Updates

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Updated Contracts

On June 30, 2025, the Canadian Construction Documents Committee (the “CCDC”) released updated versions of the following contracts:

- CCDC 5A – Construction Management Contract – For Services;
- CCDC 5B – Construction Management Contract – For Services and Construction;
- CCDC 17 – Stipulated Price Contract between Owner and Trade Contractor for Construction Management Projects; and
- CCDC 30 – Integrated Project Delivery Contract

Most of the updates introduce concepts that are already being used under the CCDC 2 – Stipulated Price Contract.

Notably, there is no requirement at law to issue the most up-to-date version.

Key Concept Updates

The Key Concept Updates to the contracts include,

1. *Ready-for-Takeover* shifts the focus of project completion from Substantial Performance to full operational readiness for the owner.
2. *Progressive Holdback Release* is now standard, and in alignment with prompt payment legislation.
3. *Liability for Uninsured Losses* is now clearly capped, more clearly allocating risk.
4. *Termination for Convenience* clauses provide owners with increased flexibility, while construction managers may now obtain a Break Fee for termination before construction commences.

Ready-For-Takeover

Ready-For-Takeover is a project milestone that lists the prerequisites for a Contractor to achieve in order to complete the Project. The prerequisites include:

1. The Owner/Consultant verifying that the Project is ready for use or is being used for the purpose intended;
2. Contractor providing evidence of satisfying the requirements for the Owner to obtain an occupancy permit;
3. The Contractor completing final cleaning and waste removal;
4. The Contractor delivering the operations and maintenance manuals;
5. The Contractor making available the as-built drawings;
6. The Contractor scheduling the required demonstration and training necessary for the Work; and
7. Any other items as set out in the applicable contracts

The updates to CCDC 5A, 5B and 17 also permit the Owner to take early occupancy of all or part of the Project before the Ready-for-Takeover milestone is achieved. Any early occupancy by the Owner requires the agreement of the affected Trade Contractor or Construction Manager, and after obtaining the approval of any applicable authorities.

Changes to Liability and Risk

The 2025 contracts have expanded a Contractor's limitation of liability for Contractors beyond its indemnity obligations.

There is now a new provision *Limitation of Liability* that outlines a Contractor's liability for losses on a project, subject to certain exclusions.

- **CCDC 5A:** The Construction Manager's liability for uninsured losses is limited to the greater of their *Fee for the Services* or $2 million, up to a maximum of $20 million.
- **CCDC 17 & CCDC 5B:** Liability for uninsured losses limited to the greater of the *Contract Price* or $2 million, up to a maximum of $20 million.

The *Limitation of Liability* provision also provides for a waiver of liability for consequential damages.

Progressive Release of Holdback

The updated contracts now incorporate the concept of **progressive release of holdback**, similar to the concept used under s. 26 of the pre-amended *Construction Act*.

Holdback can now be released in phases as specific portions of the Work are **certified complete by the Consultant**. This improves contractors' cash flow throughout the project, reduces the burden of waiting for a single final release, and lowers the risk of subcontractors liening for unpaid holdback.

Termination for Convenience

The updated **CCDC 5A** and **5B** contracts now expressly allow the Owner to **terminate for convenience;** that is, without cause.

This gives Owners greater flexibility to cancel or suspend projects where circumstances or viability have changed. The clause acts as a contractual “off-ramp,” avoiding the disputes that often arise when termination is limited to default or insolvency.

If termination occurs:

- **During pre-construction**, the Construction Manager is entitled to payment for direct damages included in their Pre-Construction Fee.
- **During construction**, the Construction Manager is entitled to direct damages, including reasonable profit.

Additional Notable 2025 CCDC Changes

Defined Pre-Construction Services & distinct fee model

- CCDC 5B now defines Pre-Construction Services separately from Construction Services.
    - Distinct fee model; consultant does not certify payment for pre-construction invoices (paid directly by Owner).
- Reimbursable expenses limited to pre-construction phase.
    - CCDC 5A allows fee allocation across the pre-construction, construction, and post-construction phases.

Execution Plan/dual schedules (Project vs. Construction)

- Owners may now request an **Execution Plan** from the Construction Manager setting methodology, procurement strategy, use of own forces, and anticipated cash flow.
- New definitions distinguish **Project Schedule** (Owner’s overall plan) and **Construction Schedule** (CM’s timeline).

Additional Notable 2025 CCDC Changes

Deleted cash allowances; expanded audit rights

- Cash allowances removed from 5A/5B.
- Owner’s audit rights over Cost of Work extended from 60 days → 1 year.
- List of excusable delays now includes subcontractor default, insolvency, or termination.

Clarified trade-contractor alignment under CCDC 17

- CCDC 17 (2025) now mirrors the Ready-for-Takeover and early-occupancy concepts, clarifies CM / Consultant roles with trade contractors, and streamlines payment flow-down

IPD (CCDC 30) modernization note

- CCDC 30 (2025) adds Lean tools, IPD Advisor, and Ready-for-Takeover milestone

Contact

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