

# Prompt Payment and Adjudication Beyond Ontario

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**ON OCTOBER 1, 2019**, the Ontario Construction Act's prompt payment and adjudication provisions will come into force. While that regime is the first of its kind in Canada, it likely won't be the only one for long.

In 2017, Public Services and Procurement Canada retained the authors of the Ontario Expert Review of the Construction Lien Act to conduct a review of the federal statutory scheme and make recommendations to accelerate payments within the construction industry and on federal government projects. On August 2, 2018, their report, titled *Building a Better Framework for Prompt Payment and Adjudication in Canada*, was released. The report recommends the adoption of prompt payment and adjudication on federal construction projects, based on the Ontario model.

Bill C-97, the Budget Implementation Act, 2019 No. 1 was introduced on April 8, 2019, and received Royal Assent on June 21, 2019. Division 26 of that Act enacts the Federal Prompt Payment for Construction Work Act, which follows the recommendations of *Building a Better Framework* and adopts aspects of the Ontario prompt payment and adjudication model.

In addition, several provinces have followed Ontario's lead by introducing prompt payment and adjudication legislation.

In May, 2019, Bill M223, the Prompt Payment (Builders Lien) Act, was introduced in British Columbia. The Bill provides for a prompt payment regime, but does not incorporate a comprehensive adjudication model similar to the Ontario one.

In 2018, the Manitoba Law Reform Commission published *The Builders' Liens Act: A Modernized Approach*. The Commission recommends the implementation of a prompt payment regime as well as a private adjudication system akin to that established by Ontario's Construction Act. The Commission further recommended that these changes be incorporated within *The Builders' Liens Act*, with such modifications as are necessary to synchronize its contents with other remedies in the Act, and not legislated as a stand-alone statute.

The Legislative Services Branch of the New Brunswick Office of the Attorney General similarly intends to implement changes based on those in Ontario.

Nova Scotia introduced a prompt payment and adjudication regime in Bill 119, which went through all readings and received

Royal Assent in less than a month, but has not yet been proclaimed.

On November 20, 2018, the Saskatchewan government introduced Bill 152, *The Builders' Lien (Prompt Payment) Amendment Act, 2018*. The Bill includes both prompt payment and adjudication regimes which seem to be modelled on the Ontario Act. The Bill went through third reading on May 2, 2019.

In Québec, the Act to facilitate oversight of public bodies' contracts and to establish the *Autorité des marchés publics*, which received legislative assent on December 1, 2017, implemented pilot projects for prompt payment and adjudication for certain government contracts. Public bodies governed by the pilot project must pay their general contractors on the last day of the month, and the general contractor must pay their subcontractors on the 5th day of the next month, and each subcontractor must pay its own subcontractors on the 10th day of the next month. To date, there is no plan to extend a prompt payment regime to the private construction sector in Quebec.

Of course, even in Ontario the prompt payment and adjudication provisions of the Construction Act have yet to come into force, so it remains to be seen how the construction industry will respond to these major changes in terms of both when payments are made and how payment disputes are resolved.

<sup>1</sup> [www.cca-acc.com/wp-content/uploads/.../Building-a-Federal-Framework-Report.pdf](http://www.cca-acc.com/wp-content/uploads/.../Building-a-Federal-Framework-Report.pdf)

<sup>2</sup> [www.manitobalawreform.ca/pubs/pdf/136-full\\_report.pdf](http://www.manitobalawreform.ca/pubs/pdf/136-full_report.pdf).

<sup>3</sup> Legislative Services Branch, Office of the Attorney General, Government of New Brunswick, "Law Reform Notes (#41)" issued May 2018, available online at: <<http://www2.gnb.ca/content/dam/gnb/Departments/ag-pg/PDF/en/LawReform/Notes41.pdf>>.



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