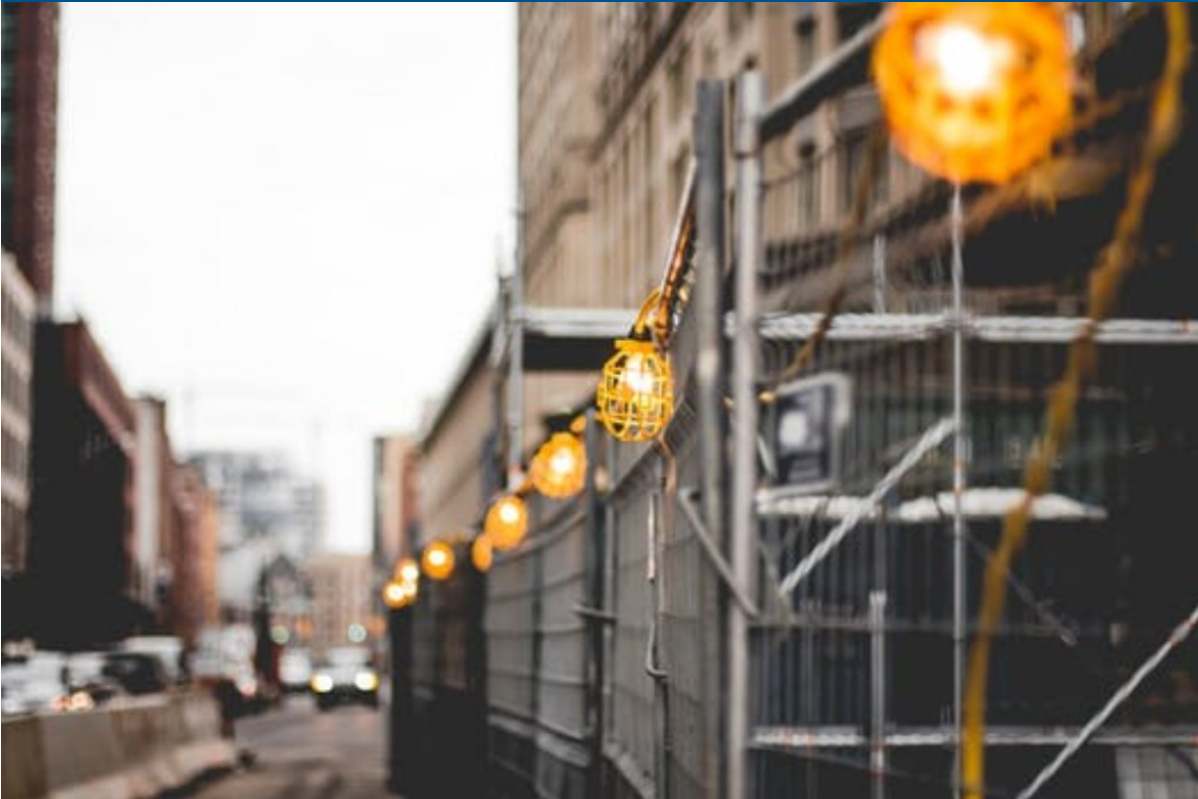


Changes to the *Construction Act* - Bill 57



While the new *Construction Act* came into force less than five months ago on July 1, 2018, there are various amendments to the *Act* now being proposed by Bill 57, *Restoring Trust, Transparency and Accountability Act, 2018*.

The significant changes include non-payment of holdback, transition and adjudication provisions as set out below:

Transitions provision

- Commencement of procurement process is defined as the earliest of:
 - A request for qualifications;
 - A request for quotations;
 - A request for proposals; or
 - A call for tenders.

- *Construction Lien Act*, as it read on June 29, 2018, continues to apply with respect to an improvement if:
 - Contract was entered into before July 1, 2018;
 - Procurement process for the improvement was commenced before July 1, 2018 by owner of premises; or
 - For premises subject to a leasehold interest first entered into before July 1, 2018, a contract for the improvement was entered into or a procurement process was commenced on or after July 1, 2018 and before the day Schedule 8 of Bill 57 comes into force.

- For municipal interest in premises, section 16(1) of the *Construction Act* applies so that liens do not attach to interest in premises of municipality, even if the contract was entered into or procurement commenced before July 1, 2018.

- Adjudication and prompt payment do not apply to contracts and subcontracts:
 - entered into before October 1, 2019;
 - entered into on or after October 1, 2019, if a procurement process for the improvement was commenced before that day by the owner.

Adjudication

- Revised to clearly provide that adjudication procedures set out in a contract apply to the extent they do not conflict with adjudication under the *Construction Act*. The application is subject to the exercise of the adjudicator's powers.
- A provision has been added to expressly allow a party to respond to a notice of adjudication.

Non-payment of holdback

- Currently section 27.1 regarding notice of non-payment of holdback allows the contractor/subcontractor to refuse to pay the amount withheld by the owner if the contractor/subcontractor refers the matter to adjudication. Since adjudication is not currently in force, the requirement for adjudication has been deleted by Bill 57.

- After October 1, 2019, that section requiring adjudication will be added back in.
- Once Bill 57 comes into force, and before October 1, 2019, a contractor may refuse to pay the amount of holdback withheld by the owner if the contractor gives notice to the applicable subcontractors that the amount is not being paid.

The first reading of Bill 57 took place on November 15, 2018. You can read the proposed amendments to the *Construction Act* at Schedule 8 of Bill 57 here:

https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2018/2018-11/b057_e.pdf

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