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Bill 142

An Act to amend the Construction Lien Act

The Hon. Y. Naqvi
Attorney General

Government Bill

1st Reading May 31, 2017

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

The Bill makes numerous amendments to the *Construction Lien Act* in response to the report titled “Striking the Balance: Expert Review of Ontario’s Construction Lien Act”, prepared for the Ministry of the Attorney General and the Ministry of Economic Development, Employment and Infrastructure and delivered on April 30, 2016. In addition, many housekeeping amendments are made to update the Act and to correct errors.

The Bill renames the Act the *Construction Act* (section 1 of the Bill). A number of other Acts are consequentially amended to reflect the change in the Act’s short title (sections 74 to 78, 80 and 81 of the Bill).

Section 2 of the Bill makes a number of different amendments to subsection 1 (1) of the Act, which set out definitions for the purposes of the Act. These include,

- (a) amending the existing definitions of “contractor” and “subcontractor” to take joint ventures into account;
- (b) re-enacting the definition of “municipality”; and
- (c) re-enacting the definition of “written notice of a lien” to provide for a written notice of a lien to be provided in a form prescribed by the regulations.

Subsection 2 (2) of the Bill repeals the definition of “construction trade newspaper”. References in the Act to publication in a construction trade newspaper are replaced with requirements to publish in the manner set out in the regulations.

The definition of “improvement” in subsection 1 (1) of the Act is amended by adding “capital” before “repair” in clause (a). A subsection 1 (1.1) is added to the Act to set out what is meant by “capital repair” as used in the definition of “improvement”.

The definition of “price” in subsection 1 (1) of the Act is re-enacted, so that direct costs incurred are included. A subsection 1 (1.2) is added to the Act to set out what is meant by “direct costs” as used in the definition of “price”.

Section 1.1 is added to the Act to set out how the Act applies in the context of an alternative financing and procurement arrangement respecting an improvement that is between the Crown, a municipality or a broader public sector organization on the one hand, and a special purpose entity on the other (section 3 of the Bill). A definition of “broader public sector organization” is added to subsection 1 (1) of the Act.

Section 2 of the Act is amended to change the thresholds at which a contract is considered to be substantially performed for the purposes of the Act, as well as for when it is deemed to be completed. Subsection (4) is added to section 2 to set out the circumstances in which multiple improvements under a single contract should be treated, for the purposes of the section, as if they were under separate contracts.

Section 6 of the Act is amended by adding a subsection (2) setting out examples of minor irregularities that do not automatically invalidate a certificate, declaration or claim for lien.

A new Part I.1 (Prompt Payment) is added to the Act. It sets out timelines for the payment of amounts payable under contracts to contractors (payable by owners), and under subcontracts to subcontractors (whether payable by contractors or by other subcontractors). A person is required to make payments in accordance with the timelines, unless he or she provides a notice of non-payment in accordance with the requirements of the Part and regulations made under it. Amounts not paid in accordance with the timelines accrue interest at a specified rate. The Part applies only to payments made under contracts and subcontracts entered into on or after the day the Part comes into force.

A new section 8.1 is added to the Act, imposing duties on contractors and subcontractors who are trustees of trust funds under section 8 of the Act. The duties require the trust funds to be deposited in a specified manner and for records to be kept that include specified details.

Section 12 of the Act is amended so that set-off by a trustee of an amount from trust funds may only be in respect of debts, claims or damages that are related to the applicable improvement. A similar amendment is made to subsection 17 (3) of the Act.

A new Part II.1 (Construction Dispute Interim Adjudication) is added to the Act. The Part establishes a right of parties to a contract or subcontract to require the adjudication of certain matters under the Part. Matters that may be adjudicated are set out under subsections 13.5 (1) and (2) of the Act. The Part contains various requirements respecting adjudications. A contract or subcontract may provide for the procedures that are to apply to an adjudication between the parties, as long as those procedures comply with the requirements of the Part. If they do not, or if a contract or subcontract does not address adjudication procedures, the procedures set out in the Part and in the regulations apply to the adjudication (section 13.6 of the Act).

An adjudication is conducted by an adjudicator, who is a person qualified to conduct such adjudications by the Authorized Nominating Authority designated under the Part for the purpose. In addition to qualifying persons as adjudicators, the Authority is required to provide for the training of persons as adjudicators, to maintain a public registry of adjudicators and, in the event that parties to an adjudication cannot agree on an adjudicator to conduct their adjudication, to appoint an

adjudicator to do so. The Authority is authorized to charge fees for its services, subject to the regulations (sections 13.2 and 13.3 of the Act).

A determination on an adjudication under Part II.1 is binding on the parties, subject to the underlying matter being determined by a court or by an arbitrator under the *Arbitration Act, 1991* (section 13.15 of the Act). The determination of an adjudicator may be set aside in certain circumstances (section 13.18 of the Act). It may also be enforced by the courts, on application (section 13.20 of the Act). Section 13.19 of the Act sets out timelines for the payment of amounts owing under a determination. The section also specifies the implications of not paying within the timelines: the accrual of interest on amounts owing and the permissibility of a suspension of work on the improvement, subject to payment. Part II.1 applies only to contracts and subcontracts entered into on or after the day the Part comes into force.

Section 16 of the Act is re-enacted. Currently, a lien does not attach to the interest of the Crown in a premises of which it is the owner, nor to the interest of a municipality in a premises that is a public street or highway owned by the municipality. The re-enactment of section 16 provides that a lien does not attach to the interest of a municipality in any premises that it owns. Complementary amendments are made to subsection 17 (4) and to section 34 of the Act.

Subsection 19 (1) of the Act is re-enacted to provide that if the interest of the owner to which a lien attaches is leasehold, and if payment for all or part of the improvement is accounted for under the terms of the lease or any renewal of it, or under any agreement to which the landlord is a party that is connected to the lease, the landlord's interest is also subject to the lien, to the extent of 10 percent of the amount of such payment. A subsection 19 (5) is added to the Act to confirm that a landlord may still be considered an owner of a premises for the purposes of the Act if he or she meets the criteria set out in the definition of "owner" in subsection 1 (1) of the Act. Complementary amendments are made to section 39 of the Act, which sets out information that must be provided on request in specified circumstances, in order to expressly address information that must be provided by a landlord to whom subsection 19 (1) applies.

A new subsection 22 (4) is added to the Act to specify the various forms in which a holdback may be held under the Act. Sections 26 and 27 are amended so that the payment of the basic holdback (under section 26) and of the holdback for finishing work (under section 27) is requisite; the current wording of the sections states that a payer may, without jeopardy, make payment of the holdbacks. Sections 26.1 and 26.2 are added to the Act, to provide for the payment of basic holdbacks on an annual and on a phased basis, respectively. A new section 27.1 of the Act provides that a payer may refuse to pay some or all of a holdback amount if he or she gives notice in accordance with the regulations.

Amendments are made to section 31 of the Act in order to extend the timelines for the expiry of liens. The section is also amended to make express reference to the termination of a contract as a factor in whether or not a lien is expired. A new subsection 31 (2.1) is added to specifically address the expiry of a lien of the trustee of a workers' trust fund.

Subsection 32 (2) of the Act is amended to provide for changes in the information that must be included in certificates or declarations of substantial performance, and subsection 34 (5) of the Act is amended to provide for changes in the information that must be included in a claim for lien. Additional amendments are made to section 34, including,

- (a) adding a requirement that a person who preserves a lien that relates to an improvement to the common elements of a condominium must give notice of the lien's preservation to specified persons (subsection 29 (10) of the Bill); and
- (b) providing for the extension of the times for a lien's expiry if the matter that is the subject of the lien is also the subject of an adjudication under the new Part II.1 of the Act, but only for the purposes of section 34 (subsection 29 (11) of the Bill).

Section 35 of the Act is re-enacted to provide for the liability of a person who preserves a claim for lien or gives written notice of a lien that results in another person suffering damages as a result, if the person who preserved the lien or gave notice knew or ought to have known that the amount of the lien was wilfully exaggerated; the current section refers to an amount which the person knew or ought to have known is grossly in excess of the amount owed. A subsection (2) is added to section 35 to give the court authority to, on motion, reduce a lien amount by any exaggerated portion, as long as it finds that the person who preserved the lien or gave notice acted in good faith.

Subsection 36 (2) of the Act is amended to extend the timeline for the perfection of a preserved lien.

In addition to being amended to address landlords under subsection 19 (1) of the Act, section 39 of the Act is amended to specify a "state of accounts" for the purposes of the section (subsections 32 (2), (4), (7) and (9) of the Bill). Paragraph 1 of subsection 39 (1) of the Act is amended to add a requirement that an owner or contractor must provide information as to whether the contract provides that it is based on the completion of specified phases or milestones. A new subsection (4.2) is added to the section respecting information to be provided by a mortgagee.

Section 41 of the Act is amended to provide for the registration of a discharge of lien, in the form prescribed by the regulations, in order to discharge a preserved or perfected lien. A complementary amendment is made to section 42 of the Act.

Various amendments are made to section 44 of the Act, which deals with the vacating of a lien by payment into court:

1. Clause 44 (1) (d) is amended to raise the threshold amount required to be provided as security for costs.
2. Subsection (3.1) is added to address motions for vacating a written notice of lien.

3. Subsection (5.1) is added to provide that a letter of credit that meets the specified requirements is acceptable as security under the section.

In addition, subsections 44 (2.1) and (2.2) are added to address the application of clause (1) (a) and subsection (2), which provide for motions to vacate a lien where the lien attaches to a premises, in the condominium context. Related amendments are made to the *Condominium Act, 1998*, by the re-enactment of sections 13 and 14 of that Act (section 73 of the Bill).

Section 47 (1) of the Act is re-enacted to provide expressly that the court may discharge a lien on the basis that the claim for lien is frivolous, vexatious or an abuse of process.

Part VIII of the Act is amended by the repeal of most of its provisions dealing with procedures on a lien claim action, and by instead providing that the procedures that govern such an action are any set out in the Act and those set out in regulations prescribed for the purposes of the Part. The *Courts of Justice Act* and the rules of court apply to the extent that they do not conflict with the Act and the prescribed procedures. Section 58 of the Act, providing for references of actions to specified persons, is amended to provide for the referral of actions that fall within the monetary jurisdiction of the Small Claims Court to deputy judges of that Court or to the Small Claims Court Administration Judge.

Subsection 71 (3) of the Act currently provides that no appeal lies from a judgment or order on a motion to oppose confirmation of a report from a reference under section 58 if the amount is \$1,000 or less, or from an interlocutory order. Subsection 71 (3) is re-enacted as subsections 71 (3) and (4), which raise the appeal threshold to \$10,000, as well as provide for the appeal of an interlocutory order with leave of the Divisional Court.

A new Part XI.1 (Surety Bonds) is added to the Act. Section 85.1 of the Act creates requirements for a contractor who enters into a contract with an owner that is the Crown, a municipality or a broader public sector organization (a “public contract”) to furnish the owner with a labour and material payment bond, and with a performance bond, if the contract price is above the amount set out in the regulations. Any such bonds must meet the specified requirements. Section 69 of the Act, establishing a right of action on default of a labour and material payment bond, is repealed and re-enacted as a new section 85.2. The new section also establishes a right of action on default of a performance bond. A complementary amendment is made to the new Part II.1 (Construction Dispute Interim Adjudication) to provide that the regulations may extend the application of that Part, with such alterations as the regulations may specify, to disputes respecting the surety bonds specified by the regulations.

Section 87 of the Act is amended by adding a new subsection (1.1) that specifies that a written notice of lien must be served in a manner permitted under the rules of court for service of an originating process.

A new section 87.1 is added to the Act to address the interaction between the Act and the *Financial Administration Act*, where the Crown or specified public entities are required to pay interest under the Act.

Section 88 of the Act, setting out regulation-making authority, is re-enacted. New regulation-making authorities respecting the various amendments to the Act are added. As well, a regulation-making authority respecting transitional matters arising from the implementation of the Bill is added.

In addition to the previously-mentioned substantive amendments and their related and complementary amendments, the Bill makes various non-substantive amendments and corrections. These include,

- (a) fixing incorrect usage of the defined term “services or materials”; for example in the definition of “payer”, in subsection 1 (1) of the Act, where “materials or services” is used instead (subsection 2 (8) of the Bill);
- (b) adding definitions for “prescribed” and “regulations” in subsection 1 (1) of the Act (subsections 2 (10) and (12) of the Bill);
- (c) replacing the reference in clause 62 (6) (b) of the Act to the repealed *Arbitrations Act* with the replacement *Arbitration Act, 1991* (subsection 45 (2) of the Bill);
- (d) amending subsection 68 (4) of the Act to remove a redundant reference to a charge (subsection 47 (2) of the Bill); and
- (e) repealing spent transitional provisions (sections 5, 18 and 82 to 84 of the Bill).

In addition, numerous amendments are made throughout the Bill to correct errors that are specific to the French version of the Act. These include amendments to the French translations of “claim for lien” (from “avis de privilège” to “revendication de privilège”) and “premises” (from “local” to “lieux”).

The commencement section of the Bill (section 85) provides that, for the most part, the housekeeping and non-substantive amendments come into force on the day the Bill receives Royal Assent, and the substantive amendments come into force on proclamation of the Lieutenant Governor.

An Act to amend the Construction Lien Act

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1 The short title of the *Construction Lien Act* is repealed and the following substituted:

Construction Act

2 (1) Subsection 1 (1) of the Act is amended by adding the following definition:

“broader public sector organization” has the same meaning as in the *Broader Public Sector Accountability Act, 2010*; (“organisme du secteur parapublic”)

(2) The definition of “construction trade newspaper” in subsection 1 (1) of the Act is repealed.

(3) The definition of “contractor” in subsection 1 (1) of the Act is amended by adding “and includes a joint venture entered into for the purposes of an improvement or improvements” at the end.

(4) The French version of the definition of “home buyer” in subsection 1 (1) of the Act is amended by striking out “un local qui constitue” in the portion before clause (a) and substituting “des lieux qui constituent”.

(5) Clause (a) of the definition of “improvement” in subsection 1 (1) of the Act is amended by adding “capital” before “repair”.

(6) The French version of the definition of “interest in the premises” in subsection 1 (1) of the Act is amended by striking out “intérêt sur le local” and substituting “intérêt sur les lieux”, by striking out “locaux” and substituting “lieux” and by striking out “un local” and substituting “des lieux”.

(7) The definition of “municipality” in subsection 1 (1) of the Act is repealed and the following substituted:

“municipality” means,

- (a) a municipality within the meaning of the *Municipal Act, 2001*,
- (b) a local board within the meaning of the *Municipal Act, 2001*, and
- (c) a conservation authority established by or under the *Conservation Authorities Act* or a predecessor of that Act; (“municipalité”)

(8) The definition of “payer” in subsection 1 (1) of the Act is amended by striking out “materials or services” and substituting “services or materials”.

(9) The French version of the definition of “premises” in subsection 1 (1) of the Act is amended by striking out “local” and substituting “lieux”.

(10) Subsection 1 (1) of the Act is amended by adding the following definition:

“prescribed” means prescribed by the regulations; (“prescrit”)

(11) The definition of “price” in subsection 1 (1) of the Act is repealed and the following substituted:

“price” means,

- (a) the contract or subcontract price,
 - (i) agreed on between the parties, or
 - (ii) if no specific price has been agreed on between them, the actual market value of the services or materials that have been supplied to the improvement under the contract or subcontract, and
- (b) any direct costs incurred as a result of an extension of the duration of the supply of services or materials to the improvement for which the contractor or subcontractor, as the case may be, is not responsible; (“prix”)

(12) Subsection 1 (1) of the Act is amended by adding the following definition:

“regulations” means the regulations made under this Act; (“règlements”)

(13) The definition of “subcontractor” in subsection 1 (1) of the Act is amended by adding “and includes a joint venture entered into for the purposes of an improvement or improvements” at the end.

(14) The French version of the definition of “written notice of a lien” in subsection 1 (1) of the Act is amended by striking out “l’avis d’un privilège” in the portion before clause (a) and substituting “la revendication de privilège”.

(15) The definition of “written notice of a lien” in subsection 1 (1) of the Act is repealed and the following substituted:

“written notice of a lien” means a claim for lien or a written notice of a lien in the prescribed form, given by a person having a lien. (“avis écrit d’un privilège”)

(16) Section 1 of the Act is amended by adding the following subsections:

Capital repair

(1.1) For the purposes of clause (a) of the definition of “improvement” in subsection (1), a capital repair to land is any repair intended to extend the normal economic life of the land or of any building, structure or works on the land, or to improve the value or productivity of the land, building, structure or works, but does not include maintenance work performed in order to prevent the normal deterioration of the land, building, structure or works or to maintain the land, building, structure or works in a normal, functional state.

Direct costs

(1.2) For the purposes of clause (b) of the definition of “price” in subsection (1), the direct costs incurred are the reasonable costs of performing the contract or subcontract during the extended period of time, including costs related to the additional supply of services or materials (including equipment rentals), insurance and surety bond premiums, and costs resulting from seasonal conditions, that, but for the extension, would not have been incurred, but do not include indirect damages suffered as a result, such as loss of profit, productivity or opportunity, or any head office overhead costs.

3 (1) The Act is amended by adding the following section:

Alternative financing and procurement arrangements

1.1 (1) This section applies if the Crown, a municipality or a broader public sector organization, as the owner of a premises, enters into an agreement with a special purpose entity that requires the entity to finance and undertake an improvement on behalf of the Crown, municipality or broader public sector organization, as the case may be, and, for the purpose, to enter into an agreement with a contractor in respect of the improvement.

Where entity deemed to be owner

(2) In the following portions and provisions of this Act and any regulations made for the purposes of them, the special purpose entity is deemed to be the owner of the premises in place of the Crown, municipality or broader public sector organization, and the agreement between the entity and the contractor is deemed to be the contract:

1. Part I.1.
2. Part II.1.
3. Section 32.
4. Section 39.
5. Any other portion or provision that may be prescribed.

Crown, etc., as owner

(3) Except in the portions and provisions referred to in subsection (2), the Crown, municipality or broader public sector organization continues to be the owner of the premises for the purposes of this Act, and, for the purpose, holdbacks shall be determined under section 22 in reference to the agreement between the contractor and the special purpose entity.

(2) Subsection 1.1 (3) of the Act, as enacted by subsection (1), is repealed and the following substituted:

Crown, etc., as owner

(3) Except in the portions and provisions referred to in subsection (2), the Crown, municipality or broader public sector organization continues to be the owner of the premises for the purposes of this Act, which applies with the following modifications:

1. For the purposes of section 22, holdbacks shall be determined in reference to the agreement between the contractor and the special purpose entity.
2. For the purposes of section 85.1, the agreement between the contractor and the special purpose entity is deemed to be a public contract.

4 (1) Subclause 2 (1) (b) (i) of the Act is amended by striking out “\$500,000” and substituting “\$1,000,000”.

(2) Subclause 2 (1) (b) (ii) of the Act is amended by striking out “\$500,000” and substituting “\$1,000,000”.

(3) Subsection 2 (2) of the Act is amended by striking out “the remainder of the improvement cannot be completed expeditiously for reasons beyond the control of the contractor or, where”.

(4) The French version of subsection 2 (3) of the Act is amended by striking out “services et matériaux” wherever it appears and substituting in each case “services ou matériaux”.

(5) Clause 2 (3) (b) of the Act is amended by striking out “\$1,000” and substituting “\$5,000”.

(6) Section 2 of the Act is amended by adding the following subsection:

Multiple improvements under a contract

(4) If more than one improvement is to be made under a contract and each of the improvements is to lands that are not contiguous, then, if the contract so provides, each improvement is deemed for the purposes of this section to be under a separate contract.

5 Subsection 3 (2) of the Act is repealed.

6 (1) The French version of section 6 of the Act is amended by striking out “un avis de privilège” and substituting “une revendication de privilège”.

(2) Section 6 of the Act is amended by adding the following subsection:

Same

(2) Minor irregularities to which subsection (1) applies include,

- (a) a minor error or irregularity in the name of an owner of a premises or of a person for whom services or materials were supplied;
- (b) a minor error or irregularity in the legal description of a premises; and
- (c) including an owner’s name in the wrong portion of a claim for lien.

7 The Act is amended by adding the following Part:

**PART I.1
PROMPT PAYMENT**

Definition, “proper invoice”

6.1 In this Part,

“proper invoice” means a written bill or other request for payment for services or materials in respect of an improvement under a contract, if it contains the following information and, subject to subsection 6.2 (2), meets any other requirements that the contract specifies:

1. The contractor’s name and address.
2. The date of the proper invoice and the period during which the services or materials were supplied.
3. Information identifying the authority, whether in the contract or otherwise, under which the services or materials were supplied.
4. A description, including quantity where appropriate, of the services or materials that were supplied.
5. The amount payable for the services or materials that were supplied, and the payment terms.
6. The name, title, telephone number and mailing address of the person to whom payment is to be sent.
7. Any other information that may be prescribed.

Giving of proper invoices

6.2 (1) Proper invoices shall be given to an owner on a monthly basis, unless the contract provides otherwise.

Restriction on conditions

(2) A provision in a contract that makes the giving of a proper invoice conditional on the prior certification of a payment certifier or on the owner’s prior approval is of no force or effect.

Same

(3) For greater certainty, subsection (2) has no application to a provision in a contract that provides for the certification of a payment certifier or the owner’s approval after a proper invoice is given.

Payment deadline, owner to contractor

6.3 (1) Subject to the giving of a notice of non-payment under subsection (2), an owner shall pay the amount payable under a proper invoice no later than 28 days after receiving the proper invoice from the contractor.

Exception, notice of non-payment if dispute

(2) An owner who disputes a proper invoice may refuse to pay all or any portion of the amount payable under the proper invoice within the time specified in subsection (1) if, no later than 14 days after receiving the proper invoice from the contractor, the owner gives to the contractor a notice of non-payment, in the prescribed form and manner, specifying the amount of the proper invoice that is not being paid and detailing all of the reasons for non-payment.

Requirement to pay remaining amount

(3) Subsection (1) continues to apply to any amount payable under the proper invoice that is not the subject of a notice under subsection (2).

Payment deadlines, contractor to subcontractor**Full payment**

6.4 (1) Subject to the giving of a notice of non-payment under subsection (6), a contractor who receives full payment of a proper invoice within the time specified in subsection 6.3 (1) shall, no later than seven days after receiving payment, pay each subcontractor who supplied services or materials under a subcontract with the contractor that were included in the proper invoice the amount payable to the subcontractor.

Partial payment, paid amount

(2) Subject to the giving of a notice of non-payment under subsection (6), if the payment received by the contractor from the owner is only for a portion of the amount payable under a proper invoice, the contractor shall, no later than seven days after receiving payment, pay each subcontractor who supplied services or materials under a subcontract with the contractor that were included in the proper invoice from the amount paid by the owner.

Same

(3) For the purposes of subsection (2), if more than one subcontractor is entitled to payment, payment shall be made in accordance with the following rules:

1. If the amount not paid by the owner is specific to services or materials supplied by a particular subcontractor or subcontractors, the remaining subcontractors shall be paid, with any amount paid by the owner in respect of the subcontractor or subcontractors who are implicated in the dispute payable to them on a rateable basis, as applicable.
2. In any other case, subcontractors shall be paid on a rateable basis.

Non or partial payment, unpaid amount

(4) Subject to the giving of a notice of non-payment under subsection (5) or (6), if the owner does not pay some or all of a proper invoice within the time specified in subsection 6.3 (1), the contractor shall, no later than 35 days after giving the proper invoice to the owner, pay each subcontractor who supplied services or materials under a subcontract with the contractor that were included in the proper invoice the amount payable to the subcontractor, to the extent that he or she was not paid fully under subsection (2).

Exception, notice of non-payment if owner does not pay

(5) Subsection (4) does not apply in respect of a subcontractor if, no later than the date specified in subsection (7), the contractor gives to the subcontractor, in the prescribed manner,

- (a) a notice of non-payment, in the prescribed form,
 - (i) stating that some or all of the amount payable to the subcontractor is not being paid within the time specified in subsection (4) due to non-payment by the owner,
 - (ii) specifying the amount not being paid, and
 - (iii) providing an undertaking to refer the matter to adjudication under Part II.1 no later than 14 days after giving the notice to the subcontractor; and
- (b) a copy of any notice of non-payment given by the owner under subsection 6.3 (2).

Exception, notice of non-payment if dispute

(6) A contractor who disputes, in whole or in part, the entitlement of a subcontractor to payment of an amount under the subcontract may refuse to pay all or any portion of the amount within the time specified in subsection (1), (2) or (4), as the case may be, if, no later than the date specified in subsection (7), the contractor gives to the subcontractor a notice of non-payment, in the prescribed form and manner, specifying the amount that is not being paid and detailing all of the reasons for non-payment.

Timing of notice

(7) For the purposes of subsections (5) and (6), the contractor must give notice no later than,

- (a) seven days after receiving a notice of non-payment from the owner under subsection 6.3 (2); or

(b) if no notice was given by the owner, before the expiry of the period referred to in subsection (4).

Payment deadline once payment received from owner

(8) Subsections (1) and (2) apply, with necessary modifications, in respect of any amount that is the subject of a notice under subsection (5), once the amount is paid by the owner.

Payment deadlines, subcontractor to subcontractor

Full payment

6.5 (1) Subject to the giving of a notice of non-payment under subsection (7), a subcontractor who receives full payment from a contractor in respect of a proper invoice within the time specified in subsection 6.4 (1) shall, no later than seven days after receiving payment, pay each subcontractor who supplied services or materials under a subcontract between them that were included in the proper invoice the amount payable to the subcontractor.

Partial payment, paid amount

(2) Subject to the giving of a notice of non-payment under subsection (7), if the payment received by the subcontractor from the contractor is only for a portion of the amount payable to the subcontractor in respect of a proper invoice, the subcontractor shall, no later than seven days after receiving payment, pay each subcontractor who supplied services or materials under a subcontract between them that were included in the proper invoice from the amount paid by the contractor.

Same

(3) For the purposes of subsection (2), if more than one subcontractor is entitled to payment, payment shall be made in accordance with the following rules:

1. If the amount not paid by the contractor is specific to services or materials supplied by a particular subcontractor or subcontractors, the remaining subcontractors shall be paid, with any amount paid by the contractor in respect of the subcontractor or subcontractors who are implicated in the dispute payable to them on a rateable basis, as applicable.
2. In any other case, subcontractors shall be paid on a rateable basis.

Non or partial payment, unpaid amount

(4) Subject to the giving of a notice of non-payment under subsection (6) or (7), if the contractor does not pay some or all of the amount payable to a subcontractor in respect of a proper invoice within the time specified in section 6.4, the subcontractor shall, no later than the date specified in subsection (5), pay each subcontractor who supplied services or materials under a subcontract between them that were included in the proper invoice the amount payable to the subcontractor, to the extent that he or she was not paid fully under subsection (2).

Same, payment deadline

(5) For the purposes of subsection (4), the subcontractor shall pay the amounts no later than,

- (a) seven days after the subcontractor receives payment from the contractor; or
- (b) if no payment is made by the contractor to the subcontractor, 42 days after the proper invoice was given to the owner.

Exception, notice of non-payment if contractor does not pay

(6) Subsection (4) does not apply in respect of a subcontractor if, no later than the date specified in subsection (8), the subcontractor required to pay under subsection (4) gives to the other subcontractor, in the prescribed manner,

- (a) a notice of non-payment, in the prescribed form,
 - (i) stating that some or all of the amount payable to the subcontractor is not being paid within the time specified in subsection (4) due to non-payment by the contractor, and
 - (ii) specifying the amount not being paid; and
- (b) a copy of any notices of non-payment received by the subcontractor in relation to the proper invoice.

Exception, notice of non-payment if dispute

(7) A subcontractor who disputes, in whole or in part, the entitlement of another subcontractor to payment of an amount under the subcontract may refuse to pay all or any portion of the amount within the time specified in subsection (1), (2) or (4), as the case may be, if, no later than the date specified in subsection (8), the subcontractor gives to the other subcontractor a notice of non-payment, in the prescribed form and manner, specifying the amount that is not being paid and detailing all of the reasons for non-payment.

Timing of notice

(8) For the purposes of subsections (6) and (7), the subcontractor must give notice no later than,

- (a) seven days after receiving a notice of non-payment from the contractor under subsection 6.4 (5) or (6); or

(b) if no notice was given by the contractor, before the expiry of the period referred to in clause (5) (b).

Payment deadline once payment received from contractor

(9) Subsections (1) and (2) apply, with necessary modifications, in respect of any amount that is the subject of a notice under subsection (6), once the amount is paid by the contractor.

Date proper invoice was given

(10) On the request of a subcontractor who is required to make payments in accordance with this section, a contractor shall, as soon as possible, provide to the subcontractor confirmation of the date on which the contractor gave a proper invoice to the owner.

Further application

(11) This section applies, with necessary modifications, in respect of a subcontractor who is entitled to payment in accordance with this section and any amounts payable by that subcontractor to any other subcontractor under a subcontract in respect of the improvement.

No effect on wages

6.6 Nothing in this Part in any way reduces, derogates from or alters the obligations of a contractor or subcontractor to pay wages as provided for by statute, contract or collective bargaining agreement.

Interest on late payments

6.7 If an amount is not paid when it is due under this Part, interest shall be paid on the outstanding balance at the prejudgment interest rate determined under subsection 127 (2) of the *Courts of Justice Act* or, if the contract or subcontract specifies a different interest rate for the purpose, the greater of the prejudgment interest rate and the interest rate specified in the contract or subcontract.

Transition

6.8 This Part applies to payments made under contracts entered into on or after the day section 7 of the *Construction Lien Amendment Act, 2017* comes into force.

8 The Act is amended by adding the following section:

Contractor's, subcontractor's duties re trust funds

8.1 (1) Every person who is a trustee under section 8 shall comply with the following requirements respecting the trust funds of which he or she is trustee:

1. The trust funds shall be deposited into a bank account in the trustee's name. If there is more than one trustee of the trust funds, the funds shall be deposited into a bank account in all of the trustees' names.
2. The trustee shall maintain written records respecting the trust funds, detailing the amounts that are received into and paid out of the funds, any transfers made for the purposes of the trust, and any other prescribed information.
3. If the person is a trustee of more than one trust under section 8, the trust funds may be deposited together into a single bank account, as long as the trustee maintains the records required under paragraph 2 separately in respect of each trust.

Multiple trust funds in single account

(2) Trust funds from separate trusts that are deposited together into a single bank account in accordance with subsection (1) are deemed to be traceable, and the depositing of trust funds in accordance with that subsection does not constitute a breach of trust.

9 The French version of subsection 9 (1) of the Act is amended by striking out "intérêt dans un local" in the portion before clause (a) and substituting "intérêt sur des lieux".

10 (1) The French version of section 12 of the Act is repealed and the following substituted:

Compensation par le fiduciaire

12 Sous réserve de la partie IV, un fiduciaire peut, sans manquer à ses obligations en cette qualité, retenir sur des fonds en fiducie un montant qui, eu égard à la relation qui existe entre le fiduciaire et la personne envers laquelle il est tenu aux termes d'un contrat ou d'un contrat de sous-traitance relatif aux améliorations, est égal au solde en sa faveur des dettes, réclamations ou dommages-intérêts non réglés, que ceux-ci se rapportent ou non aux améliorations.

(2) Section 12 of the Act is amended by striking out "whether or not related to the improvement" at the end and substituting "related to the improvement".

11 (1) The Act is amended by adding the following Part:

**PART II.1
CONSTRUCTION DISPUTE INTERIM ADJUDICATION**

Definitions

13.1 In this Part,

“adjudication” means construction dispute interim adjudication under this Part with respect to a matter referred to in section 13.5; (“arbitrage intérimaire”)

“adjudicator” means a person who is qualified by the Authority as an adjudicator; (“arbitre intérimaire”)

“Authority” means the Authorized Nominating Authority designated under section 13.2; (“Autorité”)

“notice of adjudication” means a notice that meets the requirements of section 13.7. (“avis d’arbitrage intérimaire”)

Authorized Nominating Authority

13.2 (1) The Lieutenant Governor in Council may, by regulation, designate an entity to act as Authorized Nominating Authority for the purposes of this Part.

Criteria

(2) An entity may not be designated under subsection (1), or act as Authorized Nominating Authority, unless it meets the prescribed criteria, if any.

Duties and powers of Authority

Duties

13.3 (1) The Authority shall,

- (a) develop and oversee programs for the training of persons as adjudicators;
- (b) qualify persons who meet the prescribed requirements as adjudicators;
- (c) establish and maintain a publicly available registry of adjudicators;
- (d) appoint adjudicators for the purposes of subsection 13.9 (5); and
- (e) perform any other duties of the Authority set out in this Part or that may be prescribed for the purposes of this Part.

Powers

(2) The Authority may,

- (a) subject to the regulations, set fees for the training and qualification of persons as adjudicators and for the appointment of adjudicators, and require their payment; and
- (b) exercise any other power of the Authority set out in this Part or that may be prescribed for the purposes of this Part.

Minister as interim Authority

13.4 (1) The Lieutenant Governor in Council may designate the Minister responsible for the administration of this Act to act as Authorized Nominating Authority in accordance with subsection (2) on an interim basis, for any period during which an entity is not designated under section 13.2.

Same

(2) If a designation is made under subsection (1), the Minister,

- (a) shall, subject to subsection (3), perform the duties of the Authority, other than the duty set out in clause 13.3 (1) (a); and
- (b) may exercise the powers of the Authority, other than the power set out in clause 13.3 (2) (a).

Same

(3) A duty of the Authority that is set out in the regulations for the purposes of clause 13.3 (1) (e) must only be performed by the Minister if the regulations prescribed for the purposes of this section so provide.

Availability of adjudication

Contract

13.5 (1) Subject to subsection (3), a party to a contract may refer to adjudication a dispute with the other party to the contract respecting any of the following matters:

1. The valuation of services or materials provided under the contract.

2. Payment under the contract, including in respect of a change order, whether approved or not, or a proposed change order.
3. Disputes that are the subject of a notice of non-payment under Part I.1.
4. Amounts retained under section 12 (set-off by trustee) or under subsection 17 (3) (lien set-off).
5. Non-payment of holdback under section 27.1.
6. Any other matter that the parties to the adjudication agree to, or that may be prescribed.

Subcontract

(2) Subject to subsection (3), a party to a subcontract may refer to adjudication a dispute with the other party to the subcontract respecting any of the matters referred to in subsection (1), with necessary modifications.

Expiry of adjudication period

(3) An adjudication may not be commenced if the notice of adjudication is given after the date the contract or subcontract is completed, unless the parties to the adjudication agree otherwise.

Multiple matters

(4) An adjudication may only address a single matter, unless the parties to the adjudication and the adjudicator agree otherwise.

Application despite other proceeding

(5) A party may refer a matter to adjudication under this Part even if the matter is the subject of a court action or of an arbitration under the *Arbitration Act, 1991*, unless the action or arbitration has been finally determined.

Adjudication procedures

13.6 (1) Subject to subsection (2), an adjudication is subject to the adjudication procedures set out in the contract or subcontract, if they comply with the requirements of this Part.

Same

(2) If the contract or subcontract does not address adjudication procedures, or if the adjudication procedures set out in the contract or subcontract do not comply with the requirements of this Part, the adjudication is subject to the adjudication procedures set out in this Part and in the regulations.

Notice of adjudication

13.7 (1) A party to a contract or subcontract who wishes to refer a dispute to adjudication shall give to the other party a written notice of adjudication that includes,

- (a) the names and addresses of the parties;
- (b) the nature and a brief description of the dispute, including details respecting how and when it arose;
- (c) the nature of the redress sought; and
- (d) the name of a proposed adjudicator to conduct the adjudication.

Copies

(2) If the regulations so provide, a party who gives notice under subsection (1) shall give a copy of the notice, in the prescribed manner, to the prescribed persons or entities.

Consecutive adjudication

13.8 (1) If the same matter or related matters in respect of an improvement are the subject of disputes to be adjudicated in separate adjudications under subsections 13.5 (1) and (2), the parties to each of the adjudications may agree to the adjudication of the disputes consecutively, by a single adjudicator.

May be required by contractor

(2) If the same matter or related matters in respect of an improvement are the subject of disputes to be adjudicated in separate adjudications under subsections 13.5 (1) and (2) but the parties to each of the adjudications do not agree to consecutive adjudication, the contractor may, in accordance with the regulations, nevertheless require that the disputes be adjudicated consecutively, by a single adjudicator.

Adjudicator

13.9 (1) An adjudication may only be conducted by an adjudicator listed in the registry established under clause 13.3 (1) (c).

Selection of adjudicator

(2) The parties to the adjudication may agree to an adjudicator, or may request that the Authority appoint an adjudicator.

Contract, subcontract may not name adjudicator

(3) A provision in a contract or subcontract that purports to name a person to act as an adjudicator in the event of an adjudication is of no force or effect.

Requirement to request appointment

(4) If an adjudicator does not consent to conduct the adjudication within four days after the notice of adjudication is given, the party who gave the notice shall request that the Authority appoint an adjudicator.

Appointment

(5) The Authority shall appoint an adjudicator, subject to his or her prior consent, to conduct an adjudication no later than seven days after receiving a request for the appointment.

No requirement to act

(6) Nothing in this Part or the regulations shall be read as requiring an adjudicator to agree to conduct an adjudication or to accept an appointment by the Authority to conduct an adjudication.

Adjudicator fee

13.10 (1) An adjudicator shall be paid a fee for conducting the adjudication, which shall be determined in accordance with subsection (2) before the adjudication commences.

Fee amount

(2) The fee payable to an adjudicator is,

- (a) the fee agreed to by the parties to the adjudication and the adjudicator; or
- (b) if the parties and the adjudicator do not agree to a fee amount, the amount determined by the Authority, in accordance with the regulations, if any, on the adjudicator's request.

Equal apportionment

(3) The parties to the adjudication shall split payment of the adjudication fee equally, subject to a different determination under section 13.17.

Documents for adjudication

13.11 No later than five days after an adjudicator agrees or is appointed to conduct the adjudication, the party who gave the notice of adjudication shall give to the adjudicator a copy of the notice, together with,

- (a) a copy of the contract or subcontract; and
- (b) any documents the party intends to rely on during the adjudication.

Conduct of adjudication

Powers of adjudicator

13.12 (1) In conducting an adjudication, an adjudicator may exercise the following powers and any other power of an adjudicator that may be specified in the contract or subcontract:

1. Issuing directions respecting the conduct of the adjudication.
2. Taking the initiative in ascertaining the relevant facts and law.
3. Drawing inferences based on the conduct of the parties to adjudication.
4. Subject to subsection (2), conducting an on-site inspection of the improvement that is the subject of the contract or subcontract.
5. Obtaining the assistance of a merchant, accountant, actuary, building contractor, architect, engineer or other person in such a way as the adjudicator considers fit, to enable him or her to determine better any matter of fact in question.
6. Making a determination in the adjudication.
7. Any other power that may be prescribed.

On-site inspection

(2) The exercise of the power to conduct an on-site inspection under paragraph 4 of subsection (1) is subject to the prior consent of,

- (a) the owner, if he or she is not a party to the adjudication; and
- (b) any other person who has the legal authority to exclude others from the premises.

Costs of assistance

(3) If the adjudicator obtains the assistance of a person under paragraph 5 of subsection (1), the adjudicator may fix the remuneration of the person and direct payment of the remuneration by either or both of the parties to the adjudication.

Conduct

(4) Subject to this section, the adjudicator may conduct the adjudication in the manner he or she determines appropriate in the circumstances.

Impartiality

(5) An adjudicator shall conduct an adjudication in an impartial manner.

Statutory Powers Procedure Act

(6) The *Statutory Powers Procedure Act* does not apply to adjudications.

Determination

13.13 (1) Subject to subsection (2), an adjudicator shall make a determination of the matter that is the subject of an adjudication no later than 30 days after receiving the documents required by section 13.11.

Extension

(2) The deadline for an adjudicator's determination may be extended, at any time before its expiry and after the giving of documents to the adjudicator under section 13.11,

- (a) on the adjudicator's request, with the written consent of the parties to the adjudication, for a period of no more than 14 days; or
- (b) on the written agreement of the parties to the adjudication, subject to the adjudicator's consent, for the period specified in the agreement.

Delayed determination

(3) A determination made by an adjudicator after the date determined under subsection (1) or (2) is of no force or effect.

Written reasons

(4) The adjudicator's determination shall be in writing and shall include reasons for the determination.

Termination of adjudication

13.14 At any time after the notice of adjudication is given and before the adjudicator makes his or her determination, the parties to the adjudication may agree to terminate the adjudication, on notice to the adjudicator and subject to the payment of the adjudicator's fee.

Effect of determination

13.15 The determination of a matter by an adjudicator is binding on the parties to the adjudication until a determination of the matter by a court or any determination of the matter by way of an arbitration conducted under the *Arbitration Act, 1991*.

Costs

13.16 Subject to section 13.17, the parties to an adjudication shall bear their own costs of the adjudication.

Frivolous, vexatious, etc.

13.17 If an adjudicator determines that a party to the adjudication has acted in respect of the improvement in a manner that is frivolous, vexatious, an abuse of process or other than in good faith, the adjudicator may provide, as part of his or her determination of the matter, that the party be required to pay some or all of the other party's costs, any part of the fee amount determined under section 13.10 that would otherwise be payable by the other party, or both.

Application to set aside

13.18 (1) A court may set aside the determination of an adjudicator, on application by a party to the adjudication made no later than 30 days after the determination is communicated to the parties, on any of the following grounds:

1. A party participated in the adjudication while under a legal incapacity.
2. The contract or subcontract is invalid or has ceased to exist.
3. The determination dealt, in whole or in part, with a matter that may not be the subject of adjudication under this Part, or with a matter entirely unrelated to the subject of the adjudication.
4. The adjudication was conducted by someone other than an adjudicator.
5. The procedures followed in the adjudication did not comply with the procedures to which the adjudication was subject under this Part.

6. There is a reasonable apprehension of bias on the part of the adjudicator.
7. The determination was made as a result of fraud.

Same, amounts paid

(2) In setting aside a determination under subsection (1), the court may require that any or all amounts paid in compliance with the determination be returned.

No stay

(3) An application under subsection (1) does not operate as a stay of the operation of the determination unless a court orders otherwise.

Enforcement of amounts payable

13.19 (1) A party who is required under the determination of an adjudicator to pay an amount to another person shall pay the amount no later than 10 days after the determination has been communicated to the parties to the adjudication.

Application to consecutive adjudications

(2) In the case of consecutive adjudications held in accordance with section 13.8, amounts payable under the determination of the adjudicator in any of the adjudications shall be paid no later than 10 days after the determination of the last of the adjudications has been communicated to the parties to that adjudication.

Interest on late payment

(3) Subject to subsection (4), if an amount is not paid when it is due under this section, interest shall be paid on the outstanding balance at the prejudgment interest rate determined under subsection 127 (2) of the *Courts of Justice Act* or, if the contract or subcontract specifies a different interest rate for the purpose, the greater of the prejudgment interest rate and the interest rate specified in the contract or subcontract.

No interest on interest

(4) Subsection (3) does not apply in respect of any amount payable under section 6.7.

Suspension of work

(5) If an amount payable to a contractor or subcontractor under a determination is not paid by the party when it is due under this section, the contractor or subcontractor may suspend further work under the contract or subcontract until the party pays the following amounts:

1. The amount required to be paid under the determination.
2. Any interest accrued on that amount under subsection (3).
3. Any reasonable costs incurred by the contractor or subcontractor as a result of the suspension of work.

Same, costs of resumption

(6) A contractor or subcontractor who suspends work under subsection (5) is entitled to payment, by the party, of any reasonable costs incurred by him or her as a result of the resumption of work following the payment of the amounts referred to in that subsection.

Enforcement by court

13.20 (1) A party to an adjudication may, no later than the date referred to in subsection (2), apply to the court for enforcement of the resulting determination.

Deadline

- (2) An application under subsection (1) may not be made after the later of,
- (a) the second anniversary of the communication of the determination to the parties; and
 - (b) if applicable, the second anniversary of the final determination of an application under section 13.18 that did not result in the setting aside of the adjudicator's determination.

Procedures

(3) An application under subsection (1) shall be made on notice to the person against whom enforcement is sought, in accordance with the rules of court, and shall be supported by the original determination or a certified copy.

Duty of court

(4) The court shall make an order enforcing the determination.

Immunity

13.21 No action or other proceeding shall be commenced against an adjudicator or his or her employees for any act done in good faith in the execution or intended execution of any duty or power under this Part or the regulations, or for any alleged neglect or default in the execution in good faith of that duty or power.

Testimonial immunity

13.22 An adjudicator shall not be compelled to give evidence in any action or other proceeding in respect of a matter that was the subject of an adjudication that he or she conducted.

Transition

13.23 This Part applies in respect of contracts and subcontracts entered into on or after the day subsection 11 (1) of the *Construction Lien Amendment Act, 2017* comes into force.

(2) Part II.1 of the Act, as enacted by subsection (1), is amended by adding the following section:

Application of Part to surety bonds (Part XI.1)

13.24 If the regulations so provide, this Part applies, with such modifications as the regulations specify, to disputes in respect of such surety bonds to which Part XI.1 applies as are specified by the regulations.

12 (1) The French version of subsection 14 (1) of the Act is amended by striking out “le local ainsi amélioré” and substituting “les lieux ainsi améliorés”.

(2) Section 14 of the Act is amended by adding the following subsection:

Architects

(3) For greater certainty, subsection (1) applies to services or materials supplied by an architect as defined in the *Architects Act* and any employees of the architect.

13 (1) The French version of subsection 16 (1) of the Act is amended by striking out “dans un local” at the end and substituting “sur des lieux”.

(2) The French version of subsection 16 (2) of the Act is amended by striking out “un local dans lequel” and substituting “des lieux sur lesquels” and by striking out “dans ce local” and substituting “sur ces lieux”.

(3) The French version of subsection 16 (3) of the Act is repealed and the following substituted:

Cas où le privilège ne grève pas les lieux

(3) Lorsque la Couronne est propriétaire de lieux au sens de la présente loi ou que ceux-ci consistent, selon le cas:

- a) en une rue ou une voie publique qui est la propriété d’une municipalité;
- b) en une emprise ferroviaire,

le privilège ne grève pas les lieux mais constitue une sûreté prévue à l’article 21 et les dispositions de la présente loi prennent effet sans qu’il soit nécessaire d’enregistrer de revendication de privilège à l’égard des lieux.

(4) Section 16 of the Act is repealed and the following substituted:

Crown, municipal interest in premises

16 (1) A lien does not attach to the interest in a premises of,

- (a) the Crown; or
- (b) a municipality.

Interest of other person

(2) Where an improvement is made to a premises in which the Crown or a municipality has an interest but the Crown or municipality is not an owner of the premises, the lien may attach to the interest of any other person in the premises.

Where lien does not attach to premises

(3) A lien does not attach to a premises, but constitutes a charge under section 21, if,

- (a) the owner of the premises is the Crown or a municipality; or
- (b) the premises is a railway right-of-way.

14 (1) The French version of subsection 17 (3) of the Act is repealed and the following substituted:

Compensation

(3) Sous réserve de la partie IV, afin de fixer le montant visé par le privilège aux termes du paragraphe (1) ou (2), il peut être tenu compte du montant qui, eu égard à la relation qui existe entre le responsable du paiement et la personne envers laquelle

il est tenu, est égal au solde en faveur du responsable du paiement des dettes, réclamations et dommages-intérêts non réglés, que ceux-ci se rapportent ou non aux améliorations.

(2) Subsection 17 (3) of the Act is amended by striking out “whether or not related to the improvement” at the end and substituting “related to the improvement”.

(3) The French version of subsection 17 (4) of the Act is amended by striking out “du privilège mentionné à l’avis, en regard” and substituting “d’une revendication de privilège à l’égard”.

(4) Subsection 17 (4) of the Act is amended by striking out “in respect of a public street or highway” at the end.

15 The French version of section 18 of the Act is amended by striking out “dans le local” and substituting “sur les lieux”.

16 (1) Subsection 19 (1) of the Act is repealed and the following substituted:

Leasehold interest

(1) If the interest of the owner to which a lien attaches is leasehold, and if payment for all or part of the improvement is accounted for under the terms of the lease or any renewal of it, or under any agreement to which the landlord is a party that is connected to the lease, the landlord’s interest is also subject to the lien, to the extent of 10 percent of the amount of such payment.

(2) The French version of subsection 19 (3) of the Act is amended by striking out “qu’un avis de privilège est enregistré” and substituting “qu’une revendication de privilège est enregistrée” and by striking out “un avis de privilège” and substituting “une revendication de privilège”.

(3) Section 19 of the Act is amended by adding the following subsection:

Landlord as owner

(5) Nothing in this section prevents a determination in respect of a premises that the landlord is instead its owner, if he or she meets the criteria set out in the definition of “owner” in subsection 1 (1).

17 (1) Subsection 22 (1) of the Act is amended by striking out “have expired as provided in Part V, or have been satisfied, discharged or provided for under section 44 (payment into court)” at the end and substituting “have expired or been satisfied, discharged or otherwise provided for under this Act”.

(2) Subsection 22 (2) of the Act is amended by striking out “have expired as provided in Part V, or have been satisfied, discharged or provided for under section 44” at the end and substituting “have expired or been satisfied, discharged or otherwise provided for under this Act”.

(3) Section 22 of the Act is amended by adding the following subsection:

Permissible forms of holdback

(4) Some or all of any holdbacks may, instead of being retained in the form of funds, be retained in one or more of the following forms:

1. A letter of credit in the prescribed form.
2. A demand-worded holdback repayment bond in the prescribed form.
3. Any other form that may be prescribed.

18 Subsection 23 (5) of the Act is repealed.

19 (1) The French version of subsection 24 (1) of the Act is amended by striking out “en toute sûreté” and substituting “sans risque”.

(2) The French version of subsection 24 (2) of the Act is amended by striking out “, en toute sûreté” and substituting “sans risque”.

(3) Subsection 24 (2) of the Act is amended by striking out “services and materials” and substituting “services or materials”.

20 (1) The French version of section 25 of the Act is amended by striking out “, en toute sûreté” and substituting “sans risque”.

(2) Section 25 of the Act is amended by striking out “have expired as provided in Part V, or have been satisfied, discharged or provided for under section 44 (payment into court)” at the end and substituting “have expired or been satisfied, discharged or otherwise provided for under this Act”.

21 (1) The French version of section 26 of the Act is amended by striking out “en toute sûreté” and substituting “sans risque”.

(2) Section 26 of the Act is amended by adding “Subject to section 27.1” at the beginning.

(3) Section 26 of the Act is amended by striking out “may, without jeopardy” and substituting “shall”.

(4) Section 26 of the Act is amended by striking out “have expired as provided in Part V, or have been satisfied, discharged or provided for under section 44” at the end and substituting “have expired or been satisfied, discharged or otherwise provided for under this Act”.

22 The Act is amended by adding the following sections:

Payment of holdback on annual basis

26.1 (1) If the conditions in subsection (2) are met, a payer may make payment of the accrued holdback he or she is required to retain under subsection 22 (1) on an annual basis, in relation to the services or materials supplied during the applicable annual period.

Conditions

(2) Subsection (1) applies if,

- (a) the contract provides for a completion schedule that is longer than one year;
- (b) the contract provides for the payment of accrued holdback on an annual basis;
- (c) the contract price at the time the contract is entered into exceeds the prescribed amount; and
- (d) as of the applicable payment date,
 - (i) there are no preserved or perfected liens in respect of the contract, or
 - (ii) all liens in respect of the contract have expired or been satisfied, discharged or otherwise provided for under this Act.

Payment of holdback on phased basis

26.2 (1) If the conditions in subsection (2) are met, a payer may make payment of the accrued holdback he or she is required to retain under subsection 22 (1) on the completion of phases of an improvement, in relation to the services or materials supplied during each phase.

Conditions

(2) Subsection (1) applies if,

- (a) the contract provides for the payment of accrued holdback on a phased basis and identifies each phase;
- (b) the contract price at the time the contract is entered into exceeds the prescribed amount; and
- (c) as of the applicable payment date,
 - (i) there are no preserved or perfected liens in respect of the contract, or
 - (ii) all liens in respect of the contract have expired or been satisfied, discharged or otherwise provided for under this Act.

Payment on completion of design phase

(3) If a contract provides for payment of accrued holdback on a phased basis but only with respect to a specified design phase, clause (2) (b) does not apply.

23 (1) The French version of section 27 of the Act is amended by striking out “en toute sûreté” and substituting “sans risque”.

(2) Section 27 of the Act is amended by adding “Subject to section 27.1” at the beginning.

(3) Section 27 of the Act is amended by striking out “may, without jeopardy” and substituting “shall”.

(4) Section 27 of the Act is amended by striking out “have expired as provided in Part V, or have been satisfied, discharged or provided for under section 44” at the end and substituting “have expired or been satisfied, discharged or otherwise provided for under this Act”.

24 The Act is amended by adding the following section:

Non-payment of holdback

27.1 A payer may refuse to pay some or all of the amount required to be paid under section 26 or 27, as the case may be, if, no later than 40 days after publication of the applicable certification or declaration of substantial performance under section 32, the payer publishes, in the manner set out in the regulations, a notice in the prescribed form, specifying the amount of the holdback that the payer refuses to pay.

25 Section 30 of the Act is amended by striking out “have expired as provided in Part V, or have been satisfied, discharged or provided for under section 44 (payment into court)” at the end and substituting “have expired or been satisfied, discharged or otherwise provided for under this Act”.

26 (1) Clause 31 (2) (a) of the Act is amended by striking out “forty-five” in the portion before subclause (i) and substituting “60”.

(2) Subclause 31 (2) (a) (ii) of the Act is amended by striking out “completed or abandoned” and substituting “completed, abandoned or terminated”.

(3) Clause 31 (2) (b) of the Act is amended by striking out “forty-five” in the portion before subclause (i) and substituting “60”.

(4) The French version of subclause 31 (2) (b) (i) of the Act is amended by striking out “date de l’achèvement” and substituting “date d’achèvement”.

(5) Subclause 31 (2) (b) (ii) of the Act is amended by adding “or terminated” at the end.

(6) Section 31 of the Act is amended by adding the following subsection:

Workers’ trust fund lien

(2.1) Subject to subsection (4), the lien of the trustee of a workers’ trust fund on behalf of a worker or workers,

(a) for services or materials supplied to an improvement on or before the date certified or declared to be the date of the substantial performance of the contract, expires at the conclusion of the 60-day period next following the occurrence of the earliest of,

(i) the date on which a copy of the certificate or declaration of the substantial performance of the contract is published, as provided in section 32,

(ii) the date on which the final worker who is a beneficiary of the workers’ trust fund last supplies services or materials to the improvement,

(iii) the date the contract is completed, abandoned or terminated, and

(iv) the date a subcontract is certified to be completed under section 33, where the services or materials were supplied under or in respect of that subcontract; and

(b) for services or materials supplied to the improvement where there is no certification or declaration of the substantial performance of the contract, or for services or materials supplied to the improvement after the date certified or declared to be the date of the substantial performance of the contract, expires at the conclusion of the 60-day period next following the occurrence of the earlier of,

(i) the date on which the final worker who is a beneficiary of the workers’ trust fund last supplied services or materials to the improvement,

(ii) the date the contract is completed, abandoned or terminated, and

(iii) the date a subcontract is certified to be completed under section 33, where the services or materials were supplied under or in respect of that subcontract.

(7) Clause 31 (3) (a) of the Act is amended by striking out “forty-five” in the portion before subclause (i) and substituting “60”.

(8) Clause 31 (3) (a) of the Act is amended by striking out “and” at the end of subclauses (i) and (ii) and by adding the following subclause:

(ii.1) the date the contract is completed, abandoned or terminated, and

(9) Clause 31 (3) (b) of the Act is amended by striking out “forty-five” in the portion before subclause (i) and substituting “60”.

(10) Clause 31 (3) (b) of the Act is amended by striking out “and” at the end of subclause (i) and by adding the following subclause:

(i.1) the date the contract is completed, abandoned or terminated, and

(11) Section 31 of the Act is amended by adding the following subsections:

Notice of termination

(6) If a contract is terminated, either the owner or the contractor or other person whose lien is subject to expiry shall publish, in the manner set out in the regulations, a notice of the termination in the prescribed form and, for the purposes of this section, the date on which the contract is terminated is the termination date specified in the notice for the contract.

Validity of termination

(7) Subsection (6) does not prevent a person from contesting the validity of a termination.

27 (1) Paragraphs 5 and 9 of subsection 32 (1) of the Act are amended by striking out “once in a construction trade newspaper” wherever it appears and substituting in each case “in the manner set out in the regulations”.

(2) Clauses 32 (2) (e) and (f) of the Act are repealed and the following substituted:

(e) a legal description of the premises, including all property identifier numbers and addresses for the premises; and

(f) if the lien does not attach to the premises, the name and address of the person or body to whom a copy of the claim for lien must be given under section 34.

(3) Subsection 32 (5) of the Act is repealed.

28 Subsection 33.1 (2) of the Act is amended by striking out “in a construction trade newspaper at least five and not more than 15 days, excluding Saturdays and holidays, before the description is submitted for approval under subsection 9 (3) of the *Condominium Act, 1998*” at the end and substituting “in the manner set out in the regulations.”

29 (1) The French version of subsection 34 (2) of the Act is amended by striking out “Si l’avis de privilège porte sur une rue ou une voie publique qui est la propriété d’une municipalité, une copie de cet avis” at the beginning and substituting “Si la revendication de privilège porte sur une rue ou une voie publique qui est la propriété d’une municipalité, une copie de cette revendication”.

(2) Subsection 34 (2) of the Act is repealed.

(3) Subsection 34 (3) of the Act is amended by striking out “office prescribed by regulation” and substituting “prescribed office”.

(4) Section 34 of the Act is amended by adding the following subsection:

Premises owned by municipality

(3.1) Where the owner of the premises is a municipality, the copy of the claim for lien shall be given to the clerk of the municipality.

(5) The French version of subsection 34 (4) of the Act is amended by striking out “Si le local consiste en un droit de passage d’un chemin de fer” at the beginning and substituting “Si les lieux consistent en une emprise ferroviaire”.

(6) Clause 34 (5) (a) of the Act is repealed and the following substituted:

(a) the name and address for service of the person claiming the lien or, in the case of a claim on behalf of a worker by a workers’ trust fund, the name and address of the trustee;

(a.1) the name and address of the owner of the premises and of the person for whom the services or materials were supplied;

(a.2) the time within which the services or materials were supplied;

(7) The French version of subclause 34 (5) (e) (ii) of the Act is amended by striking out “du local, si le privilège ne grève pas celui-ci” at the end and substituting “des lieux, si le privilège ne grève pas ceux-ci”.

(8) The French version of subsection 34 (7) of the Act is amended by striking out “L’avis de privilège” and substituting “La revendication”.

(9) The French version of subsection 34 (8) of the Act is repealed and the following substituted:

Jonction des parties

(8) Plusieurs titulaires de privilège sur les mêmes lieux peuvent être réunis dans une seule revendication de privilège.

(10) Section 34 of the Act is amended by adding the following subsection:

Notice of preservation of lien re common elements of condominium

(9) A person who preserves a lien under this section that relates, in whole or in part, to an improvement to the common elements of a corporation under the *Condominium Act, 1998* shall give notice of the lien’s preservation, in the prescribed form, to the corporation and to each person who is,

(a) in the case of a corporation that is not a common elements condominium corporation, as defined in that Act, an owner of a unit in the corporation; and

(b) in the case of a common elements condominium corporation, an owner of a parcel of land mentioned in subsection 139 (1) of that Act to which a common interest is attached and which is described in the declaration of the corporation.

(11) Section 34 of the Act is amended by adding the following subsection:

Adjudication and expiry

(10) If the matter that is the subject of a lien is also the subject of an adjudication under Part II.1, the lien is deemed, for the purposes of this section only, to have expired on the later of the date on which the lien would expire under section 31 and the conclusion of the 45-day period next following,

- (a) the receipt by the adjudicator of documents under section 13.11; or
- (b) in the case of consecutive adjudications held in accordance with section 13.8, the receipt by the adjudicator of documents under section 13.11 for the last of the adjudications.

30 (1) The French version of section 35 of the Act is amended by striking out “un avis de privilège” in the portion before clause (a) and substituting “une revendication de privilège”.

(2) Section 35 of the Act is repealed and the following substituted:

Exaggerated, false claims

Liability

35 (1) In addition to any other ground on which the person may be liable, any person who preserves a claim for lien or who gives written notice of a lien in the following circumstances is liable to any person who suffers damages as a result:

- 1. The person knows or ought to know that the amount of the lien has been wilfully exaggerated.
- 2. The person knows or ought to know that he or she does not have a lien.

Reduction of lien amount

(2) In the circumstances described in paragraph 1 of subsection (1), the court may, on motion, order that the lien amount be reduced by the exaggerated portion, as determined in accordance with section 17, if it finds that the person has acted in good faith.

31 (1) Subsection 36 (2) of the Act is amended by striking out “forty-five” and substituting “90”.

(2) The French version of subsection 36 (4) of the Act is amended by striking out “en regard” wherever it appears and substituting in each case “à l’égard”.

(3) Paragraph 3 of subsection 36 (4) of the Act is amended by striking out “A sheltered claim for lien” at the beginning and substituting “A sheltered lien”.

(4) The French version of paragraph 4 of subsection 36 (4) of the Act is amended by striking out “sa demande ou tout fait allégué dans son avis de privilège” at the end and substituting “sa revendication de privilège ou tout fait allégué dans celle-ci”.

32 (1) Paragraph 1 of subsection 39 (1) of the Act is amended by striking out “By the owner or contractor” at the beginning and substituting “By the owner or contractor, other than a landlord described in paragraph 4”.

(2) Subparagraph 1 iii of subsection 39 (1) of the Act is repealed and the following substituted:

- iii. a state of accounts between the owner and the contractor containing the information listed in subsection (4.1),

(3) Paragraph 1 of subsection 39 (1) of the Act is amended by striking out “and” at the end of subparagraph iv, adding “and” at the end of subparagraph v and adding the following subparagraph:

- vi. a statement of whether the contract provides that payment under the contract shall be based on the completion of specified phases or the reaching of other milestones in its completion.

(4) Subparagraph 2 ii of subsection 39 (1) of the Act is repealed and the following substituted:

- ii. a state of accounts between the contractor and a subcontractor, or between a subcontractor and another subcontractor, containing the information listed in subsection (4.1),

(5) The French version of paragraph 3 of subsection 39 (1) of the Act is amended by striking out “intérêt dans le local qui constitue” in the portion before subparagraph i and substituting “intérêt sur les lieux qui constituent”.

(6) Subsection 39 (1) of the Act is amended by adding the following paragraph:

from landlord

- 4. By a landlord whose interest in a premises is subject to a lien under subsection 19 (1), with,
 - i. the names of the parties to the lease, and
 - ii. the amount of the payment referred to in subsection 19 (1).

(7) Paragraph 4 of subsection 39 (1) of the Act, as enacted by subsection (6), is amended by striking out “and” after subparagraph i, adding “and” after subparagraph ii and adding the following subparagraph:

iii. the state of accounts between the landlord and the tenant containing the information listed in subsection (4.1).

(8) Subsection 39 (4) of the Act is repealed.

(9) Section 39 of the Act is amended by adding the following subsections:

State of accounts

(4.1) A state of accounts under subsection (1) shall contain the following information, as of a specified date:

1. The price of the services or materials that have been supplied under the contract or subcontract.
2. The amounts paid under the contract or subcontract.
3. In the case of a state of accounts under paragraph 4 of subsection (1), which of the amounts paid under the contract or subcontract constitute any part of the payment referred to in subsection 19 (1).
4. The amount of the applicable holdbacks.
5. The balance owed under the contract or subcontract.
6. Any amount retained under section 12 (set-off by trustee) or under subsection 17 (3) (lien set-off).
7. Any other information that may be prescribed.

Information provided by mortgagee

(4.2) For the purposes of clause (2) (b), if amounts have been advanced under the mortgage for the purposes of financing both the purchase price of the land and the making of the improvement, the statement must show the amount advanced under the mortgage for each of those purposes.

(10) Subsection 39 (5) of the Act is amended by striking out “damages sustained by reason thereof” at the end and substituting “damages suffered as a result”.

33 (1) Clause 41 (1) (a) of the Act is amended by striking out “a release in the prescribed form on the title to the premises and the release shall” and substituting “a discharge of lien in the prescribed form on the title to the premises and the discharge shall”.

(2) Clause 41 (1) (b) of the Act is amended by striking out “a release” and substituting “a discharge of lien”.

(3) Subsection 41 (2) of the Act is amended by striking out “in writing” and substituting “in the prescribed form”.

34 (1) The French version of section 42 of the Act is amended by striking out “le local ainsi libéré” at the end and substituting “les lieux ainsi libérés”.

(2) Section 42 of the Act is amended by striking out “the registration of a release in the prescribed form on the title to the premises released” at the end and substituting “the registration of a discharge of lien in the prescribed form on the title to the applicable premises”.

35 The French version of section 43 of the Act is amended by striking out “dans le local par l’enregistrement à l’égard du titre sur le local” and substituting “sur les lieux par l’enregistrement à l’égard du titre sur les lieux”.

36 (1) Clause 44 (1) (d) of the Act is amended by striking out “\$50,000” and substituting “\$250,000”.

(2) Section 44 of the Act is amended by adding the following subsections:

Condominium

(2.1) The owner of a condominium unit under the *Condominium Act, 1998* may make a motion under clause (1) (a) or subsection (2) regarding a lien respecting an improvement to common elements that include the common interest appurtenant to the owner’s unit, and, for the purpose, the full amount claimed as owing in the claim for lien is deemed to be that portion of the lien amount that is attributable to the owner’s common interest as specified in the applicable declaration registered under that Act.

Common elements condominium corporation

(2.2) An owner of a parcel of land mentioned in subsection 139 (1) of the *Condominium Act, 1998* to which a common interest is attached, in the case of a common elements condominium corporation, may make a motion under clause (1) (a) or subsection (2) regarding a lien respecting an improvement to common elements that include the common interest appurtenant to the owner’s parcel of land, and, for the purpose, the full amount claimed as owing in the claim for lien is deemed to be that portion of the lien amount that is attributable to the owner’s common interest as specified in the applicable declaration registered under that Act.

(3) The French version of subsection 44 (3) of the Act is amended by striking out “l’avis de privilège donné” and substituting “la revendication de privilège donnée”.

(4) Section 44 of the Act is amended by adding the following subsection:

Vacating written notice of lien

(3.1) The court shall, on motion, vacate a written notice of a lien if any of the circumstances in subsection (1), (2) or (3) apply.

(5) Section 44 of the Act is amended by adding the following subsection:

Letters of credit

(5.1) A letter of credit containing reference to an international commercial convention is acceptable as security for the purposes of this section, as long as the convention text is written into the terms of the credit and the letter of credit is unconditional and accepted by a bank listed in Schedule I to the *Bank Act* (Canada) that is operating in Ontario.

(6) Paragraph 1 of subsection 44 (9) of the Act is amended by striking out “the procedures set out in Part VIII” and substituting “the procedures under Part VIII”.

37 (1) Subsection 47 (1) of the Act is repealed and the following substituted:

General powers of the court

Power to discharge

(1) The court may, on motion, order the discharge of a lien,

- (a) on the basis that the claim for the lien is frivolous, vexatious or an abuse of process; or
- (b) on any other proper ground.

Power to vacate, etc.

(1.1) The court may, on motion, make any of the following orders, on any proper ground:

1. An order that the registration of a claim for lien, a certificate of action or both be vacated.
2. If written notice of a lien has been given, a declaration that the lien has expired or that the written notice of the lien shall no longer bind the person to whom it was given.
3. An order dismissing an action.

Conditions

(1.2) An order under subsection (1) or (1.1) may include any terms or conditions that the court considers appropriate in the circumstances.

(2) Subsection 47 (2) of the Act is amended by striking out “subsection (1)” and substituting “paragraph 1 of subsection (1.1)”.

38 The French version of section 49 of the Act is amended by striking out “l’avis de privilège” and substituting “la revendication de privilège” and by striking out “chacun des privilèges qui ont été conservés ou rendus opposables” and substituting “chacune des revendications de privilège qui ont été conservées ou rendues opposables”.

39 (1) The French version of subsection 50 (3) of the Act is amended by striking out “au même local” and substituting “aux mêmes lieux”.

(2) Section 50 of the Act is repealed and the following substituted:

Lien claims and procedures

50 (1) A lien claim is enforceable in an action in the Superior Court of Justice.

Procedures

(2) Except to the extent that they are inconsistent with this Act and the procedures prescribed for the purposes of this Part, the *Courts of Justice Act* and the rules of court apply to actions under this Part.

Summary procedure

(3) The procedure in an action shall be as far as possible of a summary character, having regard to the amount and nature of the liens in question.

40 (1) Section 51 of the Act is amended by striking out “on a reference by a master, a case management master or a person agreed on by the parties” in the portion before clause (a) and substituting “on a reference under section 58”.

(2) Clause 51 (a) of the Act is amended by striking out “subject to section 56”.

41 Section 52 of the Act is amended by striking out “or for holding a settlement meeting” at the end.

42 (1) The French version of clause 55 (2) (b) of the Act is amended by striking out “en regard” and substituting “à l’égard”.

(2) Sections 53 to 57 of the Act are repealed.

43 (1) Subsection 58 (1) of the Act is amended by striking out “or” at the end of clause (a.1), adding “or” at the end of clause (b), and adding the following clause:

(c) if the action is for an amount that is within the monetary jurisdiction of the Small Claims Court, as set out in section 23 of the *Courts of Justice Act*, to a deputy judge of that Court or to the Small Claims Court Administrative Judge.

(2) Subsection 58 (1.1) of the Act is amended by striking out “to every person who is or would be entitled to a notice of settlement meeting under subsection 60 (2)” at the end and substituting “to every person specified by the procedures prescribed for the purposes of this Part”.

(3) Subsection 58 (3) of the Act is amended by striking out “to a case management master or to a person agreed on by the parties” at the end and substituting “to a case management master, to a person agreed on by the parties or, if the action is for an amount that is within the monetary jurisdiction of the Small Claims Court, as set out in section 23 of the *Courts of Justice Act*, to a deputy judge of that Court or to the Small Claims Court Administrative Judge”

(4) Section 58 of the Act is amended by adding the following subsection:

Powers of Small Claims Court judge

(4.2) Subsection (4) also applies to a deputy judge of the Small Claims Court or to the Small Claims Court Administrative Judge, if a reference is directed to him or her.

(5) Subsection 58 (5) of the Act is amended by striking out “Where under subsection (1) the action has been referred to a master, to a case management master or to a person agreed on by the parties for trial” at the beginning and substituting “If all or part of an action is referred for trial under subsection (1)”.

44 (1) The French version of clause 60 (2) (b) of the Act is amended by striking out “le local, si le privilège grève celui-ci” and substituting “les lieux, si le privilège grève ceux-ci”.

(2) Clause 61 (5) (a) of the Act is amended by striking out “if there was no dispute at the meeting to a claim for lien” and substituting “if there was no dispute at the settlement meeting”.

(3) Sections 59 to 61 of the Act are repealed.

45 (1) Clause 62 (1) (b) of the Act is amended by striking out “on a reference by a master, by a case management master, or by a person agreed on by the parties” at the end and substituting “on a reference under section 58”.

(2) Clause 62 (6) (b) of the Act is amended by striking out “*Arbitrations Act*” at the end and substituting “*Arbitration Act, 1991*”.

46 Sections 66 and 67 of the Act are repealed.

47 (1) The heading to Part IX of the Act is repealed and the following substituted:

**PART IX
APPOINTMENT OF TRUSTEE**

(2) Subsection 68 (4) of the Act is amended by striking out “mortgage, charge, interest” and substituting “mortgage, interest”.

48 Section 69 of the Act is repealed.

49 (1) Subsection 71 (1) of the Act is amended by striking out “Subject to subsection (3)” at the beginning and substituting “Except as otherwise provided in this section”.

(2) Subsection 71 (3) of the Act is repealed and the following substituted:

No appeal without leave

(3) No appeal lies from an interlocutory order made by the court, except with leave of the Divisional Court.

No appeal

(4) No appeal lies from a judgment or an order on a motion to oppose confirmation of a report under this Act, if the amount claimed is \$10,000 or less.

(3) Section 71 of the Act is amended by adding the following subsection:

Same

(5) No appeal lies from an order of the court under Part II.1.

50 Section 72 of the Act is amended by striking out “non-completion or abandonment” and substituting “non-completion, abandonment or termination”.

51 The French version of subsection 75 (2) of the Act is amended by striking out “sa réclamation de privilège” at the end and substituting “sa revendication de privilège”.

52 Section 76 of the Act is amended by striking out “Where a claim for lien is preserved by registration” at the beginning and substituting “Where a lien is preserved by registration of a claim for lien”.

53 (1) The French version of clauses 78 (4) (a) and (6) (a) of the Act is amended by striking out “le local était grevé” wherever it appears and substituting in each case “les lieux étaient grevés”.

(2) Subsection 78 (10) of the Act is amended by striking out “in a form prescribed” in the portion after clause (b) and substituting “in the prescribed form”.

54 The French version of section 82 of the Act is amended by striking out “le même local” in the portion before clause (a) and substituting “les mêmes lieux”.

55 The French version of section 83 of the Act is repealed and the following substituted:

Affectation du produit d’une assurance

83 Si des lieux grevés d’un privilège sont détruits en totalité ou en partie, le montant du produit d’une assurance à l’égard des lieux que reçoit le propriétaire ou le créancier hypothécaire est substitué aux lieux ainsi détruits et est réparti conformément à l’ordre de priorité établi à la présente partie.

56 The Act is amended by adding the following Part:

**PART XI.1
SURETY BONDS**

Bonds and public contracts

Definition

85.1 (1) In this section,

“public contract” means a contract between an owner and a contractor respecting an improvement, if the owner is the Crown, a municipality or a broader public sector organization.

Application

(2) Subject to the regulations, this section applies to a public contract if the contract price exceeds the amount prescribed for the applicable owner.

Requirement for labour and material payment bond

(3) On entering into a public contract, a contractor shall furnish the owner with a labour and material payment bond, in the prescribed form, that,

- (a) is of an insurer licensed under the *Insurance Act* to write surety and fidelity insurance;
- (b) has a coverage limit of at least 50 per cent of the contract price; and
- (c) extends protection to subcontractors and persons supplying labour or materials to the improvement.

Requirement for performance bond

(4) On entering into a public contract, a contractor shall furnish the owner with a performance bond, in the prescribed form, that,

- (a) is of an insurer licensed under the *Insurance Act* to write surety and fidelity insurance; and
- (b) has a coverage limit of at least 50 per cent of the contract price.

Claims process

(5) A bond form prescribed for the purposes of subsection (3) or (4) may set out the claims process applicable in respect of the bond.

No limitation on other bonds or security

(6) For greater certainty, this section does not limit the ability of the owner to require the contractor to provide other types of bonds or security.

Rights of action

Default, labour and material payment bond

85.2 (1) If a labour and material payment bond is in effect in respect of an improvement and the principal on the bond defaults in making a payment guaranteed by the bond, any person to whom the payment is guaranteed has a right of action to recover the amount of the person’s claim, in accordance with the terms and conditions of the bond, against the surety and the principal.

Default, performance bond

(2) If a performance bond is in effect in respect of an improvement and the contractor defaults in performing the contract guaranteed by the bond, the owner has a right of action to enforce the bond, in accordance with its terms and conditions, against the surety and the contractor.

Saving

(3) Nothing in this section makes the surety liable for an amount in excess of the amount that the surety undertakes to pay under a bond, and the surety's liability under the bond shall be reduced by and to the extent of any payment made in good faith by the surety either before or after judgment is obtained against the surety.

Same

(4) Nothing in this section makes the surety liable as the principal under a bond, or makes the surety a party to any contract.

Subrogation

(5) On satisfaction of its obligation to any person under a bond to which this section applies, the surety shall be subrogated to all the rights of that person.

57 (1) Subsection 86 (1) of the Act is amended by striking out “settlement meeting” in the portion before clause (a) and substituting “any other step in a proceeding under this Act”.

(2) Subclause 86 (1) (b) (i) of the Act is repealed and the following substituted:

- (i) knowingly participated in the preservation or perfection of a lien, or represented a party at the trial of an action, where it is clear that the claim for a lien is without foundation, is frivolous, vexatious or an abuse of process, or is for a wilfully exaggerated amount, or that the lien has expired, or

(3) Subsection 86 (1) of the Act is amended by striking out “including where the motion is heard by, or the action has been referred under section 58 to, a master, case management master or commissioner” at the end and substituting “including where the motion is heard by a person other than a judge or the action has been referred under section 58”.

58 Section 87 of the Act is amended by adding the following subsection:

Exception, written notice of lien

(1.1) Despite subsection (1), a written notice of lien shall be served in a manner permitted under the rules of court for service of an originating process.

59 The Act is amended by adding the following section:

Financial Administration Act

87.1 If a ministry or specified public entity, as defined in the *Financial Administration Act*, is liable to pay interest under this Act, the payment of the interest is deemed to have been authorized and directed by the Treasury Board under section 11.4.1 of that Act.

60 The Act is amended by adding the following section:

Courts of Justice Act

87.2 In the event of a conflict between this Act and the *Courts of Justice Act*, this Act prevails to the extent of the conflict.

61 (1) Section 88 of the Act is repealed and the following substituted:

Regulations

88 (1) The Lieutenant Governor in Council may make regulations respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act, including regulations,

- (a) respecting anything that, under this Act, may or must be prescribed or done by regulation;
- (b) prescribing forms and providing for their use.

Same, transitional matters

(2) The Lieutenant Governor in Council may make regulations providing for such transitional matters as the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of the *Construction Lien Amendment Act, 2017*.

(2) Subsection 88 (1) of the Act is amended by adding the following clauses:

- (c) governing the registry required to be established under clause 13.3 (1) (c);
- (d) governing fees that may be set by the Authorized Nominating Authority under clause 13.3 (2) (a) or that the Authority may determine under clause 13.10 (2) (b);

- (e) if a designation is made under subsection 13.4 (1), prescribing fees for the training and qualification of persons as adjudicators and for the appointment of adjudicators, and requiring their payment;
- (f) establishing procedures for the making of complaints against the Authorized Nominating Authority;
- (g) governing adjudication procedures for the purposes of subsection 13.6 (2);
- (h) governing the procedures for requiring a consecutive adjudication under subsection 13.8 (2);
- (i) governing procedures that apply if an adjudicator fails to complete an adjudication under Part II.1;

(3) Subsection 88 (1) of the Act is amended by adding the following clause:

- (j) for the purposes of Part VIII, governing procedures that apply to actions;

(4) Subsection 88 (1) of the Act is amended by adding the following clause:

- (k) exempting public contracts from the application of section 85.1;

(5) Section 88 of the Act is amended by adding the following subsection:

Conflict

(1.1) In the event of a conflict between a regulation made under clause 88 (1) (j) and the *Courts of Justice Act* or the rules of court, the regulation prevails to the extent of the conflict.

62 The French version of the following provisions of the Act is amended by striking out “l’avis de privilège” wherever it appears and substituting in each case “la revendication de privilège”:

1. Subsection 19 (4).
2. Clause 34 (1) (b).
3. Subsections 34 (3) and (4).
4. Subsection 34 (5), in the portion before clause (a).
5. Subsection 40 (1), in the portion before paragraph 1.
6. Subsection 40 (2).
7. Clause 40 (3) (b).
8. Clause 41 (1) (b).
9. Clauses 44 (1) (b) and (c).
10. Subsection 44 (2).
11. Subsection 45 (1), in the portion before clause (a).
12. Clause 45 (1) (c), in the portion before subclause (i).
13. Subsection 46 (1).
14. Subclause 47 (1) (b) (i).
15. Subclause 86 (1) (b) (i).

63 The French version of the following provisions of the Act is amended by striking out “d’un avis de privilège” wherever it appears and substituting in each case “d’une revendication de privilège”:

1. Clause 34 (1) (a).
2. Clause 44 (1) (a).

64 The French version of the following provisions of the Act is amended by striking out “la formule prescrite” wherever it appears and substituting in each case “le formulaire prescrit”:

1. Subsection 31 (5), in the portion before clause (a).
2. Paragraph 1 of subsection 32 (1).
3. Subsection 33 (1).
4. Subsection 33.1 (3), in the portion before clause (a).
5. Clause 36 (3) (a).
6. Clauses 41 (1) (a) and (b).

7. Section 42.
8. Section 43.
9. Clauses 62 (1) (a) and (b).
10. Subsection 62 (2).

65 The French version of the following provisions of the Act is amended by striking out “des services et des matériaux” wherever it appears and substituting in each case “des services ou des matériaux”:

1. Clause (b) of the definition of “price” in subsection 1 (1).
2. Subsection 2 (2).
3. Subsection 8 (1), in the portion after clause (b).
4. Subsection 8 (2).
5. Subsection 11 (1).
6. Subsection 14 (1).
7. Subsections 22 (1) and (2).
8. Subsection 24 (1).
9. Clause 31 (2) (b), in the portion before subclause (i).
10. Subsection 31 (5), in the portion before clause (a).
11. Subsection 34 (7).
12. Section 72.

66 The French version of the following provisions of the Act is amended by striking out “aux services et aux matériaux” wherever it appears and substituting in each case “aux services ou aux matériaux”:

1. Subsection 17 (1).
2. Section 21.
3. Subsections 31 (1) and (4).

67 The French version of the following provisions of the Act is amended by striking out “les services et les matériaux” wherever it appears and substituting in each case “les services ou les matériaux”:

1. Subsection 34 (1), in the portion before clause (a).
2. Section 48.

68 The French version of the following provisions of the Act is amended by striking out by striking out “des matériaux ou des services” wherever it appears and substituting in each case “des services ou des matériaux”:

1. Section 4.
2. Subclause 82 (a) (ii).

69 The French version of the following provisions of the Act is amended by striking out “le local” wherever it appears and substituting in each case “les lieux”:

1. The definition of “owner” in subsection 1 (1).
2. Subsection 3 (1).
3. Clause 9 (1) (b).
4. Subsection 23 (1).
5. Clause 32 (2) (e).
6. Clauses 34 (1) (a) and (b).
7. Subclause 34 (5) (e) (i).
8. Clauses 36 (3) (a) and (b).
9. Clause 39 (2) (a).
10. Subsection 40 (2).

11. **Clause 40 (3) (b).**
12. **Clauses 41 (1) (a) and (b).**
13. **Clauses 44 (1) (a) and (b).**
14. **Subsections 44 (3) and (6).**
15. **Subsections 45 (1), in the portion before clause (a), and 45 (2).**
16. **Subsections 46 (1) and (2).**
17. **Section 49.**
18. **Clauses 60 (2) (c) and (d).**
19. **Subsection 60 (3).**
20. **Subsection 62 (5).**
21. **Section 64.**
22. **Subsections 65 (1) and (2).**
23. **Subsections 68 (1) and (4).**
24. **Clause 68 (2) (a).**
25. **Subsection 78 (1).**
26. **Subsection 78 (3), in the portion before clause (a).**
27. **Subsection 78 (4), in the portion before clause (a).**
28. **Subsection 78 (5).**
29. **Subsection 78 (6), in the portion before clause (a).**
30. **Clause 78 (7) (a).**
31. **Subsection 78 (8), in the portion before clause (a).**
32. **Subsection 78 (10), in the portion before clause (a).**
33. **Subsection 80 (2).**
34. **Section 84.**
35. **Clause 87 (1) (b).**

70 The French version of the following provisions of the Act is amended by striking out “du local” wherever it appears and substituting in each case “des lieux”:

1. **The definition of “written notice of a lien” in subsection 1 (1).**
2. **Clause 1 (2) (b).**
3. **Subsection 19 (3).**
4. **Clause 32 (2) (f).**
5. **Clause 34 (1) (a).**
6. **Subsection 34 (3).**
7. **Clause 34 (5) (a).**
8. **Clause 34 (5) (e), in the portion before subclause (i).**
9. **Clause 36 (3) (a).**
10. **Subparagraph 3 i of subsection 39 (1).**
11. **Paragraphs 1, 2 and 3 of subsection 44 (9).**
12. **Section 49.**
13. **Subsection 53 (1).**
14. **Clause 68 (2) (c).**
15. **Clause 78 (3) (a).**

16. Subsection 80 (2).

17. Clause 82 (b).

71 The French version of the following provisions of the Act is amended by striking out “locaux” wherever it appears and substituting in each case “lieux”:

1. Subsection 20 (1).
2. Subsection 34 (7).
3. Subsection 36 (5).
4. Section 42.
5. Subsection 44 (4).
6. Subsections 74 (1) and (2).
7. Subclause 82 (a) (ii).

72 The French version of the following provisions of the Act is amended by striking out “est situé le local ou une partie de celui-ci” wherever it appears and substituting in each case “sont situés les lieux ou une partie de ceux-ci”:

1. Clause 58 (1) (a).
2. Subsection 58 (3).

COMPLEMENTARY AMENDMENTS TO OTHER ACTS

Condominium Act, 1998

73 (1) Sections 13 and 14 of the *Condominium Act, 1998* are repealed and the following substituted:

Effect on encumbrances

13 (1) Upon the registration of the declaration and description of a corporation that is not a common elements condominium corporation, an encumbrance against the common elements registered before the registration of the declaration and description is no longer enforceable against the common elements but is enforceable against all the units and common interests.

Same, common elements condominium corporation

(2) Upon the registration of the declaration and description of a common elements condominium corporation, an encumbrance against the common elements registered before the registration of the declaration and description is no longer enforceable against the common elements but is enforceable against all the parcels of land mentioned in subsection 139 (1) and common interests.

Encumbrances on or after declaration

(3) An encumbrance against the common elements on or after the registration of the declaration and description of a corporation is not enforceable against the common elements but is enforceable against all the units and common interests or, in the case of a common elements condominium corporation, against all of the parcels of land and common interests.

Discharge of encumbrance

14 (1) If an encumbrance is, by virtue of subsection 13 (1) or (3), enforceable against all the units and common interests, an owner may discharge the portion of the encumbrance that is applicable to the owner’s unit and common interest by paying to the encumbrancer the portion of the amount owing on account of principal and interest under the encumbrance that is attributable to the owner’s common interest as specified in the declaration.

Same, common elements condominium corporation

(2) If an encumbrance is, by virtue of subsection 13 (2) or (3), enforceable against all the parcels of land mentioned in subsection 139 (1) and common interests, an owner may discharge the portion of the encumbrance that is applicable to the owner’s parcel of land and common interest by paying to the encumbrancer the portion of the amount owing on account of principal and interest under the encumbrance that is attributable to the owner’s common interest as specified in the declaration.

Form

(3) Upon payment of the portion of the encumbrance described in subsection (1) or (2), and upon demand, the encumbrancer shall give to the owner a discharge of the owner’s unit or parcel of land, as the case may be, and common interest, in accordance with the requirements of the regulations made under this Act.

Exception, construction lien

(4) Subsections (1), (2) and (3) do not apply if the encumbrance is a lien under the *Construction Act*.

(2) Subsection 14 (3) of the Act, as enacted by subsection (1), is amended by striking out “the regulations made under this Act” at the end and substituting “the regulations”.

Courts of Justice Act

74 Subsection 103 (3) of the *Courts of Justice Act* is amended by striking out “*Construction Lien Act*” at the end and substituting “*Construction Act*”.

Land Titles Act

75 (1) Section 104 of the *Land Titles Act* is amended by striking out “*Construction Lien Act*” and substituting “*Construction Act*”.

(2) Subsection (1) applies only if it comes into force before section 61 of Schedule 28 to the *Strong Action for Ontario Act (Budget Measures), 2012* comes into force.

(3) Section 104 of the Act, as re-enacted by section 61 of Schedule 28 to the *Strong Action for Ontario Act (Budget Measures), 2012*, is amended by striking out “*Construction Lien Act*” and substituting “*Construction Act*”.

Limitations Act, 2002

76 (1) The Schedule to the *Limitations Act, 2002* is amended by striking out “*Construction Lien Act*” in the column titled “Act” and substituting “*Construction Act*”.

(2) The Schedule to the Act is amended by striking out “sections 31 and 36” in the column titled “Provision” and substituting “subsections 13.18 (1) and 13.20 (2) and sections 31 and 36”.

Mining Act

77 (1) Subsection 171 (1) of the *Mining Act* is repealed and the following substituted:

Application of Construction Act

(1) Except as provided in this Act, the *Construction Act* applies to mines, mining claims, mining lands and connected works.

(2) Subsections 171 (2) and (3) of the Act are amended by striking out “*Construction Lien Act*” wherever it appears and substituting in each case “*Construction Act*”.

Ontario New Home Warranties Plan Act

78 Subsection 14 (5) of the *Ontario New Home Warranties Plan Act* is amended by striking out “*Construction Lien Act*” at the end and substituting “*Construction Act*”.

Protecting Condominium Owners Act, 2015

79 If, on the day this section comes into force, paragraph 6 of subsection 146 (1) of Schedule 1 to the *Protecting Condominium Owners Act, 2015* is not yet in force, that paragraph is repealed.

Registry Act

80 (1) The French version of subsection 38 (3) of the *Registry Act* is amended by striking out “d’un certificat d’instance” and substituting “d’un certificat d’action” and by striking out “chaque privilège ou certificat d’instance” and substituting “chaque revendication de privilège et certificat d’action enregistré”.

(2) Subsection 38 (3) of the Act is amended by striking out “*Construction Lien Act*” and substituting “*Construction Act*”.

(3) The French version of clause 67 (1) (b) of the Act is amended by striking out “un avis d’un privilège” at the beginning and substituting “une revendication de privilège”.

(4) Subsection 67 (1) of the Act is amended by striking out “*Construction Lien Act*” wherever it appears and substituting in each case “*Construction Act*”.

Workplace Safety and Insurance Act, 1997

81 (1) The French version of subsection 142 (1) of the *Workplace Safety and Insurance Act, 1997* is amended by striking out “d’un local” and substituting “de lieux”.

(2) The French version of subsection 142 (2) of the Act is amended by striking out “locaux” and substituting “lieux”.

(3) Subsections 142 (1) and (2) of the Act are amended by striking out “*Construction Lien Act*” wherever it appears and substituting in each case “*Construction Act*”.

S.O. 1993, c. 27

82 Paragraph 1 of section 8 of the *Revised Statutes Confirmation and Corrections Act, 1993* is repealed.

S.O. 1994, c. 27

83 Subsection 42 (3) of the *Statute Law Amendment Act (Government Management and Services), 1994* is repealed.

S.O. 1997, c. 23

84 Subsection 4 (2) of the *Government Process Simplification Act (Ministry of the Attorney General), 1997 is repealed.*

COMMENCEMENT AND SHORT TITLE

Commencement

85 (1) Subject to subsections (2), (3), (4), (5) and (6), this Act comes into force on the day it receives Royal Assent.

(2) The following provisions come into force on a day to be named by proclamation of the Lieutenant Governor:

1. Section 1.
 2. Subsections 2 (1), (2), (3), (5), (7), (11), (13), (15) and (16).
 3. Section 3.
 4. Subsections 4 (1), (2), (3), (5) and (6) and 6 (2).
 5. Sections 7 and 8.
 6. Subsection 10 (2).
 7. Section 11.
 8. Subsections 13 (4), 14 (2) and (4), 16 (1) and (3), 17 (3) and 21 (2) and (3).
 9. Section 22.
 10. Subsections 23 (2) and (3).
 11. Section 24.
 12. Section 26, other than subsection (4).
 13. Sections 27 and 28.
 14. Subsections 29 (2), (4), (6), (10) and (11).
 15. Subsections 30 (2) and 31 (1).
 16. Subsections 32 (1), (2), (3), (4), (6), (7), (8) and (9).
 17. Section 33.
 18. Subsection 34 (2).
 19. Section 36, other than subsection (3).
 20. Section 37.
 21. Subsection 39 (2).
 22. Sections 40 and 41.
 23. Subsection 42 (2).
 24. Section 43.
 25. Subsection 44 (3).
 26. Subsection 45 (1).
 27. Section 46.
 28. Subsection 47 (1).
 29. Sections 48 to 50 and 56 to 60.
 30. Section 61, other than subsection (1).
 31. Subsection 73 (1).
 32. Section 74.
 33. Sections 76 to 78.
 34. Subsections 80 (2) and (4) and 81 (3).
- (3) Subsection 73 (2) comes into force on the later of the day subsection 73 (1) comes into force and the day subsection 1 (15) of Schedule 1 to the *Protecting Condominium Owners Act, 2015* comes into force.**

(4) Subsections 75 (1) and (2) come into force on the day section 1 comes into force.

(5) Subsection 75 (3) comes into force on the later of the day section 1 comes into force and the day section 61 of Schedule 28 to the *Strong Action for Ontario Act (Budget Measures), 2012* comes into force.

(6) Section 79 comes into force on the day subsection 73 (1) comes into force.

Short title

86 The short title of this Act is the *Construction Lien Amendment Act, 2017*.