



Canadian Construction
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Federal Prompt Payment for Construction Work Act – Prompt Payment [part 1 of 2]

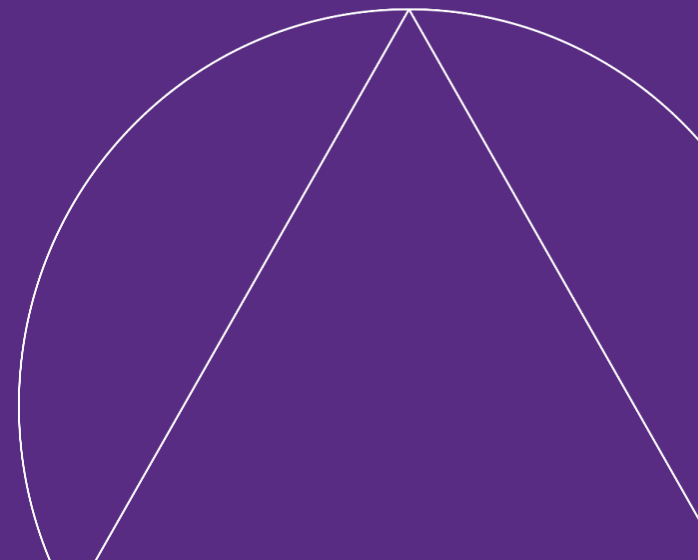
Glenn Ackerley and Jeff Scorgie

February 1, 2024

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Agenda

- Purpose of the Act
- What projects does the Act apply to?
- Key concepts and definitions
- Carve-out for designated provinces
- What transition rules apply?
- Duties to inform
- Payment rules



Purpose of the Act

- As provided in the Act:
- *4 The purpose of this Act is to promote the orderly and timely carrying out of construction projects in respect of any federal real property or federal immovable by addressing the non-payment of contractors and subcontractors who perform construction work for the purposes of those projects.*



What projects does the Act apply to?

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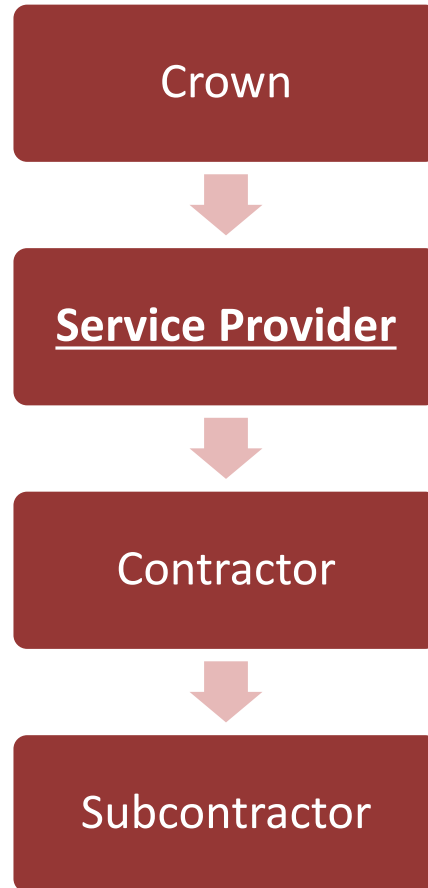


Key Concepts and Definitions

- “construction project”
 - includes “capital repair”
- “construction work”
- “contractor”
- “subcontractor”
- “federal real property”
 - generally includes leased lands
- “federal immovable”



Key Concepts and Definitions

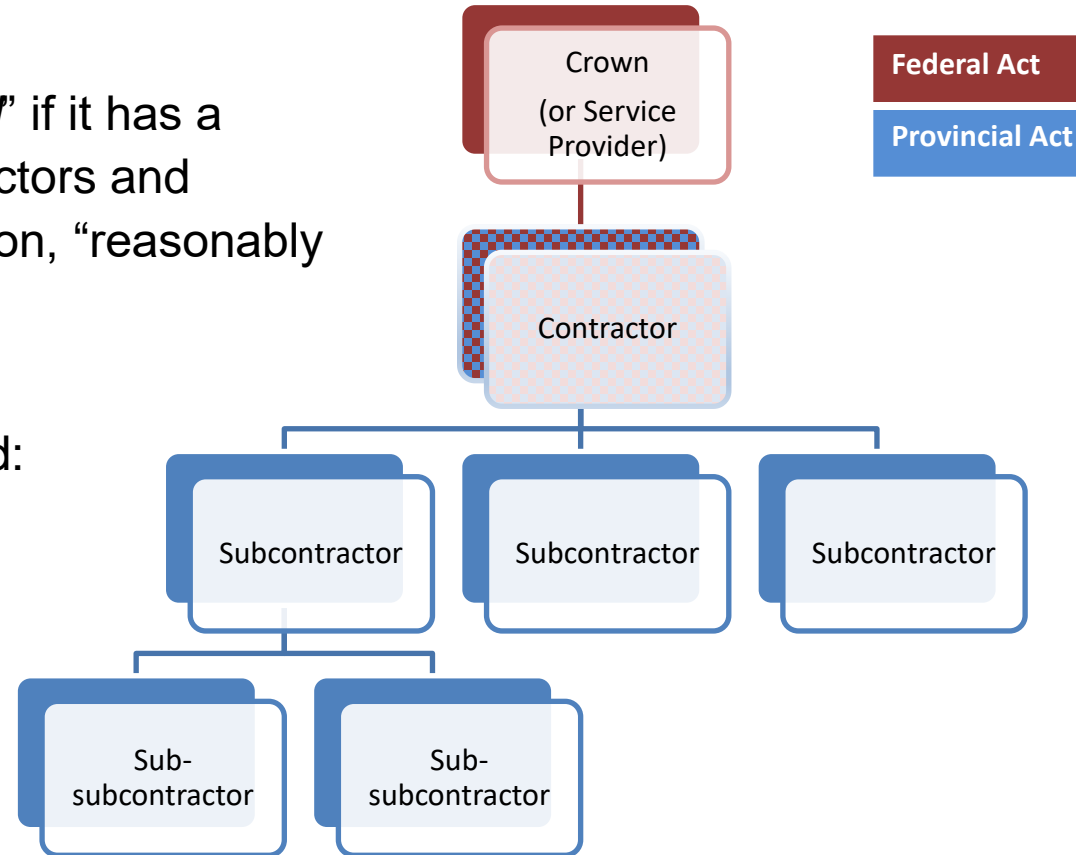


- “service provider”



Carve-out for designated provinces

- A province can be “*designated*” if it has a regimes for payment of contractors and subcontractors, and adjudication, “reasonably similar” to the federal Act
- Provinces currently designated:
 - Alberta
 - Ontario
 - Saskatchewan



Carve-out for designated provinces

For designated Provinces:

- What sections do not apply to contractors?
 - obligation to inform subcontractors that they will be subject to the federal Act – s.8(2)
 - obligation to inform subcontractors of date proper invoice was received – s.9(5)
 - obligation to pay subcontractors – s.10 (and payment obligations down the subcontracting chain – s.11)
 - holdback – s.12
 - notice of non-payment – s.13
 - interest on unpaid amounts – s.14
 - date on which contractor receives certificate of completion – s.16(5)
- What sections do not apply to subcontractors?
 - the whole Act
- What sections do not apply to service providers?
 - the whole Act



Carve-out for designated provinces

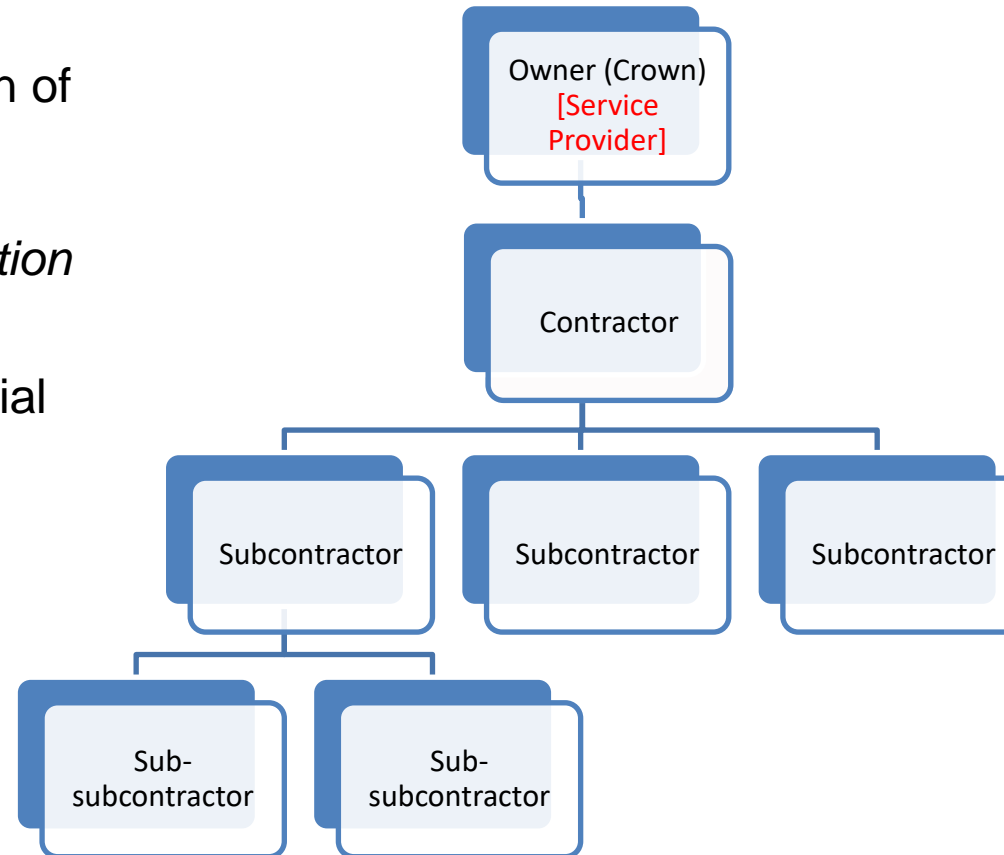
The intention of designation:

- To ensure greater consistency and ease to construction firms in the province or territory where a reasonably similar prompt payment regime exists, the legislation allows provincial/territorial prompt payment legislation (where it exists) to be applicable instead of the federal legislation as long as they meet the criteria set out in the *Federal Prompt Payment for Construction Work Regulations (Criteria, Time Limits, Interest and Circumstances)*.
- At this time, Ontario, Saskatchewan and Alberta are the only provinces with a fully implemented prompt payment regime. Based on the criteria set out in the *Federal Prompt Payment for Construction Work Regulations (Criteria, Time Limits, Interest and Circumstances)*. These three provinces' regimes qualify and are designated so that any prompt payment pursuit on federal properties in these provinces fall under their provincial prompt payment regimes.



Carve-out for designated provinces

- Potential practical application of prompt payment to federal projects in designated provinces *through interpretation*
- Implication would be provincial rules apply to everyone
- But what about “service provider”?



Transition Rules for *all* Projects

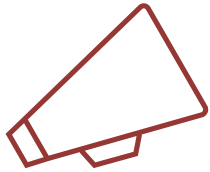
(non-application for one year)

Contracts	
Contracts entered into on or before December 8, 2023:	Act does not apply until December 9, 2024
Contracts entered into on or after December 9, 2023:	Act applies

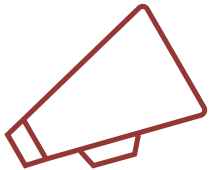
Subcontracts	
Subcontracts entered into before December 9, 2024 (where the 'Prime Contract' was entered into on or before December 8, 2023)	Act does not apply until December 9, 2024
All other Subcontracts:	Act applies



Duties to inform



- Crown and Service Providers must inform contractors they will be subject to the Act before entering into contract – s.8(1)



- Contractors and Subcontractors must inform their subcontractors before entering into a subcontract that will be subject to the Act – s.8(2)*

*(*Does not apply for designated provinces)*



Payment Rules

- Calculating timeframes:
 - The following are excluded from calculating timeframes under the Federal Act:
 - any holiday as defined in s.35(1) of the *Interpretation Act*
 - Saturdays
 - December 24 – January 1
 - any construction holiday recognized by any provincial government

Insights from provincial prompt payment regimes?



Payment Rules

Proper Invoices:

*Insights from
provincial prompt
payment regimes?*

- Must include:
 - a) the date of the invoice and the name, street and mailing address, telephone number and **email address** of the contractor that performed the construction work;
 - b) the period during which the materials or services were supplied;**
 - c) the contract number or other authorization under which the materials or services were supplied;
 - d) a description, including the quantity, if applicable, of the materials or services supplied;
 - e) the amount payable for the services or materials supplied and the payment terms; and
 - f) the name, title, street and mailing address, telephone number and email address of the person to which payment must be made,**

... and any other requirements set out in the contract that do not conflict with the Act

Note: proper invoices cannot be subject to any requirement respecting prior verification of the construction work.



Payment Rules

Notices of Non-Payment

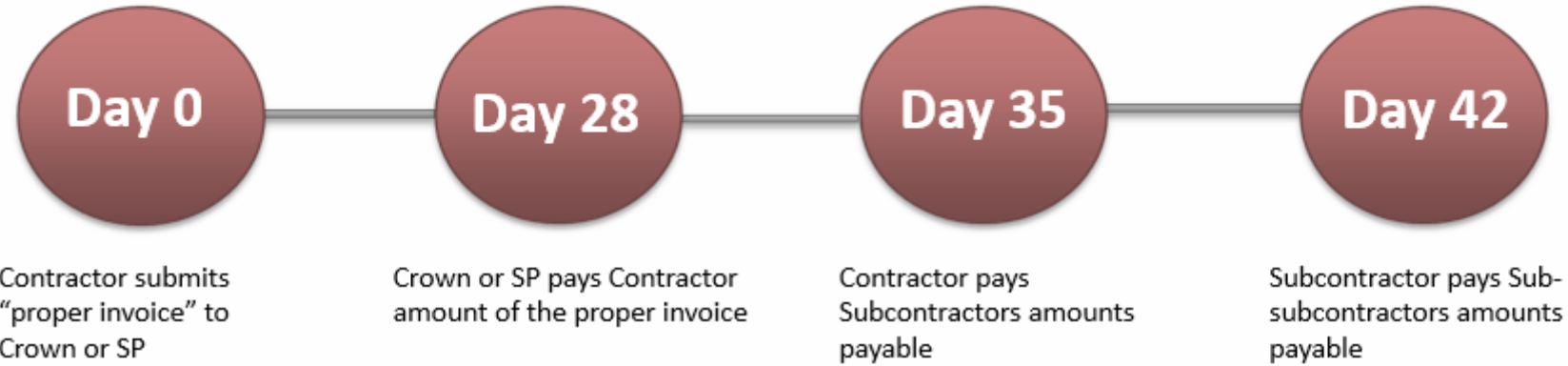
- **No prescribed form**
- Must include:
 - a) a description of the construction work covered by the notice of non-payment
 - b) the amount that will not be paid
 - c) the reasons for the non-payment, including whether the party that must pay does not have the necessary funds to do so as a result of also receiving a notice of non-payment that covers the construction work referred to in paragraph (a); and
 - d) any other information prescribed by the regulation
 - the amount paid that is not in dispute

Insights from provincial prompt payment regimes?



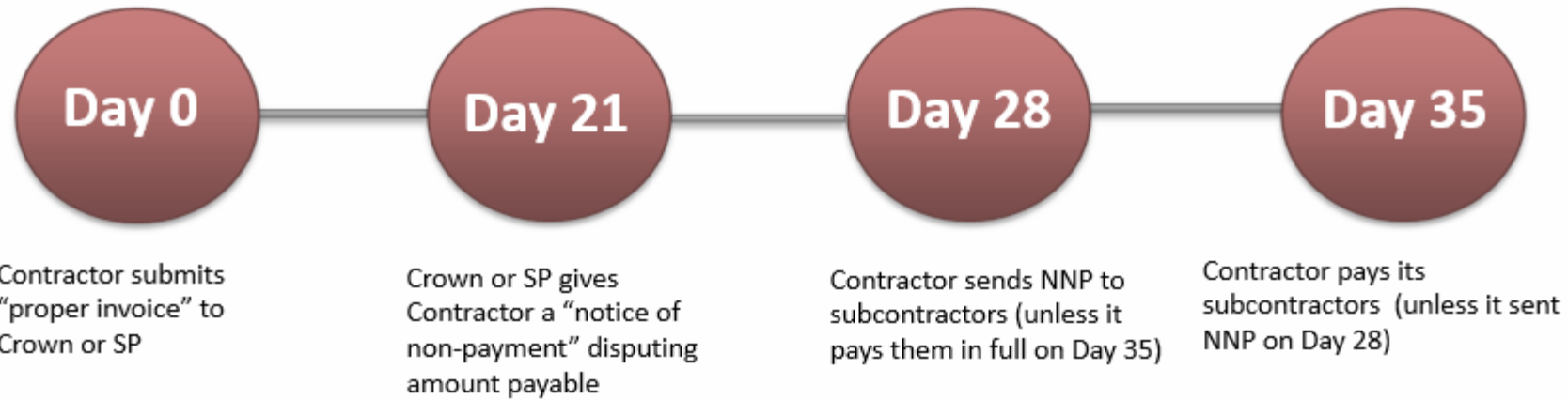
Prompt Payment Scenarios

Full Payment



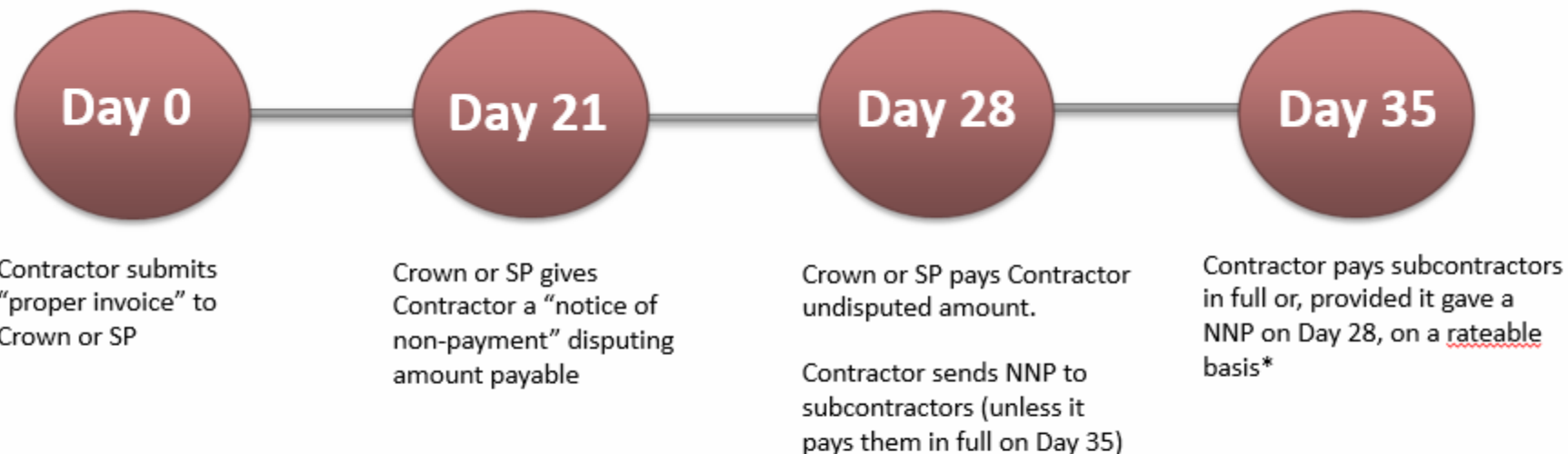
Prompt Payment Scenarios

Crown/Service Provider Disputes Invoice (In Full)



Prompt Payment Scenarios

Crown/Service Provider Disputes Invoice (Partially)



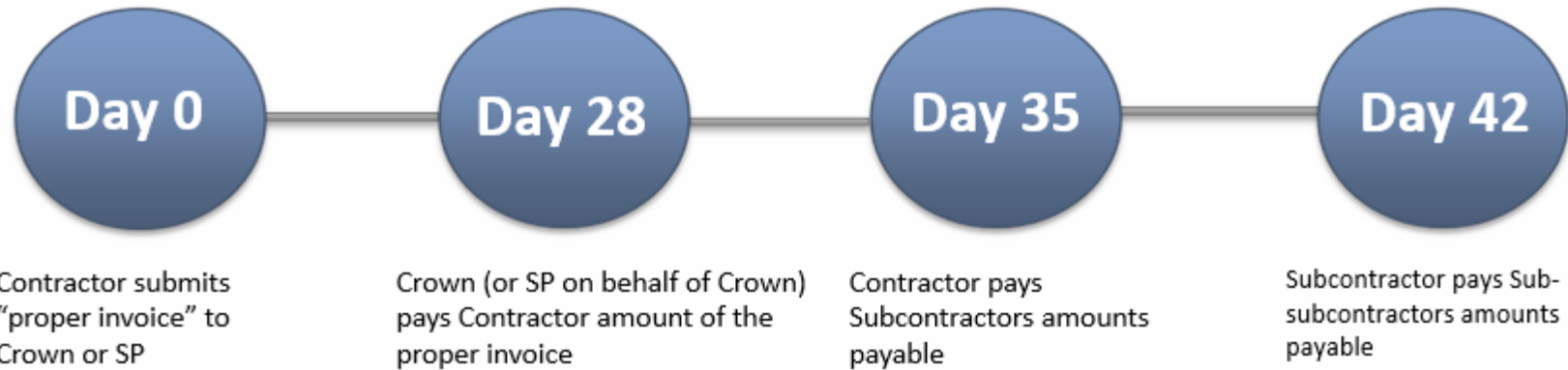
**Contractor distributes amounts received rateably: first to subcontractors (and itself) whose work is not covered by the NNP, then any remaining amounts to subcontractors (and itself) whose work is partially covered by the NNP.*

**Question: Does the Contractor know which subcontractors' work is being paid for?*



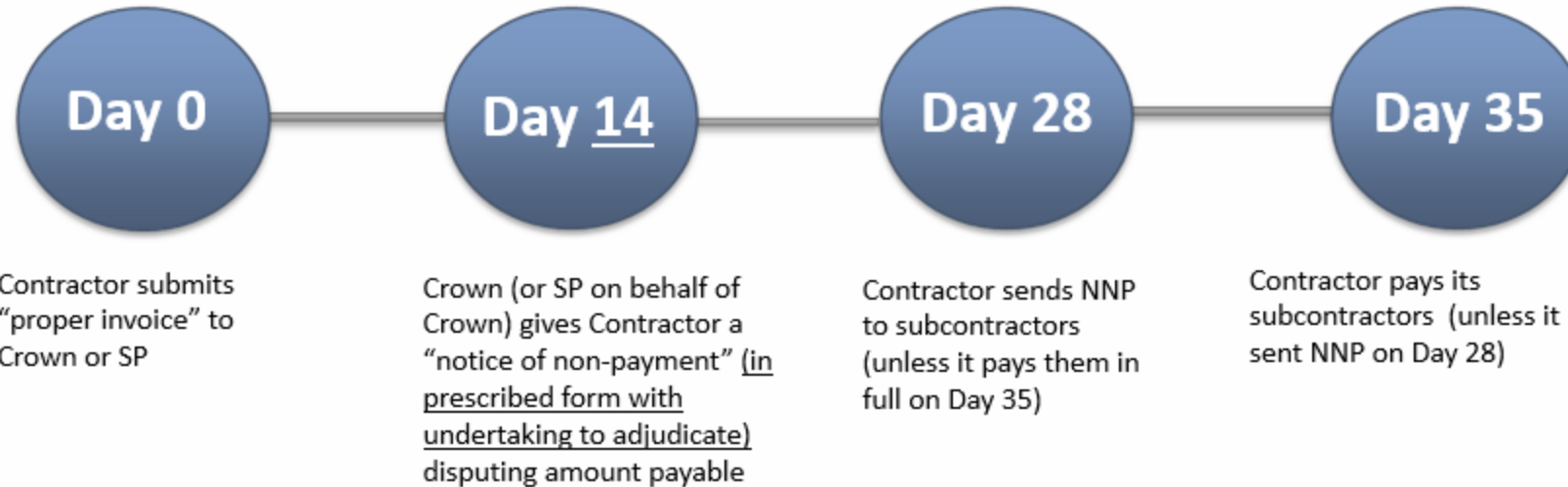
Prompt Payment Scenarios (For designated provinces)

Full Payment



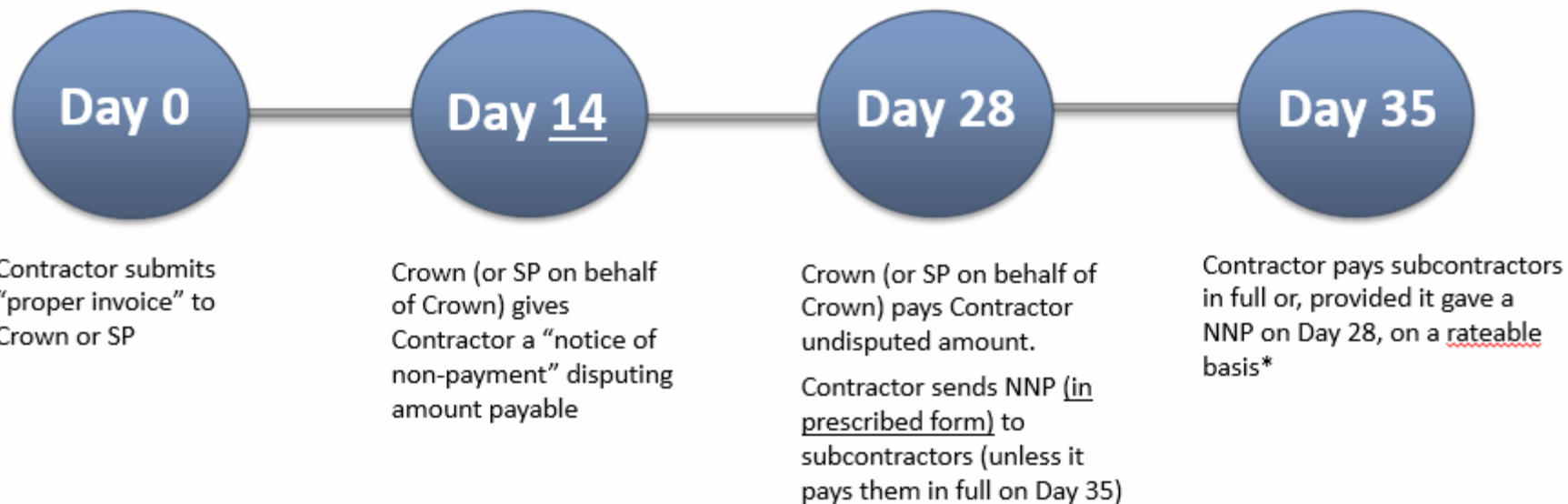
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Prompt Payment Scenarios (For designated provinces)

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**Question: Does the Contractor know which subcontractors' work is being paid for?*



What does a party do if not paid?

- Under Federal Act, you can go to adjudication:
 - **16 (1)** If a contractor or subcontractor has not been fully paid for its construction work within the time limit for payment provided under this Act or, when applicable, the shorter time limit set out in its contract, that contractor or subcontractor may obtain from an adjudicator a determination respecting any dispute over the non-payment by the party that is to pay it under the contract.
- For designated provinces, you may *have to* go to adjudication
- To be discussed more on Part 2



Questions?

Please join us for Part 2: Adjudication on February 15th!

Check out CCA's website for registration

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