

BC's Construction Prompt Payment Act: What It Means and What Comes Next

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Agenda

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 - Next Steps
 - Transition
- **Prompt Payment Act Specifics**
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 - Proper Invoice
 - Timelines
 - The end of *paid-when/if-paid*?
 - Adjudication
 - CCDC/CCA Contracts + Payment Certifiers

- **Summary**



HOW WE GOT HERE

Prompt Payment Legislation

- **Legislation was introduced Tuesday, October 7**
 - “Bill 20, Construction Prompt Payment Act”
- **Legislation was passed November 27**
 - “*Construction Prompt Payment Act*”
- **We’ve shared key resources with industry:**
 - **News Release** announcing the legislation
 - **Myths & Realities** document dispelling common misconceptions
 - **60+ FAQs** explaining key details, with more being added
 - Resources will be added and updated regularly as this process continues



use the QR code to access
bccassn.com/prompt-payment/
for information, resources and updates

We are at the Starting Line

This is only the starting line


- Need **regulations drafted** *and* **adjudication authority set up** (*this is the step we are at now.*)
- Need **enactment date**

Legislation may take 18–24 months to come into force

- *This is inline with other jurisdictions*
- *24 months is too long and we are pushing for quick, responsible enactment*

BCCA's advocacy priorities:

- No carve-outs
- Fair and clear regulations
- Prompt implementation
- Lien Act modernization



INTRODUCTION TO THE CONSTRUCTION PROMPT PAYMENT ACT (“*CPPA*”)

It will be the law

- Once enacted and in force, parties cannot contract out of Prompt Payment, similar to the Builders Lien Act.
- Clauses that try and subvert the act are **null and void**, including clauses that make invoicing conditional on owner approval or certification by a payment certifier.

Will this Apply to the Entire Construction Industry?

- We don't know yet: biggest issue with the *Construction Prompt Payment Act* (CPPA.)
 - We have repeatedly emphasized this to them.
- The government will determine details through future regulations (and we expect collaboration again)
- BCCA strongly advocates that no sector or owner type be exempted.
- Prompt payment must apply across the board to avoid confusion for firms working across multiple sectors.

Suppliers Are Included in the Definition of Subcontractor

- Under CPPA, “subcontractor” includes anyone providing **services or materials** to an improvement.
- This definition captures **suppliers**, not just trade subcontractors.
- Suppliers are therefore entitled to the **same payment protections** and rights under the Act.
- The payment flow applies through **all tiers of the supply chain**, from owner to the last supplier.

Transition: What to Expect

- The **enactment date has not yet been announced**, may take 18+ months.
- CPPA allows for **phased date transitions** for different sectors, which we are **not supportive of** and continue to advocate against.
- **The Prime Contract date matters:** if it was **signed *before*** the Act comes into force, the project will not be covered.
 - Any **subcontracts tied to older Prime Contracts** will not be covered.
- Only **Prime Contracts signed *after*** the enactment date will trigger prompt payment coverage.
 - Any **subcontracts under those covered Prime Contracts** will also be subject to the Act.



CPPA SPECIFICS

What is in the Legislation?

At a high level, it covers the following:

- Requirements for regular invoicing
- Requirements of a proper invoice
- Timelines for:
 - Submission of the proper invoice
 - Notice of an invoice not meeting proper invoice requirements
 - Notice of non-payment
 - Timeline for payment between the owner and contractor, contractor and subcontractors, subcontractors and their subcontractors (and so on down the supply chain)
 - Right to information and interest charges
 - Adjudication.
- Creation and obligations of the adjudication authority
- Workings of interim adjudication including but not limited to:
 - What matters can be adjudicated
 - Selection of an adjudicator and conduct of adjudication
 - Enforcement of a determination
 - Judicial review
- Limited amendments to BC's Builders Lien Act:
 - Eliminates "Shimco liens"
 - Release of holdback may be made after 46 days (currently 55 days)

Proper Invoice

There can be only one: between the owner and contractor.

What a proper invoice must contain:

1. Name and address of the contractor,
2. Date of the invoice,
3. Period of time, milestone or other basis,
4. Information identifying the contract, a contract number, contract line item number or purchase order number,
5. Description, including quantity if appropriate, of the services or materials that were supplied,
6. Amount payable for the services or materials that were supplied and the payment terms,
7. Details on how and where payment is to be made, or who receives it if not specified.

AND meets any requirements set out in the contract (e.g. statutory declaration, WCB clearance letter.)

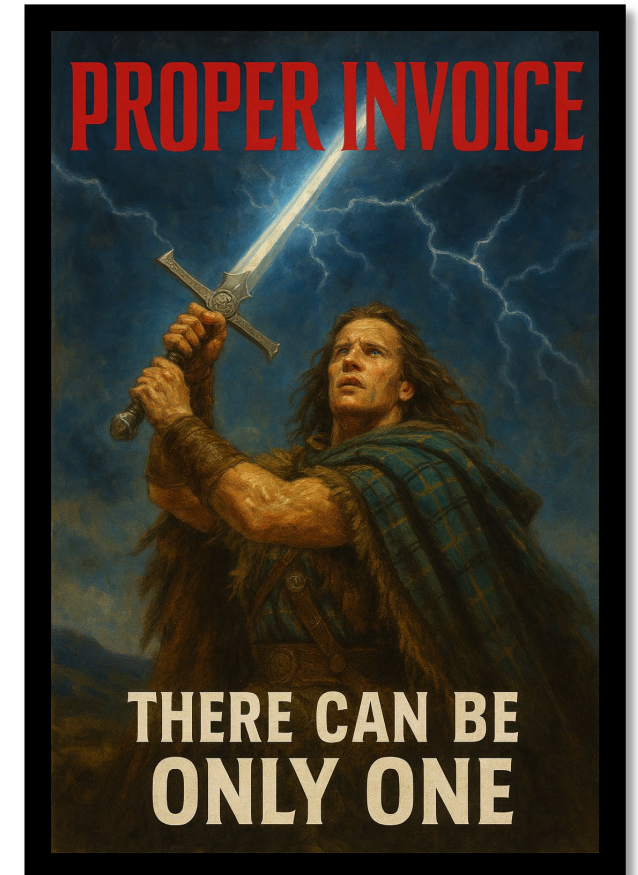
Proper invoice is administrative

- Yet to be drafted regulations will outline how a proper invoice is “given”
- A **proper invoice** is about **format and required information**, *not* the amount billed.
 - It’s a “fitness test.”
 - BUT the “description” could get tricky.
- **Before Day 7:** If the invoice is improper, the owner must issue a Notice of Improper Invoice, or it is deemed proper.
- Once deemed proper, **payment timelines start running**.
- **Best practice:** At project kickoff, agree on the format and content of the proper invoice, including expectations on “description.”

Proper Invoice: Subs/Suppliers do not submit them

Like Highlander, **there can be only one: between the owner and contractor.**

- Subcontractors **do not submit proper invoices** under the legislation.
- Their invoices to the contractor are governed by their **subcontract terms**, not the Act.
- However, the **timelines still flow down**, so when the contractor gets paid, payment to subs must follow within **7 days**.



Does this mean I will have to invoice every single month?

- If you are a subcontractor, no (follow the subcontract.)
- Monthly invoicing is required by the contractor to the owner unless your contract specifies otherwise.
- The owner and contractor (and the contractor and a subcontractor) can agree to other triggers, like milestones or deliveries.
- Once a proper invoice is submitted, prompt payment timelines begin.

Interest on Late Payments

- **Interest accrues automatically** on any amount not paid when due.
- The interest rate will be the **higher of**:
 - the prescribed rate set by regulation, *or*
 - the rate stated in your contract.
- The “prescribed rate” is not yet known.
- **Key takeaway:** Make sure your contract includes an interest rate that protects you. Otherwise, you’re relying on whatever is set by regulation.

Will this Legislation Stop “Paid-when-paid” and “Paid-if-paid” Clauses?

- **Yes** and **no** – and not in the way you might think.
- The legislation effectively enshrines this concept into law **but** may withhold payment only when:
 1. Written notice specifying the reason and amount,
 2. Attach the upstream notice of non-payment, and
 3. Undertaking to refer the dispute to adjudication within 21 days.
- If you are not paid but forget to give the required notice, you are obligated to pay.

Timelines: Standard Payment Flow (No Issues)

If everything goes smoothly and the owner does not give notice of non-payment, the flow of payment looks like this:

- **Day 0:** Contractor delivers a proper invoice to the owner (triggering event).
- **Day 28:** Owner must pay the contractor.
- **Day 35:** Contractor must pay subcontractors within 7 days of receiving payment.
- **Day 42:** Subcontractors must pay their sub-subcontractors within 7 days.
- **Day 49:** Sub-subcontractors must pay the next tier down, and so on.

Timelines: When Payment Can't Flow Smoothly



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If the owner issues a notice of non-payment, the flow of payment changes:

- **Day 0:** Contractor delivers a proper invoice to the owner (triggering event).
- **Day 7:** If a proper invoice is found to be improper, the owner must issue a notice of improper invoice (or it is deemed proper) * *remember*: this is a “fitness test”
- **Day 14:** Owner must issue a **Notice of Non-Payment** to the contractor, specifying the amount and reason.
- **Day 21:** Contractor must flow down Notice of Non-Payment down the supply chain.
- **Day 28:** Owner must still pay any undisputed amounts.
- **Day 35:** Contractor must give its own *Notice of Non-Payment* to subcontractors and refer the dispute to adjudication within 21 days.

Timelines continue down the chain, with payment or non-payment notices and adjudication following the same structure at each tier.

So, if a Contractor or Subcontractor is not paid, can they just stop working?

- **No.**
- Under the legislation they **may only suspend work if an adjudicator has issued a determination requiring payment and the other party fails to pay within 15 days** (Section 34).
- In that case, suspension is permitted under the legislation, and the party is entitled to payment for reasonable costs associated with stopping and resuming work (Section 35).
- *Remember:* The contract may include other rights and abilities to suspend work.

CPPA and the Builders Lien Act

- The legislation makes targeted amendments to the Builders Lien Act – not enough in our opinion.
- It eliminates Shimco liens and shortens holdback release from 55 to 46 days.
- Holdback release remains permissive (“may”), not mandatory. No yearly progressive release as seen elsewhere.
- No major reforms yet: BC’s lien system remains outdated.
- BCCA continues to advocate for full modernization of the Act.

Right to Information

- **Section 12 (CPPA) and Section 41 (Builders Lien Act)** together give subcontractors strong rights to request payment information.
- **BLA Section 41 (already law)** provides broad rights, not just invoice dates but account details between the owner and contractor.
- **CPPA Section 12** reinforces this by adding the date of the proper invoice as a key right to request.
- **Future Best practice:** Always ask for the proper invoice date to track payment timelines and protect rights.



CCDC CONTRACTS & PAYMENT LEGISLATION

Using CCDC/CCA Contracts Under Prompt Payment

- CCDC and CCA contracts issued after 2020 already reference payment legislation and align and allow for prompt payment timelines.
- Owners using these contracts are well positioned for compliance: the structure already supports the new requirements.
- The legislation applies broadly, so even non-CCDC projects must follow prompt payment rules.
- Now is the time to move fully to post-2020 versions, including the new CCDC 5B-2026, to ensure alignment with prompt payment provisions.*
 - ****After the enactment date, all prime contracts and their subcontracts will automatically align, as prompt payment will be the law of the land.***

Payment Certifiers: Do they have a Role? And what if they are Late?

- Under the legislation, they have no role. They are barely mentioned (except to say they have no role!)
- A delay by the payment certifier does not stop the clock on payment timelines.
- The owner **must still pay** unless *a valid notice of non-payment is issued.*
- Payment certifiers remain part of the Builders Lien Act and standard form contracts, but their role exists outside the core operation of prompt payment legislation.
- Payment certifiers are essentially “bypassed” under CPPA.

Deeper Dive: CCDC Contracts (CCDC 2-2020)

GC 5.2 APPLICATIONS FOR PAYMENT

5.2.1 Applications for payment on account as provided in Article A-5 of the Agreement – PAYMENT shall be submitted monthly to the *Owner* and the *Consultant* simultaneously as the *Work* progresses.

GC 5.3 PAYMENT

5.3.1 After receipt by the *Consultant* and the *Owner* of an application for payment submitted by the *Contractor* in accordance with GC 5.2 – APPLICATIONS FOR PAYMENT:

- .1 The *Consultant* will issue to the *Owner* and copy to the *Contractor*, no later than 10 calendar days after the receipt of the application for payment, a certificate for payment in the amount applied for, or in such other amount as the *Consultant* determines to be properly due. If the *Consultant* certifies a different amount, or rejects the application or part thereof, the *Owner* shall promptly issue a written notice to the *Contractor* giving reasons for the revision or rejection, such written notice to be in compliance with *Payment Legislation*.
- .2 The *Owner* shall make payment to the *Contractor* on account as provided in Article A-5 of the Agreement – PAYMENT on or before 28 calendar days after the receipt by the *Owner* and the *Consultant* of the application for payment, and in any event, in compliance with *Payment Legislation*.



ADJUDICATION

What can be disputed under the adjudication process?

A lot. Section 16 sets out the matters that can be disputed and the scope is broad. It includes:

- Failure to make a payment
- Whether an invoice is a proper invoice
- Failure to give a proper invoice
- Matters relating to a notice of non-payment
- Evaluation of services or materials supplied under the contract
- Change orders, whether approved or proposed
- Any other matter the parties agree to submit to adjudication.

Ontario: Adjudications by Sector (Public Sector)

TABLE 7: TOTAL, AVERAGE AND MEDIAN AMOUNTS CLAIMED DURING THE FISCAL YEAR, BROKEN DOWN BY INDUSTRY SECTOR

Industry Sector	Number of Notices of Adjudication Given During the Fiscal Year	Total Amount Claimed	Average Amount Claimed	Median Amount Claimed
Residential	105	\$40,131,221.26	\$382,202.11	\$157,791.07
Commercial	96	\$92,888,445.04	\$967,587.97	\$216,172.72
Industrial	16	\$20,343,377.17	\$1,271,461.07	\$474,856.94
Public Buildings	35	\$ 13,576,685.29	\$387,905.29	\$243,071.68
Transportation and Infrastructure	72	\$38,658,156.06	\$536,918.83	\$240,786.50
All Sectors	324	\$205,597,884.82	\$634,561.37	\$212,811.77

Public Sector Adjudications (Combined)

- Public buildings plus transportation and infrastructure: **107 adjudications**
- Share of all adjudications: **33 percent**

Dollar Value

- Combined claimed amount: **\$52.23M**
- Share of total claimed value: **25 percent**
- Public sector projects represent only one third of adjudications, showing they are not the primary source of disputes
- Commercial and residential projects together drive the majority of adjudications and claimed amounts

Ontario: Adjudications by Sector (Resi/Commercial)

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All Sectors	324	\$205,597,884.82	\$634,561.37	\$212,811.77

Residential + Commercial

- Residential (105) plus commercial (96) equals **201 adjudications**
- 62 percent** of all adjudications

Dollar Value

Combined amount claimed: **\$133.02M**

65 percent of total dollar value

- Residential and commercial projects together make up the majority of adjudications
- These two sectors also account for the largest share of total claimed amount

Ontario: What Gets Adjudicated

TABLE 6: NUMBER OF ADJUDICATIONS COMPLETED DURING THE FISCAL YEAR, BROKEN DOWN BY EACH MATTER LISTED IN S.13.5(1) OF THE CONSTRUCTION ACT

Matter Listed Under Paragraphs 1 to 7 of Subsection 13.5(1) of the Construction Act	Number of Adjudications Completed During the Fiscal Year
1. The valuation of services or materials provided under the contract.	47
2. Payment under the contract, including in respect of a change order, whether approved or not, or a proposed change order.	72
3. Disputes that are the subject of a notice of non-payment under Part I.1.	9
4. Amounts retained under section 12 (set-off by trustee) or under subsection 17 (3) (lien set-off).	0
5. Payment of a holdback under section 26.1 or 26.2.	3
6. Non-payment of holdback under section 27.1.	6
7. Any other matter that the parties to the Adjudication agree to, or that may be prescribed.	6
TOTAL	143

Valuation of services or materials

- 47 adjudications
- 33 percent

Payment under the contract (i.e. Change Orders)

- 72 adjudications
- 50 percent

Combined: valuation + payment

- 83 percent of all adjudications
- Most adjudications are about payment/changes and valuation, showing cash flow is the core pressure point in construction
- Reinforces that prompt payment legislation directly targets the issues most often adjudicated



SUMMARY

Transition: What to Expect

- The enactment date has not yet been announced, may take 18+ months
- **The Prime Contract date matters:** if it was **signed *before*** the Act comes into force, the project will not be covered.
 - Any **subcontracts tied to older Prime Contracts** will not be covered.
- Only **Prime Contracts signed *after*** the enactment date will trigger prompt payment coverage.
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Be Prepared: Opportunities and Challenges

1. Develop **streamlined and efficient** payment systems
2. Consultants and payment certifiers **must evaluate payment applications quickly** (timelines which are already stipulated in CCDC contracts.)
3. Lots of **notices**: tracking will be essential
4. **Contracts and subcontracts** need updating to include requirements (but know that post 2020 CCDC/CCA contracts already do.)
5. **Early** lack of **awareness** and **acceptance**: ongoing education will critical

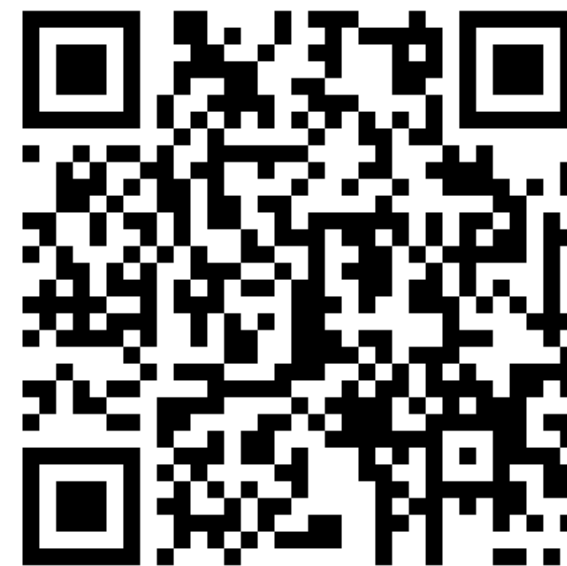
Resources

Myths & Realities: Clears up common misconceptions about the Construction Prompt Payment Act and how prompt payment works.

60+ FAQs: Provides plain-language explanations of key provisions and practical impacts

As we get closer to enactment, even more support is coming:

- Updated tools, templates, and checklists
- Webinars and training sessions for all industry sectors
- Continued collaboration with government and stakeholders



*use the QR code to access
bccassn.com/prompt-payment/
for information, resources and updates*

BCCA will keep industry informed every step of the way.

Be Ready: Final Thoughts

1. Read Your Contracts

They still govern how and when you get paid today.

2. Treat it like new tech

It's not just legislation: it's payment infrastructure.

3. Review your payment and approvals process now

Find efficiencies today.

4. Be the one who “gets it”: Attend *every* education session you can. Knowledge will be power.

For more information, visit the BCCA website at:
bccassn.com/prompt-payment/

THANK YOU.

If you're interested in **lending your expertise** to support the
development of **industry best practice guides**,
we'd love to hear from you.

THANK YOU



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