Get Ready for the CPPA: What's Next and What You Need to Know

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NRCA Northern Regional Construction Association

SICA Southern Interior Construction Association

VICA Vancouver Island Construction Association

VRCA Vancouver Regional Construction Association

Agenda

- **Ministry of Infrastructure:** Implementation Status Update

- **Introduction to Construction Prompt Payment Act**
  - What's in it
  - Proper Invoice
  - Timelines

- **Prompt Payment Act Specifics**
  - Common questions
    - The end of *paid-when/if-paid*?
    - The (non) role of Payment Certifiers?
  - Adjudication
  - Builders Lien Act

- **Summary**

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Thank you.

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INTRODUCTION TO THE CONSTRUCTION PROMPT PAYMENT ACT (*"CPPA"*)

WHAT IS PROMPT PAYMENT LEGISLATION?

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The prompt payment framework creates a fair, predictable payment system so cash flows on time and projects stay on track.

PROMPT PAYMENT

Sets clear timelines and processes for when and how payments must be made at every level.

ADJUDICATION

Provides an accessible way to resolve payment disputes and keep projects moving forward.

BUILDERS LIEN ACT

Protects the right to secure payment by allowing lien rights when payment is not made.

TOGETHER, THEY STRENGTHEN BC'S CONSTRUCTION INDUSTRY.

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.

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What's Coming

1. "Proper Invoice" requirements for *Contractor's* billings
2. Cascading payment scheme with short timelines
3. Statutory rules override contractual payment terms
4. *Timing* of delivery of invoices remains subject to contract
5. Notices of non-payment for disputed amounts
6. Interim Adjudication

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Transition:

It will NOT be retroactive

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Transition Process

- **It will be based on the <u>date of the Prime Contract</u>**
- If it was signed *before* the Act comes into force, the project <u>*will not*</u> be covered.
  - Any subcontracts tied to older Prime Contracts <u>will not</u> 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.

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The Hard Reality:

Even *with* Prompt Payment Legislation you can't expect payment will magically flow, with no interruptions …

GET COMFORTABLE BEING UNCOMFORTABLE

Be Ready

1. **Read Your Contracts – Use Your Contract**
   They still govern how and when you get paid today.

2. **Review your payment and approvals process now**
   Find efficiencies today.

3. **Get to know the Builders Lien Act**
   It's an important piece of the prompt payment scheme.

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

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CPPA SPECIFICS

Suppliers (and sub subs) 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 will be entitled to the same payment protections and rights under the Act.
- The payment flow will apply through all tiers of the supply chain, from owner to the last supplier.

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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)

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Like Highlander, **there can be only one:**

between the owner and contractor.

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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.)

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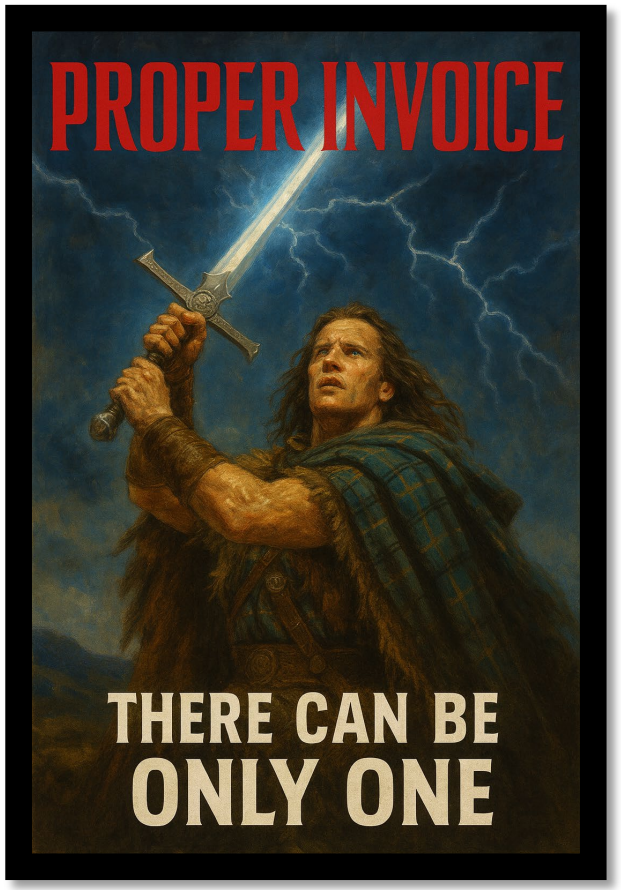
Proper Invoice: Subs/Suppliers do not submit them



- Subcontractors do not submit “proper invoices” under the legislation.
- Their invoices to the contractor are governed by their subcontract terms, not the Act.
- **For subs, the key date is when the proper invoice is given to the owner - that starts the payment clock.**

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Proper invoice is administrative

- A proper invoice is about format and required information, *not* the amount billed.
  - It's a "fitness test."

- 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 are running based on when the Proper Invoice was "given."
- **Best practice:** At project kickoff, agree on the format and content of the proper invoice, including expectations on "description."

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STANDARD PAYMENT FLOW *(No Issues)*

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If everything goes smoothly:

DAY 0

Contractor delivers a **proper invoice** to the owner (trigger).

DAY 28

Owner must **pay the contractor** all undisputed amounts.

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-subcontractos **must pay the next tier down**, and so on (+7 days).

WHEN PAYMENT CAN'T FLOW SMOOTHLY

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DAY 0

Contractor submits a **proper invoice** (trigger).

DAY 7

Owner must issue a **Notice of Improper Invoice** or the invoice is deemed proper.

DAY 14

Owner issues a **Notice of Non-Payment** (amount and reason).

DAY 21

Contractor flows the **Notice of Non-Payment** down the chain.

DAY 28

Owner pays **undisputed amounts.**

DAY 35

Contractor issues **Notice of Non-Payment,** gives an **undertaking to refer to adjudication** within 21 days, and **pays undisputed amounts** received.

Freedom to Contract

The Act leaves certain matters to the contract, including:

- Additional proper invoice requirements, s. 7
- Timing or milestones for submitting proper invoices, s. 5
- Adjudication procedures, s. 17
- Interest rate on late payments, s. 15

- The interest rate will be the **higher of**:
  - the prescribed rate set by regulation, *or*
  - the rate stated in the contract.
- The “prescribed rate” is not yet known.
- **Key BCCA advocacy priority.**

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COMMON QUESTIONS

Are all timelines based on calendar days?

- **Yes.** All timelines set out in the Act run on calendar days, not business days.

Do timelines pause for holidays or vacations?

- **No.** Timelines are fixed and run on calendar days, no exceptions for holidays or absences.
- Parties must manage this through their own processes.

**** Likely will be subject to the* Interpretation Act *and a Calculation of Days***

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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.

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Could owners ask for a draft proper invoice?

- **Yes.**
- We are aware of this practice in other jurisdictions.
- But Section 6(1) of the Act (Approval and Testing) makes clear that any contract clause requiring the approval of the owner before submitting a proper invoice is void.
- While an owner may ask to see a draft, that does not prevent a contractor from submitting their proper invoice and starting the payment timelines.

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If an owner issues a Notice of Improper Invoice, does the timeline reset?

- Yes. The 28-day timeline does not start until a proper invoice is submitted.
- If an invoice is found improper, deficiencies must be corrected and a proper invoice resubmitted, starting the 28-day timeline.
- Revision to an existing proper invoice is different: if the owner agrees in advance and the invoice date stays the same, the timeline does not reset.
- Important: a Notice of Non-Payment addresses payment disputes, not invoice deficiencies, and does not stop the clock.

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If a Contractor or Subcontractor are not paid, can they just stop working?

- **No**.
- 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.

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PAYMENT CERTIFIERS & PAYMENT LEGISLATION

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.

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Using CCDC/CCA Contracts Under Prompt Payment

- CCDC and CCA contracts issued 2020 and after already reference “payment legislation” and align and allow for prompt payment timelines.
- Parties 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.

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ADJUDICATION

Purpose of adjudication

1. Prompt payment disputes and other money matters are settled by adjudication.

2. Adjudicator's decisions are binding on an "interim" basis to keep project moving forward.

3. Leads to quicker third-party decision-making versus court or arbitration; no right of appeal, need to go to court.

4. Winning party can enforce decision like court order and may have the right to stop work.

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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.

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Can changes that are not yet invoiced be adjudicated?

- **Yes**, adjudication is not limited to approved change orders
- Section 16(f) includes payment matters relating to:
  - Approved change orders
  - Unapproved change orders
  - Proposed change orders
- Ontario experience: Change orders, approved or not, are the top matter referred to adjudication

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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 providedunder the contract.	47
2. Payment under the contract, including in respectof 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 bytrustee) 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**

<u>Combined: valuation + payment</u>

- **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

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Who can be an adjudicator?

- We don’t know yet. Qualifications and eligibility will be established through regulations and the Adjudication Authority.

How will adjudicators be selected?

- Parties agree on an adjudicator from the Adjudication Authority’s roster.
- If they cannot agree, the Adjudication Authority appoints one.
- The adjudicator cannot be preselected in the contract, s. 23(5).

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How much will adjudication cost?

- Two types of fees: administration/referral fee + adjudicator fee
  - Filing/referral fee: Other jurisdictions use a fixed fee, sometimes waived for lower-value claims
  - Adjudicator fee: Other jurisdictions use sliding scales based on the value of the claim

- BC's fee amounts and structure are still to be determined.

- Adjudicator fee split 50/50 between the parties unless the adjudicator determines otherwise.

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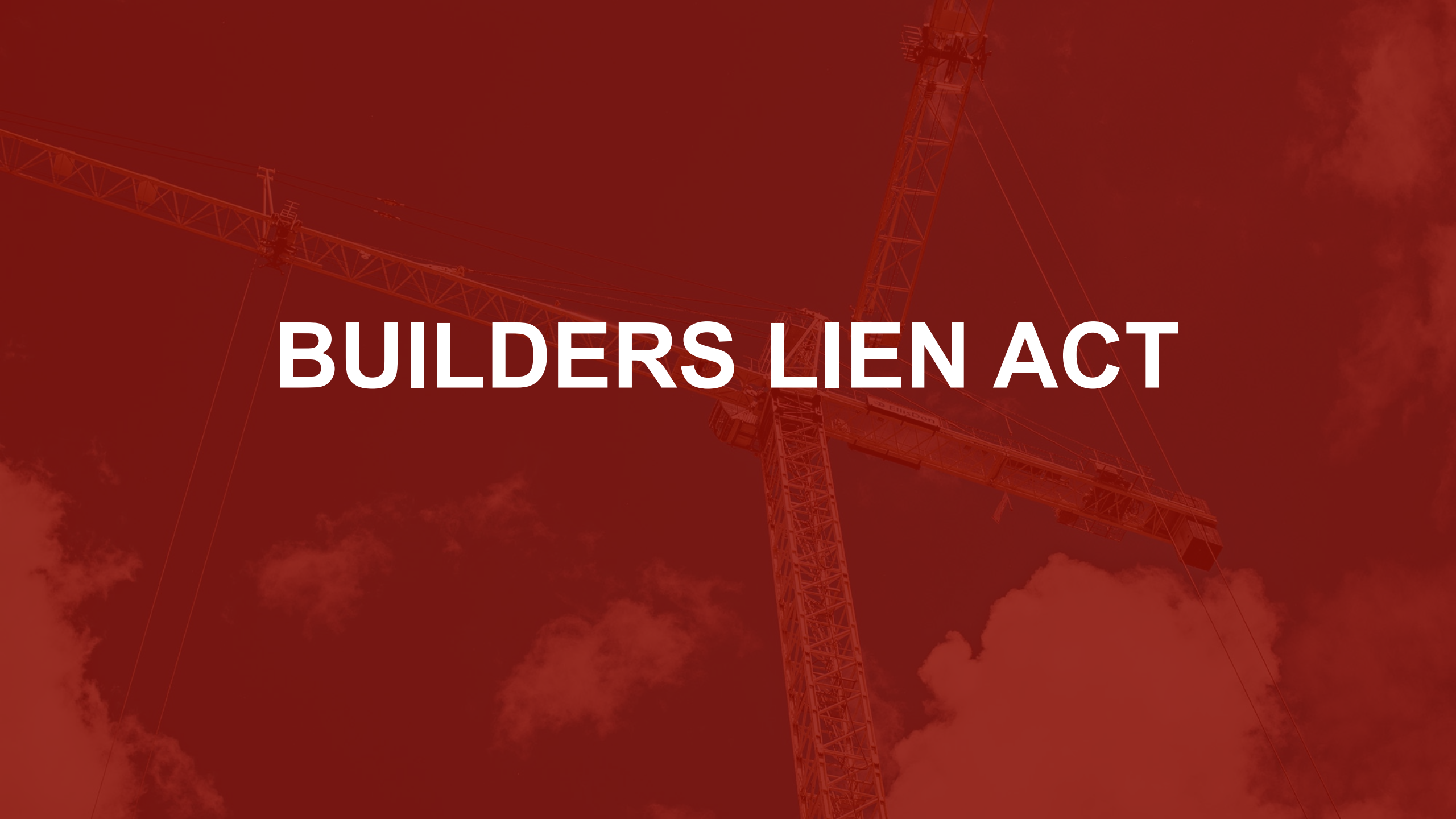

BUILDERS LIEN ACT

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 release as seen in Alberta and Ontario.
- No major reforms yet: BC’s lien system remains outdated.
- BCCA continues to advocate for full modernization of the Act.

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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.

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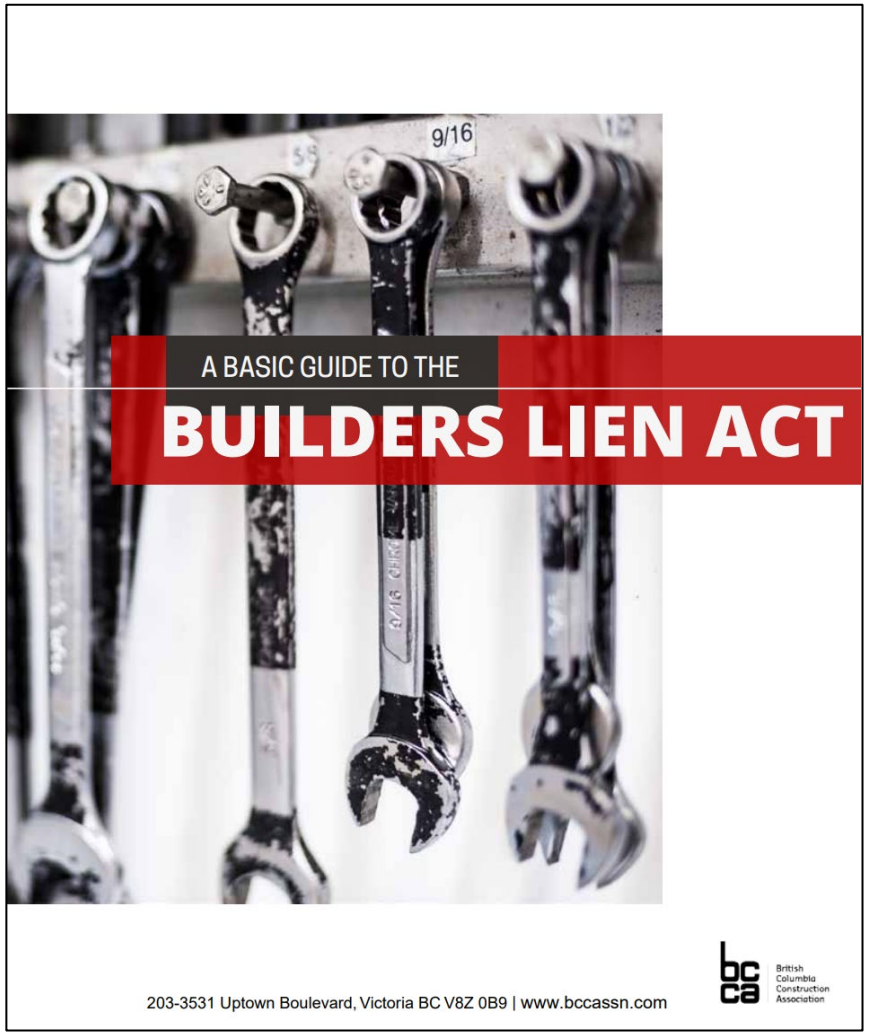
Guides Available Now



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SUMMARY

Be Prepared: Opportunities and Challenges

1. Develop **streamlined and efficient** payment systems

2. Consultants and payment certifiers **must evaluate payment applications quickly** (per timelines 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

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Resources

80+ 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

BCCA will keep industry informed every step of the way.

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

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We still need your help:
Share the challenges you are seeing,
they help inform BCCA's advocacy

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

Have a question? Want to go into the weeds? Contact Katy.
Katy.fairley@bccassn.com 778 350 3444

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