

# Goodmans<sup>LLP</sup> Update

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## Bill 57 and Amendments to the *Construction Act*

The *Construction Lien Amendment Act* was passed in December 2017 and substantively changed the *Construction Lien Act*. Its primary purposes were to: (i) modernize the existing *Construction Lien Act*; (ii) provide prompt payment legislation throughout Ontario; and (iii) introduce adjudication provisions for disputes arising in the course of a contract. The first set of changes regarding the modernization provisions came into effect on July 1, 2018. The remaining changes relating to prompt payment and adjudication are scheduled to come into force on October 1, 2019. For further information on the Act, see our June 20, 2018 Update, [Construction Act: Here We Go!](#)

On December 6, 2018, Bill 57, *Restoring Trust, Transparency and Accountability Act, 2018* (“**Bill 57**”) received Royal Assent by the Legislative Assembly of Ontario. Bill 57 was introduced in November, with the hope of clarifying certain ambiguities in the *Construction Act* (the “**Act**”).

Below is a summary of the key aspects of Bill 57, which change elements of the transition provisions, the right to information, adjudication, and the non-payment of holdback.

### Transition Provisions

Bill 57 is intended to clarify the transition provisions under section 87.3 of the Act. Specifically, the *Construction Act*, as it read on June 29, 2018, continues to apply if:

- a contract for the improvement was entered into before July 1, 2018;
- a procurement process for the improvement was commenced before July 1, 2018 by the owner of the premises;
  - what constitutes the commencement of a “procurement process” is now defined in section 1(1) of the Act and is limited to a restricted class of initiating documents and is deemed commenced on the earliest of the making of:
    - a request for qualifications;
    - a request for quotation;
    - a request for proposals; or
    - a call for tenders
- in the case of a premises that is subject to a leasehold interest first entered into before July 1, 2018, a contract for the improvement was entered into or a procurement process for the improvement was commenced on or after July 1, 2018 and before December 6, 2018, the day Bill 57 came into force.

Further, the prompt payment and adjudication provisions (Parts I.1 and II.1 of the Act) will not apply to contracts and subcontracts entered into before October 1, 2019 or contracts and subcontracts entered into on or after October 1, 2019, if the procurement process was commenced before that day by the owner.

### Right to Information

Section 39(1) of the Act was amended by Bill 57 such that upon receiving a request for information, specified parties are now to be told the date(s) on which a contract or subcontract was entered into and the date when any procurement process was commenced. This will better enable parties to determine whether the Act or the former *Construction Act* (i.e. the provisions of the Act as it read on June 29, 2018) applies.

## Part II.1 - Adjudication

Bill 57 makes certain changes to the adjudication provisions of Part II.1 of the Act. Specifically, Bill 57 provides that:

- Parties may include specific adjudication procedures in the contract or subcontract, but those specific procedures only apply to the extent they are not inconsistent with the Part II.1 of the Act and the regulations;
- Parties who receive a Notice of Adjudication may, in accordance with the regulations, respond in writing to said Notice; and
- provisions have been added that require the party who delivered the Notice of Adjudication to provide to all parties involved in the adjudication, the Notice of Adjudication, the contract or subcontract, and any documents the party intends to rely on during the adjudication within five days after an adjudicator agrees or is appointed to conduct the adjudication.

## Holdback

Bill 57 amends section 27.1 of the Act (Non-Payment of Holdback) to provide that, before October 1, 2019, when adjudication comes into force, if an owner, contractor or subcontractor refuses to make payment under section 26 or 27 of the Act, the contractor or subcontractor to whom payment is owed may refuse to pay out its subcontractor or sub-subcontractor (as the case may be) if the contractor or subcontractor provides notice of non-payment to those further down the construction pyramid.

For further information concerning these developments, please contact any member of our [Construction Law Group](#).

## Authors



Joe Cosentino  
jcosentino@goodmans.ca  
416.597.4245



Brad Halfin  
bhalfin@goodmans.ca  
416.597.4252



Howard Wise  
hwise@goodmans.ca  
416.597.4281

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