

Construction Act (Phase 1)

(Modernization in Force)
July 1, 2018 to September 30, 2019



Français

Construction Act

R.S.O. 1990, CHAPTER C.30

Consolidation Period: From July 1, 2019 to the [e-Laws currency date](#).

Last amendment: 2019, c. 7, Sched. 17, s. 56.

Legislative History: 1994, c. 27, s. 42; 1996, c. 25, s. 4; 1997, c. 19, s. 30; 1997, c. 23, s. 4; 1999, c. 12, Sched. B, s. 3; 2002, c. 17, Sched. F, Table; 2006, c. 19, Sched. C, s. 1 (1); 2006, c. 21, Sched. C, s. 102; 2010, c. 16, Sched. 2, s. 2; 2017, c. 24, s. 1-73, 83-85; 2017, c. 33, Sched. 2, s. 76; 2018, c. 17, Sched. 8, s. 1-20; 2019, c. 7, Sched. 17, s. 56.

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Interpretation

Definitions

1 (1) In this Act,

“action” means an action under Part VIII; (“action”)

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

“contract” means the contract between the owner and the contractor, and includes any amendment to that contract; (“contrat”)

“contractor” means a person contracting with or employed directly by the owner or an agent of the owner to supply services or materials to an improvement and includes a joint venture entered into for the purposes of an improvement or improvements; (“entrepreneur”)

“court” means the Superior Court of Justice; (“tribunal”)

“Crown” includes a Crown agency to which the *Crown Agency Act* applies; (“Couronne”)

“holdback” means the 10 per cent of the value of the services or materials supplied under a contract or subcontract required to be withheld from payment by Part IV; (“retenue”)

“home” means,

- (a) a self-contained one-family dwelling, detached or attached to one or more others by a common wall,
- (b) a building composed of two self-contained, one-family dwellings under one ownership, or
- (c) a condominium one-family dwelling unit, including the common interests appurtenant thereto,

and includes any structure or works used in conjunction therewith; (“logement”)

“home buyer” means a person who buys the interest of an owner in a premises that is a home, whether built or not at the time the agreement of purchase and sale in respect thereof is entered into, provided,

- (a) not more than 30 per cent of the purchase price, excluding money held in trust under section 81 of the *Condominium Act, 1998*, is paid prior to the conveyance, and
- (b) the home is not conveyed until it is ready for occupancy, evidenced in the case of a new home by the issuance of a municipal permit authorizing occupancy or the issuance under the *Ontario New Home Warranties Plan Act* of a certificate of completion and possession; (“acquéreur d’un logement”)

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (b) of the definition of “home buyer” in subsection 1 (1) of the Act is amended by striking out “the issuance under the *Ontario New Home Warranties Plan Act* of a certificate of completion and possession” and substituting “the issuance of material prescribed for the purpose of this clause by the regulations made under the *Protection for Owners and Purchasers of New Homes Act, 2017*”. (See: 2017, c. 33, Sched. 2, s. 76 (1))

“improvement” means, in respect of any land,

- (a) any alteration, addition or capital repair to the land,
- (b) any construction, erection or installation on the land, including the installation of industrial, mechanical, electrical or other equipment on the land or on any building, structure or works on the land that is essential to the normal or intended use of the land, building, structure or works, or
- (c) the complete or partial demolition or removal of any building, structure or works on the land; (“améliorations”)

“interest in the premises” means an estate or interest of any nature, and includes a statutory right given or reserved to the Crown to enter any lands or premises belonging to any person or public authority for the purpose of doing any work, construction, repair or maintenance in, upon, through, over or under any lands or premises; (“intérêt sur les lieux”)

“land” includes any building, structure or works affixed to the land, or an appurtenance to any of them, but does not include the improvement; (“bien-fonds”)

“lien claimant” means a person having a preserved or perfected lien; (“créancier privilégié”)

“materials” means every kind of movable property,

- (a) that becomes, or is intended to become, part of the improvement, or that is used directly in the making of the improvement, or that is used to facilitate directly the making of the improvement,
- (b) that is equipment rented without an operator for use in the making of the improvement; (“matériaux”)

“monetary supplementary benefit” includes any contribution, remittance, union dues, deduction, payment or other additional compensation of any kind; (“avantage pécuniaire supplémentaire”)

“mortgage” includes a charge and “mortgagee” includes a chargee; (“hypothèque”, “créancier hypothécaire”)

“municipality” means,

- (a) a municipality within the meaning of the *Municipal Act, 2001*, and
- (b) a local board within the meaning of the *Municipal Act, 2001* or the *City of Toronto Act, 2006*; (“municipalité”)

“owner” means any person, including the Crown, having an interest in a premises at whose request and,

- (a) upon whose credit, or
- (b) on whose behalf, or
- (c) with whose privity or consent, or

- (d) for whose direct benefit,
an improvement is made to the premises but does not include a home buyer; (“propriétaire”)
- “payer” means the owner, contractor or subcontractor who is liable to pay for the services or materials supplied to an improvement under a contract or subcontract; (“responsable du paiement”)
- “payment certifier” means an architect, engineer or any other person upon whose certificate payments are made under a contract or subcontract; (“personne qui autorise le paiement”)
- “person having a lien” includes both a lien claimant and a person with an unpreserved lien; (“titulaire d’un privilège”)
- “premises” includes,
- (a) the improvement,
 - (b) all materials supplied to the improvement, and
 - (c) the land occupied by the improvement, or enjoyed therewith, or the land upon or in respect of which the improvement was done or made; (“lieux”)
- “prescribed” means prescribed by the regulations; (“prescrit”)
- “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”)
- “regulations” means the regulations made under this Act; (“règlements”)
- “services or materials” includes both services and materials; (“services ou matériaux”)
- “subcontract” means any agreement between the contractor and a subcontractor, or between two or more subcontractors, relating to the supply of services or materials to the improvement and includes any amendment to that agreement; (“contrat de sous-traitance”)
- “subcontractor” means a person not contracting with or employed directly by the owner or an agent of the owner but who supplies services or materials to the improvement under an agreement with the contractor or under the contractor with another subcontractor and includes a joint venture entered into for the purposes of an improvement or improvements; (“sous-traitant”)
- “suffers damages as a result” means suffers damages that could be reasonably foreseen to result; (“subir des dommages en conséquence”)
- “supply of services” means any work done or service performed upon or in respect of an improvement, and includes,
- (a) the rental of equipment with an operator, and
 - (b) where the making of the planned improvement is not commenced, the supply of a design, plan, drawing or specification that in itself enhances the value of the owner’s interest in the land,
- and a corresponding expression has a corresponding meaning; (“prestation de services”)
- “wages” means the money earned by a worker for work done by time or as piece work, and includes all monetary supplementary benefits, whether provided for by statute, contract or collective bargaining agreement; (“salaire”)
- “worker” means a person employed for wages in any kind of labour; (“ouvrier”)
- “workers’ trust fund” means any trust fund maintained in whole or in part on behalf of any worker on an improvement and into which any monetary supplementary benefit is payable as wages for work done by the worker in respect of the improvement; (“fonds en fiducie des ouvriers”)
- “written notice of a lien” means a written notice of a lien in the prescribed form, given by a person having a lien. (“avis écrit d’un privilège”) R.S.O. 1990, c. C.30, s. 1 (1); 2002, c. 17, Sched. F, Table; 2006, c. 19, Sched. C, s. 1 (1); 2010, c. 16, Sched. 2, s. 2 (1, 2); 2017, c. 24, s. 2 (1-16), 66, 70, 71.

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. 2017, c. 24, s. 2 (17).

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. 2017, c. 24, s. 2 (17).

When materials supplied

(2) For the purposes of this Act, materials are supplied to an improvement when they are,

- (a) placed on the land on which the improvement is being made;
- (b) placed upon land designated by the owner or an agent of the owner that is in the immediate vicinity of the premises, but placing materials on the land so designated does not, of itself, make that land subject to a lien; or
- (c) in any event, incorporated into or used in making or facilitating directly the making of the improvement. R.S.O. 1990, c. C.30, s. 1 (2); 2017, c. 24, s. 71.

Same

(3) A contractor or subcontractor to whom materials are supplied and who designates land under clause (2) (b) is deemed to be the owner’s agent for that purpose, unless the person supplying the materials has actual notice to the contrary. R.S.O. 1990, c. C.30, s. 1 (3).

Commencement of a procurement process

(4) For the purposes of this Act, a procurement process is commenced on the earliest of the making of,

- (a) a request for qualifications;
- (b) a request for quotation;
- (c) a request for proposals; or
- (d) a call for tenders. 2018, c. 17, Sched. 8, s. 1.

Section Amendments with date in force (d/m/y)

2002, c. 17, Sched. F, Table - 01/01/2003

2006, c. 19, Sched. C, s. 1 (1) - 22/06/2006

2010, c. 16, Sched. 2, s. 2 (1, 2) - 25/10/2010

2017, c. 24, s. 2 (1-3, 5, 7, 8, 12, 14, 16, 17) - 01/07/2018; 2017, c. 24, s. 2 (4, 6, 9-11, 13, 15), 66, 70, 71 - 12/12/2017; 2017, c. 33, Sched. 2, s. 76 (1) - not in force

2018, c. 17, Sched. 8, s. 1 - 06/12/2018

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 a project 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. 2017, c. 24, s. 3 (1).

Application of Act, regulations

(2) Except as provided by this section, this Act and the regulations apply, with the modifications set out in this section and any other necessary modifications,

- (a) to a project agreement between the Crown, a municipality or a broader public sector organization and a special purpose entity as if the project agreement were a contract and the special purpose entity were the contractor; and
- (b) to the agreement between the special purpose entity and the contractor as if the agreement were a subcontract made under the contract. 2017, c. 24, s. 3 (1).

Note: On October 1, 2019, the day named by proclamation of the Lieutenant Governor, section 1.1 of the Act is amended by adding the following subsections: (See: 2017, c. 24, s. 3 (2))

Specified modifications, Part I.1

(2.1) Part I.1 applies with the following modifications:

- 1. The Part does not apply with respect to any portion of a project agreement that provides for the operation or maintenance of the improvement by the special purpose entity, or to any portion of an agreement between the special purpose entity and the contractor or any other subcontract made under the project agreement that pertains to the operation or maintenance of the improvement by the special purpose entity.
- 2. Subsection 6.3 (2) does not apply, and nothing in the Part shall be read as preventing the inclusion, in a project agreement or agreement between a special purpose entity and a contractor, of a provision requiring certification or approval prior to the giving of a proper invoice. 2017, c. 24, s. 3 (2).

Specified modifications, Part II.1

(2.2) Part II.1 applies with the following modifications:

- 1. The following matters may not be the subject of an adjudication under the Part:
 - i. A determination of when,
 - A. a project agreement is substantially completed, or
 - B. an agreement between a special purpose entity and a contractor is substantially performed, as provided under subsection (5).
 - ii. A determination of whether a milestone in relation to the improvement has been reached, if reaching the milestone requires an amount to be paid.
 - iii. Any prescribed matters.
- 2. If the parties to a project agreement are the parties to an adjudication and the project agreement specifies an independent certifier, the parties shall, provided that a representative of the independent certifier is listed as an adjudicator in the registry established under clause 13.3 (1) (c), request that the representative conduct the adjudication, in which case subsections 13.9 (2) and (3) do not apply. 2017, c. 24, s. 3 (2).

Specified modifications, Part IV

(3) For the purposes of section 22, holdback amounts shall be determined in reference to the agreement between the special purpose entity and the contractor. 2017, c. 24, s. 3 (1).

Specified modifications, Part XI.1

(4) Section 85.1 applies with the following modifications:

- 1. The agreement between the special purpose entity and the contractor is deemed, for the purposes of the section, to be a public contract between the Crown, municipality or broader public sector organization, as the case may be, and the contractor.
- 2. The Crown, municipality or broader public sector organization, as the case may be, may require a coverage limit other than one specified in clause 85.1 (4) (b) or (5) (b), provided that it meets or exceeds any coverage limit that may be prescribed for the purposes of this paragraph.
- 3. Paragraph 2 does not apply unless the bonds required under subsections 85.1 (4) and (5) and any other security required by the Crown, municipality or broader public sector organization, as the case may be, taken together, reflect an appropriate balance between the adequacy of the security required to ensure the payment of persons supplying services or materials under the public contract on the one hand and the cost of the security on the other. 2017, c. 24, s. 3 (1).

Where entity deemed to be owner

(5) 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 special purpose entity and the contractor is deemed

to be the contract, for the purposes of the following portions and provisions of this Act and any regulations made for the purposes of them and, for the purpose, the portions, provisions and regulations apply with such modifications as may be prescribed and any other necessary modifications:

1. Subsections 2 (1) and (2).
2. Section 31.
3. Section 32.
4. Section 33.
5. Section 39.
6. Any other portion or provision that may be prescribed. 2017, c. 24, s. 3 (1).

Interpretation, substantial performance of a contract

(6) For the purposes of subsection (5), a reference in this Act or the regulations to the substantial performance of a contract, as it applies in relation to a project agreement, shall be read as a reference to the substantial performance of the agreement between the special purpose entity and the contractor, subject to any exceptions that may be prescribed. 2017, c. 24, s. 3 (1).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 3 (1) - 01/07/2018; 2017, c. 24, s. 3 (2) - 01/10/2019

Contracts, substantial performance and completion

When contract substantially performed

2 (1) For the purposes of this Act, a contract is substantially performed,

- (a) when the improvement to be made under that contract or a substantial part thereof is ready for use or is being used for the purposes intended; and
- (b) when the improvement to be made under that contract is capable of completion or, where there is a known defect, correction, at a cost of not more than,
 - (i) 3 per cent of the first \$1,000,000 of the contract price,
 - (ii) 2 per cent of the next \$1,000,000 of the contract price, and
 - (iii) 1 per cent of the balance of the contract price. R.S.O. 1990, c. C.30, s. 2 (1); 2017, c. 24, s. 4 (1, 2).

Same

(2) For the purposes of this Act, where the improvement or a substantial part thereof is ready for use or is being used for the purposes intended and the owner and the contractor agree not to complete the improvement expeditiously, the price of the services or materials remaining to be supplied and required to complete the improvement shall be deducted from the contract price in determining substantial performance. R.S.O. 1990, c. C.30, s. 2 (2); 2017, c. 24, s. 4 (3), 66.

Note: On October 1, 2019, the day named by proclamation of the Lieutenant Governor, section 2 of the Act is amended by adding the following subsections: (See: 2017, c. 24, s. 4 (4))

Adjudication amounts

(2.1) For the purposes of this Act, if an adjudicator makes a determination under Part II.1 in relation to a contract before the certification or declaration of the substantial performance of the contract under section 32,

- (a) any amount determined by the adjudicator to be payable by a party to the contract shall be added to the contract price in determining substantial performance; and
- (b) any amount determined by the adjudicator to have been overpaid by a party to the contract shall be deducted from the contract price in determining substantial performance. 2017, c. 24, s. 4 (4).

Same

(2.2) Subsection (2.1) ceases to apply if,

- (a) the adjudicator's determination ceases to be binding on the parties to the adjudication under section 13.15; or
- (b) the determination of the adjudicator is set aside on judicial review. 2017, c. 24, s. 4 (4).

When contract deemed completed

(3) For the purposes of this Act, a contract shall be deemed to be completed and services or materials shall be deemed to be last supplied to the improvement when the price of completion, correction of a known defect or last supply is not more than the lesser of,

- (a) 1 per cent of the contract price; and
- (b) \$5,000. R.S.O. 1990, c. C.30, s. 2 (3); 2017, c. 24, s. 4 (5, 6).

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. 2017, c. 24, s. 4 (7).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 4 (1-3, 6, 7) - 01/07/2018; 2017, c. 24, s. 4 (4) - 01/10/2019; 2017, c. 24, s. 4 (5), 66 - 12/12/2017

PART I GENERAL

Act binds Crown

3 (1) Subject to section 16 (where lien does not attach to the premises), this Act binds the Crown. R.S.O. 1990, c. C.30, s. 3 (1); 2017, c. 24, s. 70.

(2) REPEALED: 2017, c. 24, s. 5.

Exception re notice of claim

(3) Section 18 of the *Crown Liability and Proceedings Act, 2019* does not apply in respect of an action against the Crown under this Act. R.S.O. 1990, c. C.30, s. 3 (3); 2019, c. 7, Sched. 17, s. 56.

(4) REPEALED: 1997, c. 23, s. 4 (1).

Section Amendments with date in force (d/m/y)

1997, c. 23, s. 4 (1) - 28/11/1997

2017, c. 24, s. 5, 70 - 12/12/2017

2019, c. 7, Sched. 17, s. 56 - 01/07/2019

No waiver of rights

4 An agreement by any person who supplies services or materials to an improvement that this Act does not apply to the person or that the remedies provided by it are not available for the benefit of the person is void. R.S.O. 1990, c. C.30, s. 4; 2017, c. 24, s. 69.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 69 - 12/12/2017

Contracts to conform

5 (1) Every contract or subcontract related to an improvement is deemed to be amended in so far as is necessary to be in conformity with this Act. R.S.O. 1990, c. C.30, s. 5 (1).

Retention of holdbacks authorized

(2) Without restricting the generality of subsection (1), where the purchaser is an owner, an agreement of purchase and sale that provides for the making or completion of an improvement shall be deemed to provide for the retention of holdbacks by the purchaser, and tender by the purchaser on closing is not defective by reason only that the purchaser does not tender the amount of the holdbacks. R.S.O. 1990, c. C.30, s. 5 (2).

Minor errors, irregularities

6 (1) No certificate, declaration or claim for lien is invalidated by reason only of a failure to comply strictly with subsection 32 (2), 33 (1) or 34 (5) unless, in the opinion of the court, a person has been prejudiced as a result, and then only to the extent of the prejudice suffered. 2017, c. 24, s. 6 (2); 2018, c. 17, Sched. 8, s. 2.

Same

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

- (a) a minor error or irregularity in,
 - (i) the name of an owner, a person for whom services or materials were supplied or a payment certifier,
 - (ii) the legal description of a premises, or
 - (iii) the address for service; and
- (b) including an owner's name in the wrong portion of a claim for lien. 2017, c. 24, s. 6 (2).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 6 (1) - 12/12/2017; 2017, c. 24, s. 6 (2) - 01/07/2018

2018, c. 17, Sched. 8, s. 2 - 06/12/2018

Note: On October 1, 2019, the day named by proclamation of the Lieutenant Governor, the Act is amended by adding the following Part:
(See: 2017, c. 24, s. 7)

**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 6.3 (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. 2017, c. 24, s. 7.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 7 - 01/10/2019

Subject to holdback requirements

6.2 A requirement to pay an amount in accordance with this Part is subject to any requirement to retain a holdback in accordance with Part IV. 2017, c. 24, s. 7.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 7 - 01/10/2019

Giving of proper invoices

6.3 (1) Proper invoices shall be given to an owner on a monthly basis, unless the contract provides otherwise. 2017, c. 24, s. 7.

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. 2017, c. 24, s. 7.

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. 2017, c. 24, s. 7.

Exception

(4) Subsection (2) does not apply to a provision in a contract that provides for the testing and commissioning of the improvement or of services or materials supplied under the contract. 2017, c. 24, s. 7.

Revisions

- (5) A proper invoice may be revised by the contractor after the contractor has given it to the owner, if,
- (a) the owner agrees in advance to the revision;
 - (b) the date of the proper invoice is not changed; and
 - (c) the proper invoice continues to meet the requirements referred to in the definition of “proper invoice” in section 6.1. 2017, c. 24, s. 7.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 7 - 01/10/2019

Payment deadline, owner to contractor

6.4 (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. 2017, c. 24, s. 7.

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. 2017, c. 24, s. 7.

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). 2017, c. 24, s. 7.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 7 - 01/10/2019

Payment deadlines, contractor to subcontractor

Full payment

6.5 (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 6.4 (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. 2017, c. 24, s. 7.

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. 2017, c. 24, s. 7.

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. 2017, c. 24, s. 7.

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 6.4 (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). 2017, c. 24, s. 7.

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 21 days after giving the notice to the subcontractor; and
- (b) a copy of any notice of non-payment given by the owner under subsection 6.4 (2). 2017, c. 24, s. 7.

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. 2017, c. 24, s. 7.

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 6.4 (2); or
- (b) if no notice was given by the owner, before the expiry of the period referred to in subsection (4). 2017, c. 24, s. 7.

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. 2017, c. 24, s. 7.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 7 - 01/10/2019

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

6.6 (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 6.5 (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. 2017, c. 24, s. 7.

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. 2017, c. 24, s. 7.

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. 2017, c. 24, s. 7.

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 6.5, 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). 2017, c. 24, s. 7.

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. 2017, c. 24, s. 7.

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,
 - (ii) specifying the amount not being paid, and
 - (iii) unless the failure of the contractor to pay is as a result of non-payment by the owner, providing an undertaking to refer the matter to adjudication under Part II.1 no later than 21 days after giving the notice to the subcontractor; and
- (b) a copy of any notices of non-payment received by the subcontractor in relation to the proper invoice. 2017, c. 24, s. 7.

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. 2017, c. 24, s. 7.

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 6.5 (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). 2017, c. 24, s. 7.

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. 2017, c. 24, s. 7.

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. 2017, c. 24, s. 7.

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. 2017, c. 24, s. 7.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 7 - 01/10/2019

Reasons for non-payment

6.7 Reasons for non-payment in accordance with this Part may include the retention of amounts under section 12 (set-off by trustee) or under subsection 17 (3) (lien set-off). 2017, c. 24, s. 7.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 7 - 01/10/2019

No effect on wages

6.8 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. 2017, c. 24, s. 7.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 7 - 01/10/2019

Interest on late payments

6.9 Interest begins to accrue on an amount that is not paid when it is due to be paid under this Part, 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. 2017, c. 24, s. 7.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 7 - 01/10/2019

PART II TRUST PROVISIONS

Owner's trust

Amounts received for financing a trust

7 (1) All amounts received by an owner, other than the Crown or a municipality, that are to be used in the financing of the improvement, including any amount that is to be used in the payment of the purchase price of the land and the payment of prior encumbrances, constitute, subject to the payment of the purchase price of the land and prior encumbrances, a trust fund for the benefit of the contractor. R.S.O. 1990, c. C.30, s. 7 (1).

Amounts certified as payable

(2) Where amounts become payable under a contract to a contractor by the owner on a certificate of a payment certifier, an amount that is equal to an amount so certified that is in the owner's hands or received by the owner at any time thereafter constitutes a trust fund for the benefit of the contractor. R.S.O. 1990, c. C.30, s. 7 (2).

Where substantial performance certified

(3) Where the substantial performance of a contract has been certified, or has been declared by the court, an amount that is equal to the unpaid price of the substantially performed portion of the contract that is in the owner's hands or is received by the owner at any time thereafter constitutes a trust fund for the benefit of the contractor. R.S.O. 1990, c. C.30, s. 7 (3).

Obligations as trustee

(4) The owner is the trustee of the trust fund created by subsection (1), (2) or (3), and the owner shall not appropriate or convert any part of a fund to the owner's own use or to any use inconsistent with the trust until the contractor is paid all amounts related to the improvement owed to the contractor by the owner. R.S.O. 1990, c. C.30, s. 7 (4).

Contractor's and subcontractor's trust

Amounts received a trust

8 (1) All amounts,

- (a) owing to a contractor or subcontractor, whether or not due or payable; or
- (b) received by a contractor or subcontractor,

on account of the contract or subcontract price of an improvement constitute a trust fund for the benefit of the subcontractors and other persons who have supplied services or materials to the improvement who are owed amounts by the contractor or subcontractor. R.S.O. 1990, c. C.30, s. 8 (1); 2017, c. 24, s. 66.

Obligations as trustee

(2) The contractor or subcontractor is the trustee of the trust fund created by subsection (1) and the contractor or subcontractor shall not appropriate or convert any part of the fund to the contractor's or subcontractor's own use or to any use inconsistent with the trust until all subcontractors and other persons who supply services or materials to the improvement are paid all amounts related to the improvement owed to them by the contractor or subcontractor. R.S.O. 1990, c. C.30, s. 8 (2); 2017, c. 24, s. 66.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 66 - 12/12/2017

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. 2017, c. 24, s. 8.

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. 2017, c. 24, s. 8.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 8 - 01/07/2018

Vendor's trust

Amounts received a trust

9 (1) Where the owner's interest in a premises is sold by the owner, an amount equal to,

- (a) the value of the consideration received by the owner as a result of the sale,
- less,
- (b) the reasonable expenses arising from the sale and the amount, if any, paid by the vendor to discharge any existing mortgage indebtedness on the premises,

constitutes a trust fund for the benefit of the contractor. R.S.O. 1990, c. C.30, s. 9 (1); 2017, c. 24, s. 9, 70.

Obligations as trustee

(2) The former owner is the trustee of the trust created by subsection (1), and shall not appropriate or convert any part of the trust property to the former owner's own use or to any use inconsistent with the trust until the contractor is paid all amounts owed to the contractor that relate to the improvement. R.S.O. 1990, c. C.30, s. 9 (2).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 9, 70 - 12/12/2017

Payment discharging trust

10 Subject to Part IV (holdbacks), every payment by a trustee to a person the trustee is liable to pay for services or materials supplied to the improvement discharges the trust of the trustee making the payment and the trustee's obligations and liability as trustee to all beneficiaries of the trust to the extent of the payment made by the trustee. R.S.O. 1990, c. C.30, s. 10.

Where trust funds may be reduced

11 (1) Subject to Part IV, a trustee who pays in whole or in part for the supply of services or materials to an improvement out of money that is not subject to a trust under this Part may retain from trust funds an amount equal to that paid by the trustee without being in breach of the trust. R.S.O. 1990, c. C.30, s. 11 (1); 2017, c. 24, s. 66.

Application of trust funds to discharge loan

(2) Subject to Part IV, where a trustee pays in whole or in part for the supply of services or materials to an improvement out of money that is loaned to the trustee, trust funds may be applied to discharge the loan to the extent that the lender's money was so used by the trustee, and the application of trust money does not constitute a breach of the trust. R.S.O. 1990, c. C.30, s. 11 (2).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 66 - 12/12/2017

Set-off by trustee

12 Subject to Part IV, a trustee may, without being in breach of trust, retain from trust funds an amount that, as between the trustee and the person the trustee is liable to pay under a contract or subcontract related to the improvement, is equal to the balance in the trustee's favour of all outstanding debts, claims or damages related to the improvement or, if the contractor or subcontractor, as the case may be, becomes insolvent, all outstanding debts, claims or damages whether or not related to the improvement. R.S.O. 1990, c. C.30, s. 12; 2017, c. 24, s. 10.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 10 (1) - 12/12/2017; 2017, c. 24, s. 10 (2) - 01/07/2018

Liability for breach of trust

By corporation

13 (1) In addition to the persons who are otherwise liable in an action for breach of trust under this Part,

- (a) every director or officer of a corporation; and
- (b) any person, including an employee or agent of the corporation, who has effective control of a corporation or its relevant activities,

who assents to, or acquiesces in, conduct that he or she knows or reasonably ought to know amounts to breach of trust by the corporation is liable for the breach of trust. R.S.O. 1990, c. C.30, s. 13 (1).

Effective control of corporation

(2) The question of whether a person has effective control of a corporation or its relevant activities is one of fact and in determining this the court may disregard the form of any transaction and the separate corporate existence of any participant. R.S.O. 1990, c. C.30, s. 13 (2).

Joint and several liability

(3) Where more than one person is found liable or has admitted liability for a particular breach of trust under this Part, those persons are jointly and severally liable. R.S.O. 1990, c. C.30, s. 13 (3).

Contribution

(4) A person who is found liable, or who has admitted liability, for a particular breach of a trust under this Part is entitled to recover contribution from any other person also liable for the breach in such amount as will result in equal contribution by all parties liable for the breach unless the court considers such apportionment would not be fair and, in that case, the court may direct such contribution or indemnity as the court considers appropriate in the circumstances. R.S.O. 1990, c. C.30, s. 13 (4).

Note: On October 1, 2019, the day named by proclamation of the Lieutenant Governor, the Act is amended by adding the following Part:
(See: 2017, c. 24, s. 11 (1))

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”)
2017, c. 24, s. 11 (1).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 11 (1) - 01/10/2019

Authorized Nominating Authority

13.2 (1) The Minister responsible for the administration of this Act may designate an entity to act as Authorized Nominating Authority for the purposes of this Part. 2017, c. 24, s. 11 (1).

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. 2017, c. 24, s. 11 (1).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 11 (1) - 01/10/2019

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. 2017, c. 24, s. 11 (1).

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

Note: On October 1, 2019, the day subsection 11 (1) of the *Construction Lien Amendment Act, 2017* comes into force, clause 13.3 (2) (a) of the Act is repealed and the following substituted: (See: 2018, c. 17, Sched. 8, s. 3 (1))

- (a) subject to the regulations, set fees, costs or other charges related to the administration of adjudication under this Part, including fees, costs or charges for the training and qualification of persons as adjudicators or 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. 2017, c. 24, s. 11 (1).

Note: On October 1, 2019, the day subsection 11 (1) of the *Construction Lien Amendment Act, 2017* comes into force, section 13.3 of the Act is amended by adding the following subsections: (See: 2018, c. 17, Sched. 8, s. 3 (2))

Setting fees

(3) In setting the fees, costs and charges referred to in clause (2) (a), the Authority may, subject to the regulations, specify their amounts or the method for determining the amounts. 2018, c. 17, Sched. 8, s. 3 (2).

Fee retention

(4) Money collected by the Authority under clause (2) (a),

- (a) is revenue belonging to the Authority and not public money within the meaning of the *Financial Administration Act*; and
- (b) may be retained and used by the Authority for its own account. 2018, c. 17, Sched. 8, s. 3 (2).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 11 (1) - 01/10/2019

2018, c. 17, Sched. 8, s. 3 (1, 2) - 01/10/2019

Minister as interim Authority

13.4 (1) The Minister responsible for the administration of this Act may 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. 2017, c. 24, s. 11 (1).

Same

(2) If the Minister responsible for the administration of this Act acts as Authorized Nominating Authority, 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). 2017, c. 24, s. 11 (1).

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. 2017, c. 24, s. 11 (1).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 11 (1) - 01/10/2019

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. Payment of a holdback under section 26.1 or 26.2.
6. Non-payment of holdback under section 27.1.
7. Any other matter that the parties to the adjudication agree to, or that may be prescribed. 2017, c. 24, s. 11 (1).

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. 2017, c. 24, s. 11 (1).

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. 2017, c. 24, s. 11 (1).

Multiple matters

(4) An adjudication may only address a single matter, unless the parties to the adjudication and the adjudicator agree otherwise. 2017, c. 24, s. 11 (1).

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. 2017, c. 24, s. 11 (1).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 11 (1) - 01/10/2019

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. 2017, c. 24, s. 11 (1).

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. 2017, c. 24, s. 11 (1).

Note: On October 1, 2019, the day subsection 11 (1) of the *Construction Lien Amendment Act, 2017* comes into force, section 13.6 of the Act is repealed and the following substituted: (See: 2018, c. 17, Sched. 8, s. 4)

Adjudication procedures

13.6 (1) An adjudication shall be conducted in accordance with the adjudication procedures set out in this Part, the regulations, and, subject to subsection (2), any additional adjudication procedures that may be set out in the contract or subcontract. 2018, c. 17, Sched. 8, s. 4.

Same

(2) Adjudication procedures set out in a contract or subcontract apply only to the extent that they do not conflict with this Part and the regulations, and their application is subject to the exercise of the adjudicator's powers under section 13.12. 2018, c. 17, Sched. 8, s. 4.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 11 (1) - 01/10/2019

2018, c. 17, Sched. 8, s. 4 - 01/10/2019

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. 2017, c. 24, s. 11 (1).

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. 2017, c. 24, s. 11 (1).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 11 (1) - 01/10/2019

Consolidated adjudications

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 together by a single adjudicator as a consolidated adjudication. 2017, c. 24, s. 11 (1).

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 consolidated adjudication, the contractor may, in accordance with the regulations, nevertheless require the consolidation of the adjudications. 2017, c. 24, s. 11 (1).

Application

(3) This Part applies with the following and any other necessary modifications to a consolidated adjudication:

1. Subsection 13.10 (3) does not apply, and the adjudicator may determine how the adjudication fee is to be apportioned between the parties.

2. The reference in subsection 13.12 (3) to either or both parties to an adjudication shall be read as a reference to any or all of the parties to the consolidated adjudication.

Note: On October 1, 2019, the day subsection 11 (1) of the *Construction Lien Amendment Act, 2017* comes into force, subsection 13.8 (3) of the Act is amended by adding the following paragraph: (See: 2018, c. 17, Sched. 8, s. 5)

- 2.1 The reference in clause 13.11 (b) to the other party shall be read as a reference to every other party.
3. The references in section 13.17 to the other party to the adjudication shall be read as a reference to any party to the consolidated adjudication. 2017, c. 24, s. 11 (1).

Multiple matters permitted

- (4) This section applies despite subsection 13.5 (4). 2017, c. 24, s. 11 (1).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 11 (1) - 01/10/2019

2018, c. 17, Sched. 8, s. 5 - 01/10/2019

Adjudicator

13.9 (1) An adjudication may only be conducted by an adjudicator listed in the registry established under clause 13.3 (1) (c). 2017, c. 24, s. 11 (1).

Selection of adjudicator

(2) The parties to the adjudication may agree to an adjudicator, or may request that the Authority appoint an adjudicator. 2017, c. 24, s. 11 (1).

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. 2017, c. 24, s. 11 (1).

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. 2017, c. 24, s. 11 (1).

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. 2017, c. 24, s. 11 (1).

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. 2017, c. 24, s. 11 (1).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 11 (1) - 01/10/2019

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. 2017, c. 24, s. 11 (1).

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. 2017, c. 24, s. 11 (1).

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. 2017, c. 24, s. 11 (1).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 11 (1) - 01/10/2019

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. 2017, c. 24, s. 11 (1).

Note: On October 1, 2019, the day subsection 11 (1) of the *Construction Lien Amendment Act, 2017* comes into force, section 13.11 of the Act is repealed and the following substituted: (See: 2018, c. 17, Sched. 8, s. 6)

Documents to adjudicator, party

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,

- (a) provide to the adjudicator a copy of the notice; and
- (b) provide to the adjudicator and to the other party a copy of the contract or subcontract and any documents the party intends to rely on during the adjudication. 2018, c. 17, Sched. 8, s. 6.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 11 (1) - 01/10/2019

2018, c. 17, Sched. 8, s. 6 - 01/10/2019

Response to notice

13.11.1 A party who receives a notice of adjudication may, in accordance with the regulations, respond in writing. 2018, c. 17, Sched. 8, s. 6.

Section Amendments with date in force (d/m/y)

2018, c. 17, Sched. 8, s. 6 - 01/10/2019

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, as is reasonably necessary 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. 2017, c. 24, s. 11 (1).

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 of the premises if,
 - (i) the premises is a home in which the owner resides, or
 - (ii) the owner is not a party to the adjudication; and
- (b) any other person who has the legal authority to exclude others from the premises. 2017, c. 24, s. 11 (1).

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 as is reasonable and proportionate to the dispute and direct payment of the remuneration by either or both of the parties to the adjudication. 2017, c. 24, s. 11 (1).

Conduct

(4) Subject to this section, the adjudicator may conduct the adjudication in the manner he or she determines appropriate in the circumstances. 2017, c. 24, s. 11 (1).

Impartiality

(5) An adjudicator shall conduct an adjudication in an impartial manner. 2017, c. 24, s. 11 (1).

Statutory Powers Procedure Act

(6) The *Statutory Powers Procedure Act* does not apply to adjudications. 2017, c. 24, s. 11 (1).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 11 (1) - 01/10/2019

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. 2017, c. 24, s. 11 (1).

Extension

(2) The deadline for an adjudicator's determination may be extended, at any time before its expiry and after the provision 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. 2017, c. 24, s. 11 (1).

Notice of extension

(3) If the party who gave the notice of adjudication also gave a notice of non-payment under Part I.1 in relation to the matter that is the subject of the adjudication, the party shall give notice of an extension under clause (2) (b), specifying the period of the extension, to the person to whom he or she gave the notice of non-payment. 2017, c. 24, s. 11 (1).

Same

(4) A person who receives notice of an extension under subsection (3) or under this subsection shall give notice of the extension, specifying the period of the extension, to any person to whom he or she gave notice of non-payment under Part I.1 in relation to the matter that is the subject of the adjudication. 2017, c. 24, s. 11 (1).

Delayed determination

(5) A determination made by an adjudicator after the date determined under subsection (1) or (2) is of no force or effect. 2017, c. 24, s. 11 (1).

Written reasons

(6) The adjudicator's determination shall be in writing and shall include reasons for the determination. 2017, c. 24, s. 11 (1).

Admissibility

(7) The determination and reasons of an adjudicator are admissible as evidence in court. 2017, c. 24, s. 11 (1).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 11 (1) - 01/10/2019

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. 2017, c. 24, s. 11 (1).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 11 (1) - 01/10/2019

Effect of determination

13.15 (1) 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, a determination of the matter by way of an arbitration conducted under the *Arbitration Act, 1991*, or a written agreement between the parties respecting the matter. 2017, c. 24, s. 11 (1).

Authority of court, arbitrator

(2) Subject to section 13.18, nothing in this Part restricts the authority of a court or of an arbitrator acting under the *Arbitration Act, 1991* to consider the merits of a matter determined by an adjudicator. 2017, c. 24, s. 11 (1).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 11 (1) - 01/10/2019

Costs

13.16 Subject to section 13.17, the parties to an adjudication shall bear their own costs of the adjudication. 2017, c. 24, s. 11 (1).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 11 (1) - 01/10/2019

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. 2017, c. 24, s. 11 (1).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 11 (1) - 01/10/2019

Setting aside on judicial review

Leave required

13.18 (1) An application for judicial review of a determination of an adjudicator may only be made with leave of the Divisional Court in accordance with this section and the rules of court. 2017, c. 24, s. 11 (1).

Timing

(2) A motion for leave to bring an application for judicial review of a determination of an adjudicator shall be filed, with proof of service, in accordance with the rules of court no later than 30 days after the determination is communicated to the parties. 2017, c. 24, s. 11 (1).

Dismissal without reasons

(3) A motion for leave to bring an application for judicial review may be dismissed without reasons. 2017, c. 24, s. 11 (1).

No appeal

(4) No appeal lies from an order on a motion for leave to bring an application for judicial review. 2017, c. 24, s. 11 (1).

Setting aside only for specified reasons

(5) The determination of an adjudicator may only be set aside on an application for judicial review if the applicant establishes one or more of the following grounds:

1. The applicant participated in the adjudication while under a legal incapacity.
2. The contract or subcontract is invalid or has ceased to exist.
3. The determination was of a matter that may not be the subject of adjudication under this Part, or of 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, and the failure to comply prejudiced the applicant's right to a fair adjudication.

Note: On October 1, 2019, the day subsection 11 (1) of the *Construction Lien Amendment Act, 2017* comes into force, the English version of paragraph 5 of subsection 13.18 (5) of the Act is amended by striking out "did not comply" and substituting "did not accord" and by striking out "failure to comply" and substituting "failure to accord". (See: 2018, c. 17, Sched. 8, s. 7)

6. There is a reasonable apprehension of bias on the part of the adjudicator.
7. The determination was made as a result of fraud. 2017, c. 24, s. 11 (1).

Amounts paid

(6) If the Divisional Court sets aside the decision of an adjudicator, the Court may require that any or all amounts paid in compliance with the determination be returned. 2017, c. 24, s. 11 (1).

No stay

(7) An application for judicial review of a decision of an adjudicator does not operate as a stay of the operation of the determination unless the Divisional Court orders otherwise. 2017, c. 24, s. 11 (1).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 11 (1) - 01/10/2019

2018, c. 17, Sched. 8, s. 7 - 01/10/2019

Amounts payable

Subject to holdback

13.19 (1) A requirement to pay an amount in accordance with this section is subject to any requirement to retain a holdback in accordance with Part IV. 2017, c. 24, s. 11 (1).

Enforcement of amounts payable

(2) 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. 2017, c. 24, s. 11 (1).

Interest on late payments

(3) Interest begins to accrue on an amount that is not paid when it is due to be paid under this Part, 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. 2017, c. 24, s. 11 (1).

No interest on interest

(4) Subsection (3) does not apply in respect of any amount payable under section 6.9. 2017, c. 24, s. 11 (1).

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. 2017, c. 24, s. 11 (1).

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. 2017, c. 24, s. 11 (1).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 11 (1) - 01/10/2019

Enforcement by court

13.20 (1) A party to an adjudication may, no later than the date referred to in subsection (2), file a certified copy of the determination of an adjudicator with the court and, on filing, the determination is enforceable as if it were an order of the court. 2017, c. 24, s. 11 (1).

Deadline

- (2) The filing of a determination 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 a party makes a motion under section 13.18 for leave to bring an application for judicial review of a determination of an adjudicator, the second anniversary of the dismissal of the motion or, if the motion was not dismissed, the final determination of the application, if it did not result in the adjudicator's determination being set aside. 2017, c. 24, s. 11 (1).

Notice of filing

(3) A party shall, no later than 10 days after filing a determination under subsection (1), notify the other party of the filing. 2017, c. 24, s. 11 (1).

Effect on requirement to make payments

(4) If a determination requiring that an amount be paid to a contractor or subcontractor is filed under subsection (1), any related requirement of the contractor or subcontractor, as the case may be, to make payment to a subcontractor is deferred pending the outcome of the enforcement. 2017, c. 24, s. 11 (1).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 11 (1) - 01/10/2019

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. 2017, c. 24, s. 11 (1).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 11 (1) - 01/10/2019

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. 2017, c. 24, s. 11 (1).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 11 (1) - 01/10/2019

Note: On October 1, 2019, the day named by proclamation of the Lieutenant Governor, Part II.1 of the Act is amended by adding the following section: (See: 2017, c. 24, s. 11 (2))

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

13.23 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. 2017, c. 24, s. 11 (2).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 11 (2) - 01/10/2019

PART III THE LIEN

Creation of lien

14 (1) A person who supplies services or materials to an improvement for an owner, contractor or subcontractor, has a lien upon the interest of the owner in the premises improved for the price of those services or materials. R.S.O. 1990, c. C.30, s. 14 (1); 2017, c. 24, s. 12 (1), 66.

No lien for interest

(2) No person is entitled to a lien for any interest on the amount owed to the person in respect of the services or materials that have been supplied by the person, but nothing in this subsection affects any right that the person may otherwise have to recover that interest. R.S.O. 1990, c. C.30, s. 14 (2).

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. 2017, c. 24, s. 12 (2)

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 12 (1, 2), 66 - 12/12/2017

When lien arises

15 A person's lien arises and takes effect when the person first supplies services or materials to the improvement. R.S.O. 1990, c. C.30, s. 15.

Interest of Crown

16 (1) A lien does not attach to the interest of the Crown in a premises. R.S.O. 1990, c. C.30, s. 16 (1); 2017, c. 24, s. 13 (1).

Interest of person other than Crown

(2) Where an improvement is made to a premises in which the Crown has an interest, but the Crown is not an owner within the meaning of this Act, the lien may attach to the interest of any other person in that premises. R.S.O. 1990, c. C.30, s. 16 (2); 2017, c. 24, s. 13 (2).

Where lien does not attach to premises

(3) Where the Crown is the owner of a premises within the meaning of this Act, or where the premises is,

- (a) a public street or highway owned by a municipality; or
- (b) a railway right-of-way,

the lien does not attach to the premises but constitutes a charge as provided in section 21, and the provisions of this Act shall have effect without requiring the registration of a claim for lien against the premises. R.S.O. 1990, c. C.30, s. 16 (3); 2017, c. 24, s. 13 (3).

Note: On October 1, 2019, the day named by proclamation of the Lieutenant Governor, section 16 of the Act is repealed and the following substituted: (See: 2017, c. 24, s. 13 (4))

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. 2017, c. 24, s. 13 (4).

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. 2017, c. 24, s. 13 (4).

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. 2017, c. 24, s. 13 (4).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 13 (1-3) - 12/12/2017; 2017, c. 24, s. 13 (4) - 01/10/2019

Limitation on value of lien

17 (1) The lien of a person is limited to the amount owing to the person in relation to the improvement and, subject to Part IV (holdbacks), it is further limited to the least amount owed in relation to the improvement by a payer to the

contractor or to any subcontractor whose contract or subcontract was in whole or in part performed by the supply of services or materials giving rise to the lien. R.S.O. 1990, c. C.30, s. 17 (1); 2017, c. 24, s. 67.

Same

(2) Subject to Part IV, the total value of the liens of all members of a class, as defined in section 79, is limited to the least amount owed in relation to the improvement by a payer to the contractor or to any subcontractor whose contract or subcontract was in whole or in part performed by the supply of services or materials made by the members of the class. R.S.O. 1990, c. C.30, s. 17 (2).

Set-off

(3) Subject to Part IV, in determining the amount of a lien under subsection (1) or (2), there may be taken into account the amount that is, as between a payer and the person the payer is liable to pay, equal to the balance in the payer's favour of all outstanding debts, claims or damages related to the improvement or, if the contractor or subcontractor, as the case may be, becomes insolvent, all outstanding debts, claims or damages whether or not related to the improvement. R.S.O. 1990, c. C.30, s. 17 (3); 2017, c. 24, s. 14 (1, 2).

Liability of municipality

(4) Despite subsection (1), where land is dedicated to a municipality as a public street or highway and an improvement is made to the land at the written request of, or under an agreement with, the municipality, but not at its expense, the municipality shall nevertheless, on default of payment by the proper payer, be liable to the value of the holdbacks under Part IV that would have been required were the improvement made at the expense of the municipality, and the procedure for making a claim under this subsection shall be the same as for enforcing a claim for lien against a municipality in respect of a public street or highway. R.S.O. 1990, c. C.30, s. 17 (4); 2017, c. 24, s. 14 (3).

Note: On October 1, 2019, the day named by proclamation of the Lieutenant Governor, subsection 17 (4) of the Act is amended by striking out "in respect of a public street or highway" at the end. (See: 2017, c. 24, s. 14 (4))

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 14 (1, 3), 67 - 12/12/2017; 2017, c. 24, s. 14 (2) - 01/07/2018; 2017, c. 24, s. 14 (4) - 01/10/2019

Joint or common interests

18 Where the interest of the owner in the premises is held jointly or in common with another person who knew or ought reasonably to have known of the making of the improvement, the joint or common interest in the premises of that person is also subject to the lien unless the contractor receives actual notice, before the supply of services or materials to the improvement is commenced, that the person having the joint or common interest assumes no responsibility for the improvement to be made. R.S.O. 1990, c. C.30, s. 18; 2017, c. 24, s. 15.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 15 - 12/12/2017

Leasehold interest

19 (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. 2017, c. 24, s. 16 (1).

Forfeiture or termination of lease, effect of

(2) No forfeiture of a lease to, or termination of a lease by, a landlord, except for non-payment of rent, deprives any person having a lien against the leasehold of the benefit of the person's lien. R.S.O. 1990, c. C.30, s. 19 (2).

Notice to lien claimants

(3) Where a landlord intends to enforce forfeiture or terminate a lease of the premises because of non-payment of rent, and there is a claim for lien registered against the premises in the proper land registry office, the landlord shall give notice in writing of the intention to enforce forfeiture or terminate the lease and of the amount of the unpaid rent to each person who has registered a claim for lien against the premises. R.S.O. 1990, c. C.30, s. 19 (3); 2017, c. 24, s. 16 (2), 71.

Payment of unpaid rent

(4) A person receiving notice under subsection (3) may, within ten days thereafter, pay to the landlord the amount of the unpaid rent, and the amount so paid may be added by that person to the person's claim for lien. R.S.O. 1990, c. C.30, s. 19 (4); 2017, c. 24, s. 63.

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). 2017, c. 24, s. 16 (3).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 16 (1, 3) - 01/07/2018; 2017, c. 24, s. 16 (2), 63, 71 - 12/12/2017

General lien, more than one premises

20 (1) Where an owner enters into a single contract for improvements on more than one premises of the owner, any person supplying services or materials under that contract, or under a subcontract under that contract, may choose to have the person’s lien follow the form of the contract and be a general lien against each of those premises for the price of all services and materials the person supplied to all the premises. R.S.O. 1990, c. C.30, s. 20 (1); 2017, c. 24, s. 72.

Where subs. (1) does not apply

(2) Subsection (1) does not apply and no general lien arises under or in respect of a contract that provides in writing that liens shall arise and expire on a lot-by-lot basis. R.S.O. 1990, c. C.30, s. 20 (2).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 72 - 12/12/2017

Lien a charge

21 The lien of a person is a charge upon the holdbacks required to be retained by Part IV, and subject to subsection 17 (3), any additional amount owed in relation to the improvement by a payer to the contractor or to any subcontractor whose contract or subcontract was in whole or in part performed by the supply of services or materials giving rise to the lien. R.S.O. 1990, c. C.30, s. 21; 2017, c. 24, s. 67.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 67 - 12/12/2017

PART IV HOLDBACKS

Holdbacks

Basic holdback

22 (1) Each payer upon a contract or subcontract under which a lien may arise shall retain a holdback equal to 10 per cent of the price of the services or materials as they are actually supplied under the contract or subcontract until all liens that may be claimed against the holdback have expired or been satisfied, discharged or otherwise provided for under this Act. R.S.O. 1990, c. C.30, s. 22 (1); 2017, c. 24, s. 17 (1), 66.

Separate holdback for finishing work

(2) Where the contract has been certified or declared to be substantially performed but services or materials remain to be supplied to complete the contract, the payer upon the contract, or a subcontract, under which a lien may arise shall retain, from the date certified or declared to be the date of substantial performance of the contract, a separate holdback equal to 10 per cent of the price of the remaining services or materials as they are actually supplied under the contract or subcontract, until all liens that may be claimed against the holdback have expired or been satisfied, discharged or otherwise provided for under this Act. R.S.O. 1990, c. C.30, s. 22 (2); 2017, c. 24, s. 17 (2), 66.

When obligation to retain applies

(3) The obligation to retain the holdbacks under subsections (1) and (2) applies irrespective of whether the contract or subcontract provides for partial payments or payment on completion. R.S.O. 1990, c. C.30, s. 22 (3).

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. 2017, c. 24, s. 17 (3).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 17 (1, 2), 66 - 12/12/2017; 2017, c. 24, s. 17 (3) - 01/07/2018

Personal liability

23 (1) Subject to subsections (2), (3) and (4), an owner is personally liable for holdbacks that the owner is required to retain under this Part to those lien claimants who have valid liens against the owner's interest in the premises. R.S.O. 1990, c. C.30, s. 23 (1); 2017, c. 24, s. 70.

Limitation

(2) Where the defaulting payer is the contractor, the owner's personal liability to a lien claimant or to a class of lien claimants as defined by section 79 does not exceed the holdbacks the owner is required to retain. R.S.O. 1990, c. C.30, s. 23 (2).

Same

(3) Where the defaulting payer is a subcontractor, the owner's personal liability to a lien claimant or to a class of lien claimants as defined by section 79 does not exceed the lesser of,

- (a) the holdbacks the owner is required to retain; and
- (b) the holdbacks required to be retained by the contractor or a subcontractor from the lien claimant's defaulting payer. R.S.O. 1990, c. C.30, s. 23 (3).

How determined

(4) The personal liability of an owner under this section may only be determined by an action under this Act. R.S.O. 1990, c. C.30, s. 23 (4).

(5) REPEALED: 2017, c. 24, s. 18.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 18, 70 - 12/12/2017

Payments that may be made

24 (1) A payer may, without jeopardy, make payments on a contract or subcontract up to 90 per cent of the price of the services or materials that have been supplied under that contract or subcontract unless, prior to making payment, the payer has received written notice of a lien. R.S.O. 1990, c. C.30, s. 24 (1); 2017, c. 24, s. 19 (1), 66.

Same

(2) Where a payer has received written notice of a lien and has retained, in addition to the holdbacks required by this Part, an amount sufficient to satisfy the lien, the payer may, without jeopardy, make payment on a contract or subcontract up to 90 per cent of the price of the services or materials that have been supplied under that contract or subcontract, less the amount retained. R.S.O. 1990, c. C.30, s. 24 (2); 2017, c. 24, s. 19 (2, 3).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 19 (1-3), 66 - 12/12/2017

Payment where subcontract certified complete

25 Where a subcontract has been certified complete under section 33, each payer upon the contract and any subcontract may, without jeopardy, make payment reducing the holdbacks required by this Part to the extent of the amount of holdback the payer has retained in respect of the completed subcontract, where all liens in respect of the completed subcontract have expired or been satisfied, discharged or otherwise provided for under this Act. R.S.O. 1990, c. C.30, s. 25; 2017, c. 24, s. 20 (1, 2).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 20 (1, 2) - 12/12/2017

Payment of basic holdback

26 Subject to section 27.1, each payer upon the contract or a subcontract shall make payment of the holdback the payer is required to retain by subsection 22 (1) (basic holdback), so as to discharge all claims in respect of that holdback, where all liens that may be claimed against that holdback have expired or been satisfied, discharged or otherwise provided for under this Act. R.S.O. 1990, c. C.30, s. 26; 2017, c. 24, s. 21.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 21 (1, 4) - 12/12/2017; 2017, c. 24, s. 21 (2, 3) - 01/07/2018

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. 2017, c. 24, s. 22.

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 been satisfied, discharged or otherwise provided for under this Act. 2017, c. 24, s. 22.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 22 - 01/07/2018

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. 2017, c. 24, s. 22.

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 been satisfied, discharged or otherwise provided for under this Act. 2017, c. 24, s. 22.

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. 2017, c. 24, s. 22.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 22 - 01/07/2018

Payment of holdback for finishing work

27 Subject to section 27.1, each payer upon the contract or a subcontract shall make payment of the holdback the payer is required to retain by subsection 22 (2) (holdback for finishing work), so as to discharge all claims in respect of that holdback, where all liens that may be claimed against that holdback have expired or been satisfied, discharged or otherwise provided for under this Act. R.S.O. 1990, c. C.30, s. 27; 2017, c. 24, s. 23.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 23 (1, 4) - 12/12/2017; 2017, c. 24, s. 23 (2, 3) - 01/07/2018

Non-payment of holdback

By owner

27.1 (1) An owner may refuse to pay some or all of the amount the owner is required to pay to a contractor under section 26 or 27, as the case may be, if,

- (a) the owner publishes a notice in the prescribed form specifying the amount of the holdback that the owner refuses to pay, and the notice is published in the manner set out in the regulations no later than 40 days after the date on which,
 - (i) the applicable certification or declaration of substantial performance is published under section 32, or
 - (ii) if no certification or declaration of substantial performance is published, the date on which the contract is completed, abandoned or terminated; and
- (b) the owner notifies, in accordance with the regulations, if any, the contractor of the publication of the notice. 2018, c. 17, Sched. 8, s. 8 (1).

By contractor

(2) A contractor may refuse to pay some or all of the amount the contractor is required to pay to a subcontractor under section 26 or 27, as the case may be, if,

- (a) the owner refuses to pay some or all of the amount the owner is required to pay to the contractor under that section; and

Note: On October 1, 2019, the day subsection 11 (1) of the *Construction Lien Amendment Act, 2017* comes into force, clause 27.1 (2) (a) of the Act is repealed and the following substituted: (See: 2018, c. 17, Sched. 8, s. 8 (2))

- (a) the owner refuses to pay some or all of the amount the owner is required to pay to the contractor under that section;
- (b) the contractor notifies, in accordance with the regulations, if any, every subcontractor to whom the contractor is required to pay the amount that the amount is not being paid. 2018, c. 17, Sched. 8, s. 8 (1).

Note: On October 1, 2019, the day subsection 11 (1) of the *Construction Lien Amendment Act, 2017* comes into force, clause 27.1 (2) (b) of the Act is repealed and the following substituted: (See: 2018, c. 17, Sched. 8, s. 8 (2))

- (b) the contractor refers the matter to adjudication under Part II.1; and
- (c) the contractor notifies, in accordance with the regulations, if any, every subcontractor to whom the contractor is required to pay the amount that the amount is not being paid and that the matter is being referred to adjudication.

By subcontractor

(3) A subcontractor may refuse to pay some or all of the amount the subcontractor is required to pay to another subcontractor under section 26 or 27, as the case may be, if,

- (a) the contractor refuses to pay some or all of the amount the contractor is required to pay to the subcontractor under that section; and

Note: On October 1, 2019, the day subsection 11 (1) of the *Construction Lien Amendment Act, 2017* comes into force, clause 27.1 (3) (a) of the Act is repealed and the following substituted: (See: 2018, c. 17, Sched. 8, s. 8 (3))

- (a) the contractor refuses to pay some or all of the amount the contractor is required to pay to the subcontractor under that section;
- (b) the subcontractor notifies, in accordance with the regulations, if any, every subcontractor to whom the subcontractor is required to pay the amount that the amount is not being paid. 2018, c. 17, Sched. 8, s. 8 (1).

Note: On October 1, 2019, the day subsection 11 (1) of the *Construction Lien Amendment Act, 2017* comes into force, clause 27.1 (3) (b) of the Act is repealed and the following substituted: (See: 2018, c. 17, Sched. 8, s. 8 (3))

- (b) the subcontractor refers the matter to adjudication under Part II.1; and
- (c) the subcontractor notifies, in accordance with the regulations, if any, every subcontractor to whom the subcontractor is required to pay the amount that the amount is not being paid and that the matter is being referred to adjudication.

Same

(4) Subsection (3) applies, with necessary modifications, with respect to a subcontractor who receives notice under that subsection. 2018, c. 17, Sched. 8, s. 8 (1).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 24 (1) - 01/07/2018; 2017, c. 24, s. 24 (2) - no effect - 2018, c. 17, Sched. 8, s. 8 (1) - 06/12/2018

2018, c. 17, Sched. 8, s. 8 (1) - 06/12/2018; 2018, c. 17, Sched. 8, s. 8 (2, 3) - 01/10/2019

Direct payment to person having lien

28 Where an owner, contractor or subcontractor makes a payment without obligation to do so to any person having a lien for or on account of any amount owing to that person for services or materials supplied to the improvement and gives written notice of the payment or the intention to pay to the proper payer of that person, the payment shall be deemed to be a payment by the owner, contractor or subcontractor to the proper payer of that person, but no such payment reduces the amount of the holdback required to be retained under this Part or reduces the amount that must be retained in response to a written notice of lien given by a person other than the person to whom payment is made. R.S.O. 1990, c. C.30, s. 28.

Discharge of lien

29 Payments made in accordance with this Part operate as a discharge of the lien to the extent of the amount paid. R.S.O. 1990, c. C.30, s. 29.

How holdback not to be applied

30 Where the contractor or a subcontractor defaults in the performance of a contract or subcontract, a holdback shall not be applied by any payer toward obtaining services or materials in substitution for those that were to have been supplied by the person in default, nor in payment or satisfaction of any claim against the person in default, until all liens that may be claimed against that holdback have expired or been satisfied, discharged or otherwise provided for under this Act. R.S.O. 1990, c. C.30, s. 30; 2017, c. 24, s. 25.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 25 - 12/12/2017

PART V EXPIRY, PRESERVATION AND PERFECTION OF LIENS

Expiry of liens

31 (1) Unless preserved under section 34, the liens arising from the supply of services or materials to an improvement expire as provided in this section. R.S.O. 1990, c. C.30, s. 31 (1); 2017, c. 24, s. 67.

Contractor's liens

(2) Subject to subsection (4), the lien of a contractor,

- (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 earlier 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, and
 - (ii) the date the contract is completed, abandoned or terminated; 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 substantial performance, expires at the conclusion of the 60-day period next following the occurrence of the earlier of,
 - (i) the date the contract is completed, and
 - (ii) the date the contract is abandoned or terminated. R.S.O. 1990, c. C.30, s. 31 (2); 2017, c. 24, s. 26 (1-5), 66.

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. 2017, c. 24, s. 26 (6).

Liens of other persons

- (3) Subject to subsection (4), the lien of any other person,
 - (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 person last supplies services or materials to the improvement,
 - (ii.1) 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; 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 person last supplied services or materials to the improvement,
 - (i.1) the date the contract is completed, abandoned or terminated, and
 - (ii) 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. R.S.O. 1990, c. C.30, s. 31 (3); 2017, c. 24, s. 26 (7-10).

Separate liens when ongoing supply

(4) Where a person has supplied services or materials to an improvement on or before the date certified or declared to be the date of the substantial performance of the contract and has also supplied, or is to supply, services or materials after that date, the person's lien in respect of the services or materials supplied on or before the date of substantial performance expires without affecting any lien that the person may have for the supply of services or materials after that date. R.S.O. 1990, c. C.30, s. 31 (4); 2017, c. 24, s. 67.

Declaration of last supply

(5) Where a person who has supplied services or materials under a contract or subcontract makes a declaration in the prescribed form declaring,

- (a) the date on which the person last supplied services or materials under that contract or subcontract; and
- (b) that the person will not supply any further services or materials under that contract or subcontract,

then the facts so stated shall be deemed to be true against the person making the declaration. R.S.O. 1990, c. C.30, s. 31 (5); 2017, c. 24, s. 65, 66.

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. 2017, c. 24, s. 26 (11).

Validity of termination

(7) Subsection (6) does not prevent a person from contesting the validity of a termination. 2017, c. 24, s. 26 (11).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 26 (1-3, 5-11) - 01/07/2018; 2017, c. 24, s. 26 (4), 65-67 - 12/12/2017

Rules governing certification or declaration of substantial performance

32 (1) The following rules govern the certification and declaration of the substantial performance of a contract:

1. On the application of the contractor, the payment certifier shall determine whether the contract has been substantially performed in accordance with section 2, and, if the payment certifier so determines, shall certify the substantial performance of the contract by signing a certificate in the prescribed form. If there is no payment certifier, the owner and contractor shall make the determination jointly and shall both sign the certificate.
2. The payment certifier or the owner and the contractor jointly, as the case may be, shall set out in the certificate the date on which the contract was substantially performed.
3. The date set out in the certificate as the date on which the contract was substantially performed is deemed for the purpose of this Act to be the date on which that event occurred.
4. Where the payment certifier certifies the substantial performance of a contract the payment certifier shall within seven days of the day the certificate is signed give a copy of the certificate to the owner and to the contractor.
5. The contractor shall publish a copy of the certificate in the manner set out in the regulations.
6. Where the contractor does not publish a copy of the certificate within seven days of receiving a copy of the certificate signed by the payment certifier or, where there is no payment certifier, signed by the owner, any person may publish a copy of the certificate.
7. Where there is a failure or refusal to certify substantial performance of the contract within a reasonable time, any person may apply to the court, and the court, upon being satisfied that the contract is substantially performed, and upon such terms as to costs or otherwise as it considers fit, may declare that the contract has been substantially performed, and the declaration has the same force and effect as a certificate of substantial performance of the contract.
8. Unless the court otherwise orders, the day the declaration is made shall be deemed to be the date the contract was substantially performed.
9. The person who applied to the court shall publish a copy of the declaration of substantial performance in the manner set out in the regulations.
10. For the purposes of this Part, a certificate or declaration of the substantial performance of a contract has no effect until a copy of the certificate or declaration is published. R.S.O. 1990, c. C.30, s. 32 (1); 2017, c. 24, s. 27 (1), 65.

Contents of certificate

(2) Every certificate or declaration made or given under this section shall include,

- (a) the name and address for service of the owner and of the contractor;
- (b) the name and address of the payment certifier, where there is one;
- (c) a short description of the improvement;
- (d) the date on which the contract was substantially performed;
- (e) if the lien attaches to the premises, 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, a concise description of the premises, including addresses, and the name and address of the person or body to whom a copy of the claim for lien must be given under section 34. R.S.O. 1990, c. C.30, s. 32 (2); 2010, c. 16, Sched. 2, s. 2 (3); 2017, c. 24, s. 27 (2), 70, 71; 2018, c. 17, Sched. 8, s. 9.

Liability for refusal to certify

(3) Any person who is required by this section to make a determination of the substantial performance of a contract, and who after receiving an application fails or refuses within a reasonable time to certify the substantial performance

of the contract, even though there is no reasonable doubt that the contract has, in fact, been substantially performed, is liable to anyone who suffers damages as a result. R.S.O. 1990, c. C.30, s. 32 (3).

Liability for failure to furnish copy of certificate

(4) A payment certifier who fails to comply with paragraph 4 of subsection (1) is liable to anyone who suffers damages as a result. R.S.O. 1990, c. C.30, s. 32 (4).

(5) REPEALED: 2017, c. 24, s. 27 (3).

Section Amendments with date in force (d/m/y)

2010, c. 16, Sched. 2, s. 2 (3) - 25/10/2010

2017, c. 24, s. 27 (1-3) - 01/07/2018; 2017, c. 24, s. 65, 70, 71 - 12/12/2017

2018, c. 17, Sched. 8, s. 9 - 06/12/2018

Certificate re subcontract

33 (1) Upon the request of the contractor, the payment certifier on the contract may determine whether a subcontract has been completed, and, if the payment certifier so determines, shall certify the completion of the subcontract in the prescribed form; alternatively, the owner and the contractor may jointly make the declaration and certify completion in the prescribed form. R.S.O. 1990, c. C.30, s. 33 (1); 2017, c. 24, s. 65.

Date subcontract deemed completed

(2) Where a subcontract is certified to be completed, the subcontract shall be deemed to have been completed on the date of certification. R.S.O. 1990, c. C.30, s. 33 (2).

Services or materials supplied after subcontract certified completed

(3) If services or materials are supplied to the improvement under or in respect of a subcontract after the date the subcontract is certified to be completed, those services or materials shall be deemed to have been last supplied on the date of certification. R.S.O. 1990, c. C.30, s. 33 (3).

Copy of certificate

(4) Within seven days of the date the subcontract is certified to be completed, the payment certifier or the owner and the contractor, as the case may be, shall give a copy of the certificate,

(a) to the subcontractor whose subcontract has been certified as complete; and

(b) to the owner and the contractor, where certification is by the payment certifier. R.S.O. 1990, c. C.30, s. 33 (4).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 65 - 12/12/2017

Notice of intention to register in accordance with the *Condominium Act, 1998*

Definitions

33.1 (1) In this section,

“declaration” means a declaration as defined in the *Condominium Act, 1998*; (“déclaration”)

“description” means a description as defined in the *Condominium Act, 1998*; (“description”)

“registered” means registered as defined in the *Condominium Act, 1998*. (“enregistré”) 2010, c. 16, Sched. 2, s. 2 (4).

Notice required

(2) An owner of land described in a description that is intended to be registered together with a declaration in accordance with the *Condominium Act, 1998* shall publish notice of the intended registration in the manner set out in the regulations. 2010, c. 16, Sched. 2, s. 2 (4); 2017, c. 24, s. 28.

Contents

(3) The notice shall be in the prescribed form and shall include,

(a) the owner’s name and address for service;

(b) a concise overview of the land described in the description, including reference to the lot and plan number and the parcel number or numbers of the land; and

- (c) if, to the best of the owner's knowledge, information and belief, a contractor supplied services or materials to an improvement in respect of the land during the 90-day period preceding the day on which the description is to be submitted for approval under subsection 9 (3) of the *Condominium Act, 1998*, the contractor's name, address and, if known, address for service. 2010, c. 16, Sched. 2, s. 2 (4); 2017, c. 24, s. 65.

Liability for failure to comply

- (4) An owner who fails to comply with this section is liable to any person entitled to a lien who suffers damages as a result. 2010, c. 16, Sched. 2, s. 2 (4).

Section Amendments with date in force (d/m/y)

2010, c. 16, Sched. 2, s. 2 (4) - 01/07/2011

2017, c. 24, s. 28 - 01/07/2018; 2017, c. 24, s. 65 - 12/12/2017

How lien preserved

- 34** (1) A lien may be preserved during the supplying of services or materials or at any time before it expires,

- (a) where the lien attaches to the premises, by the registration in the proper land registry office of a claim for lien on the title of the premises in accordance with this Part; and
- (b) where the lien does not attach to the premises, by giving to the owner a copy of the claim for lien. R.S.O. 1990, c. C.30, s. 34 (1); 2010, c. 16, Sched. 2, s. 2 (5); 2017, c. 24, s. 63, 64, 68, 70, 71.

Public highway

- (2) Where a claim for lien is in respect of a public street or highway owned by a municipality, the copy of the claim for lien shall be given to the clerk of the municipality. R.S.O. 1990, c. C.30, s. 34 (2); 2010, c. 16, Sched. 2, s. 2 (6); 2017, c. 24, s. 29 (1).

Note: On October 1, 2019, the day named by proclamation of the Lieutenant Governor, subsection 34 (2) of the Act is repealed. (See: 2017, c. 24, s. 29 (2))

Premises owned by Crown

- (3) Where the owner of the premises is the Crown, the copy of the claim for lien shall be given to the prescribed office, or, where no office has been prescribed, to the ministry or Crown agency for whom the improvement is made. R.S.O. 1990, c. C.30, s. 34 (3); 2010, c. 16, Sched. 2, s. 2 (7); 2017, c. 24, s. 29 (3), 63, 71.

Note: On October 1, 2019, the day named by proclamation of the Lieutenant Governor, section 34 of the Act is amended by adding the following subsection: (See: 2017, c. 24, s. 29 (4))

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. 2017, c. 24, s. 29 (4).

Railway right-of-way

- (4) Where the premises is a railway right-of-way, the copy of the claim for lien shall be given to the manager or any person apparently in charge of any office of the railway in Ontario. R.S.O. 1990, c. C.30, s. 34 (4); 2010, c. 16, Sched. 2, s. 2 (7); 2017, c. 24, s. 29 (5), 63.

Contents of claim for lien

- (5) Every claim for lien shall set out,
- (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;
 - (b) a short description of the services or materials that were supplied;
 - (c) the contract price or subcontract price;
 - (d) the amount claimed in respect of services or materials that have been supplied; and
 - (e) a description of the premises,

- (i) where the lien attaches to the premises, sufficient for registration under the *Land Titles Act* or the *Registry Act*, as the case may be, or
- (ii) where the lien does not attach to the premises, being the address or other identification of the location of the premises. R.S.O. 1990, c. C.30, s. 34 (5); 2010, c. 16, Sched. 2, s. 2 (8); 2017, c. 24, s. 29 (6, 7), 63, 70, 71.

(6) REPEALED: 2010, c. 16, Sched. 2, s. 2 (9).

Preservation of general lien

(7) Subject to subsection 44 (4) (apportionment), a general lien shall be preserved against each of the premises that the person having the lien desires the lien to continue to apply against, and the claim against each premises may be for the price of the services or materials that have been supplied to all the premises. R.S.O. 1990, c. C.30, s. 34 (7); 2017, c. 24, s. 29 (8), 66, 72.

Who may join in claim

(8) Any number of persons having liens upon the same premises may unite in a claim for lien. R.S.O. 1990, c. C.30, s. 34 (8); 2010, c. 16, Sched. 2, s. 2 (10); 2017, c. 24, s. 29 (9).

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. 2017, c. 24, s. 29 (10).

Note: On October 1, 2019, the day named by proclamation of the Lieutenant Governor, section 34 of the Act is amended by adding the following subsection: (See: 2017, c. 24, s. 29 (11))

Adjudication and expiry

(10) If the matter that is the subject of a lien that has not expired is also a matter that is 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 the receipt by the adjudicator of documents under section 13.11. 2017, c. 24, s. 29 (11).

Section Amendments with date in force (d/m/y)

2010, c. 16, Sched. 2, s. 2 (5-7, 9, 10) - 01/07/2011; 2010, c. 16, Sched. 2, s. 2 (8) - 25/10/2010

2017, c. 24, s. 29 (1, 3, 5, 7-9), 63, 64, 66, 68, 70-72 - 12/12/2017; 2017, c. 24, s. 29 (2, 4, 11) - 01/10/2019; 2017, c. 24, s. 29 (6, 10) - 01/07/2018

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. 2017, c. 24, s. 30 (2).

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. 2017, c. 24, s. 30 (2).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 30 (1) - 12/12/2017; 2017, c. 24, s. 30 (2) - 01/07/2018

What liens may be perfected

36 (1) A lien may not be perfected unless it is preserved. R.S.O. 1990, c. C.30, s. 36 (1).

Expiry of preserved lien

(2) A lien that has been preserved expires unless it is perfected prior to the end of the 90-day period next following the last day, under section 31, on which the lien could have been preserved. R.S.O. 1990, c. C.30, s. 36 (2); 2017, c. 24, s. 31 (1).

How lien perfected

(3) A lien claimant perfects the lien claimant's preserved lien,

- (a) where the lien attaches to the premises, when the lien claimant commences an action to enforce the lien and, except where an order to vacate the registration of the lien is made, the lien claimant registers a certificate of action in the prescribed form on the title of the premises; or
- (b) where the lien does not attach to the premises, when the lien claimant commences an action to enforce the lien. R.S.O. 1990, c. C.30, s. 36 (3); 2017, c. 24, s. 65, 70, 71; 2018, c. 17, Sched. 8, s. 10.

Rules re sheltering

(4) A preserved lien becomes perfected by sheltering under a lien perfected by another lien claimant in respect of the same improvement in accordance with the following rules:

1. The preserved lien of a lien claimant is perfected by sheltering under the perfected lien of another lien claimant in respect of the same improvement where,
 - i. the lien of that other lien claimant was a subsisting perfected lien at the time when the lien of the lien claimant was preserved, or
 - ii. the lien of that other lien claimant is perfected in accordance with clause (3) (a) or (b) between the time when the lien of the lien claimant was preserved and the time that the lien of the lien claimant would have expired under subsection (2).
2. The validity of the perfection of a sheltered lien does not depend upon the validity, proper preservation or perfection of the lien under which it is sheltered.
3. A sheltered claim for lien is perfected only as to the defendants and the nature of the relief claimed in the statement of claim under which it is sheltered.
4. Upon notice given by a defendant named in a statement of claim, any lien claimant whose lien is sheltered under that statement of claim shall provide the defendant with further particulars of the claim for lien or of any fact alleged in the claim for lien. R.S.O. 1990, c. C.30, s. 36 (4); 2017, c. 24, s. 31 (2-4).

General lien

(5) Subject to subsection 44 (4) (apportionment), a preserved general lien that attaches to the premises shall be perfected against each premises to which the person having the lien desires the lien to continue to apply. R.S.O. 1990, c. C.30, s. 36 (5); 2017, c. 24, s. 72.

Where period of credit extended

(6) A person who has preserved a lien, but who has extended a period of credit for the payment of the amount to which the lien relates, may commence an action for the purpose of perfecting the lien even though the period of credit has not at the time expired. R.S.O. 1990, c. C.30, s. 36 (6).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 31 (1) - 01/07/2018; 2017, c. 24, s. 31 (2-4), 65, 70-72 - 12/12/2017

2018, c. 17, Sched. 8, s. 10 - 06/12/2018

Expiry of perfected lien

37 (1) A perfected lien expires immediately after the second anniversary of the commencement of the action that perfected the lien, unless one of the following occurs on or before that anniversary:

1. An order is made for the trial of an action in which the lien may be enforced.
2. An action in which the lien may be enforced is set down for trial. 1994, c. 27, s. 42 (1).

Motion under s. 46

(2) Where a lien has expired under subsection (1), a motion may be made under section 46. R.S.O. 1990, c. C.30, s. 37 (2).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 42 (1) - 02/04/1983

Saving other rights

38 The expiration of a lien under this Act shall not affect any other legal or equitable right or remedy otherwise available to the person whose lien has expired. R.S.O. 1990, c. C.30, s. 38.

PART VI RIGHT TO INFORMATION

Right to information;

39 (1) Any person having a lien or who is the beneficiary of a trust under Part II or who is a mortgagee may, at any time, by written request, require information to be provided within a reasonable time, not to exceed twenty-one days, as follows:

from owner or contractor

1. By the owner or contractor, other than a landlord described in paragraph 4, with,
 - i. the names of the parties to the contract, the date on which the contract was entered into and the date on which any applicable procurement process was commenced,
 - ii. the contract price,
 - iii. a state of accounts between the owner and the contractor containing the information listed in subsection (4.1),
 - iv. a copy of any labour and material payment bond in respect of the contract posted by the contractor with the owner,
 - v. a statement of whether the contract provides in writing that liens shall arise and expire on a lot-by-lot basis, and
 - 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.

from contractor or subcontractor

2. By the contractor or a subcontractor, with,
 - i. the names of the parties to a subcontract and the date on which the subcontract was entered into,
 - 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),
 - iii. a statement of whether there is a provision in a subcontract providing for certification of the subcontract,
 - iv. a statement of whether a subcontract has been certified as complete, and
 - v. a copy of any labour and material payment bond posted by a subcontractor with the contractor or by a subcontractor with another subcontractor.

from owner

3. By an owner who is selling the owner's interest in a premises that is a home, with,
 - i. the name and address of the purchaser, the sale price, the amount of the purchase price paid or to be paid prior to the conveyance, the scheduled date of the conveyance and the lot and plan number or other legal description of the premises as contained in the agreement of purchase and sale, and
 - ii. the date on which a permit authorizing occupancy or a certificate of completion and possession has been issued.

Note: On a day to be named by proclamation of the Lieutenant Governor, subparagraph 3 ii of subsection 39 (1) of the Act is repealed and the following substituted: (See: 2017, c. 33, Sched. 2, s. 76 (2))

- ii. the date on which the permit or material described in clause (b) of the definition of home buyer in subsection 1 (1) has been issued.

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,
 - ii. the amount of the payment referred to in subsection 19 (1), and
 - iii. the state of accounts between the landlord and the tenant containing the information listed in subsection (4.1). R.S.O. 1990, c. C.30, s. 39 (1); 2017, c. 24, s. 32 (1-7), 71; 2018, c. 17, Sched. 8, s. 11.

from mortgagee or unpaid vendor

(2) Any person having a lien or any beneficiary of a trust under Part II may, at any time, by written request, require a mortgagee or unpaid vendor to provide the person within a reasonable time, not to exceed twenty-one days, with,

- (a) sufficient details concerning any mortgage on the premises to enable the person who requests the information to determine whether the mortgage was taken by the mortgagee for the purposes of financing the making of the improvement;
- (b) a statement showing the amount advanced under the mortgage, the dates of those advances, and any arrears in payment including any arrears in the payment of interest; or
- (c) a statement showing the amount secured under the agreement of purchase and sale and any arrears in payment including any arrears in the payment of interest. R.S.O. 1990, c. C.30, s. 39 (2); 2017, c. 24, s. 70.

by trustee or workers' trust fund

(3) The trustee of a workers' trust fund may at any time by written request require any contractor or subcontractor to permit the trustee, within a reasonable time after making the request, not to exceed twenty-one days, to inspect the payroll records of all workers who are beneficiaries of the fund, and who have supplied labour to the making of the improvement, and who are employed by the contractor or the subcontractor. R.S.O. 1990, c. C.30, s. 39 (3).

respecting publication of certificate of substantial performance

(4) A contractor shall, on the written request of a person, provide to the person within a reasonable time after the request is made written confirmation of the date and location of the publication of the copy of the certificate of substantial performance under subsection 32 (1). 2017, c. 24, s. 32 (8).

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. 2017, c. 24, s. 32 (9).

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. 2017, c. 24, s. 32 (9).

Liability for failure to provide information

(5) Where a person, who is required under subsection (1), (2), (3) or (4) to provide information or access to information, does not provide the information or access to information as required or knowingly or negligently misstates that information, the person is liable to the person who made the request for any damages suffered as a result. R.S.O. 1990, c. C.30, s. 39 (5); 2017, c. 24, s. 32 (10).

Order by court to comply with request

(6) Upon motion, the court may at any time, whether or not an action has been commenced, order a person to comply with a request that has been made to the person under this section and, when making the order, the court may make any order as to costs as it considers appropriate in the circumstances, including an order for the payment of costs on a substantial indemnity basis. R.S.O. 1990, c. C.30, s. 39 (6); 2006, c. 21, Sched. C, s. 102 (1).

Section Amendments with date in force (d/m/y)

2006, c. 21, Sched. C, s. 102 (1) - 01/05/2007

2017, c. 24, s. 32 (1-4, 6-9) - 01/07/2018; 2017, c. 24, s. 32 (5, 10), 70, 71 - 12/12/2017; 2017, c. 33, Sched. 2, s. 76 (2) - not in force

2018, c. 17, Sched. 8, s. 11 (1, 2) - 06/12/2018

Cross-examination on claim for lien

40 (1) Any of the following persons is liable to be cross-examined without an order on a claim for lien at any time, regardless of whether an action has been commenced:

1. The lien claimant.
2. An agent or assignee of the lien claimant.
3. A trustee of the workers' trust fund, where subsection 81 (2) applies. 2010, c. 16, Sched. 2, s. 2 (11); 2017, c. 24, s. 63.

Who may participate

(2) There shall be only one examination under subsection (1), but the contractor, the payer of the lien claimant, and every person named in the claim for lien who has an interest in the premises are entitled to participate therein. R.S.O. 1990, c. C.30, s. 40 (2); 2017, c. 24, s. 63, 70.

Notice

(3) Any person intending to examine a person under subsection (1) shall give at least seven days notice of the examination specifying the time and place for the examination to,

- (a) the person to be examined or the person's solicitor;
- (b) every other person named in the claim for lien as having an interest in the premises;
- (c) the contractor; and
- (d) the payer of the lien claimant. R.S.O. 1990, c. C.30, s. 40 (3); 2017, c. 24, s. 63, 70.

Application of rules of court

(4) The rules of court pertaining to examinations apply, with necessary modifications, to cross-examinations under this section. R.S.O. 1990, c. C.30, s. 40 (4).

Section Amendments with date in force (d/m/y)

2010, c. 16, Sched. 2, s. 2 (11) - 01/07/2011

2017, c. 24, s. 63, 70 - 12/12/2017

PART VII DISCHARGE OF PRESERVED OR PERFECTED LIENS

Discharge of lien and withdrawal of written notice of lien

Discharge of lien

41 (1) A preserved or perfected lien may be discharged,

- (a) where the lien attaches to the premises, by the registration of a discharge of lien in the prescribed form on the title to the premises and the discharge shall, except where the lien claimant is a corporation, be supported by an affidavit of execution; or
- (b) where the lien does not attach to the premises, by giving a discharge of lien in the prescribed form to the owner, in the manner set out in section 34 for the giving of copies of the claim for lien. R.S.O. 1990, c. C.30, s. 41 (1); 2017, c. 24, s. 33 (1, 2), 63, 65, 70.

Withdrawal of written notice of lien

(2) A written notice of a lien may be withdrawn by giving a withdrawal in the prescribed form to the person to whom the written notice of a lien was given, and a payer given the withdrawal shall, in respect of the operation of subsection 24 (2), be in the same position as if the written notice of a lien had never been given. R.S.O. 1990, c. C.30, s. 41 (2); 2017, c. 24, s. 33 (3).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 33 (1-3) - 01/07/2018; 2017, c. 24, s. 63, 65, 70 - 12/12/2017

Discharge of general lien

42 A preserved or perfected general lien may be discharged against any one or more of the premises that are subject to it, without affecting its application to any other premises to which it applies, by the registration of a discharge of lien in the prescribed form on the title to the applicable premises. R.S.O. 1990, c. C.30, s. 42; 2017, c. 24, s. 34, 65, 72.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 34 (1), 65, 72 - 12/12/2017; 2017, c. 24, s. 34 (2) - 01/07/2018

Postponement of lien claim

43 A preserved or perfected lien may be postponed in favour of the interest of another person in the premises by the registration on the title to the premises of a notice of postponement in the prescribed form, and, in that case, subsection 78 (8) applies (priorities in event of postponement). R.S.O. 1990, c. C.30, s. 43; 2017, c. 24, s. 35, 65.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 35, 65 - 12/12/2017

Vacating lien by payment into court

Without notice

44 (1) Upon the motion of any person, without notice to any other person, the court shall make an order vacating,

- (a) where the lien attaches to the premises, the registration of a claim for lien and any certificate of action in respect of that lien; or
- (b) where the lien does not attach to the premises, the claim for lien,

where the person bringing the motion pays into court, or posts security in an amount equal to, the total of,

- (c) the full amount claimed as owing in the claim for lien; and
- (d) the lesser of \$250,000 or 25 per cent of the amount described in clause (c), as security for costs. R.S.O. 1990, c. C.30, s. 44 (1); 2017, c. 24, s. 36 (1), 63, 64, 70; 2018, c. 17, Sched. 8, s. 12 (1).

On payment in of reasonable amount

(2) Upon the motion of any person, the court may make an order vacating the registration of a claim for lien, and any certificate of action in respect of that lien, upon the payment into court or the posting of security of an amount that the court determines to be reasonable in the circumstances to satisfy the lien. R.S.O. 1990, c. C.30, s. 44 (2); 2017, c. 24, s. 63; 2018, c. 17, Sched. 8, s. 12 (2).

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. 2017, c. 24, s. 36 (2).

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. 2017, c. 24, s. 36 (2).

Where lien does not attach to premises

(3) Where the lien does not attach to the premises, the court may make an order, upon the motion of any person, vacating a claim for lien given to the owner, upon the payment into court or the posting of security of an amount that the court determines to be reasonable in the circumstances to satisfy the lien. R.S.O. 1990, c. C.30, s. 44 (3); 2017, c. 24, s. 36 (3), 70; 2018, c. 17, Sched. 8, s. 12 (2).

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. 2017, c. 24, s. 36 (4); 2018, c. 17, Sched. 8, s. 12 (3).

Where general lien

(4) Where a motion is made to vacate the registration of a general lien against one or more of the premises subject to that lien, the court may apportion the general lien between the premises in respect of which the motion is made and all other premises that are subject to the lien. R.S.O. 1990, c. C.30, s. 44 (4); 2017, c. 24, s. 72; 2018, c. 17, Sched. 8, s. 12 (4).

Reduction of amount paid into court

(5) Where an amount has been paid into court or security has been posted with the court under this section, the court, upon notice to such persons as it may require, may order where it is appropriate to do so,

- (a) the reduction of the amount paid into court, and the payment of any part of the amount paid into court to the person entitled; or
- (b) the reduction of the amount of security posted with the court, and the delivery up of the security posted with the court for cancellation or substitution, as the case may be. R.S.O. 1990, c. C.30, s. 44 (5).

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. 2017, c. 24, s. 36 (5).

Lien a charge upon amount paid into court

(6) Where an order is made under clause (1) (a) or subsection (2), the lien ceases to attach to the premises and ceases to attach to the holdbacks and other amounts subject to a charge under section 21, and becomes instead a charge upon the amount paid into court or security posted, and the owner or payer shall, in respect of the operation of sections 21, 23 and 24, be in the same position as if the lien had not been preserved or written notice of the lien had not been given. R.S.O. 1990, c. C.30, s. 44 (6); 2017, c. 24, s. 70.

Same

(7) Where an order is made under clause (1) (b) or subsection (3), the lien ceases to attach to the holdbacks and other amounts subject to a charge under section 21 and becomes instead a charge upon the amount paid into court or security posted and the owner or payer shall, in respect of the operation of sections 21, 23 and 24, be in the same position as if the lien had not been preserved or written notice of the lien had not been given. R.S.O. 1990, c. C.30, s. 44 (7).

Consolidation of motions

(8) Where more than one motion is made under subsection (1), (2) or (3) for the payment into court or posting of security to obtain an order vacating the registration of one or more preserved or perfected liens arising from the same improvement, the court may consolidate the motions and require that the amount paid into court or security posted be adequate to satisfy all the liens that are the subject of each of the motions, or make any other order that it considers appropriate. R.S.O. 1990, c. C.30, s. 44 (8); 2018, c. 17, Sched. 8, s. 12 (5).

Rules

(9) Where an order is made under subsection (1), (2) or (3), the following rules apply:

1. The lien claimant whose lien was the subject of the order may proceed with an action to enforce the claim against the amount paid into court or security posted in accordance with the procedures under Part VIII, but no certificate of action shall be registered against the premises.
2. The amount paid into court or security posted is subject to the claims of all persons having a lien to the same extent as if the amount paid into court or security posted was realized by the sale of the premises in an action to enforce the lien and shall be distributed among all lien claimants in accordance with the priorities provided for in section 80.

3. Where any amount is realized in a lien action by the sale of the premises or otherwise, it shall be pooled into a common fund with the amount paid into court or security posted under this section, and shall be distributed among all lien claimants in accordance with the priorities provided for in section 80.
4. A lien claimant whose lien is sheltered, in accordance with subsection 36 (4), under the lien that was the subject of the order may proceed with an action to enforce the sheltered lien as if the order had not been made. R.S.O. 1990, c. C.30, s. 44 (9); 2010, c. 16, Sched. 2, s. 2 (12); 2017, c. 24, s. 36 (6), 71.

Section Amendments with date in force (d/m/y)

2010, c. 16, Sched. 2, s. 2 (12) - 01/07/2011

2017, c. 24, s. 36 (1, 2, 4-6) - 01/07/2018; 2017, c. 24, s. 36 (3), 63, 64, 70-72 - 12/12/2017

2018, c. 17, Sched. 8, s. 12 (1-5) - 06/12/2018

Declaration by court that preserved lien has expired

45 (1) Where a lien that attaches to the premises is not preserved or is not perfected within the time allowed for doing so under section 31 or 36, the court upon,

- (a) the motion of any person without notice to any other person;
- (b) proof that the lien has not been preserved or perfected within the time allowed; and
- (c) production of,
 - (i) a certificate of search under the *Land Titles Act*, or
 - (ii) a registrar's abstract under the *Registry Act*,together with a certified copy of the claim for lien,

shall declare that the lien has expired and order that the registration of the claim for lien be vacated. R.S.O. 1990, c. C.30, s. 45 (1); 2017, c. 24, s. 63, 70; 2018, c. 17, Sched. 8, s. 13.

Same

(2) Where the court is satisfied that a lien that does not attach to the premises has not been preserved or perfected within the time allowed for doing so under section 31 or 36, the court upon the motion of any person without notice to any other person shall declare that the lien has expired. R.S.O. 1990, c. C.30, s. 45 (2); 2017, c. 24, s. 70.

Order returning amount paid into court or cancelling security

(3) Where a declaration is made under subsection (1) or (2), the court shall order that,

- (a) any amount that has been paid into court under section 44 in respect of that lien be returned to the person who paid the amount into court; and
- (b) any security that has been posted under section 44 in respect of that lien be cancelled. R.S.O. 1990, c. C.30, s. 45 (3).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 63, 70 - 12/12/2017

2018, c. 17, Sched. 8, s. 13 - 06/12/2018

Order dismissing action, etc.

46 (1) Where a perfected lien that attaches to the premises has expired under section 37, the court, upon the motion of any person, shall declare that the lien has expired and shall make an order dismissing the action to enforce that lien and vacating the registration of a claim for lien and the certificate of action in respect of that action. R.S.O. 1990, c. C.30, s. 46 (1); 2017, c. 24, s. 63, 70; 2018, c. 17, Sched. 8, s. 14.

Same

(2) Where a perfected lien that does not attach to the premises has expired under section 37, the court, upon the motion of any person, shall declare that the lien has expired and shall make an order dismissing the action to realize upon that lien. R.S.O. 1990, c. C.30, s. 46 (2); 2017, c. 24, s. 70.

Costs

(3) A motion under subsection (1) or (2) may be brought without notice, but no order as to costs in the action may be made upon the motion unless notice of that motion was given to the person against whom the order for costs is sought. R.S.O. 1990, c. C.30, s. 46 (3).

Order returning money paid into court or cancelling security

(4) Where an action is dismissed under subsection (1) or (2), the court shall order that,

- (a) any amount that has been paid into court under section 44 in respect of that action be returned to the person who paid the amount into court; and
- (b) any security that has been posted under section 44 in respect of that action be cancelled. R.S.O. 1990, c. C.30, s. 46 (4).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 63, 70 - 12/12/2017

2018, c. 17, Sched. 8, s. 14 - 06/12/2018

General powers of the court

Power to discharge

47 (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. 2017, c. 24, s. 37 (1).

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. 2017, c. 24, s. 37 (1); 2018, c. 17, Sched. 8, s. 15 (1).

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. 2017, c. 24, s. 37 (1).

Direction by court

(2) Where a certificate of action is vacated under paragraph 1 of subsection (1.1), and there remain liens which may be enforced in the action to which that certificate relates, the court shall give any directions that are necessary in the circumstances in respect of the continuation of that action subject to paragraph 4 of subsection 44 (9). R.S.O. 1990, c. C.30, s. 47 (2); 2010, c. 16, Sched. 2, s. 2 (13); 2017, c. 24, s. 37 (2); 2018, c. 17, Sched. 8, s. 15 (2).

Section Amendments with date in force (d/m/y)

2010, c. 16, Sched. 2, s. 2 (13) - 01/07/2011

2017, c. 24, s. 37 (1, 2) - 01/07/2018; 2017, c. 24, s. 63 - 12/12/2017

2018, c. 17, Sched. 8, s. 15 (1, 2) - 06/12/2018

Discharge irrevocable

48 A discharge of a lien under this Part is irrevocable and the discharged lien cannot be revived, but no discharge affects the right of the person whose lien was discharged to claim a lien in respect of services or materials supplied by the person subsequent to the preservation of the discharged lien. R.S.O. 1990, c. C.30, s. 48; 2017, c. 24, s. 68.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 68 - 12/12/2017

Registration of orders

49 Where the lien attaches to the premises, an order declaring that a lien has expired, or discharging a lien, or vacating the registration of a claim for lien or a certificate of action, may be registered by registering on the title to the premises

a certified copy of the order that includes a description of the premises sufficient for registration under the *Registry Act* or the *Land Titles Act*, as the case may be, and a reference to the registration number of every preserved or perfected claim for lien and certificate of action thereby affected. R.S.O. 1990, c. C.30, s. 49; 2017, c. 24, s. 38, 70, 71; 2018, c. 17, Sched. 8, s. 16.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 38, 70, 71 - 12/12/2017

2018, c. 17, Sched. 8, s. 16 - 06/12/2018

**PART VIII
JURISDICTION AND PROCEDURE**

Lien claims and procedures

50 (1) A lien claim is enforceable in an action in the Superior Court of Justice. 2017, c. 24, s. 39 (2).

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. 2017, c. 24, s. 39 (2).

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. 2017, c. 24, s. 39 (2).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. C, s. 1 (1) - 22/06/2006

2017, c. 24, s. 39 (1) - 12/12/2017; 2017, c. 24, s. 39 (2) - 01/07/2018

Court to dispose completely of action

51 The court, whether the action is being tried by a judge or on a reference under section 58,

- (a) shall try the action, including any set-off, crossclaim, counterclaim and third party claim, and all questions that arise therein or that are necessary to be tried in order to dispose completely of the action and to adjust the rights and liabilities of the persons appearing before it or upon whom notice of trial has been served; and
- (b) shall take all accounts, make all inquiries, give all directions and do all things necessary to dispose finally of the action and all matters, questions and accounts arising therein or at the trial and to adjust the rights and liabilities of, and give all necessary relief to, all parties to the action. R.S.O. 1990, c. C.30, s. 51; 1994, c. 27, s. 42 (4); 1996, c. 25, s. 4 (1); 2017, c. 24, s. 40.

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 42 (4) - 09/12/1994; 1996, c. 25, s. 4 (1) - 31/10/1996.

2017, c. 24, s. 40 (1, 2) - 01/07/2018

Where exclusive jurisdiction not acquired

52 A judge, master or case management master does not acquire exclusive jurisdiction over the trial of an action or reference by reason only of appointing the time and place for the trial of the action or reference. R.S.O. 1990, c. C.30, s. 52; 1996, c. 25, s. 4 (2); 2017, c. 24, s. 41.

Section Amendments with date in force (d/m/y)

1996, c. 25, s. 4 (2) - 31/10/1996

2017, c. 24, s. 41 - 01/07/2018

53 REPEALED: 2017, c. 24, s. 42 (2).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 42 (2) - 01/07/2018; 2017, c. 24, s. 71 - 12/12/2017

54 REPEALED: 2017, c. 24, s. 42 (2).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 42 (2) - 01/07/2018

55 REPEALED: 2017, c. 24, s. 42 (2).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 42 (1) - 12/12/2017; 2017, c. 24, s. 42 (2) - 01/07/2018

56, 57 REPEALED: 2017, c. 24, s. 42 (2).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 42 (2) - 01/07/2018

Reference to master, etc.

58 (1) On motion made after the delivery of all statements of defence, or the statement of defence to all crossclaims, counterclaims or third party claims, if any, or after the time for their delivery has expired, a judge may refer the whole action or any part of it for trial,

(a) to a master assigned to the area in which the premises or part of the premises are situate;

(a.1) to a case management master;

(b) to a person agreed on by the parties; or

(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. 1994, c. 27, s. 42 (5); 1996, c. 25, s. 4 (3); 2017, c. 24, s. 43 (1), 73.

Notice

(1.1) Notice of a motion for a reference under clause (1) (b) or (c) shall be given to every person specified by the procedures prescribed for the purposes of this Part. 2017, c. 24, s. 43 (2).

Requirement for consent

(1.2) A reference under clause (1) (b) shall not be made unless the persons entitled to notice under subsection (1.1) consent to the reference. 1994, c. 27, s. 42 (5).

Deemed consent

(1.3) A person given notice under subsection (1.1) who does not oppose the motion or does not appear at the hearing of the motion shall be deemed to consent to the reference under clause (1) (b). 1994, c. 27, s. 42 (5).

Master not to hear motion

(2) A master or a case management master shall not hear or dispose of a motion made under subsection (1). R.S.O. 1990, c. C.30, s. 58 (2); 1996, c. 25, s. 4 (4).

Reference directed

(3) At the trial, a judge may direct a reference to a master assigned to the area in which the premises or part of the premises are situate, 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. 1996, c. 25, s. 4 (5); 2017, c. 24, s. 43 (3), 73.

Powers of master on reference

(4) A master or case management master to whom a reference has been directed has all the jurisdiction, powers and authority of the court to try and completely dispose of the action and all matters and questions arising in connection with the action, including the giving of leave to amend any pleading and the giving of directions to a receiver or trustee appointed by the court. R.S.O. 1990, c. C.30, s. 58 (4); 1996, c. 25, s. 4 (6).

Powers of person agreed on by parties

(4.1) Subsection (4) also applies to a person who is agreed on by the parties and to whom a reference has been directed. 1994, c. 27, s. 42 (7); 2018, c. 17, Sched. 8, s. 17 (1).

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. 2017, c. 24, s. 43 (4); 2018, c. 17, Sched. 8, s. 17 (2).

Application to set aside order of reference

(5) If all or part of an action is referred for trial under subsection (1), any person who subsequently becomes a party to the action may, within seven days after becoming a party to the action, make a motion to a judge of the court that directed the reference to set aside the judgment directing the reference. 1996, c. 25, s. 4 (7); 2017, c. 24, s. 43 (5).

Effect on subsequent party to action

(6) Where no motion is made under subsection (5), or where the motion is refused, the person who subsequently became a party to the action is bound by the judgment directing the reference as if the person had been a party to the action at the time the reference was directed. R.S.O. 1990, c. C.30, s. 58 (6).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 42 (5, 7) - 09/12/1994; 1996, c. 25, s. 4 (3-7) - 31/10/1996

2017, c. 24, s. 43 (1-5) - 01/07/2018; 2017, c. 24, s. 73 - 12/12/2017

2018, c. 17, Sched. 8, s. 17 (1, 2) - 06/12/2018

59 REPEALED: 2017, c. 24, s. 44 (3).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 44 (3) - 01/07/2018

60 REPEALED: 2017, c. 24, s. 44 (3).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 44 (1), 70 - 12/12/2017; 2017, c. 24, s. 44 (3) - 01/07/2018

61 REPEALED: 2017, c. 24, s. 44 (3).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 44 (2) - 12/12/2017; 2017, c. 24, s. 44 (3) - 01/07/2018

Judgment or report

62 (1) The results of the trial shall be embodied,

- (a) in a judgment in the prescribed form, where the trial is conducted by a judge of the court; or
- (b) in a report in the prescribed form, where the trial is conducted on a reference under section 58. R.S.O. 1990, c. C.30, s. 62 (1); 1994, c. 27, s. 42 (9); 1996, c. 25, s. 4 (8); 2017, c. 24, s. 45 (1), 65.

Varying form

(2) The prescribed form of judgment or report may be varied by the court in order to meet the circumstances of the case so as to afford to any party to the action any right or remedy in the judgment or report to which the party is entitled. R.S.O. 1990, c. C.30, s. 62 (2); 2017, c. 24, s. 65.

(3) REPEALED: 1999, c. 12, Sched. B, s. 3.

Issue of execution

(4) The judgment or report may direct any party found liable to make a payment, to make such payment forthwith, and execution may be issued,

- (a) immediately, in the case of a judgment; or
- (b) after confirmation, in the case of a report. R.S.O. 1990, c. C.30, s. 62 (4).

Order for sale

(5) The court may order that the interest in the premises be sold and may direct the sale to take place at any time after the judgment or confirmation of the report, allowing a reasonable time for advertising the sale. R.S.O. 1990, c. C.30, s. 62 (5); 2017, c. 24, s. 70.

Persons who may be let in

(6) The court may allow any person with a perfected lien,

- (a) who was not served with a notice of trial; or
- (b) whose action was stayed by reason of an order under the *Arbitration Act, 1991*,

to be let in to prove the claim at any time before the amount realized in the action for the satisfaction of the lien has been distributed, and where the claim is allowed, the judgment or report shall be amended to include the claim. R.S.O. 1990, c. C.30, s. 62 (6); 2017, c. 24, s. 45 (2).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 42 (9) - 09/12/1994; 1996, c. 25, s. 4 (8) - 31/10/1996; 1999, c. 12, Sched. B, s. 3 - 22/12/1999

2017, c. 24, s. 45 (1) - 01/07/2018; 2017, c. 24, s. 45 (2), 65, 70 - 12/12/2017

Personal judgment

63 Subject to paragraph 3 of subsection 36 (4) (sheltering), the court may award any lien claimant a personal judgment, whether the claimant proves the lien or not, upon any ground relating to the claim that is disclosed by the evidence against any party to the action for any amount that may be due to the claimant and that the claimant might have recovered in a proceeding against that party. R.S.O. 1990, c. C.30, s. 63.

Right to share in proceeds

64 Where an interest in the premises is sold under court order, or by a trustee appointed under Part IX, a person with a perfected lien is entitled to share in the proceeds of sale in respect of the amount owing to the person, although that amount or part thereof was not payable at the time of the commencement of the action or at the time of the distribution of the proceeds. R.S.O. 1990, c. C.30, s. 64; 2017, c. 24, s. 70.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 70 - 12/12/2017

Orders for completion of sale

65 (1) The court may make all orders necessary for the completion of a sale and for vesting an interest in the premises in the purchaser. R.S.O. 1990, c. C.30, s. 65 (1); 2017, c. 24, s. 70.

Payment into court of proceeds

(2) Where an interest in the premises is sold under court order, or by a trustee appointed under Part IX, the proceeds of the sale shall be paid into court to the credit of the action. R.S.O. 1990, c. C.30, s. 65 (2); 2017, c. 24, s. 70.

Fees and disbursements

(3) The court may add to the claim of the party having carriage of the action the fees and actual disbursements of the party in connection with the sale. R.S.O. 1990, c. C.30, s. 65 (3).

To whom proceeds paid

(4) The court shall direct to whom the proceeds shall be paid in accordance with the priorities established by this Act. R.S.O. 1990, c. C.30, s. 65 (4).

Where proceeds insufficient to satisfy judgment

(5) Where the proceeds of the sale are not sufficient to satisfy the judgment and costs, the court shall certify the amount of the deficiency and give personal judgment in the appropriate amount to each party whose judgment is not satisfied out of the proceeds against each person who has been found liable to the party. R.S.O. 1990, c. C.30, s. 65 (5).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 70 - 12/12/2017

66 REPEALED: 2017, c. 24, s. 46.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 46 - 01/07/2018

67 REPEALED: 2017, c. 24, s. 46.

Section Amendments with date in force (d/m/y)

2006, c. 21, Sched. C, s. 102 (2) - 01/05/2007

2017, c. 24, s. 46 - 01/07/2018

PART IX APPOINTMENT OF TRUSTEE

Application for appointment of trustee

68 (1) Any person having a lien, or any other person having an interest in the premises, may apply to the court for the appointment of a trustee and the court may appoint a trustee upon such terms as to the giving of security or otherwise as the court considers appropriate. R.S.O. 1990, c. C.30, s. 68 (1); 2017, c. 24, s. 70.

Powers of trustee

- (2) Subject to the supervision and direction of the court, a trustee appointed under subsection (1) may,
- (a) act as a receiver and manager and, subject to the *Planning Act* and the approval of the court, mortgage, sell or lease the premises or any part thereof;
 - (b) complete or partially complete the improvement;
 - (c) take appropriate steps for the preservation of the premises; and
 - (d) subject to the approval of the court, take such other steps as are appropriate in the circumstances. R.S.O. 1990, c. C.30, s. 68 (2); 2017, c. 24, s. 70, 71.

Liens a charge on amounts recovered

(3) Subject to subsection 78 (7), all liens shall be a charge upon any amount recovered by the trustee after payment of the reasonable business expenses and management costs incurred by the trustee in the exercise of any power under subsection (2). R.S.O. 1990, c. C.30, s. 68 (3).

Sale subject to encumbrances

(4) Any interest in the premises that is to be sold may be offered for sale subject to any mortgage, interest or other encumbrance that the court directs. R.S.O. 1990, c. C.30, s. 68 (4); 2017, c. 24, s. 47 (2), 70.

Orders for completion of sale, etc.

(5) The court may make all orders necessary for the completion of any mortgage, lease or sale by a trustee under this section. R.S.O. 1990, c. C.30, s. 68 (5).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 47 (2), 70, 71 - 12/12/2017

69 REPEALED: 2017, c. 24, s. 48.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 48 - 01/07/2018

PART X APPEALS

Stated case

70 (1) Where in the course of an action a question of law arises, the court may state the question in the form of a stated case for the opinion of the Divisional Court, and the stated case shall thereupon be set down to be heard before the Divisional Court and notice of hearing shall be served by the party setting down the matter upon all parties concerned. R.S.O. 1990, c. C.30, s. 70 (1).

Facts to be set out

(2) The stated case shall set forth those facts material to the determination of the question raised. R.S.O. 1990, c. C.30, s. 70 (2).

Appeal to Divisional Court

71 (1) Except as otherwise provided in this section, an appeal lies to the Divisional Court from a judgment or an order on a motion to oppose confirmation of a report under this Act. R.S.O. 1990, c. C.30, s. 71 (1); 2017, c. 24, s. 49 (1).

Notice of appeal

(2) A party wishing to appeal shall file and serve a notice of appeal within fifteen days of the date of the judgment or order, but the time for filing or serving the notice of appeal may be extended by the written consent of all parties, or by a single judge of the Divisional Court where an appropriate case is made out for doing so. R.S.O. 1990, c. C.30, s. 71 (2).

No appeal without leave

(3) No appeal lies from an interlocutory order made by the court, except with leave of the Divisional Court. 2017, c. 24, s. 49 (2).

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. 2017, c. 24, s. 49 (2).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 49 (1, 2) - 01/07/2018

PART XI PRIORITIES

Enforcement of lien despite default

72 A person who has supplied services or materials in respect of an improvement may enforce a lien despite the non-completion, abandonment or termination of the contract or a subcontract by any other person. R.S.O. 1990, c. C.30, s. 72; 2017, c. 24, s. 50, 66.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 50 - 01/07/2018; 2017, c. 24, s. 66 - 12/12/2017

Assignment of lien rights

73 The rights of a person having a lien may be assigned by an instrument in writing and, if not assigned, upon the death of the person pass to the person's personal representative. R.S.O. 1990, c. C.30, s. 73.

Continuation of general lien

74 (1) Subject to section 82, where one or more premises that are subject to an unpreserved general lien are sold, the general lien continues for the full amount of the lien against those premises that are subject to the lien, that were not sold. R.S.O. 1990, c. C.30, s. 74 (1); 2017, c. 24, s. 72.

Same

(2) Where a person having a preserved or perfected general lien discharges the lien against one or more of the premises subject to the lien, the lien continues for the full amount of the lien against those premises that were not discharged. R.S.O. 1990, c. C.30, s. 74 (2); 2017, c. 24, s. 72; 2018, c. 17, Sched. 8, s. 18.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 72 - 12/12/2017

2018, c. 17, Sched. 8, s. 18 - 06/12/2018

Effect of taking security

75 (1) The taking of any security for, or the acceptance of any promissory note or bill of exchange for, or the taking of any acknowledgment of, or the giving of time for the payment of, or the taking of proceedings for the recovery of, or the obtaining of a personal judgment for, the claim, does not in itself merge, waive, pay, satisfy, prejudice or destroy a lien. R.S.O. 1990, c. C.30, s. 75 (1).

Where note or bill negotiated

(2) Where any promissory note or bill of exchange has been negotiated, the person having the lien may still enforce the lien if the person is the holder of the promissory note or bill of exchange at the time when the person proves the claim for lien. R.S.O. 1990, c. C.30, s. 75 (2); 2017, c. 24, s. 51.

Time not extended

(3) Nothing in this section extends the time for, or dispenses with the requirement for, the preservation or perfection of a lien. R.S.O. 1990, c. C.30, s. 75 (3).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 51 - 12/12/2017

Lien claimant deemed purchaser

76 Where a lien is preserved by registration of a claim for lien, the lien claimant shall be deemed to be a purchaser to the extent of his lien within the provisions of the *Registry Act* and *Land Titles Act*, but except as otherwise provided in this Act, those Acts do not apply to any lien arising under this Act. R.S.O. 1990, c. C.30, s. 76; 2017, c. 24, s. 52.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 52 - 12/12/2017

Priority of liens over executions, etc.

77 The liens arising from an improvement have priority over all judgments, executions, assignments, attachments, garnishments and receiving orders except those executed or recovered upon before the time when the first lien arose in respect of the improvement. R.S.O. 1990, c. C.30, s. 77.

Priority over mortgages, etc.

78 (1) Except as provided in this section, the liens arising from an improvement have priority over all conveyances, mortgages or other agreements affecting the owner's interest in the premises. R.S.O. 1990, c. C.30, s. 78 (1); 2017, c. 24, s. 70.

Building mortgage

(2) Where a mortgagee takes a mortgage with the intention to secure the financing of an improvement, the liens arising from the improvement have priority over that mortgage, and any mortgage taken out to repay that mortgage, to the extent of any deficiency in the holdbacks required to be retained by the owner under Part IV, irrespective of when that mortgage, or the mortgage taken out to repay it, is registered. R.S.O. 1990, c. C.30, s. 78 (2).

Prior mortgages, prior advances

(3) Subject to subsection (2), and without limiting the effect of subsection (4), all conveyances, mortgages or other agreements affecting the owner's interest in the premises that were registered prior to the time when the first lien arose in respect of an improvement have priority over the liens arising from the improvement to the extent of the lesser of,

- (a) the actual value of the premises at the time when the first lien arose; and
- (b) the total of all amounts that prior to that time were,
 - (i) advanced in the case of a mortgage, and
 - (ii) advanced or secured in the case of a conveyance or other agreement. R.S.O. 1990, c. C.30, s. 78 (3); 2017, c. 24, s. 70, 71.

Prior mortgages, subsequent advances

(4) Subject to subsection (2), a conveyance, mortgage or other agreement affecting the owner's interest in the premises that was registered prior to the time when the first lien arose in respect of an improvement, has priority, in addition to the priority to which it is entitled under subsection (3), over the liens arising from the improvement, to the extent of any advance made in respect of that conveyance, mortgage or other agreement after the time when the first lien arose, unless,

- (a) at the time when the advance was made, there was a preserved or perfected lien against the premises; or
- (b) prior to the time when the advance was made, the person making the advance had received written notice of a lien. R.S.O. 1990, c. C.30, s. 78 (4); 2017, c. 24, s. 53 (1), 70.

Special priority against subsequent mortgages

(5) Where a mortgage affecting the owner's interest in the premises is registered after the time when the first lien arose in respect of an improvement, the liens arising from the improvement have priority over the mortgage to the extent of any deficiency in the holdbacks required to be retained by the owner under Part IV. R.S.O. 1990, c. C.30, s. 78 (5); 2017, c. 24, s. 70.

General priority against subsequent mortgages

(6) Subject to subsections (2) and (5), a conveyance, mortgage or other agreement affecting the owner's interest in the premises that is registered after the time when the first lien arose in respect of the improvement, has priority over the liens arising from the improvement to the extent of any advance made in respect of that conveyance, mortgage or other agreement, unless,

- (a) at the time when the advance was made, there was a preserved or perfected lien against the premises; or

- (b) prior to the time when the advance was made, the person making the advance had received written notice of a lien. R.S.O. 1990, c. C.30, s. 78 (6); 2017, c. 24, s. 53 (1), 70.

Advances to trustee under Part IX

(7) Despite anything in this Act, where an amount is advanced to a trustee appointed under Part IX as a result of the exercise of any powers conferred upon the trustee under that Part,

- (a) the interest in the premises acquired by the person making the advance takes priority, to the extent of the advance, over every lien existing at the date of the trustee's appointment; and
- (b) the amount received is not subject to any lien existing at the date of the trustee's appointment. R.S.O. 1990, c. C.30, s. 78 (7); 2017, c. 24, s. 70.

Where postponement

(8) Despite subsections (4) and (6), where a preserved or perfected lien is postponed in favour of the interest of some other person in the premises, that person shall enjoy priority in accordance with the postponement over,

- (a) the postponed lien; and
- (b) where an advance is made, any unpreserved lien in respect of which no written notice has been received by the person in whose favour the postponement is made at the time of the advance,

but nothing in this subsection affects the priority of the liens under subsections (2) and (5). R.S.O. 1990, c. C.30, s. 78 (8); 2017, c. 24, s. 70.

Saving

(9) Subsections (2) and (5) do not apply in respect of a mortgage that was registered prior to the 2nd day of April, 1983. R.S.O. 1990, c. C.30, s. 78 (9).

Financial guarantee bond

(10) A purchaser who takes title from a mortgagee takes title to the premises free of the priority of the liens created by subsections (2) and (5) where,

- (a) a bond of an insurer licensed under the *Insurance Act* to write surety and fidelity insurance; or
- (b) a letter of credit or a guarantee from a bank listed in Schedule I or II to the *Bank Act* (Canada),

in the prescribed form is registered on the title to the premises, and, upon registration, the security of the bond, letter of credit or the guarantee takes the place of the priority created by those subsections, and persons who have proved liens have a right of action against the surety on the bond or guarantee or the issuer of the letter of credit. R.S.O. 1990, c. C.30, s. 78 (10); 1997, c. 19, s. 30; 2017, c. 24, s. 53 (2), 70.

Home buyer's mortgage

(11) Subsections (2) and (5) do not apply to a mortgage given or assumed by a home buyer. R.S.O. 1990, c. C.30, s. 78 (11).

Section Amendments with date in force (d/m/y)

1997, c. 19, s. 30 - 10/10/1997

2017, c. 24, s. 53 (1, 2), 70, 71 - 12/12/2017

Persons who comprise class

79 All persons having a lien who have supplied services or materials to the same payer comprise a class, and a person who has supplied services or materials to more than one payer is a member of every class to the extent to which the person's lien relates to that class. R.S.O. 1990, c. C.30, s. 79.

Priority between and within class

80 (1) Except where it is otherwise provided by this Act,

- (a) no person having a lien is entitled to any priority over another member of the same class;
- (b) all amounts available to satisfy the liens in respect of an improvement shall be distributed rateably among the members of each class according to their respective rights; and
- (c) the lien of every member of a class has priority over the lien of the payer of that class. R.S.O. 1990, c. C.30, s. 80 (1).

Where conveyance or mortgage void

(2) Any conveyance or mortgage in respect of the premises to any person entitled to a lien on the premises, in payment of or as security for that claim, whether given before or after that lien arises, is void against all other persons entitled to a lien on the premises. R.S.O. 1990, c. C.30, s. 80 (2); 2017, c. 24, s. 70, 71.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 70, 71 - 12/12/2017

Worker's priority

81 (1) The lien of a worker has priority over the lien of any other person belonging to the same class to the extent of the amount of forty regular-time working days' wages. R.S.O. 1990, c. C.30, s. 81 (1).

Workers' trust fund

(2) Where monetary supplementary benefits are payable to a workers' trust fund instead of to a worker, the trustee of the workers' trust fund is subrogated to the rights of the worker under this Act with respect to those benefits. R.S.O. 1990, c. C.30, s. 81 (2).

Device to defeat workers' priority void

(3) Every device to defeat the priority given to workers by this section is void. R.S.O. 1990, c. C.30, s. 81 (3).

Subordination of general lien claims

82 Where a general lien is realized against a premises in an action in which other liens are also realized against the premises,

(a) the general lien shall rank with the other liens according to the rules of priority set out in section 80 only to the extent of,

(i) the total value of the general lien,

divided by,

(ii) the total number of premises to which the person having the general lien supplied services or materials under contract or subcontract; and

(b) in respect of the balance of the general lien, it shall rank next in priority to all other liens against the premises, whether or not of the same class. R.S.O. 1990, c. C.30, s. 82; 2017, c. 24, s. 54, 69, 71, 72.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 54, 69, 71, 72 - 12/12/2017

Application of insurance proceeds

83 Where a premises that is subject to a lien is destroyed in whole or in part, any amount received by the owner or a mortgagee by reason of any insurance on the premises shall take the place of the premises so destroyed and shall be distributed in accordance with the priorities set out in this Part. R.S.O. 1990, c. C.30, s. 83; 2017, c. 24, s. 55.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 55 - 12/12/2017

Distribution of proceeds of sale

84 Where an interest in the premises is sold or leased under an order of the court or by a trustee appointed under Part IX, the proceeds received as a result of that disposition, together with any amount paid into court under subsection 65 (2), shall be distributed in accordance with the priorities set out in this Part. R.S.O. 1990, c. C.30, s. 84; 2017, c. 24, s. 70.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 70 - 12/12/2017

Priorities on insolvency

85 (1) Where a payer becomes insolvent, the trust fund of which that payer is trustee shall be distributed so that priority over all others is given to a beneficiary of that trust who has proved a lien and a beneficiary of a trust created by section 8 that is derived from that trust, who has proved a lien. R.S.O. 1990, c. C.30, s. 85 (1).

Same

(2) Priority in the distribution of trust funds among those who have proved liens shall be in accordance with the respective priorities of their liens as set out in this Part. R.S.O. 1990, c. C.30, s. 85 (2).

Same

(3) The remaining trust funds shall be distributed among the beneficiaries of that trust and the beneficiaries of trusts created by section 8 that are derived from that trust, whose liens have not been proved, in accordance with the respective priorities to which those liens would have been entitled as set out in this Part, had those liens been proved. R.S.O. 1990, c. C.30, s. 85 (3).

**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. 2017, c. 24, s. 56.

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. 2017, c. 24, s. 56.

Exception

(3) This section does not apply in the case of a contractor who is an architect or an engineer. 2017, c. 24, s. 56.

Requirement for labour and material payment bond

(4) 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, or such other percentage of the contract price as may be prescribed; and
- (c) extends protection to subcontractors and persons supplying labour or materials to the improvement. 2017, c. 24, s. 56.

Requirement for performance bond

(5) 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, or such other percentage of the contract price as may be prescribed. 2017, c. 24, s. 56.

Claims process

(6) A bond form prescribed for the purposes of subsection (4) or (5) may set out the claims process applicable in respect of the bond. 2017, c. 24, s. 56.

No limitation on other bonds or security

(7) 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. 2017, c. 24, s. 56.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 56 - 01/07/2018

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. 2017, c. 24, s. 56.

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. 2017, c. 24, s. 56.

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. 2017, c. 24, s. 56.

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. 2017, c. 24, s. 56.

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. 2017, c. 24, s. 56.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 56 - 01/07/2018

PART XII MISCELLANEOUS RULES

Costs

86 (1) Subject to subsection (2), any order as to the costs in an action, application, motion or any other step in a proceeding under this Act is in the discretion of the court, and an order as to costs may be made against,

- (a) a party to the action or motion; or
- (b) a person who represented a party to the action, application or motion, where the person,
 - (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
 - (ii) prejudiced or delayed the conduct of the action,

and the order may be made on a substantial indemnity basis, including where the motion is heard by a person other than a judge or the action has been referred under section 58. 2006, c. 21, Sched. C, s. 102 (3); 2017, c. 24, s. 57, 63.

Where least expensive course not taken

(2) Where the least expensive course is not taken by a party, the costs allowed to the party shall not exceed what would have been incurred had the least expensive course been taken. R.S.O. 1990, c. C.30, s. 86 (2).

Section Amendments with date in force (d/m/y)

1996, c. 25, s. 4 (10) - 31/10/1996

2006, c. 21, Sched. C, s. 102 (3) - 01/05/2007

2017, c. 24, s. 57 (1-3) - 01/07/2018; 2017, c. 24, s. 63 - 12/12/2017

How documents may be given

87 (1) Except where otherwise ordered by the court, all documents and notices required to be given or that may be given under this Act, may be served in any manner permitted under the rules of court or, in the alternative, may be sent by certified or registered mail addressed to the intended recipient at the recipient's last known mailing address,

- (a) according to the records of the person sending the document; or
- (b) as stated on the most recently registered instrument identifying the recipient as a person having an interest in the premises. R.S.O. 1990, c. C.30, s. 87 (1); 2017, c. 24, s. 70.

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. 2017, c. 24, s. 58.

Claim for lien to municipality

(1.2) If the regulations so provide, a copy of a claim for lien shall, despite subsection (1), be given to the clerk of a municipality under subsection 34 (3.1) electronically in accordance with the regulations. 2017, c. 24, s. 58.

When document deemed received

(2) In the absence of evidence to the contrary, a document or notice sent to a person by certified or registered mail shall be deemed to have been received by the person on the fifth day following the date on which it was mailed, exclusive of Saturdays and holidays. R.S.O. 1990, c. C.30, s. 87 (2).

Date of mailing

(3) Where a document or notice is sent by registered mail, the date appearing on the postal registration receipt shall be deemed conclusively to be the date of mailing. R.S.O. 1990, c. C.30, s. 87 (3).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 58 - 01/07/2018; 2017, c. 24, s. 70 - 12/12/2017

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. 2017, c. 24, s. 59.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 59 - 01/07/2018

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. 2017, c. 24, s. 60.

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 60 - 01/07/2018

Transition

Continued application of *Construction Lien Act* and regulations

87.3 (1) This Act and the regulations, as they read on June 29, 2018, continue to apply with respect to an improvement if,

- (a) a contract for the improvement was entered into before July 1, 2018;
- (b) a procurement process for the improvement was commenced before July 1, 2018 by the owner of the premises;
or
- (c) in the case of a premises that is subject to a leasehold interest that was 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 the day subsection 19 (1) of Schedule 8 to the *Restoring Trust, Transparency and Accountability Act, 2018* came into force. 2018, c. 17, Sched. 8, s. 19 (1).

Same

(2) For greater certainty, clauses (1) (a) and (c) apply regardless of when any subcontract under the contract was entered into. 2018, c. 17, Sched. 8, s. 19 (1).

Note: On October 1, 2019, the day subsection 13 (4) of the *Construction Lien Amendment Act, 2017* comes into force, section 87.3 of the Act is amended by adding the following subsection: (See: 2018, c. 17, Sched. 8, s. 19 (2))

Exception, municipal interest in premises

(3) Despite subsection (1), the amendments made to this Act by subsections 13 (4), 14 (4) and 29 (2) and (4) of the *Construction Lien Amendment Act, 2017* apply with respect to an improvement to a premises in which a municipality has an interest, even if a contract for the improvement was entered into or a procurement process for the improvement was commenced before July 1, 2018. 2018, c. 17, Sched. 8, s. 19 (2).

Note: On October 1, 2019, the day subsection 11 (1) of the *Construction Lien Amendment Act, 2017* comes into force, section 87.3 of the Act is amended by adding the following subsection: (See: 2018, c. 17, Sched. 8, s. 19 (3))

Non-application of Parts I.1 and II.1

(4) Parts I.1 and II.1 do not apply with respect to the following contracts and subcontracts:

1. A contract entered into before the day subsection 11 (1) of the *Construction Lien Amendment Act, 2017* came into force.
2. A contract entered into on or after the day subsection 11 (1) of the *Construction Lien Amendment Act, 2017* came into force, if a procurement process for the improvement that is the subject of the contract was commenced before that day by the owner of the premises.
3. A subcontract made under a contract referred to in paragraph 1 or 2. 2018, c. 17, Sched. 8, s. 19 (3).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 61 (1) - 01/07/2018; 2017, c. 24, s. 61 (2) - no effect - see 2018, c. 17, Sched. 8, s. 19 (1) - 06/12/2018

2018, c. 17, Sched. 8, s. 19 (1) - 06/12/2018; 2018, c. 17, Sched. 8, s. 19 (2, 3) - 01/10/2019

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;

Note: On October 1, 2019, the day named by proclamation of the Lieutenant Governor, subsection 88 (1) of the Act is amended by adding the following clauses: (See: 2017, c. 24, s. 62 (2))

- (c) for the purposes of subsection 1.1 (5), providing for modifications in the application of portions, provisions or regulations listed in that subsection;
- (d) governing the registry required to be established under clause 13.3 (1) (c);
- (e) 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);

Note: On October 1, 2019, the day subsection 11 (1) of the *Construction Lien Amendment Act, 2017* comes into force, clause 88 (1) (e) of the Act is repealed and the following substituted: (See: 2018, c. 17, Sched. 8, s. 20 (1))

- (e) governing the setting of fees, costs and charges by the Authorized Nominating Authority under clause 13.3 (2) (a);
- (f) for the purposes of section 13.4, prescribing fees for the training and qualification of persons as adjudicators and for the appointment of adjudicators, and requiring their payment;
- (g) establishing procedures for the making of complaints against the Authorized Nominating Authority;
- (h) governing adjudication procedures for the purposes of subsection 13.6 (2);

Note: On October 1, 2019, the day subsection 11 (1) of the *Construction Lien Amendment Act, 2017* comes into force, clause 88 (1) (h) of the Act is amended by striking out “for the purposes of subsection 13.6 (2)” at the end. (See: 2018, c. 17, Sched. 8, s. 20 (2))

- (i) governing the procedures for requiring a consolidated adjudication under subsection 13.8 (2);

Note: On October 1, 2019, the day subsection 11 (1) of the *Construction Lien Amendment Act, 2017* comes into force, subsection 88 (1) of the Act is amended by adding the following clauses: (See: 2018, c. 17, Sched. 8, s. 20 (3))

- (i.1) governing the determination of fees by the Authorized Nominating Authority under clause 13.10 (2) (b);
- (i.2) governing responses for the purposes of section 13.11.1, including specifying the time and manner in which responses must be provided and setting out information they must contain or any other requirements they must meet;
- (j) governing procedures that apply if an adjudicator fails to complete an adjudication under Part II.1;
- (k) providing that Parts I.1 and II.1 do not apply with respect to the classes of contracts and subcontracts for improvements to land used in connection with a facility referred to in the definition of “nuclear facility” in the *Nuclear Safety and Control Act* (Canada) that are specified by the regulations.

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

(m) exempting public contracts from the application of section 85.1. 2017, c. 24, s. 62 (1, 3, 4).

Conflict

(1.1) In the event of a conflict between a regulation made under clause 88 (1) (l) and the *Courts of Justice Act* or the rules of court, the regulation prevails to the extent of the conflict. 2017, c. 24, s. 62 (5).

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*. 2017, c. 24, s. 62 (1).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 62 (1) - 12/12/2017; 2017, c. 24, s. 62 (2) - 01/10/2019; 2017, c. 24, s. 62 (3-5) - 01/07/2018

2018, c. 17, Sched. 8, s. 20 (1-3) - 01/10/2019

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REG. 302

Procedures For Actions Under Part VIII

Français

Construction Act

ONTARIO REGULATION 302/18

PROCEDURES FOR ACTIONS UNDER PART VIII OF THE ACT

Consolidation Period: From May 23, 2019 to the [e-Laws currency date](#).

Last amendment: 110/19.

Legislative History: 110/19.

This is the English version of a bilingual regulation.

Statement of claim

1. (1) An action shall be commenced by the issuing of a statement of claim in a court office in the county in which the premises or part of the premises are situate.

(2) Subject to subsection (3), a statement of claim shall be served within 90 days after it is issued.

(3) The court may, on a motion served and filed before or after the period of time mentioned in subsection (2) has expired, extend the time for service of the statement of claim.

Statement of defence, crossclaim and counterclaim

2. (1) A defendant may,

(a) counterclaim against the person who named the defendant as a defendant in respect of any claim that the defendant may be entitled to make against that person, whether or not that claim is related to the making of the improvement; and

(b) crossclaim against a co-defendant in respect of any claim that the defendant may be entitled to make against that person related to the making of the improvement.

(2) Subject to subsection (3), a crossclaim or counterclaim by any person shall accompany the person's statement of defence.

(3) The court may, on a motion served and filed before the date the statement of defence is delivered, grant leave to deliver a crossclaim or counterclaim after the statement of defence is delivered.

(4) If the court grants leave under subsection (3), the court may,

(a) make any order as to costs that it considers appropriate; and

(b) give directions as to the conduct of the action.

(5) The time for delivering a statement of defence to a lien claim, crossclaim, counterclaim or third party claim shall be 20 days.

Joinder

3. (1) Any number of lien claimants whose liens are in respect of the same owner and the same premises may join in the same action.

(2) A plaintiff may, in an action, join a lien claim and a claim for breach of a contract or subcontract. O. Reg. 110/19, s. 2.

Third party claims

4. (1) Subject to subsection (2), a person against whom a claim is made in a statement of claim, crossclaim, counterclaim or third party claim may join a person who is not a party to the action as a third party for the purpose of claiming contribution or indemnity from the third party in respect of that claim.

(2) A person may be joined as a third party only with leave of the court on a motion served and filed with notice to the owner and all persons having subsisting preserved or perfected liens at the time of the motion.

(3) A court may grant leave under subsection (2) only if it is satisfied that the trial of the third party claim will not,

- (a) unduly prejudice the ability of the third party or of any lien claimant or defendant to prosecute a claim or conduct a defence; or
- (b) unduly delay or complicate the resolution of the action.
- (4) The court may give directions as to the conduct of third party claims.

Noting in default

5. (1) If a person against whom a claim is made in a statement of claim, counterclaim, crossclaim or third party claim defaults in the delivery of a defence to that claim, the person against whom the claim is made may be noted in default.

(2) If a defendant or third party has been noted in default under subsection (1), the defendant or third party may not contest the claim of the person who named the defendant or third party as a defendant or third party, or file a statement of defence, except with leave of the court.

(3) A court may grant leave under subsection (2) only if the court is satisfied that there is evidence to support a defence.

(4) If the court grants leave under subsection (2), the court may,

- (a) make any order as to costs that it considers appropriate; and
- (b) give directions as to the conduct of the action.

(5) The following rules apply with respect to a defendant or third party who has been noted in default under subsection (1), if leave is not granted under subsection (2):

- 1. The defendant or third party is deemed to admit all allegations of fact made in the statement of claim, counterclaim, crossclaim or third party claim, as the case may be.
- 2. Despite anything to the contrary in this Regulation, the defendant or third party is not entitled to notice of the trial of the action or of any step in the action, or to participate in the trial of the action or in any step in the action.
- 3. Default judgment may be given against the defendant or third party.

Parties

- 6.** (1) The person serving the notice of trial and all persons served with notice of trial are parties to the action.
- (2) The court may at any time add or join any person as a party to the action.

Carriage of action

7. The court may at any time make an order awarding carriage of the action to any person who has a perfected lien against the premises.

Consolidation of actions

- 8.** If more than one action is brought to enforce liens in respect of the same improvement, the court may,
 - (a) consolidate all the actions into one action; and
 - (b) award carriage of the action to any person who has a perfected lien against the premises.

Motion to fix date for trial or settlement meeting

9. (1) Any party may, at any time after the following, make a motion to the court, without notice to any other person, to have a day, time and place fixed for the trial of the action, or for the holding of a settlement meeting under section 10, or both:

- 1. The delivery of the statements of defence, including the statements of defence to all crossclaims, counterclaims or third party claims.
- 2. The expiry of the time for the delivery of the statements of defence referred to in paragraph 1.

(2) If the court orders the holding of a settlement meeting, the moving party shall, at least 10 days before the scheduled meeting date, serve a notice of settlement meeting on any person who, on the twelfth day before the scheduled meeting date, was,

- (a) the owner of the premises or any other person named as a defendant in a statement of claim in respect of the action;

- (b) if the lien attaches to the premises,
 - (i) a person with a registered interest in the premises, or
 - (ii) an execution creditor of the owner;
 - (c) any other person having a preserved or perfected lien against the premises; or
 - (d) a person joined as a third party under section 4.
- (3) If the lien does not attach to the premises, the moving party shall request from the owner the identity of every person described in clause (2) (c).
- (4) If the court fixes a date for trial, the moving party shall serve a notice of trial, at least 10 days before the trial date, on any person who is or would be entitled to a notice of a settlement meeting under subsection (2).

Settlement meeting

- 10.** (1) A settlement meeting ordered by the court shall be conducted in accordance with this section.
- (2) The settlement meeting shall be for the purpose of resolving or narrowing any issues to be tried in the action.
 - (3) The settlement meeting shall be conducted by,
 - (a) a person selected by a majority of the persons present at the meeting; or
 - (b) if no person is selected, the moving party.
 - (4) The results of the settlement meeting shall be recorded in a statement of settlement, which shall summarize those issues of fact and law that have been settled by the parties.
 - (5) The statement of settlement shall be filed with the court and shall be attached to and form part of the record.
 - (6) A filed statement of settlement is binding on all persons served with notice of the settlement meeting, and on all defendants who have been noted in default.
 - (7) Despite subsection (6), the court may vary or set aside a filed statement of settlement on such order as to costs as it considers appropriate.
 - (8) On the filing of a statement of settlement with the court, the court may,
 - (a) if there was no dispute at the settlement meeting with respect to a claim for lien, declare the lien valid and give such further judgment as it considers appropriate;
 - (b) enter a judgment or make a report on consent on those issues that have been settled by the parties;
 - (c) make any order that is necessary to give effect to any judgment or report of the court under clause (a) or (b); and
 - (d) make any order that is necessary for, or will expedite the conduct of, the trial.
 - (9) Rule 50 of the Rules of Civil Procedure does not apply to actions.

Reference of action

- 11.** (1) For the purposes of subsection 58 (1.1) of the Act,
- (a) notice of a motion for a reference under clause 58 (1) (b) of the Act shall be given to every person who is or would be entitled to a notice of settlement meeting under subsection 9 (2) of this Regulation; and
 - (b) notice of a motion for a reference under clause 58 (1) (c) of the Act shall be given to any other person having a preserved or perfected lien against the premises.
- (2) In the case of a reference mentioned in clause (1) (b), if the lien does not attach to the premises, the moving party shall request from the owner the identity of every person described in clause (1) (b).
- (3) On a motion for a reference mentioned in clause (1) (b), the moving party shall file the following documents with respect to the action and any other action that involves a lien claim arising from the same improvement:
- 1. A copy of the claim for lien.
 - 2. A copy of the pleadings, including in any counterclaim, crossclaim or third party claim in the action.

Motion for directions

12. If a person is in possession of an amount that may be subject to a trust under Part II of the Act, the person may make a motion for directions and the court may give any direction or make any order that the court considers appropriate in the circumstances.

Interlocutory steps

13. Interlocutory steps, other than those provided for under the Act, shall not be taken without the consent of the court on proof that the steps are necessary or would expedite the resolution of the issues in dispute.

Technical assistance

14. (1) The court may, for the purpose of enabling it to determine better any matter of fact in question, obtain the assistance of any merchant, accountant, actuary, building contractor, architect, engineer or other person in any way it considers fit.

(2) The court may fix the remuneration of a person mentioned in subsection (1) and direct the payment of the remuneration by any of the parties.

(3) The parties are entitled to make submissions regarding the payment of remuneration before an order is made under subsection (2).

15. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION).

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REG. 303

FORMS

Français

Construction Act

ONTARIO REGULATION 303/18

FORMS

Consolidation Period: From May 23, 2019 to the [e-Laws currency date](#).

Last amendment: 111/19.

Legislative History: 303/18, 111/19.

This is the English version of a bilingual regulation.

Reference to forms

1. In this Regulation, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of this Regulation and that is available on the Internet through www.ontariocourtforms.on.ca.

Forms

2. (1) For the purposes of the definition of “written notice of a lien” in subsection 1 (1) of the Act, a written notice of a lien shall be in Form 1.

Note: On October 1, 2019, the day section 7 of the *Construction Lien Amendment Act, 2017* comes into force, section 2 of the Regulation is amended by adding the following subsection: (See: O. Reg. 303/18, s. 3)

(1.1) A notice of non-payment,

(a) under subsection 6.4 (2) of the Act shall be in Form 1.1;

(b) under subsection 6.5 (5) of the Act shall be in Form 1.2;

(c) under subsection 6.5 (6) of the Act shall be in Form 1.3;

(d) under subsection 6.6 (6) of the Act shall be in Form 1.4; and

(e) under subsection 6.6 (7) of the Act shall be in Form 1.5. O. Reg. 303/18, s. 3.

(2) A notice to a contractor under section 18 of the Act may be in Form 2.

(3) A notice to a lien claimant under subsection 19 (3) of the Act may be in Form 3.

(4) A letter of credit under subsection 22 (4) of the Act shall be in Form 4.

(5) A demand-worded holdback repayment bond under subsection 22 (4) of the Act shall be in Form 5.

(6) A notice of non-payment of a holdback under section 27.1 of the Act shall be in Form 6.

(7) A declaration of last supply under subsection 31 (5) of the Act shall be in Form 7.

(8) A notice of termination under subsection 31 (6) of the Act shall be in Form 8.

(9) A certificate of the substantial performance of a contract under section 32 of the Act shall be in Form 9.

(10) A certificate of completion of a subcontract under subsection 33 (1) of the Act shall be in Form 10.

(11) A notice of intention to register land described in a description in accordance with the *Condominium Act, 1998* under section 33.1 of the Act shall be in Form 11.

(12) A claim for lien under section 34 of the Act shall be in Form 12.

(13) A notice of preservation of lien regarding common elements of a condominium under subsection 34 (9) of the Act shall be in Form 13.

(14) A certificate of action under section 36 of the Act shall be in Form 14.

(15) A notice given by a defendant under subsection 36 (4) of the Act may be in Form 15.

(16) A notice of cross-examination under clause 40 (3) (a) of the Act may be in Form 16 and under clause 40 (3) (b), (c) or (d) of the Act may be in Form 17.

(17) A withdrawal of written notice of a lien under subsection 41 (2) of the Act shall be in Form 18.

(18) A discharge of lien under section 41 or 42 of the Act shall be in Form 19.

(19) A notice of postponement of lien under section 43 of the Act shall be in Form 20.

(20) A bond posted as security under section 44 of the Act shall be in Form 21.

(21) An order under section 58 of the Act directing a reference of the whole action or any part of it for trial to a master, a case management master or a person agreed on by the parties shall be in Form 22.

(22) An order under section 58 of the Act directing a reference of the whole action or any part of it for trial to a deputy judge of the Small Claims Court or to the Small Claims Court Administrative Judge shall be in Form 23.

(23) A judgment at trial under section 62 of the Act shall be,

(a) in Form 24, if the lien attaches to the premises; or

(b) in Form 25, if the lien does not attach to the premises.

(24) A report under section 62 of the Act relating to a reference by a master, a case management master or a person agreed on by the parties shall be,

(a) in Form 26, if the lien attaches to the premises; or

(b) in Form 27, if the lien does not attach to the premises.

(25) A report under section 62 of the Act relating to a reference by a deputy judge of the Small Claims Court or the Small Claims Court Administrative Judge shall be,

(a) in Form 28, if the lien attaches to the premises; or

(b) in Form 29, if the lien does not attach to the premises.

(26) A financial guarantee bond under subsection 78 (10) of the Act shall be in Form 30.

(27) A labour and material payment bond under section 85.1 of the Act shall be in Form 31.

(28) A performance bond under section 85.1 of the Act shall be in Form 32.

(29) A notice of trial under section 9 of Ontario Regulation 302/18 (Procedures For Actions Under Part VIII) made under the Act may be in Form 33.

(30) A notice of settlement meeting under section 9 of Ontario Regulation 302/18 (Procedures For Actions Under Part VIII) made under the Act may be in Form 34.

3. OMITTED (PROVIDES FOR AMENDMENTS TO THIS REGULATION).

4. REVOKED: O. Reg. 111/19, s. 1.

5. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION).

TABLE OF FORMS

Column 1 Form Number	Column 2 Form Name	Column 3 Date of Form
1	Written Notice of Lien under Subsection 1 (1) of the Act	2018/04
2	Notice to Contractor under Section 18 of the Act	2018/04
3	Notice to Lien Claimant under Subsection 19 (3) of the Act	2018/04
4	Letter of Credit under Subsection 22 (4) of the Act	2018/04
5	Holdback Repayment Bond under Subsection 22 (4) of the Act	2019/01
6	Notice of Non-Payment of Holdback under Section 27.1 of the Act	2019/01
7	Declaration of Last Supply under Subsection 31 (5) of the Act	2018/04
8	Notice of Termination under Subsection 31 (6) of the Act	2019/01
9	Certificate of Substantial Performance of the Contract under Section 32 of the Act	2019/01
10	Certificate of Completion of Subcontract under Subsection 33 (1) of the Act	2018/04
11	Notice of Intention to Register a Condominium in accordance with the <i>Condominium Act, 1998</i> under Section 33.1 of the Act	2018/04
12	Claim for Lien under Section 34 of the Act	2018/04

13	Notice of Preservation of Lien under Subsection 34 (9) of the Act	2018/04
14	Certificate of Action under Section 36 of the Act	2019/01
15	Notice Given by Defendant under Subsection 36 (4) of the Act	2019/01
16	Notice of Cross-Examination under Clause 40 (3) (a) of the Act	2018/04
17	Notice of Cross-Examination under Clause 40 (3) (b), (c) or (d) of the Act	2019/01
18	Withdrawal of Written Notice of Lien under Subsection 41 (2) of the Act	2018/04
19	Discharge of Lien under Section 41 or 42 of the Act	2018/04
20	Notice of Postponement of Lien under Section 43 of the Act	2018/04
21	Financial Guarantee Bond under Section 44 of the Act	2018/04
22	Order Directing a Reference for Trial under Section 58 of the Act	2018/04
23	Order Directing a Reference for Trial under Section 58 of the Act (under \$25,000)	2019/01
24	Judgment at Trial under Section 62 of the Act if Lien Attaches to Premises	2019/01
25	Judgment at Trial under Section 62 of the Act if Lien Does Not Attach to Premises	2019/01
26	Report under Section 62 of the Act if Lien Attaches to Premises	2019/01
27	Report under Section 62 of the Act if Lien Does Not Attach to Premises	2018/04
28	Report under Section 62 of the Act if Lien Attaches to Premises (under \$25,000)	2019/01
29	Report under Section 62 of the Act if Lien Does Not Attach to Premises (under \$25,000)	2019/01
30	Financial Guarantee Bond under Subsection 78 (10) of the Act	2018/04
31	Labour and Material Payment Bond under Section 85.1 of the Act	2019/01
32	Performance Bond under Section 85.1 of the Act	2019/01
33	Notice of Trial	2018/04
34	Notice of Settlement Meeting	2018/04

Note: On October 1, 2019, the day section 7 of the *Construction Lien Amendment Act, 2017* comes into force, the Table of Forms to the Regulation is amended by adding the following rows: (See: O. Reg. 111/19, s. 2 (1))

1.1	Owner Notice of Non-Payment (Subsection 6.4 (2) of the Act)	2019/01
1.2	Contractor Notice of Non-Payment Where Owner Does not Pay (Subsection 6.5 (5) of the Act)	2019/01
1.3	Contractor Notice of Non-Payment if Dispute (Subsection 6.5 (6) of the Act)	2019/01
1.4	Subcontractor Notice of Non-Payment Where Contractor Does not Pay (Subsection 6.6 (6) of the Act)	2019/01
1.5	Subcontractor Notice of Non-Payment if Dispute (Subsection 6.6 (7) of the Act)	2019/01

O. Reg. 111/19, s. 2 (2, 3).

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REG. 304

GENERAL

Français

Construction Act

ONTARIO REGULATION 304/18

GENERAL

Consolidation Period: From May 23, 2019 to the [e-Laws currency date](#).

Last amendment: 112/19.

Legislative History: 304/18, 112/19.

This is the English version of a bilingual regulation.

INTERPRETATION

Definition

1. In this Regulation,

“construction trade newspaper” means a newspaper,

- (a) that is published either in paper format with circulation generally throughout Ontario or in electronic format in Ontario,
- (b) that is published at least daily on all days other than Saturdays and holidays,
- (c) in which calls for tender on construction contracts are customarily published, and
- (d) that is primarily devoted to the publication of matters of concern to the construction industry.

Forms

2. In this Regulation, when a form is referred to by number, the reference is to the form as prescribed by Ontario Regulation 303/18 (Forms) made under the Act.

ALTERNATIVE FINANCING AND PROCUREMENT ARRANGEMENTS

Surety bonds, minimum coverage

3. For the purposes of paragraph 2 of subsection 1.1 (4) of the Act, the minimum coverage limit is,

- (a) 50 per cent of the contract price, if the contract price is \$100,000,000 or less; or
- (b) \$50,000,000, if the contract price is more than \$100,000,000.

Note: Section 4 comes into force on October 1, 2019, the day section 7 of the *Construction Lien Amendment Act, 2017* comes into force. (See: O. Reg. 304/18, s. 16 (2))

PROMPT PAYMENT

Notices of non-payment

4. Notices of non-payment under Part I.1 of the Act (Forms 1.1 to 1.5) may be provided in electronic or paper format.

HOLDBACKS

Payment of holdback on annual basis

5. For the purposes of clause 26.1 (2) (c) of the Act, the contract price must be \$10,000,000 or more.

Payment of holdback on phased basis

6. For the purposes of clause 26.2 (2) (b) of the Act, the contract price must be \$10,000,000 or more.

Non-payment of holdback

7. (1) An owner shall publish a notice of non-payment of a holdback under subsection 27.1 (1) of the Act (Form 6) in a construction trade newspaper. O. Reg. 112/19, s. 1.

(2) For the purposes of subsection 27.1 (1) of the Act, the owner shall, no later than three days after publication of the notice of non-payment, notify the contractor of its publication. O. Reg. 112/19, s. 1.

(3) If the owner provides notice to the contractor in accordance with subsection (2), then notice for the purposes of subsection 27.1 (2) of the Act shall be provided no later than three days after receipt of the notice from the owner, and shall be accompanied by a copy of the notice from the owner. O. Reg. 112/19, s. 1.

(4) If the contractor provides notice to a subcontractor in accordance with subsection (3), then notice for the purposes of subsection 27.1 (3) of the Act shall be provided no later than three days after receipt of the notice from the contractor, and shall be accompanied by a copy of the notice from the contractor. O. Reg. 112/19, s. 1.

(5) Subsection (4) applies with necessary modifications if a subcontractor provides notice to another subcontractor in accordance with that subsection. O. Reg. 112/19, s. 1.

(6) Notice to a contractor or subcontractor under section 27.1 of the Act shall be provided in writing, and may be provided in electronic or paper format. O. Reg. 112/19, s. 1.

EXPIRY, PRESERVATION AND PERFECTION OF LIENS

Notice of contract termination

8. A notice of termination under subsection 31 (6) of the Act (Form 8) shall be published in a construction trade newspaper.

Certificate, declaration of substantial performance

9. A certificate of substantial performance (Form 9) or declaration of substantial performance under section 32 of the Act shall be published in a construction trade newspaper.

Notice of intention to register condominium

10. A notice of intention to register land described in a description in accordance with the *Condominium Act, 1998* under section 33.1 of the Act (Form 11) shall be published 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*. O. Reg. 304/18, s. 10; O. Reg. 112/19, s. 2.

Claim for lien copy given to Crown office

11. The office of the Crown to which a copy of a claim for lien (Form 12) must be given under subsection 34 (3) of the Act is as follows:

1. If the contract is with a ministry of the Crown, the office of the Director of Legal Services of that ministry.
2. If the contract is with the Ontario Mortgage and Housing Corporation, the office of the Director of Legal Services of the Ministry of the Minister responsible for the administration of the *Ontario Mortgage and Housing Corporation Act*.
3. If the contract is with a college of applied arts and technology, the office of the president of the college.
4. If the contract is with any other office of the Crown, the office of the chief executive officer of that office. O. Reg. 304/18, s. 11; O. Reg. 112/19, s. 3.

Note: On October 1, 2019, the day subsection 29 (4) of the *Construction Lien Amendment Act, 2017* comes into force, the Regulation is amended by adding the following section: (See: O. Reg. 112/19, s. 4)

Claim for lien copy given to municipal clerk

11.1 (1) A municipality may provide for the giving of a copy of a claim for lien (Form 12) to the clerk of the municipality under subsection 34 (3.1) of the Act through one or both of the following methods by publishing on its website a statement to that effect that details the method or methods:

1. Sending a copy of the claim for lien by email to a specified email address.
2. Completing and submitting the claim for lien through a specified web portal. O. Reg. 112/19, s. 4.

(2) If a municipality details a method in accordance with subsection (1), a copy of a claim for lien shall be given to the clerk of the municipality in accordance with that method. O. Reg. 112/19, s. 4.

(3) A copy of a claim for lien that is given in accordance with subsection (2) after 5 p.m. local time is deemed to have been given on the following business day. O. Reg. 112/19, s. 4.

SURETY BONDS

Application of s. 85.1 of the Act

- 12.** Section 85.1 of the Act applies to a public contract if the contract price is \$500,000 or more.

NUCLEAR FACILITIES

Non-application of Parts I.1 and II.1

13. Parts I.1 and II.1 of the Act do not apply to contracts for improvements to land used in connection with a Class I nuclear facility as defined in SOR/2000-204 (Class I Nuclear Facilities Regulation) made under the *Nuclear Safety and Control Act* (Canada), or to subcontracts made under such contracts.

14. REVOKED: O. Reg. 112/19, s. 5.

15. OMITTED (REVOKES OTHER REGULATIONS).

16. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION).

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REG. 306

Adjudications Under Part II.1 of the Act

Français

Construction Act

ONTARIO REGULATION 306/18 ADJUDICATIONS UNDER PART II.1 OF THE ACT

Consolidation Period: From May 23, 2019 to the [e-Laws currency date](#).

Note: THIS REGULATION IS NOT YET IN FORCE. It comes into force on October 1, 2019, the day subsection 62 (2) of the *Construction Lien Amendment Act, 2017* comes into force.

Last amendment: 109/19.

Legislative History: 109/19.

This is the English version of a bilingual regulation.

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DEFINITIONS AND DESIGNATION

Definitions

1. In this Regulation,

“adjudicator registry” means the registry established by the Authority under clause 13.3 (1) (c) of the Act; (“registre d’arbitres intérimaires”)

“code of conduct” means the code of conduct established by the Authority under section 7; (“code de déontologie”)

“Minister” means the Minister responsible for the administration of the Act. (“ministre”)

Designation

2. (1) To be eligible to be designated to act as Authorized Nominating Authority, an entity must,

- (a) submit an application to the Minister in the time and manner specified by the Minister; and
 - (b) agree in writing to abide by any conditions of designation specified by the Minister, including any conditions respecting the term or termination of any such designation.
- (2) A designation may be terminated at the Minister’s discretion.

ADJUDICATORS

Certificate of qualification to adjudicate

3. (1) The Authority may issue a certificate of qualification to adjudicate to an individual who meets the requirements and qualifications set out in subsection (2) and who applies to the Authority in accordance with its procedures.

(2) An individual who meets the following requirements and qualifications is eligible to hold a certificate of qualification to adjudicate:

- 1. The individual has, in the Authority’s view, at least 10 years of relevant working experience in the construction industry.
- 2. The individual has successfully completed the training programs provided under clause 8 (a), subject to subsection (4) of this section.
- 3. The individual is not an undischarged bankrupt.
- 4. The individual has not been convicted of an indictable offence in Canada or of a comparable offence outside Canada.
- 5. The individual pays to the Authority any applicable fees for training and qualification as an adjudicator listed in the schedule of fees under section 9.

Note: On October 1, 2019, the day subsection 62 (2) of the *Construction Lien Amendment Act, 2017* comes into force, paragraph 5 of subsection 3 (2) of the Regulation is revoked and the following substituted: (See: O. Reg. 109/19, s. 1)

- 5. The individual pays to the Authority the required fees, costs or charges for training and qualification as an adjudicator.
- 6. The individual agrees in writing to abide by the requirements for holders of certificates set out in section 4.

(3) For the purposes of paragraph 1 of subsection (2), examples of relevant working experience in the construction industry may include experience working in the industry as an accountant, architect, engineer, quantity surveyor, project manager, arbitrator or lawyer.

(4) In the case of an application made to the Authority on or before the first anniversary of the coming into force of this Regulation, the Authority may waive the requirement in paragraph 2 of subsection (2) if, in the Authority’s view, the applicant has experience or education qualifications that are at least equivalent to the successful completion of the training programs referred to in that paragraph.

(5) A certificate of qualification to adjudicate is valid for the period specified for it by the Authority, but the Authority may renew it for one or more further periods if the holder continues to be eligible to hold the certificate.

(6) Subsection (5) is subject to the suspension or cancellation of the holder’s certificate by the Authority under section 5.

(7) The holder of a certificate of qualification to adjudicate is an adjudicator for the purposes of Part II.1 of the Act.

Requirements for holders of certificates

4. Every holder of a certificate of qualification to adjudicate shall,

- (a) successfully complete the continuing training programs provided under clause 8 (b);
- (b) comply with the code of conduct;
- (c) on its request, provide to the Authority proof, in the time and manner specified by the Authority, of the holder's eligibility to hold the certificate;
- (d) immediately notify the Authority in writing if he or she ceases to be eligible to hold the certificate;
- (e) maintain records as required by the Authority and report information respecting the records to the Authority on its request;
- (f) pay to the Authority any applicable fees for training and qualification as an adjudicator listed in the schedule of fees under section 9; and

Note: On October 1, 2019, the day subsection 62 (2) of the *Construction Lien Amendment Act, 2017* comes into force, clause 4 (f) of the Regulation is revoked and the following substituted: (See: O. Reg. 109/19, s. 2)

- (f) pay to the Authority the required fees, costs or charges for training and qualification as an adjudicator; and
- (g) comply with the Act and this Regulation, and with any further directions or requirements of the Authority.

Suspension, cancellation of certificate

5. (1) The Authority may suspend or cancel a holder's certificate of qualification to adjudicate if it is reasonably satisfied that,

- (a) the holder has ceased to be eligible to hold the certificate under section 3, or has failed to comply with the code of conduct or to meet any other requirement of section 4;
- (b) the holder is incompetent or unsuitable to conduct adjudications; or
- (c) the certificate was issued or renewed on the basis of a false or misleading representation or declaration.

(2) The Authority may lift the suspension of a certificate of qualification to adjudicate if the Authority is reasonably satisfied that the circumstances giving rise to the suspension no longer exist and the holder is eligible to hold the certificate.

(3) The Authority may re-issue a cancelled certificate of qualification to adjudicate if the Authority is reasonably satisfied that the circumstances giving rise to the cancellation no longer exist and the holder is eligible to hold the certificate.

(4) A holder whose certificate of qualification is suspended or cancelled ceases, for the duration of the suspension or cancellation, to be authorized to conduct adjudications or to continue to conduct any ongoing adjudication.

OTHER DUTIES OF AUTHORITY

Note: On October 1, 2019, the day subsection 62 (2) of the *Construction Lien Amendment Act, 2017* comes into force, the heading before section 6 of the Regulation is amended by adding "and Powers" after "Duties". (See: O. Reg. 109/19, s. 3)

Adjudicator registry

6. (1) The Authority shall make the adjudicator registry publicly available on its website.

(2) The Authority shall ensure that the adjudicator registry includes every holder of a certificate of qualification to adjudicate and, in relation to each listed holder, includes,

- (a) the holder's contact information;
- (b) the period of validity of the holder's certificate;
- (c) the holder's areas of expertise for the purposes of adjudication, number of years of relevant working experience in the construction industry and every professional body of which the holder is a member in good standing;
- (d) the geographical areas in which the holder conducts adjudications; and
- (e) any other information that the Minister directs be included in order to assist persons in selecting an adjudicator.

Code of conduct

7. (1) The Authority shall, subject to the approval of the Minister, establish and maintain a code of conduct for adjudicators, and shall make the code of conduct publicly available on its website.

Note: On October 1, 2019, the day subsection 62 (2) of the *Construction Lien Amendment Act, 2017* comes into force, subsection 7 (1) of the Regulation is amended by striking out “subject to the approval of the Minister”. (See: O. Reg. 109/19, s. 4 (1))

(2) The code of conduct shall address, at a minimum, the following matters:

1. Conflicts of interest and related procedural matters.
2. Principles of proportionality in the conduct of an adjudication, and the need to avoid excess expense.
3. Principles of civility, procedural fairness, competence and integrity in the conduct of an adjudication.
4. The confidentiality of information disclosed in relation to an adjudication.
5. Procedures for ensuring the accuracy and completeness of information in the adjudicator registry.

(3) The Minister may, on written notice, require the Authority to make such changes to the code of conduct as are specified by the Minister, in the time and manner specified by the Minister.

Note: On October 1, 2019, the day subsection 62 (2) of the *Construction Lien Amendment Act, 2017* comes into force, subsection 7 (3) of the Regulation is revoked. (See: O. Reg. 109/19, s. 4 (2))

(4) The Authority may not make changes to the code of conduct, except,

- (a) with the prior written approval of the Minister; or
- (b) in order to comply with a notice given under subsection (3).

Note: On October 1, 2019, the day subsection 62 (2) of the *Construction Lien Amendment Act, 2017* comes into force, subsection 7 (4) of the Regulation is revoked. (See: O. Reg. 109/19, s. 4 (2))

(5) The Authority shall indicate on its website the effective date of every change made to the code of conduct.

Note: On October 1, 2019, the day subsection 62 (2) of the *Construction Lien Amendment Act, 2017* comes into force, subsection 7 (5) of the Regulation is revoked and the following substituted: (See: O. Reg. 109/19, s. 4 (3))

(5) The Authority shall indicate on its website the effective date of every change it makes to the code of conduct, other than changes of a typographical or similar nature. O. Reg. 109/19, s. 4 (3).

(6) Subsections (4) and (5) do not apply with respect to changes of a typographical or similar nature.

Note: On October 1, 2019, the day subsection 62 (2) of the *Construction Lien Amendment Act, 2017* comes into force, subsection 7 (6) of the Regulation is revoked. (See: O. Reg. 109/19, s. 4 (3))

(7) The Authority shall maintain an archive of all previous versions of the code of conduct, indicating the period during which each version applied, and shall ensure that the versions are publicly accessible.

Training programs

8. In developing and overseeing training programs for the purposes of clause 13.3 (1) (a) of the Act, the Authority shall ensure that training programs are provided,

- (a) to individuals who apply for the issuance of a certificate of qualification to adjudicate; and
- (b) to holders of a certificate, on a continuing basis.

Fee schedule

9. (1) The Authority shall, subject to the approval of the Minister, establish and maintain a schedule of fees listing the following items, and shall make the schedule publicly available on its website:

1. Any fees set by the Authority under clause 13.3 (2) (a) of the Act.

Note: On October 1, 2019, the day subsection 62 (2) of the *Construction Lien Amendment Act, 2017* comes into force, paragraph 1 of subsection 9 (1) of the Regulation is revoked and the following substituted: (See: O. Reg. 109/19, s. 5 (1))

1. Fees, costs or other charges set by the Authority under clause 13.3 (2) (a) of the Act.
2. Amounts or rates determined by the Authority for the purposes of clause 13.10 (2) (b) of the Act with respect to the fee payable to an adjudicator.

(2) Subject to clause 24 (4) (b), the Authority shall not charge a fee under clause 13.3 (2) (a) of the Act or authorize the payment of a fee under clause 13.10 (2) (b) of the Act unless it is included in and accords with the schedule of fees.

Note: On October 1, 2019, the day subsection 62 (2) of the *Construction Lien Amendment Act, 2017* comes into force, subsection 9 (2) of the Regulation is amended by striking out “shall not charge a fee” and substituting “shall not require the payment of a fee, cost or other charge”. (See: O. Reg. 109/19, s. 5 (2))

Note: On October 1, 2019, the day subsection 62 (2) of the *Construction Lien Amendment Act, 2017* comes into force, section 9 of the Regulation is amended by adding the following subsection: (See: O. Reg. 109/19, s. 5 (3))

(2.1) Subsections (1) and (2) do not apply with respect to fees, costs or charges for the training of persons as adjudicators. O. Reg. 109/19, s. 5 (3).

(3) The Authority may not make changes to the schedule of fees, except with the prior written approval of the Minister.

(4) The Authority shall indicate on its website the effective date of every change made to the schedule of fees.

(5) Subsections (3) and (4) do not apply with respect to changes of a typographical or similar nature.

(6) The Authority shall maintain an archive of all previous versions of the schedule of fees, indicating the period during which each version applied, and shall ensure that the versions are publicly accessible.

Complaints re adjudicators

10. The Authority shall establish a complaints process for accepting and dealing with complaints against adjudicators from persons involved in adjudications, and shall make the complaints process publicly available on its website.

Province-wide availability

11. The Authority shall develop procedures and take other reasonable steps to ensure that adjudication is available to parties throughout Ontario.

Breadth of adjudicator expertise

12. The Authority shall develop procedures and take other reasonable steps to ensure that the aggregate breadth of expertise and working experience of the holders of certificates of qualification to adjudicate is sufficient to account for the industry sectors in which parties refer matters to adjudication and the nature of the matters in dispute.

Educational materials

13. The Authority shall develop and make publicly available on its website educational materials respecting the adjudication process.

Annual report

14. (1) The Authority shall, no later than 90 days after the end of each of its fiscal years, issue and make publicly available on its website an annual report for the fiscal year, containing aggregated information respecting adjudication in Ontario, including, at a minimum, information respecting,

- (a) the number of adjudications completed during the fiscal year, and the geographical area in which the adjudications were completed;
- (b) the number of adjudications completed during the fiscal year, broken down by each matter listed under paragraphs 1 to 7 of subsection 13.5 (1) of the Act;
- (c) the total amount claimed in all notices of adjudication given during the fiscal year, and the average of the amounts claimed during that year;
- (d) the total amount and the average amount required to be paid under determinations made during the fiscal year;
- (e) the percentage of adjudications completed during the fiscal year in which the adjudicator made a determination within the timeline specified in subsection 13.13 (1) of the Act;
- (f) the total number of adjudications that were terminated under section 13.14 of the Act during the fiscal year;
- (g) the total amount of fees paid during the fiscal year to the Authority; and

Note: On October 1, 2019, the day subsection 62 (2) of the *Construction Lien Amendment Act, 2017* comes into force, clause 14 (1) (g) of the Regulation is amended by striking out “fees” and substituting “fees, costs or other charges”. (See: O. Reg. 109/19, s. 6)

- (h) the total amount of fees paid during the fiscal year to adjudicators.

(2) Information under each of clauses (1) (a), (c) and (d) shall be reported for Ontario as a whole and in respect of each of the following industry sectors:

1. Residential.
2. Commercial.
3. Industrial.

4. Public buildings.
5. Transportation and infrastructure.
6. Any other industry sectors the Authority considers to be relevant.

(3) The Authority shall collect from holders of a certificate of qualification to adjudicate such information as may be reasonably required to meet the reporting requirements of this section.

Public availability

15. The Authority shall, on the request of any person, provide information that is published on the Authority's website to the person in a format accessible to that person.

Note: On October 1, 2019, the day subsection 62 (2) of the *Construction Lien Amendment Act, 2017* comes into force, the Regulation is amended by adding the following section: (See: O. Reg. 109/19, s. 7)

Administrative support

15.1 The Authority may provide administrative support services for the purpose of facilitating the conduct of adjudications. O. Reg. 109/19, s. 7.

ADJUDICATION

Notice of adjudication, copy to Authority

16. A party to a contract or subcontract who gives a notice of adjudication under subsection 13.7 (1) of the Act shall, on the same day, provide a copy of the notice in electronic format to the Authority.

Note: On October 1, 2019, the day subsection 62 (2) of the *Construction Lien Amendment Act, 2017* comes into force, the Regulation is amended by adding the following section: (See: O. Reg. 109/19, s. 8)

Documents to adjudicator, party under s. 13.11 of the Act

16.1 (1) Unless the adjudicator directs otherwise, the documents required to be provided to the adjudicator or a party under section 13.11 of the Act shall be served on the adjudicator or party in a manner permitted under the rules of court for service of a document other than an originating process. O. Reg. 109/19, s. 8.

(2) The provision of documents by a party under clause 13.11 (b) of the Act is subject to the following requirements:

1. The documents shall be provided to the adjudicator together with the copy of the notice under clause 13.11 (a) of the Act.
2. The documents shall be provided to the other party or, in the case of a consolidated adjudication, to every other party, on the same day as they are provided to the adjudicator. O. Reg. 109/19, s. 8.

(3) As soon as possible after receiving all of the documents required to be provided to the adjudicator under section 13.11 of the Act, the adjudicator shall provide written confirmation to the parties of the date on which they were received. O. Reg. 109/19, s. 8.

Response

17. The right of a party to respond to a notice of adjudication is subject to any directions of the adjudicator as to the time and manner of the delivery of the response.

Note: On October 1, 2019, the day subsection 62 (2) of the *Construction Lien Amendment Act, 2017* comes into force, section 17 of the Regulation is revoked and the following substituted: (See: O. Reg. 109/19, s. 9)

Response

17. (1) A party responding to a notice of adjudication shall provide copies of the response to the adjudicator, to the party who gave the notice of adjudication and, in the case of a consolidated adjudication, to every other party. O. Reg. 109/19, s. 9.

(2) Unless the adjudicator directs otherwise, the copies required to be provided to the adjudicator or a party under subsection (1) shall be served on the adjudicator or party in a manner permitted under the rules of court for service of a document other than an originating process. O. Reg. 109/19, s. 9.

(3) The response shall be provided no later than such day as the adjudicator may specify, but must be provided to the adjudicator and every other party on the same day. O. Reg. 109/19, s. 9.

Consolidation of adjudications, if required by contractor

18. (1) A contractor who wishes to require the consolidation of two or more adjudications under subsection 13.8 (2) of the Act shall give to the parties to each of the adjudications to be consolidated and to the adjudicator, if any, of each such adjudication, a written notice of consolidation that includes,

- (a) with respect to each adjudication,
 - (i) the names and addresses of the parties,
 - (ii) the nature and a brief description of the dispute that is the subject of the adjudication, including details respecting how and when the dispute arose,
 - (iii) the nature of the redress sought, and
 - (iv) a copy of the notice of adjudication; and
- (b) the name of a proposed adjudicator to conduct the consolidated adjudication.

(2) A contractor who gives a notice of consolidation under subsection (1) shall, on the same day, provide a copy of the notice in electronic format to the Authority.

Note: On October 1, 2019, the day subsection 62 (2) of the *Construction Lien Amendment Act, 2017* comes into force, subsection 18 (2) of the Regulation is revoked and the following substituted: (See: O. Reg. 109/19, s. 10)

(2) The contractor shall, as soon as possible after giving the last of the notices of consolidation under subsection (1), provide a copy of the notice in electronic format to the Authority. O. Reg. 109/19, s. 10.

(3) Notice under subsection (1) in respect of an adjudication may not be given later than the fifth day after the adjudicator in the adjudication receives the documents required by section 13.11 of the Act.

Application of Part to consolidated adjudications

19. (1) This section applies for the purposes of subsection 13.8 (3) of the Act with respect to adjudications consolidated under subsection 13.8 (1) or (2) of the Act.

(2) An adjudicator of an adjudication that is consolidated under subsection 13.8 (1) or (2) of the Act is deemed to have resigned from the adjudication,

- (a) on the day on which the adjudicator receives notice that the parties to the adjudication have agreed to consolidation under subsection 13.8 (1) of the Act; or
- (b) on the day on which the adjudicator receives a notice of consolidation in accordance with subsection 18 (1) of this Regulation.

(3) An adjudicator who is deemed to have resigned under subsection (2) may be selected or appointed under section 13.9 of the Act to conduct the consolidated adjudication, subject to the requirements of that section.

(4) For the purposes of subsection 13.9 (4) of the Act, the reference to the day on which the notice of adjudication was given shall be read as a reference to the day referred to in clause (2) (a) or (b) of this section, as the case may be.

(5) For greater certainty, section 13.11 of the Act applies with respect to a consolidated adjudication, and the requirement under that section to give documents to the adjudicator applies to the parties who gave the notice of adjudication in each of the adjudications that have been consolidated.

Note: On October 1, 2019, the day subsection 62 (2) of the *Construction Lien Amendment Act, 2017* comes into force, subsections 19 (4) and (5) of the Regulation are revoked and the following substituted: (See: O. Reg. 109/19, s. 11)

(4) For the purposes of subsection 13.9 (4) of the Act, the reference to the day on which the notice of adjudication was given shall be read as a reference to,

- (a) the day on which the parties to each of the adjudications agreed to the consolidation of the adjudications; or
- (b) the last day of receipt by a party of a notice of consolidation given by the contractor under subsection 18 (1) of this Regulation. O. Reg. 109/19, s. 11.

(5) The requirement under section 13.11 of the Act, as modified by subsection 13.8 (3) of the Act, to provide documents to the adjudicator and to every other party applies with respect to each of the parties who gave the notice of adjudication in each adjudication being consolidated. O. Reg. 109/19, s. 11.

(6) For the purposes of subsections 13.13 (1) and 34 (10) of the Act, the day on which the documents required under section 13.11 of the Act are received by the adjudicator is the last day on which the adjudicator receives any such documents, as confirmed by the adjudicator in accordance with subsection 16.1 (3) of this Regulation. O. Reg. 109/19, s. 11.

Disclosure of documents

20. (1) An adjudicator may issue directions respecting the disclosure of documents on which a party intends to rely in an adjudication.

(2) An adjudicator shall exercise the power to issue directions under subsection (1) to the extent and in a manner that ensures that each party to the adjudication has an opportunity to review any documents on which a party to the adjudication intends to rely.

Powers of adjudicator

21. An adjudicator may exercise a power under subsection 13.12 (1) of the Act despite any failure of a party to the adjudication to comply with a direction or other requirement of the adjudicator.

Determinations

22. (1) An adjudicator who makes a determination shall,

- (a) communicate the determination to the parties to the adjudication by providing each of them with an electronic copy of the determination on the day it is made; and
- (b) give a certified copy of the determination to the parties to the adjudication no later than five days following the making of a determination.

Note: On October 1, 2019, the day subsection 62 (2) of the *Construction Lien Amendment Act, 2017* comes into force, clause 22 (1) (b) of the Regulation is amended by striking out “five days” and substituting “seven days”. (See: O. Reg. 109/19, s. 12 (1))

(2) An adjudicator who makes a determination may, on the written request of a party or on his or her own initiative, make such changes to the determination as may be necessary to correct an error that is of a typographical or similar nature.

Note: On October 1, 2019, the day subsection 62 (2) of the *Construction Lien Amendment Act, 2017* comes into force, subsection 22 (2) of the Regulation is amended by adding “during the period referred to in clause (1) (b)” after “make such changes to the determination”. (See: O. Reg. 109/19, s. 12 (2))

(3) An adjudicator who changes a determination under subsection (2) shall,

- (a) provide to the parties an electronic copy of the corrected determination on the day the change is made; and
- (b) give a certified copy of the corrected determination to the parties no later than five days following the making of the change.

Adjudicator unable to conduct adjudication

23. (1) An adjudicator may at any time resign from an adjudication of a matter if the adjudicator determines that,

- (a) the matter is not eligible for adjudication under section 13.5 of the Act; or
- (b) he or she is not able or competent to conduct the adjudication.

(2) The adjudicator shall promptly give written notice of the resignation to the parties.

Failure of adjudicator to complete adjudication

24. (1) If an adjudicator fails to complete an adjudication, the party who gave the notice of adjudication may give to the other party a fresh notice of adjudication under section 13.7 of the Act.

(2) For greater certainty, subsection (1) does not permit a matter to be adjudicated that could not otherwise be adjudicated under Part II.1 of the Act.

(3) If a fresh notice of adjudication is given, the parties shall, if requested by the adjudicator in the new adjudication and to the extent that it is reasonably practicable to do so, give to the adjudicator copies of any documents that they made available to the adjudicator in the adjudication that was not completed.

Note: On October 1, 2019, the day subsection 62 (2) of the *Construction Lien Amendment Act, 2017* comes into force, subsection 24 (3) of the Regulation is amended by striking out “give” and substituting “provide”. (See: O. Reg. 109/19, s. 13 (1))

(4) If an adjudicator fails to complete an adjudication, other than in the circumstances set out in section 13.14 of the Act, the adjudicator’s entitlement to be paid a fee under section 13.10 of the Act and the amount of any such fee shall be determined,

- (a) by agreement between the parties to the adjudication and the adjudicator; or
- (b) if no agreement is reached, by the Authority, on the adjudicator’s request.

(5) In determining the amount of a fee under clause (4) (b), the Authority shall determine an amount that is, in the Authority's view, appropriate given the work completed by the adjudicator and the circumstances in which the adjudicator failed to complete the adjudication.

(6) For the purposes of clause (4) (b), a party to the adjudication shall give to the Authority, on its request, any information in the party's possession relating to the adjudication that is reasonably required by the Authority to assist it in making a determination under that clause.

Note: On October 1, 2019, the day subsection 62 (2) of the *Construction Lien Amendment Act, 2017* comes into force, subsection 24 (6) of the Regulation is amended by striking out "give" and substituting "provide". (See: O. Reg. 109/19, s. 13 (2))

(7) This section, other than subsections (1) and (2), applies with respect to a failure of an adjudicator to complete an adjudication because it is consolidated under section 13.8 of the Act.

Application of Part II.1 to labour and material payment bonds

25. (1) A person to whom payment is guaranteed under a labour and material payment bond required under subsection 85.1 (4) of the Act may refer to adjudication under Part II.1 of the Act any dispute with the principal and the surety in relation to the payment guaranteed under the bond.

(2) For the purposes of subsection (1), Part II.1 of the Act and this Regulation apply with the following and any other necessary modifications:

1. Subsection (1) applies instead of subsections 13.5 (1) and (2) of the Act.
2. Except as otherwise provided by this subsection, a reference in Part II.1 of the Act and this Regulation to a contract shall be read as a reference to the public contract in relation to which the labour and material payment bond was furnished.
3. In section 13.6 of the Act, a reference to adjudication procedures that are or may be set out in the contract shall be read as a reference to adjudication procedures that are or may be set out in the subcontract with respect to which the dispute relates. Any such adjudication procedures, if applicable under section 13.6 of the Act, apply with necessary modifications.
4. In section 13.7 of the Act, a reference to a contract shall be read as a reference to the labour and material payment bond, and a reference to the parties to a contract shall be read as a reference to the person to whom payment is guaranteed under the bond, the principal and the surety.
5. The reference in subsection 13.12 (1) of the Act to any other power of an adjudicator that may be specified in the contract shall be read as a reference to any other power of an adjudicator that may be specified in the subcontract with respect to which the dispute relates.
6. Subsections 13.8 (2) and 13.19 (1), (5) and (6) of the Act do not apply.

26. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION).

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