

Construction Act / Construction Lien Act

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Summary

The Practice Tip 10 series of Practice Tips covers procedures required under the *Construction Act (CA)* and the *Construction Lien Act (CLA)* related to the following situations:

1. Substantial performance of the contract
2. Total completion of a subcontract
3. Contract deemed completed
4. Release of Holdback:
 - (a) On an annual basis;
 - (b) Following publication of a certificate of “substantial performance”
 - (c) Following “deemed completion” of the contract; and/or
 - (d) In respect of a subcontract that has been “certified complete”.
5. Prompt payment

In order to provide services and prepare the prescribed documentation related to the various scenarios noted above, the Certificate of Practice holder must be retained to provide Construction Phase Services, including at a minimum General Review and Payment Certification for the entire phase.

6. Adjudication

Depending on the nature of what is being adjudicated, in order to provide services and prepare the prescribed documentation related to the various scenarios noted above, the holder may need to have been retained to provide Construction Phase Services. There are scenarios where a holder not providing Construction Phase Services may be requested, by a party to an adjudication, to provide an opinion about the intent of other holder’s construction documents or their adequacy.

General

PT.10.0 *Construction Act / Construction Lien Act*

Practice Tip PT.10.0 serves as an index to the other Practice Tips in the series, helping users to determine which are pertinent to their situation. Localized edits were applied following the amendments to the *Construction Act* that came into force January 1, 2026.

PT.10.1 *Construction Lien Act – Procedures for the Release of Statutory Lien Holdbacks*

Important Notice: PT.10.1 & Transition Rules for New Holdback Rules that came into force on Jan. 1, 2026:

- As time passes, fewer and fewer projects being done under the *Construction Lien Act* remain incomplete. At some point, PT.10.1 will be withdrawn from circulation.
- While the new holdback rules for the most part come into force immediately (apart from annual release, which won’t apply until 2027), the new holdback rules do not apply to contracts governed by the old *Construction Lien Act* – see s.87.4(1). As a result, it’s possible to still have contracts governed by the old *Construction Lien Act* holdback rules.

- OAA Members and their practices as well as their clients are strongly encouraged to consult with legal counsel for any questions regarding the applicability of the *Construction Act* changes that came into force on January 1, 2026 on projects that may fall under the *Construction Lien Act*.

Practice Tip PT.10.1 covers holdback release procedures under the *Construction Lien Act* as it read on June 29, 2018 for:

1. Substantial performance of the contract
2. Total completion of a subcontract; and
3. Contract deemed completed.

According to the transition rules in 87.3 subsection (1), the *CLA* as it read on June 29, 2018 continues to apply with respect to a project 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.

For greater certainty, clauses (1) (a) and (c) apply regardless of when any subcontract under the contract was entered into.

For the purposes of the statute, 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.

PT.10.2 *Construction Act* – Procedures for Release of Statutory Lien Holdbacks

Practice Tip PT.10.2 covers holdback release procedures under the *Construction Act* for the same conditions as PT.10.1:

1. Substantial performance of the contract
2. Total completion of a subcontract; and
3. Contract deemed completed,

Practice Tip PT. 10.2 also covers the annual holdback release procedures introduced as part of the amendments to the *CA* that came in force January 1, 2026.

According to the transition rules in 87.4 subsection (1), contracts and procurements governed by the former *CLA*, as it read on June 29, 2018, continue to follow the *CLA*'s holdback rules (and, for those matters, see Practice Tip 10.1). All other contracts are governed by the current *CA*'s holdback provisions (and, for those matters, see Practice Tip 10.2).

PT.10.3 *Construction Act* – Prompt Payment

Practice Tip PT10.3 covers procedures under the *Construction Act* (CA) Part I.1 Prompt Payment provisions which came into force on October 1, 2019 and provide for payments related to an improvement to be made within 28 days of the receipt of a *proper invoice* unless a notice of non-payment is issued within 14 days. This Practice Tip was updated to reflect the latest legislative changes that came into force on January 1, 2026.

Members need to be aware of the provisions as they relate to a contract between a Certificate of Practice holder and a client and the contracts with subconsultants in addition to those that affect the administration of construction contracts.

PT.10.4 *Construction Act* - OAA Members Acting as Adjudicators

Practice Tip 10.4 provides information to OAA members considering providing services as a certified adjudicator under the *Construction Act*, including provisions that came into force on October 1, 2019 and amendments to the CA that came into force January 1, 2026.

PT.10.5 *Construction Act* – Interim Adjudication

Practice Tip PT.10.5 covers procedures and changes related to *Construction Act (CA)* Part II.1 Construction Dispute Interim Adjudication, including provisions that came into force on October 1, 2019 and amendments to the CA that came into force January 1, 2026.

Holders may be involved in adjudications with respect to the architectural services contract between the holder and the client. Whether the adjudication is initiated by choice or because it is required following non-payment by the client, the holder will be a party to the adjudication.

Holders may find themselves involved as a respondent in adjudications with respect to any subconsultant contracts they are party to.

Holders may also be involved in assisting in adjudications with respect to the construction contract between the contractor and the owner. In such a case, the holder will be assisting one party or the other.

PT.10.5 addresses these and other scenarios. Interim adjudication was created as a quick means of keeping the cash flowing in a construction pyramid. To achieve this, the timelines are tight, and compliance may be disruptive of the normal workflow in a practice.

The OAA does not provide legal, insurance, or accounting advice. Readers are advised to consult their own legal, accounting, or insurance representatives to obtain suitable professional advice in those regards.
