

Construction Act

Procedures for the Release of Statutory Lien Holdbacks

Certificate of Substantial Performance of the Contract - Certificate of Completion of Subcontract – Statement of Contract Deemed Completed – Annual Release of Holdback

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Summary

The Construction Act (CA) prescribes mandatory procedures for the release of lien holdbacks under various scenarios. Certificate of Practice holders must take care when issuing documentation pertaining to certificates and statements so that they are correct and complete.

This PT relates to procedures under construction contracts between owner and contractor; it provides an overview of the following:

- Background of what is a holdback, including:
 - The mandatory annual release of holdback,
 - Release of holdback following substantial performance and deemed completion,
 - Release of holdback for subcontracts certified complete,
 - Termination and Abandonment: Effect on Lien Periods and Holdback,
 - Holdback as trust funds
 - Information on optional early release of holdback now repealed (effective Jan. 01, 2026)
- Suggested Procedures within the context of the holder doing Contract administration including:
 - Mandatory annual release of holdback,
 - Substantial performance of the contract including an example of Form 9 Certificate of Substantial Performance of the Contract under Section 32 of the Act,
 - Certified completion of a subcontract,
 - Statement of contract deemed completed
- References
 - which includes references to other Practice Tips in the PT.10.0 Series
- Attachment 1: OAA Statement of Deemed Completion of a Contract (Word)

Note: Where the term “project” is used, it has the same meaning throughout as “improvement” in the CA.

Amendments made by the *Building Ontario for You Act (Budget Measures), 2024* update the CA’s holdback rules. As of the date of this Practice Tip, most amendments are now in force. The new mandatory annual release of holdback under Section 26 takes effect on January 1, 2026, with special transition rules described below.

Which statute applies:

- Contracts and procurements governed by the former Construction Lien Act (CLA) continue to follow the CLA’s holdback rules. This applies if:
 - the contract for the improvement was entered into before July 1, 2018; or
 - the owner commenced a procurement process for the improvement before July 1, 2018; or
 - for certain pre-July 1, 2018 leasehold premises, the contract or procurement fell within the special leasehold window referenced in Section 87.3(1)(c).

For those matters, see Practice Tip PT.10.1 Procedures for the Release of Statutory Lien Holdbacks – *Construction Lien Act (CLA)*:

- All other contracts are governed by the current CA’s holdback provisions, and this Practice Tip 10.2 applies.

The application of the transition rules can be complicated. If you are unsure about which statute applies in a given scenario, it is recommended to seek advice from legal counsel.

Background

Holdback Generally:

1. The CA provides for the release of lien holdback to a “contractor” under four possible scenarios:
 - (a) Release of holdback on an annual basis;
 - (b) Release of holdback following publication of a certificate of “substantial performance”;
 - (c) Release of holdback following “deemed completion” of the contract; and/or
 - (d) Release of holdback in respect of a subcontract that has been “certified complete”.
2. The CA refers to two types of holdback (refer to the CA for further descriptions), being:
 - (a) The “basic holdback”; and
 - (b) A separate holdback for finishing work (commonly referred to as the “finishing holdback”).

Mandatory Annual Release of Holdback:

3. As of January 1, 2026, owners must release holdback each year after the contract anniversary, provided there are no outstanding liens that prevent payment.
4. Not later than 14 days after each contract anniversary, the owner must publish a notice of annual release of holdback, in the prescribed form, stating the amount to be paid and the intended payment date (Section 26(3)).
5. Between 60 and 74 days after publishing that notice, the owner must pay the contractor all accrued holdback for services or materials supplied by the contractor during the year immediately before the anniversary, unless a preserved or perfected lien in respect of the contract remains in place as described in Section 26(4). After receiving that payment, the contractor must pay accrued holdback to its subcontractors within 14 days, unless a preserved or perfected lien in respect of the subcontract remains in place (Section 26(5)). Subcontractors have the same 14-day obligation to pay their sub-subcontractors, with necessary modifications (Section 26(6)). If payment is not made because of a preserved lien, the payer must release the holdback not later than 14 days after the lien is discharged, vacated, satisfied, or declared expired (Section 26(7)).
6. To ease the transition for contracts entered into before January 1, 2026, the annual holdback regime applies starting on the second contract anniversary after January 1, 2026. The first annual release at that time must include all holdback accrued up to that anniversary date, and this timing and scope apply to the contract regardless of other contracts or subcontracts for the same improvement entered into on or after January 1, 2026. The effect of these transition provisions is to defer the application of mandatory annual release of holdback until 2027.

Release of Holdback Following Substantial Performance and Deemed Completion:

(a) Timing for Release of Basic Holdback That is Not Otherwise Released on an Annual Basis:

7. Any of the “basic holdback” that remains and was not paid or payable on an annual basis (i.e. under ss.26(4) to (7)) will be payable in accordance with certain rules following the expiration of the lien periods. Depending on the circumstances (as described further below), this will occur after the publication of a certificate of substantial performance or, if there is no certificate of substantial performance published, after the deemed

completion, abandonment, or termination of that contract. The timing for release of this remaining “basic holdback” is subject to certain payment timing rules set out in Section 26(8) of the CA.

In other words, if the “basic holdback” has not been paid through the annual release process, it must be paid out after all lien claims against it have expired or been resolved. These holdback release timing rules under s. 26(8) are not transitioned (unlike the mandatory annual release provisions) but are rather effective immediately as of January 1, 2026. Note that Section 26(8) applies only with respect to the “basic holdback” that remains and was not otherwise released on an annual basis (there is no equivalent provision stipulating the time period within which any remaining holdback for “finishing work” not otherwise release on an annual basis must be released).

8. Any payment made under Section 26 reduces the holdback still required to be retained to the extent of the amount paid (Section 26(9)).

(b) Substantial Performance:

9. If substantial performance of the contract is certified and a certificate of substantial performance published, the release of lien holdback that follows is the “basic holdback.” The “separate holdback for finishing work” is then retained, to be released following determination that the contract is “deemed completed.” Procedures and waiting periods apply to both. In order to provide such certification, the holder must have been engaged to provide general review of the construction and as a payment certifier to the construction contract for the entire construction phase. The holder must be adequately familiar with the contract details and performance of the work under the contract.
10. There is a prescribed form for the certificate of “substantial performance” as well as rules governing the process of certification and the contents of the certificate. It is mandatory that the procedures be followed as prescribed. In some instances, certificates of substantial performance have been ruled invalid due to inaccuracies, and had to be corrected and re-issued, causing confusion as well as claims for interest on holdback monies withheld for a further period.

(c) Deemed Completion, Abandonment, or Termination:

11. There may not be a certificate of substantial performance on a particular project. Someone, usually the contractor, must request this. Sometimes, especially on smaller projects or when the difference in time between “substantial performance” and “deemed completed” is minor, the contractor may prefer not to apply for a release at substantial performance and wait instead for a release at “deemed completed.” Also, if the date of “deemed completed” occurs prior to the date of publication of “substantial performance”, the earlier governs the start of the lien period.
12. If there is no certificate of substantial performance published, then there is no release of lien holdback related to “substantial performance.” In that case, the full amount of any remaining lien holdback (i.e. that has not otherwise been released on an annual basis) is released following the procedures and waiting period related to a contract “deemed to have been completed”, or abandoned, or terminated.
13. A contract is “deemed to have been completed” when the price of completion, correction of a known defect or last supply is not more than the lesser of,
 - one percent (1%) of the contract price, and
 - \$5,000.
14. Unlike “substantial performance” or “certified completion of a subcontract”, there are no prescribed forms in the CA to complete that attest to the fact that a contract is “deemed to be completed.” At the same time, it is important for the parties to the contract to understand when a contract is “deemed to be completed” as lien expiry periods begin to run from that date and, subsequently, lien holdbacks should be released upon the conclusion of those expiry periods.
15. It is appropriate for a holder, who is also the payment certifier on a construction contract, to clearly identify to the parties of the contract, when a contract is “deemed to be completed.” In order to provide such a statement, the holder must have been engaged to provide general review of the construction and as a payment certifier to the construction contract for the entire construction phase. The holder must be

adequately familiar with the contract details and performance of the work under that contract. There is no requirement to publish in any newspaper a statement of contract deemed completed, unlike a certificate of substantial performance.

16. There is no further lien holdback retained after a contract is “deemed completed”.

Release of Holdback for Subcontracts Certified Complete:

17. The CA allows early release of holdback for a subcontract that is certified as complete. This mechanism is intended for trades that finish well before substantial performance, such as excavation and foundation subcontractors. There is no concept of “substantial performance” for subcontracts; instead, completion is established by certification (Section 33).
18. On the contractor’s request, the payment certifier may determine whether a subcontract is complete and, if so, certify completion in the prescribed form. Alternatively, the owner and contractor may jointly certify completion in the prescribed form (Section 33(1)). Because the payment certifier is not privy to the subcontract, the holder (if acting in the role of payment certifier) should ensure it requests enough documentation from the contractor and subcontractor to verify that the subcontract work is totally complete.
19. The subcontract is deemed complete on the date of certification, and any services or materials supplied after that date are deemed to have been last supplied on the certification date. This date therefore governs the lien timelines for that subcontract (Sections 33(2)–(3)).
20. Within seven days of certification, a copy of the certificate must be given to the subcontractor, and, where the payment certifier issued the certificate, also to the owner and contractor (Section 33(4)).
21. Once the subcontract is certified complete and all liens in respect of that subcontract have expired or been satisfied, discharged or otherwise provided for, each payer in the contracting chain may, without jeopardy, release the portion of holdback retained for that subcontract (Section 25). This is a permissive (not mandatory) payment mechanism that reduces the overall holdback to the extent of the amount paid for the completed subcontract.

Termination and Abandonment: Effect on Lien Periods and Holdback:

22. If a contract or subcontract is terminated or abandoned, the lien period may run from that event rather than from the publication of a certificate of substantial performance or deemed completion. For contractors, Section 31(2) provides that the 60-day lien period runs from the earlier of publication of the certificate of substantial performance or the date the contract is completed, abandoned, or terminated; where there is no certificate of substantial performance (or for services supplied after substantial performance), the 60-day period runs from completion, abandonment, or termination. In practice, termination or abandonment can therefore be an earlier trigger for lien expiry and, in turn, for the timing of any holdback release once all liens have expired or been otherwise addressed. Note that no later than seven days after a contract is terminated, either the owner or the contractor or other person whose lien is subject to expiry shall publish a notice of the termination in the form and manner prescribed by the CA (Section 31(6)). If a notice of termination is published in accordance with the CA in respect of a contract, the date on which the contract was terminated is the date on which the notice was published or, if more than one notice is published in accordance with that subsection, the date on which the first of the notices was published (Section 31(7)).
23. Separately, Section 30 restricts how holdback may be applied after termination or abandonment. In brief, holdback is not to be used to procure replacement work or to satisfy claims against the contractor or

subcontractor until all liens that may be claimed against that holdback have expired or been satisfied, discharged, or otherwise provided for.

Holdback as Trust Funds:

24. As of January 1, 2026, holdback amounts form part of the statutory trust regime at every tier: amounts required to be retained by an owner (other than the Crown or a municipality) are included in the owner's trust under Section 7, and any holdback owed to or received by a contractor or subcontractor is included in the trust under Sections 8 and 8.1. Holders and other project participants should be mindful of the associated trust-accounting and obligations and potential liability for breach, and note that payment of holdback in accordance with Sections 26 or 27 discharges the trust to the extent of the payment (Section 10).

Prior optional release (phased/annual) — repealed:

25. The CA previously permitted optional early release of holdback on an annual basis (Section 26.1) or a phased basis (Section 26.2) for larger contracts where the contract price at entry exceeded the prescribed amount, which had been set by regulation at \$10,000,000 although under the former phased-release rules, the \$10,000,000 threshold did not apply where the contract provided for payment of accrued holdback only on completion of a specified design phase). Those provisions have been repealed effective January 1, 2026.

26. Notwithstanding the foregoing, if before the transition day, the Owner was permitted to make payment on an annual or phased basis under the Section 26.1 or Section 26.2 of the CA, as it read before it was repealed (effective January 1, 2026), the Owner will remain permitted to do so until the second anniversary of the day the Prime Contract was entered into that follows January 1, 2026 (O. Reg 384/25 – Transition Matters).

Suggested procedure

For projects that are under the Construction Act, holders should consider the following general procedures as it pertains to holdbacks. While offering Construction Contract Administration services, a holder must take care to avoid providing legal interpretations of the *Construction Act*, as these matters fall outside the scope of professional practice and may require input from legal professionals.

Mandatory Annual Release of Holdback

- Confirm the contract date and the annual anniversary. This drives the timing for the notice and payment window.
 - Not later than 14 days after each contract anniversary, the owner must publish a notice of annual release of holdback in the prescribed form stating the amount to be paid and the intended payment date.
 - Between 60 and 74 days after publishing the notice, the owner must pay the contractor all accrued holdback for services and materials the contractor supplied in the year immediately before the anniversary, unless a preserved or perfected lien remains and prevents payment.
 - If a lien prevents payment, the owner must continue to retain the affected holdback. Once the lien is discharged, vacated, satisfied, or declared expired (i.e. the circumstances preventing payment cease), the owner must release the affected holdback not later than 14 days thereafter.
 - After receiving annual holdback from the owner, the contractor must pay accrued holdback to its subcontractors within 14 days, unless a preserved or perfected lien exists in respect of the

- subcontract. Subcontractors have the same 14-day obligation downstream, with necessary modifications.
- Each annual holdback payment reduces the amount still required to be retained to the extent of the amount paid. Prior annual releases should be reflected in subsequent applications and certificates for payment.
- Transition note: For contracts entered into before January 1, 2026, the annual release regime starts on the second contract anniversary after January 1, 2026. The first annual release at that time must include all holdback accrued up to that anniversary date.

Substantial Performance of the Contract

- Review and implement the procedures outlined in the version of OAA-OGCA (Ontario General Contractors Association) Take-Over Procedures (Document 100), applicable to the project, and as prescribed in the CA. Document 100 is currently being reviewed to ensure compliance with the Act.
 - In determining if a contract is substantially performed, prepare and retain the following backup calculations:
 - (a) total value of known incomplete work and deficiencies (work to be completed or corrected) preferably including a list of specific items;
 - (b) if applicable, the total value of incomplete work where the owner and contractor agree and which shall be deducted from the contract price in determining substantial performance; and
 - (c) the allowable cost of completing the work according to the formula in section 2(1) of the CA after reducing the contract price as noted in (b) when applicable.
- Note:** The value of (a) must be less than the value of (c).
- If the contract is substantially performed:
 - obtain and use only the standard CA Form 9 - Certificate of Substantial Performance of the Contract under Section 32 of the Act from the Ontario Courts Forms website;
 - obtain and confirm all of the information required to properly complete the form well in advance of the date of substantial performance to avoid delays in issuance, including the legal names of the “owner” and “contractor” as defined by the CA and the addresses for service; and
 - when completing “identification of premises for preservation of liens”, obtain from your client the registerable description of the entire property on which the improvement is being made, as verified by their legal counsel.

On the following page is an example of Form 9, completed for a fictitious project.

FORM 9

CERTIFICATE OF SUBSTANTIAL PERFORMANCE OF THE CONTRACT UNDER SECTION 32 OF THE ACT

Construction Act

Regional Municipality of Niagara

(County/District/Regional Municipality/Town/City in which premises are situated)

91 Thorold Road, Niagara Falls, Ontario L2X 3X4

(street address and city, town, etc., or, if there is no street address, the location of the premises)

This is to certify that the contract for the following improvement:

Addition and Alterations to offices of Alpha Owner

(short description of the improvement)

To the above premises was substantially performed on

November 17, 2023

(date substantially performed)

Date of certificate signed: November 20, 2023

Charlie Architect Inc.

(payment certifier, where there is one)

(owner and contractor, where there is no payment certifier)

Name of owner

Alpha Owner (1985) Inc.

Address for service

91 Thorold Road, Niagara Falls, Ontario L2X 3X4

Name of contractor

Beta Contractor (1987) Ltd.

Address for service

39 Facer Street, Niagara Falls, Ontario L2X 7X8

Name of payment certifier (where applicable)

Charlie Architect Inc.

Address

46 Long Road, Niagara Falls, Ontario L2X 7X8

(Use A or B whichever is appropriate)

A. Indemnification of premises for preservation of liens:

Part of Lots 7, 8, 15, 16, Reg'd Plan 96, Former TWP of Stamford, now City of Niagara Falls

(a legal description of the premises, including all property identifier numbers and addresses for the premises)

B. Office to which claim for lien and affidavit must be given to preserve lien:

(If the lien does not attach to premises, the name and address of the person or body to whom the claim for lien must be given)

Certified Completion of a Subcontract

The recommended procedure for release of construction lien holdback on a completed subcontract is related to the Certificate of Completion of Subcontract (Form 10) Section 33 of the CA (from the Ontario Courts Forms website) provides for the release of holdback funds after expiry of the 60-day period following the date the subcontract was certified complete.

It should be noted that the certification of completion of a subcontract is not mandatory under the CA. If the owner is not prepared to comply with this section, this should be clearly stated in the supplementary conditions to the construction contract.

- The procedure for release of a subcontractor's construction lien holdback is initiated by the contractor's written request for review to determine the date of completion of the subcontract. Require that this request be complete with the following documentation:
 - Description of the scope of work included in the subcontract;
 - Declaration of Last Supply by the subcontractor as prescribed in subsection 31(5) of the CA (Form 7) from the Ontario Courts Forms website;
 - Workplace Safety and Insurance Board interim release for the contractor;
 - Contractor's written acknowledgement to the owner that the requirements of the contract documents will not be altered by the early release of the holdback of the completed subcontracts; and
 - Confirmation that the bonding company has been notified of the intent to claim release of the subcontractor's holdback.

Upon a satisfactory receipt of all documentation as listed above, review the work along with appropriate consultants. If satisfied that all work under the particular subcontract has been properly completed, issue a certificate to the owner, contractor and subcontractor within seven (7) calendar days of the satisfactory receipt of the documentation noted above.

The date of completion shall be noted and acknowledged in writing by all parties.

- Require from the contractor, over the signature of one of the signing authorities, a statutory declaration to the owner, stating:
 - That no written notices of lien have been received by the contractor;
 - Subcontractor has been paid in full, except for construction lien holdback;
 - The final net amount of the subcontract and the amount owing; and
 - That they have received the certificate issued by the holder pursuant to Section 33(1) of the CA on _____ day of _____, 20_____.
- The subcontractor shall issue, simultaneously, and over the signature of one of their authorized signing officers, a statutory declaration to the contractor stating:
 - That they have not received any written notices of lien claim;
 - That their own subcontractors and suppliers are listed completely in the declaration;
 - That they have received payment in full from the contractor except for construction lien holdback;
 - The final net amount of the subcontract and the amount owing; and
 - That they have received the certificate issued by the holder pursuant to Section 33(1) of the CA on _____ day of _____, 20_____.
- The subcontractor must provide releases from the Workplace Safety and Insurance Board on their own behalf of his/her subcontractors and suppliers.
- Advise the owner to have a construction lien search made at the expiry of sixty (60) calendar days after the date of completion noted on the holder's certificate mentioned above.

- Provided that:
 - no liens have been preserved or certificates of action registered;
 - all documents noted herein have been received; and
 - no written or oral notices of lien claims or of unpaid subcontractors or suppliers have been received by the owner; the owner may then make payment to a contractor on the basis of the holder's certificate for payment. It is recommended that the owner retain legal counsel to carry out the lien search.

Note: Subject to the terms of the applicable subcontract, the release of holdback to a subcontractor, whose work has been certified as totally completed, will typically not affect the commencement date and warranty requirements of the subcontract.

Statement of Contract Deemed Completed

- While there is no prescribed form in the CA to attest to the fact that a contract is “deemed completed”, it is prudent for a holder who is the payment certifier to clearly document the fact. The contractor and the owner should be notified of the following information:
 - The date that the contract is “deemed completed” as per subsection 2(3) of the CA;
 - When lien rights expire (being at the conclusion of the sixty (60) day period next following the date the contract was deemed completed); and,
 - When outstanding lien holdback monies will be due to the contractor (being on the day following the conclusion of the sixty (60) day period, provided no liens exist relative to the subcontract).
- The above can take the form of a letter or a statement. It should be addressed to the owner and contractor or to the owner with a copy to the contractor. A statement can be formatted as a standard form. The letter or statement should be on the practice's letterhead and be signed by a holder or someone under the personal supervision and direction of a holder. Attached at the end of this document is an example of a standard format for a Statement of Contract “Deemed Completed” with sample wording.
- As a backup for the above, the certifying holder should retain:
 - A calculation of the total value of known incomplete work and deficiencies (work to be completed or corrected), preferably including a detailed list of each item; and,
 - A calculation of the applicable maximum amount in determining “deemed completed” (less of \$5,000 and one percent (1%) of the contract value). The value of known incomplete work and deficiencies must be less than the maximum amount in determining “deemed completed”. This information may accompany the letter or statement noted in the bullet above.
- Follow procedures outlined in OAA-OGCA Take-Over Procedures (Document 100).

References

[Construction Act, R.S.O., 1990, Chapter C.30](#) (CA)
 OAA-OGCA Take-Over Procedures, Document 100
[Ontario Court Forms – Construction Act](#) for all forms under the CA
 Practice Tip PT.10 Series Construction Act/Construction Lien Act
 Canadian Handbook of Practice for Architects, (CHOP)

Attachments

Attachment 1 – OAA Statement of Deemed Completion of a Contract_(Word)

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.
