

Federal Prompt Payment for Construction Work Act

Enactment of Act

Enactment

387 The Federal Prompt Payment for Construction Work Act is enacted as follows:

An Act to establish a regime for prompt payment for construction work performed for the purposes of a construction project in respect of federal real property or federal immovables

Short Title

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1 This Act may be cited as the *Federal Prompt Payment for Construction Work Act*.

Interpretation

Definitions

2 (1) The following definitions apply in this Act.

adjudicator means an individual designated as an adjudicator by the Adjudicator Authority. (*intervenant expert*)

Adjudicator Authority means the entity, designated under section 15, responsible for the designation of adjudicators. (*autorité des intervenants experts*)

capital repair means any repair intended to extend the normal useful life or to improve the value or productivity of any real property or immovable, but does not include maintenance or repair work performed to prevent the normal deterioration or to maintain the normal, functional state of the real property or immovable. (*réparation majeure*)

construction project means one or more of the following elements required by a contract between a contractor and Her Majesty or a service provider:

(a) the addition, alteration or capital repair to, or restoration of, any federal real property or federal immovable;

(b) the construction, erection or installation on any federal real property or federal immovable, including the installation of equipment that is essential to the normal or intended use of the federal real property or federal immovable; or

(c) the complete or partial demolition or removal of any federal real property or federal immovable. (*projet de construction*)

construction work means the supply of materials or services, including the rental of equipment, for the purposes of a construction project located in Canada. (*travaux de construction*)

contractor means a party to a contract with Her Majesty or a service provider under which that party is to perform construction work, but does not include such a party if they are the lessor or lessee of the real property or immovable to which the construction work relates. (*entrepreneur*)

federal immovable has the same meaning as in section 2 of the *Federal Real Property and Federal Immovables Act*. (*immeuble fédéral*)

federal real property has the same meaning as in section 2 of the *Federal Real Property and Federal Immovables Act*. (*bien réel fédéral*)

Her Majesty means Her Majesty in right of Canada. (*Sa Majesté*)

Minister means the member of the Queen's Privy Council for Canada who is designated as the Minister under section 3. (*ministre*)

notice of adjudication means a written notice provided under subsection 16(2). (*avis de renvoi*)

notice of non-payment means a written notice provided under subsection 9(3), 10(3) or 11(3). (*avis de non-paiement*)

proper invoice means an invoice submitted under subsection 9(1) that meets the requirements under this Act as well as any other requirements set out in the contract between the contractor and Her Majesty or a service provider that do not conflict with the requirements under this Act. (*facture en règle*)

service provider means a party to a contract with Her Majesty under which that party is to provide Her Majesty with services related to federal real property or a federal immovable and may, for the purposes of fulfilling its obligations under that contract, enter into a contract with a person for the carrying out of a construction project, but does not include a party to such a contract if they are the lessor or lessee of the federal real property or federal immovable. (*fournisseur de services*)

subcontractor means

(a) a party to a contract with a contractor under which that party is to perform construction work; and

(b) a party to a contract with any person — other than Her Majesty, a service provider or the contractor — under which that party is to perform construction work for the purposes of the same construction project for which the construction work referred to in paragraph (a) is to be performed. (*sous-traitant*)

Employment contract

(2) The references to a contract in the definitions *contractor*, *service provider* and *subcontractor* in subsection (1) do not include a contract under which a party is to perform construction work as an employee.

Designation

Minister

3 The Governor in Council may, by order, designate a member of the Queen's Privy Council for Canada as the Minister for the purpose of this Act.

Purpose of Act

Purpose

4 The purpose of this Act is to promote the orderly and timely carrying out of construction projects in respect of any federal real property or federal

immovable by addressing the non-payment of contractors and subcontractors who perform construction work for the purposes of those projects.

Application of Act

Application

5 This Act applies to Her Majesty, to any service provider and to any contractor or subcontractor that is to perform construction work for the purposes of a construction project located in Canada in respect of any federal real property or federal immovable.

Designation of province

6 (1) The Governor in Council may, by order, designate any province if the Governor in Council is, taking into account any criteria set out in the regulations, of the opinion that the province has, by or under the laws of that province, enacted

(a) a regime for the payment of contractors and subcontractors that is reasonably similar to the one set out in this Act; and

(b) in case of non-payment of contractors or subcontractors, an adjudication regime that is reasonably similar to the one set out in this Act.

Non-application – designated province

(2) If the Governor in Council designates a province under subsection (1),

(a) subsections 8(2) and 9(5), sections 10 to 14 and subsection 16(5) no longer apply to any contractor that is to perform construction work for the purposes of a construction project located in that province;

(b) the provisions of this Act no longer apply to

(i) any subcontractor that is to perform construction work for the purposes of that construction project, and

(ii) any service provider that is to pay for construction work performed for the purposes of that construction project; and

(c) the Governor in Council may, with respect to all construction projects located in that province, adapt any provisions of this Act that apply to Her Majesty or continue to apply to contractors for the purpose of addressing any inconsistency or conflict between those provisions and the provincial law.

Exception

(3) Subsection (2) does not apply to a construction project if any part of that project straddles the border between two or more provinces.

Exemption

7 The Governor in Council may, by order, exempt any construction project from the application of this Act.

Duty to inform potential contractor

8 (1) Before Her Majesty or a service provider enters into a contract with a person under which that person is to perform construction work, Her Majesty or that service provider must inform the person that they will be subject to this Act if they enter into the contract and provide them with any information prescribed by regulation.

Duty to inform subcontractor

(2) Before a contractor or subcontractor enters into a contract with a person, under which that person is to perform construction work for the purposes of the same construction project for which the construction work referred to in subsection (1) is to be performed, that contractor or subcontractor must inform the person that they will be subject to this Act if they enter into the contract and provide them with any information prescribed by regulation.

Payments Between Parties

Her Majesty or Service Provider to Contractor

Submission of proper invoice

9 (1) A contractor must, on a monthly basis or as specified by its contract, submit a proper invoice in writing to Her Majesty or a service provider, as the case may be, with respect to any construction work that was performed by the contractor, or performed and invoiced by any subcontractor in the subcontracting chain, up to the date of the proper invoice and not yet paid for by Her Majesty or that service provider.

Duty to pay

(2) Her Majesty or the service provider must pay the contractor for all of the construction work referred to in subsection (1) no later than the 28th day after the day on which the proper invoice is received.

Non-payment

(3) Despite subsection (2), Her Majesty or the service provider may decline to pay for some or all of the construction work referred to in subsection (1) if, no later than the 21st day after the day on which the proper invoice is received, Her Majesty or the service provider provides the contractor with a notice of non-payment.

No prior verification

(4) A proper invoice is not subject to any requirement respecting prior verification of the construction work.

Right to information — proper invoice

(5) On request, a contractor must inform any subcontractor in the subcontracting chain of the date on which Her Majesty or the service provider received a proper invoice from the contractor under subsection (1).

Contractor to Subcontractor

Duty to pay

10 (1) A contractor that is paid by Her Majesty or a service provider under subsection 9(2) must, no later than the 35th day after the day on which the proper invoice is received by Her Majesty or a service provider, pay each of its subcontractors for the construction work that they invoiced and that was covered by the proper invoice and paid for by Her Majesty or the service provider.

Partial payment

(2) For the purposes of subsection (1), if the contractor is only paid in part, it must distribute the amount received from Her Majesty or the service provider in the following manner:

(a) on a rateable basis, the contractor must pay any of its subcontractors whose construction work is not covered by a notice of non-payment provided under subsection 9(3) and may retain any amount owed to the contractor by Her Majesty or the service provider for any of the contractor's own construction work that is not covered by such a notice; and

(b) then, from any remaining amount and on a rateable basis, the contractor must pay any of its subcontractors whose work is partly covered by a notice of non-payment provided under subsection 9(3) and may retain any amount owed to the contractor by Her Majesty or the service provider for any of the contractor's own construction work that is partly covered by such a notice.

Non-payment

(3) Despite subsection (1), the contractor may decline to pay for some or all of the construction work if, no later than the 28th day after the day on which the proper invoice is received, the contractor provides the subcontractor with a notice of non-payment.

Subcontractor to Subcontractor

Duty to pay

11 (1) A subcontractor that is paid by a contractor under subsection 10(1) must, no later than the 42nd day after the day on which the proper invoice is received by Her Majesty or the service provider, pay each of its subcontractors for the construction work that they invoiced and that was covered by the proper invoice and paid for by Her Majesty or the service provider.

Partial payment

(2) For the purpose of subsection (1), if the subcontractor is only paid in part, it must distribute the amount received from the contractor in the following manner:

(a) on a rateable basis, the subcontractor must pay any of its subcontractors whose construction work is not covered by a notice of non-payment provided under subsection 10(3) and may retain any amount owed to the subcontractor by the contractor for any of the subcontractor's own construction work that is not covered by such a notice; and

(b) then, from any remaining amount and on a rateable basis, the subcontractor must pay any of its subcontractors whose work is partly covered by the notice of non-payment provided under subsection 10(3) and may retain any amount owed to the subcontractor by the contractor for any of the subcontractor's own construction work that is partly covered by such a notice.

Non-payment

(3) Despite subsection (1), the subcontractor may decline to pay for some or all of the construction work if, no later than the 35th day after the day on which the proper invoice is received, the subcontractor provides its subcontractor with a notice of non-payment.

Further application — subcontracting chain

(4) This section applies to any other subcontractor in the subcontracting chain, with any necessary modifications, so that

(a) any subcontractor that is paid under subsection (1) must pay its subcontractors no later than the 49th day after the day on which the proper invoice is received by Her Majesty or the service provider and those subcontractors must pay any of their subcontractors no later than the 56th day after the day on which the proper invoice is received and so on, in increments of seven days, until the end of the subcontracting chain; and

(b) any subcontractor that is paid under subsection (1) may decline to pay any of its subcontractors if it provides them with a notice of non-payment no later than the 42nd day after the day on which the proper invoice is received by Her Majesty or the service provider and those subcontractors may decline to pay any of their subcontractors if they provide them with a notice of non-payment no later than the 49th day after the day on which the proper invoice is received and so on, in increments of seven days, until the end of the subcontracting chain.

Holdback

Payment subject to holdback

12 (1) Any payment for construction work made to a party under subsection 9(2), 10(1) or 11(1) may be subject to a holdback provided for by the contract entered into between that party and the party that is to pay them.

Limit

(2) However, the amount of a holdback made under the contract cannot exceed what that amount would be if the holdback was made under the construction law of the province in which the construction project is located.

Payment of holdback

(3) The amount of the holdback must be paid by no later than the day on which that payment would be made under the construction law of the province in which the construction project is located.

Non-payment

Notice of non-payment

13 A notice of non-payment must include the following:

(a) a description of the construction work covered by the notice of non-payment;

(b) the amount that will not be paid;

(c) the reasons for the non-payment, including whether the party that must pay does not have the necessary funds to do so as a result of also receiving a notice of non-payment that covers the construction work referred to in paragraph (a); and

(d) any other information prescribed by regulation.

Interest on unpaid amounts

14 (1) Interest must be paid and begins to accrue on the following unpaid amounts from the expiry of the time limit for payment provided under this Act or, when applicable, the shorter time limit set out in the contract between the parties:

(a) any amount that is not covered by a notice of non-payment;

(b) any amount that is covered by a notice of non-payment, if the only reason for non-payment of that amount is that the party that must pay does not have the necessary funds to do so as a result of also receiving a notice of non-payment that covers the construction work that must be paid for; and

(c) any amount that is covered by a notice of non-payment, if there is a reason for non-payment of that amount other than the reason referred to in paragraph (b), but only for the portion of that amount that an adjudicator orders to be paid.

Applicable interest rate

(2) The interest rate applicable to the amounts referred to in subsection (1) is the rate prescribed by regulation or, if the contract between the parties sets out an interest rate, the greater of the rate prescribed by regulation and the rate set out in the contract.

Dispute Resolution

Designation

15 The Minister may, in accordance with any criteria prescribed by regulations, designate the Adjudicator Authority.

Adjudication

16 (1) If a contractor or subcontractor has not been fully paid for its construction work within the time limit for payment provided under this Act or, when applicable, the shorter time limit set out in its contract, that contractor or subcontractor may obtain from an adjudicator a determination respecting any dispute over the non-payment by the party that is to pay it under the contract.

Notice to other party

(2) A contractor or subcontractor that seeks to have the dispute referred to in subsection (1) determined by an adjudicator must provide the party that is to pay it under the contract with a notice of adjudication no later than the 21st day after the later of the following:

(a) the day on which the contractor receives a certificate of completion with respect to the construction project from Her Majesty or a service provider; and

(b) if any of its construction work is covered by the last proper invoice submitted with respect to the construction project, the expiry of the time limit provided under this Act for payment for that work.

Notice of adjudication

(3) A notice of adjudication must include the following:

(a) the names of the parties to the dispute;

(b) a brief description of the dispute, including details of how and when it arose;

(c) the amount requested to be paid;

(d) the name of a proposed adjudicator; and

(e) any other information prescribed by regulation.

Proposed adjudicator

(4) For the purposes of paragraph (3)(d), the name must be selected from a list of adjudicators established by the Adjudicator Authority and that selection cannot be restricted by contract.

Right to information – certificate of completion

(5) On request, a contractor must inform any subcontractor in the subcontracting chain of the date on which the contractor received a certificate of completion with respect to the construction project from Her Majesty or the service provider.

Joint appointment

17 (1) The parties to a dispute must jointly appoint an adjudicator to determine the dispute.

Request for appointment

(2) If the parties are unable to jointly appoint an adjudicator, either party may request that the Adjudicator Authority appoint an adjudicator for them.

Appointment

(3) On request, the Adjudicator Authority must appoint an adjudicator from a list of adjudicators it has established.

Consent

(4) The appointment of an adjudicator is subject to that adjudicator's consent.

Determination

18 (1) An adjudicator must, except in the cases provided for in the regulations, determine the dispute.

Determination binding

(2) The adjudicator's determination is binding on the parties to the dispute unless they come to a written agreement or the determination is set aside by a court order or arbitral award.

Authority of court or arbitrator

(3) Nothing in this Act restricts the authority of a court or of an arbitrator to consider the merits of a matter determined by an adjudicator.

Compliance with determination

19 (1) If a party that is to pay for construction work under its contract is ordered by the adjudicator to make a payment, the party must make the payment no later than the 10th day after the day on which it received the adjudicator's determination, or within any other time limit set out in the determination.

Filing of decision

(2) If the party that is ordered to make the payment fails to do so within the applicable time limit, the party that is to be paid may

(a) suspend further construction work without this constituting a breach of the terms of its contract; and

(b) file in the Federal Court or a superior court of a province, as the case may be, a certified copy of the adjudicator's determination within two years after the day on which that determination was received.

Effect of filing

(3) On the certified copy being filed, the determination becomes and may be enforced as an order of the Federal Court or superior court of a province, as the case may be.

Costs, fees and expenses

20 (1) Subject to subsection (2), each party to the adjudication must pay its own costs and an equal portion of the adjudicator's fees and expenses.

Exception

(2) If the adjudicator is of the opinion that a party has acted in an abusive, scandalous or vexatious manner or in bad faith, the adjudicator may order that party to pay some or all of the other party's costs or some or all of the other party's portion of the adjudicator's fees and expenses.

No summons

21 The adjudicator is not to be required to produce or give evidence in respect of any matter that comes to their knowledge as a result of exercising their powers or performing their duties or functions under this Act.

General Provisions

Regulations – Minister

22 The Minister may make regulations prescribing

- (a)** the information referred to in section 8 and the form and manner in which it is to be submitted;
- (b)** the form and content of a proper invoice and the manner in which it is to be submitted;
- (c)** the form and any additional content of a notice of non-payment and the manner in which it is to be submitted;
- (d)** the powers, duties and functions of the Adjudicator Authority;
- (e)** the eligibility and qualifications of individuals who may be designated as adjudicators;
- (f)** the powers, duties and functions of adjudicators;
- (g)** the maximum fees for the services of an adjudicator;
- (h)** the form and any additional content of a notice of adjudication and the manner in which it is to be submitted; and
- (i)** the procedure and time limits governing the adjudication.

Regulations – Governor in Council

23 The Governor in Council may make regulations generally for carrying out the purposes and provisions of this Act, including regulations prescribing

- (a)** criteria for the purpose of subsection 6(1); and
- (b)** in respect of any province, any days that are to be excluded from the computation of time for the purposes of the time limits referred to in sections 9 to 11.

Section 126 of Criminal Code

24 Section 126 of the *Criminal Code* does not apply to or in respect of any contravention or alleged contravention of any provision of this Act or its regulations.

Transitional Provision

Non-application for one year

25 For one year after the day on which this Act comes into force, this Act does not apply in respect of the following contracts to perform construction work:

(a) a contract entered into by a contractor, before the day on which this Act comes into force, with Her Majesty or a service provider; and

(b) a contract entered into by a subcontractor, before the day on which this Act comes into force or within one year after that day, with a contractor referred to in paragraph (a) or with any other subcontractor.

Coming into Force

Order in council

388 This Division comes into force on a day to be fixed by order of the Governor in Council.