

JC

**GOVERNMENT AMENDMENT**

Amendment A1 agreed to November 4, 2020

**AMENDMENTS TO BILL 37**

**BUILDERS' LIEN (PROMPT PAYMENT)  
AMENDMENT ACT, 2020**

The Bill is amended as follows:

**A** Section 10 is amended in the proposed section 24.1(1) by striking out "may" and substituting "must".

**B** Section 14 is amended by striking out the proposed Part 3 and substituting the following:

**Part 3  
Prompt Payment**

**Proper invoice**

**32.1(1)** For the purposes of this Part, "proper invoice" means a written bill or other request for payment for the work done or materials furnished in respect of an improvement under a contract if the written bill or request for payment contains the following information and, subject to subsection (4), meets any other requirements as may be specified in the contract:

- (a) the contractor's name and business address;
- (b) the date of the proper invoice and the period during which the work was done or materials were furnished;
- (c) information identifying the authority, whether in a written or verbal contract or otherwise, under which the work was done or materials were furnished;
- (d) a description of the work done or materials furnished;
- (e) the amount requested for payment and the corresponding payment terms broken down for the work done or materials furnished;

Le

- (f) the name, title and contact information of the person to whom the payment is to be sent;
  - (g) a statement indicating that the invoice provided is intended to constitute a proper invoice;
  - (h) any other information that may be prescribed.
- (2) A requirement to pay an amount in accordance with this Part is subject to any requirement to retain an amount according to Part 2.
- (3) Subject to subsection (4), a provision in a contract that makes the giving of a proper invoice conditional on the prior certification of a person or prior approval of the owner to give the invoice is of no force or effect.
- (4) Subject to the regulations, subsection (3) does not apply to a provision in a contract that provides for the testing and commissioning of the improvement or of the work done or materials furnished under the contract.
- (5) A proper invoice may be revised if
- (a) the parties to the proper invoice agree to a revision,
  - (b) the date of the proper invoice is not changed, and
  - (c) the proper invoice continues to meet the requirements referred to in subsection (1).
- (6) Subject to the regulations, proper invoices must be given to an owner at least every 31 days unless the contract includes a provision for the testing and commissioning of the improvement or of the work done or materials furnished under the contract and the conditions of testing and commissioning are not met.

**Payment deadline — owner to contractor**

- 32.2(1)** Subject to subsection (2), an owner who owes money under a proper invoice must pay the amount payable under a proper invoice no later than 28 days after receiving the proper invoice.
- (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

Je

after receiving the proper invoice, the owner gives the contractor a notice of dispute, in the prescribed form and manner, specifying the amount of the proper invoice that is not being paid and detailing all the reasons for non-payment.

(3) Subsection (1) continues to apply to any amount payable under the proper invoice that is not the subject of a notice of dispute under subsection (2).

**Payment deadlines — contractor to subcontractor**

**32.3(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 section 32.2(1) must, no later than 7 days after receiving payment, pay each subcontractor the amount payable to the subcontractor for the work done or materials furnished under a subcontract with the contractor that were included in the proper invoice.

(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 must, no later than 7 days after receiving payment, pay each subcontractor the amount paid by the owner for the work done or materials furnished under a subcontract with the contractor that were included in the proper invoice.

(3) For the purposes of subsection (2), if more than one subcontractor is entitled to payment, payment must be made in accordance with the following rules:

- (a) if the amount not paid by the owner is specific to the work done or materials furnished by a particular subcontractor or subcontractors,
  - (i) the other subcontractors must be paid, and
  - (ii) any amount paid by the owner with respect to the subcontractor or subcontractors who are implicated in the dispute mentioned in section 32.2(2) must be paid to the subcontractor or subcontractors on a proportionate basis, as applicable;
- (b) in any other case, all subcontractors must be paid on a proportionate basis.

JC

(4) Subject to subsection (5) or (6), as the case may be, if the owner does not pay some or all of the amount payable under a proper invoice within the time specified in section 32.2(1), the contractor must, no later than 35 days after giving the proper invoice to the owner, pay each subcontractor the amount payable to each subcontractor for the work done or materials furnished under a subcontract with the contractor that were included in the proper invoice to the extent that the contractor was not paid in full under subsection (2).

(5) Subsection (4) does not apply in respect of a subcontractor if, no later than the date specified in subsection (7), the contractor provides to the subcontractor the following:

- (a) a notice of non-payment, in the prescribed form and manner,
  - (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, and
  - (ii) specifying the amount not being paid;
- (b) an undertaking to refer the matter to adjudication under Part 5 no later than 21 days after giving the notice to the subcontractor;
- (c) a copy of any notice of dispute given by the owner under subsection 32.2(2).

(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) or (2), 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 the reasons for non-payment.

(7) For the purposes of subsections (5) and (6), the contractor must give notice no later than

- (a) 7 days after receiving a notice of dispute from the owner under subsection 32.2(2), or

le

(b) if no notice was given by the owner, before the expiry of the period referred to in subsection (4).

(8) Subsections (1) and (2) apply, with necessary modifications, in respect of any amount that is the subject of a notice of non-payment under subsection (5), once the amount is paid by the owner.

**Notice of non-payment**

**32.4(1)** Subject to the regulations, a contractor who receives a notice of dispute under section 32.2(2) must, without delay, advise its subcontractors of the receipt of that notice.

(2) Subject to the regulations, a subcontractor who receives a notice of non-payment under section 32.3(6) must, without delay, advise its subcontractors of the receipt of that notice.

**Payment deadlines — subcontractor to subcontractor**

**32.5(1)** Subject to subsection (7), a subcontractor who receives full payment from a contractor in respect of a proper invoice within the time specified in section 32.3(1) must, no later than 7 days after receiving payment, pay each subcontractor the amount payable to the subcontractor for the work done or materials furnished under a subcontract between them that were included in the proper invoice.

(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 must, no later than 7 days after receiving payment, pay each subcontractor the amount paid by the contractor for the work done or materials furnished under a subcontract between the subcontractor and the other subcontractors that were included in the proper invoice.

(3) For the purposes of subsection (2), if more than one subcontractor is entitled to payment, payment must be made in accordance with the following rules:

(a) if the amount not paid by the contractor is specific to the work done or materials furnished by a particular subcontractor or subcontractors,

(i) the other subcontractors must be paid, and

ll

- (ii) any amount paid by the owner with respect to the subcontractor or subcontractors who are implicated in the dispute mentioned in subsection 32.2(2) must be paid to the subcontractor or subcontractors on a proportionate basis, as applicable;
  - (b) in any other case, all subcontractors must be paid on a proportionate basis.
- (4) Subject to subsections (6) and (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 32.3(1), the subcontractor must, no later than the date specified in subsection (5), pay each subcontractor the amount payable to each subcontractor for the work done or materials furnished under a subcontract with that subcontractor that were included in the proper invoice to the extent that the subcontractor was not paid in full under subsection (2).
- (5) For the purposes of subsection (4), the subcontractor must pay the amounts no later than
- (a) 7 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.
- (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, the following:
- (a) a notice of non-payment, in the prescribed form and manner,
    - (i) stating that some or all of the amount payable to the subcontractor is not being paid within the time specified in subsection (5) due to non-payment by the contractor, and
    - (ii) specifying the amount not being paid;

LC

- (b) unless the failure of the contractor to pay is as a result of non-payment by the owner, an undertaking to refer the matter to adjudication under Part 5 no later than 21 days after giving the notice to the subcontractor;
- (c) a copy of any notices of dispute or non-payment, as the case may be, received by the subcontractor in relation to the proper invoice.

(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) or (2), 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 the reasons for non-payment.

(8) For the purposes of subsections (6) and (7), the subcontractor must give notice no later than

- (a) 7 days after receiving a notice of non-payment from the contractor under section 32.3(5) or (6), or
- (b) if no notice was given by the contractor, before the expiry of the period referred to in subsection (5)(b).

(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.

(10) On the request of a subcontractor who is required to make payments in accordance with this section, a contractor must, as soon as possible, provide to the subcontractor confirmation of the date on which the contractor gave a proper invoice to the owner.

(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 work done or materials furnished.

*de*

**Interest on late payments**

**32.6** Interest begins to accrue in accordance with the prescribed rates on any amounts included in a proper invoice that are unpaid and due.

**No effect on wages**

**32.7** Nothing in this Part in any way reduces, derogates from or alters the obligations of a contractor or subcontractor to pay wages to an employee as provided for by statute, contract or collective bargaining agreement.