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New *Construction Lien Act* – Countdown to the Reveal

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Within the next 7 days, Ontario will unveil significant changes to the *Construction Lien Act*, which have been more than two years in the making. The Act, to be renamed the *Construction Act*, will shift the focus of the legislation from primarily being on security of payment, to an intended balance between security of payment and efficient dispute resolution.

The new Act is expected to introduce prompt payment provisions, which require an owner to pay a contractor within 28 days of receipt of a proper invoice, and for a contractor to pay its subcontractors within 7 days of receipt of funds from the owner.

To give teeth to the prompt payment provisions, the new Act is also expected to introduce "Adjudication" of disputes. Adjudication, present in the UK, but largely unknown in the North American construction industry, is intended to be a swift and flexible dispute resolution mechanism. Procedurally, it will bear some resemblance to an arbitration proceeding, though with a strict deadline of 42 days from notice of dispute to the issuance of an "interim, but binding" decision. The decision will be "interim" in that the issue that is determined through adjudication can still be the subject of a subsequent legal proceeding or arbitration (and a different conclusion reached). The decision will be "binding" in that it can be enforced like an arbitral award. Adjudicators will not necessarily have legal training, but will have to be industry professionals (e.g. lawyers, architects, engineers, accountants, quantity surveyors). The intention is that the "type" of adjudicator chosen will be determined by the issue in dispute. Adjudicators will have to complete a standardized training course before they can act as such.

The concept of the lien remedy and breach of trust remedy (which can allow a claimant to pierce the corporate veil) will likely both remain intact from the existing Act. Regarding the lien remedy, welcome extensions of the time to preserve a lien (up to 60 days from 45) and to perfect a lien (up to 90 days from 45) are likely.

The devil will be in the details, which the Province has promised to present for first reading "before June", and should be law by the end of the year. The last major overhaul of the Act took

place in 1983.