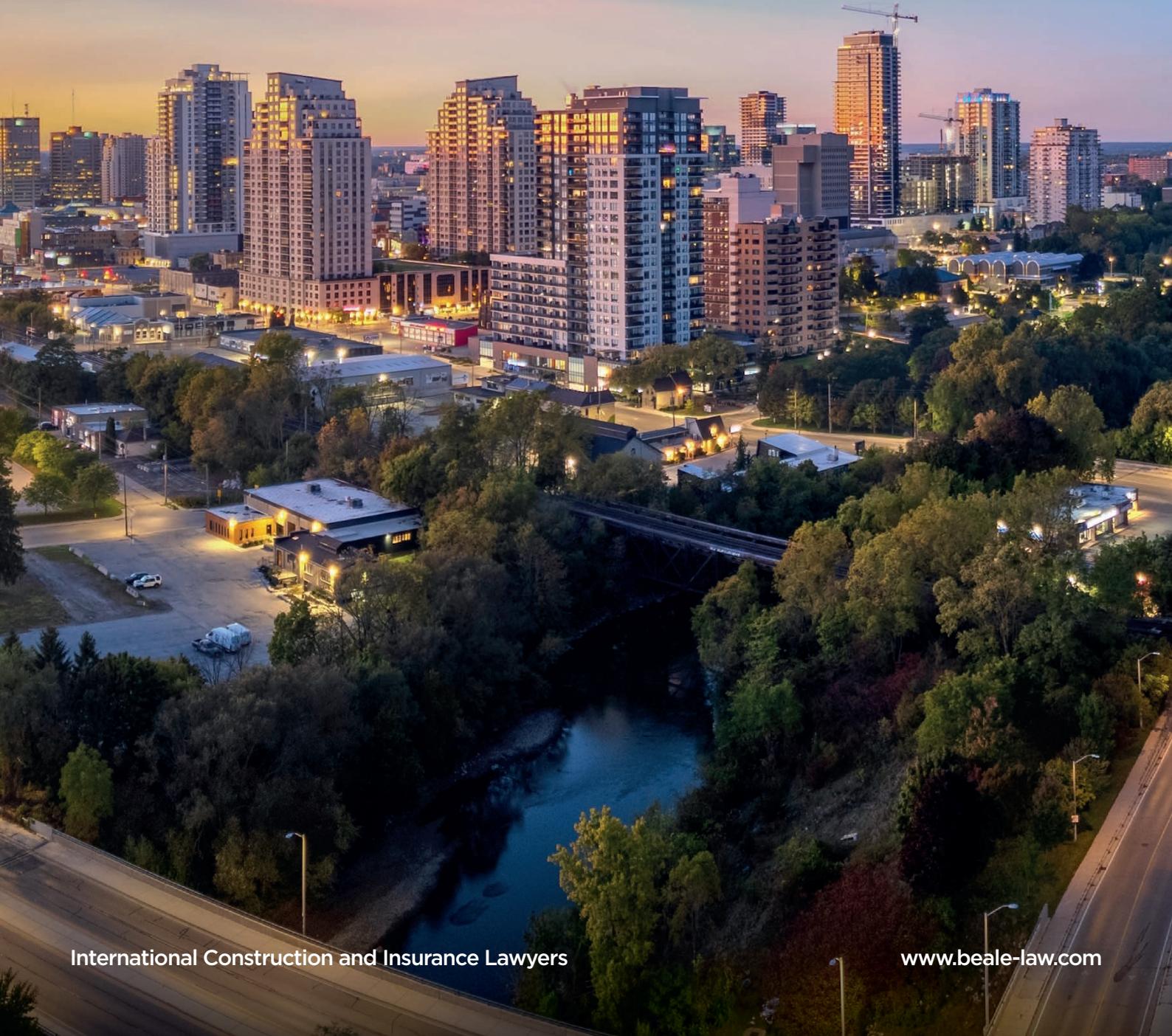


BEALE&CO

# ONTARIO'S CONSTRUCTION ACT

Another year, another amendment to Ontario's Construction Act:  
a comprehensive guide to changes effective **1 January 2026**



## INTRODUCTION

After several years of proposals, discussions, and more proposals, the latest round of changes to the Construction Act are officially in force as of 1 January 2026.

The changes fall into four categories:

### 1

#### HOLDBACK

- Holdback must be released annually, subject to limited or temporary exceptions.
- Holdback funds are trust funds.

### 2

#### ADJUDICATION

- Private adjudicators can conduct adjudications under the Act, so long as prescribed conditions are met.
- Adjudication may commence up to 90 days after the contract is completed, abandoned, or terminated.
- Adjudicators can rule on their own jurisdiction.

### 3

#### TRANSITION

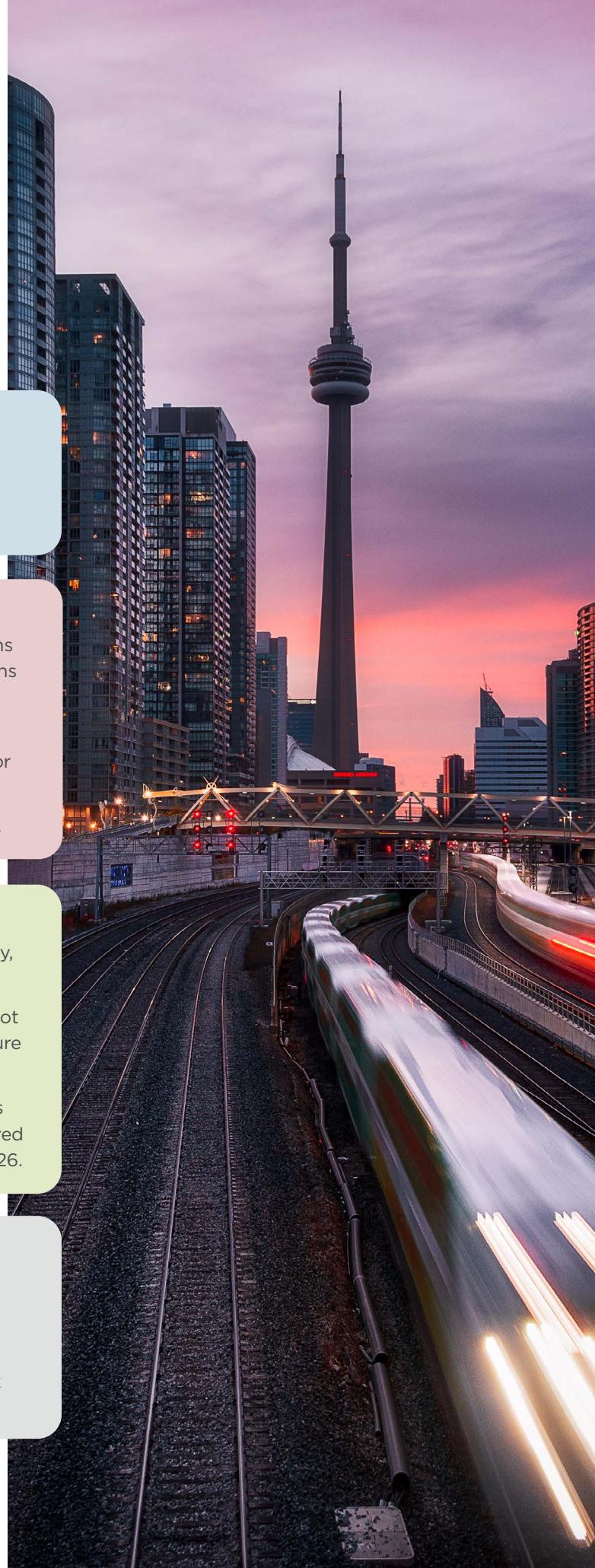
- The amendments come into force immediately, with limited exceptions.
- Mandatory annual release of holdback does not apply to certain prescribed public infrastructure projects.
- Mandatory annual release of holdback applies on the second anniversary for contracts entered into after 1 July 2018 and before 1 January 2026.

### 4

#### EVERYTHING ELSE.

- An invoice is a “proper invoice” unless the owner objects.
- Lien and trust claims can be joined.
- Lien rights are available to designers for work on improvements that are not commenced.

In this document we discuss each of the changes, and how they impact your contracts.



## BACKGROUND

Changes to the Construction Act have been contemplated since 2024.

First, Bill 216, An Act to implement Budget measures and to enact and amend various statutes, received Royal Assent on 6 November 2024. Included in Schedule 4 were the proposed changes to the Construction Act. Bill 216 contained the majority of changes discussed below.

Bill 60, Fighting Delays and Building Faster Act, 2025, followed and received Royal Assent on 27 November 2025. Included in Schedule 2 were further changes to the Construction Act, including revisions to those proposed in Bill 216.

Finally, in August 2025 amendments to the regulations to the Construction Act were proposed, and Order In Council 1523/2025 was released 27 November 2025, bringing the amendments to the regulations into force on 1 January 2026.

## HOLDBACK MUST BE RELEASED ANNUALLY

Holback is a point of confusion for many owners, contractors, and subcontractors. The recent changes to the holback regime are designed to provide greater clarity.

Previously, holback was intended to be paid after the expiry of the lien period, usually 60 days after the contract is complete. However, the Construction Act also included provisions for a phased release of holback for certain projects and gave payer's the ability to withhold holback under certain circumstances.

Now, holback is due to be paid annually. Provisions related to the phased release and withholding of holback have been revoked.

Mandatory annual release works like this: on the first anniversary of the contract, the owner has 14 days to publish a notice of annual release of holback. After expiry of the lien period the owner has an additional 14 days to pay all accrued holback up to the date of the first anniversary. In turn, the contractor then has 14 days to pay all accrued holback to its subcontractors.

Holback may only be withheld if a lien has been preserved and not otherwise discharged or satisfied.

All participants on a construction project should be aware of and prepare for these changes to holback

release, particularly accounting for how the changes will impact annual cash flow.

## HOLDBACK FUNDS ARE TRUST FUNDS.

The Construction Act creates a statutory trust in favour of payees who are owed funds by the payer above them in the construction pyramid. For example, if a contractor receives payment from the owner to pay its subcontractors, that payment amount constitutes a trust fund for the benefit of the subcontractors. In that situation, the contractor has an obligation not to use those funds for any purpose other than paying the subcontractors until the subcontractors are paid. If the contractor misuses the funds, the contractor is liable for breaching the trust and its directors and officers can incur personal liability.

It was previously understood that holback funds were trust funds for the purposes of the Construction Act's trust regime, however, the amendments now make that explicit.

## ADJUDICATION

Changes to the adjudication regime are largely procedural but are important for construction industry stakeholders.

### SCOPE OF ADJUDICATION

Adjudication was previously limited to the "matters" set out in s. 13.5(1). The "matters" were rigid, and many disputes arose about an adjudicator's ability to consider ancillary aspects of the dispute. Now, the list of "matters" has been moved to the revamped regulation and permits an adjudicator to consider the scope of work under the contract and any request for change in contract price or time, if such a determination is necessary to make a determination. In short, an adjudicator's ability to consider necessary matters related to the dispute, like the scope and price of the contract, is more robust.

### TIME FOR ADJUDICATION

Adjudication was previously unavailable after a contract or subcontract was complete. This led to many disputes about whether a contract was in fact complete and whether adjudication was available if a contract was terminated. The amendments now provide that adjudication is available up to 90 days after the contract is completed, abandoned, or terminated, unless the parties agree otherwise. This amendment brings the

adjudication deadline into closer alignment with the others in the Construction Act.

## JURISDICTION

Many disputes were brought to the courts about the jurisdiction of adjudicators to make certain decisions, including whether they could make a ruling about his own jurisdiction on a motion before rendering a determination. Adjudicators are now expressly empowered to decide questions about the scope of their own authority, including whether they can proceed with an adjudication and whether they have acted beyond their mandate. The court recognised that adjudicators always had this power, but now the power is explicit.

Even more disputes came before the court about a party's ability to raise questions of jurisdiction, and the timing of those challenges. Now, the right of a party to raise jurisdictional issues is codified, but it must be done promptly. If not, the adjudicator may extend the time to make such an objection.

## JUDICIAL REVIEW

Parties to adjudications are often surprised to learn that an adjudicator's determination cannot be appealed. Instead, determinations may only be set aside on judicial review where there is a breach of procedural fairness on one of the grounds set out in s. 13.18(5). To do so, a party must first seek leave to bring the judicial review application within 35 days after the determination is communicated to the parties, rather than 30 days under the old regime.

Responding to the uncertainty created by importing the possible reasons for judicial review from the Arbitration Act into the Construction Act, the allegation that a contract or subcontract is "invalid or has ceased to exist" is no longer a ground on which a determination may be set aside. Per Pasqualino, a contract cannot cease to exist even if terminated because the parties acquire rights during the performance of the contract that can survive termination.

Further, and related to the discussion of jurisdiction above, where a party makes an allegation of procedural unfairness that could have been raised as a jurisdictional objection during the course of the adjudication, the court can set aside the determination only if it is satisfied that the party's failure to make the objection earlier is justified. This change ensures parties take breaches of

procedural fairness and natural justice seriously in the first instance and should deter parties from raising new arguments on judicial review.

## OTHER CHANGES

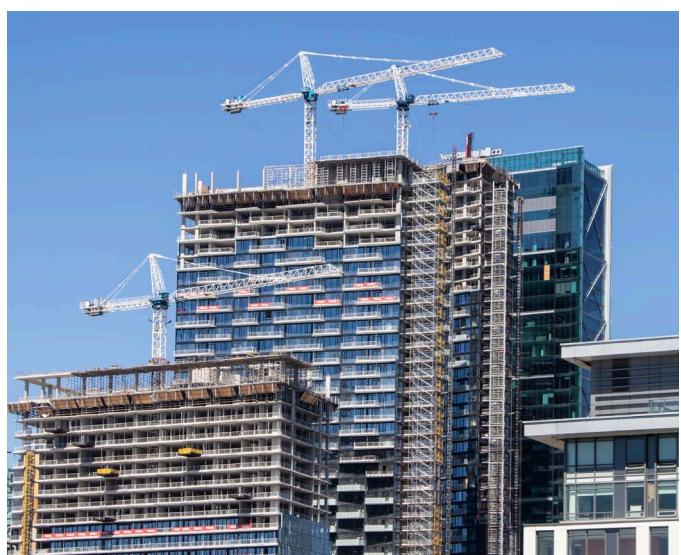
While previously only ODACC registry adjudicators could be appointed, the Act now provides for the appointment of a "private adjudicator" as agreed between the parties. All private adjudications must have a minimum hourly rate of \$1,000.

If an adjudicator determines that one party shall pay the other, that payment is due within 15 days of the determination, rather than the previous 10 days.

While parties generally bear their own costs of adjudication, the Construction Act is now amended to allow an adjudicator to award costs if a party's conduct in the adjudication is frivolous, vexatious, an abuse of process, or other than in good faith. Previously, the Act provided that costs could only be awarded if a party's conduct was as described with respect to the improvement, fixing what was a significant drafting error.

ODACC will now publish all adjudication determinations. The determinations may be anonymized, subject to the position of the parties.

With these changes to the adjudication regime, parties should expect more flexibility from adjudicators in rendering determinations, an incentive on raising jurisdictional questions early, and clarity with respect to the costs of adjudications.





## TRANSITION PROVISIONS

The changes to the Construction Act are effective immediately, with limited exceptions.

Procurement processes entered into before 1 July 2018, and the contracts associated with those procurement processes, continue to be governed by the Construction Lien Act.

For contracts entered into on or after 1 July 2018 but before 1 January 2026, annual release of holdback only applies on the second anniversary of the contract following 1 January 2026.

For example, if a contract was entered into on 30 July 2025. The second anniversary of the contract is 30 July 2027, at which time the owner must pay all holdback accrued before that date (subject to the processes set out in s. 26). In such cases, the first annual release of holdback will be a significant sum, and owners should prepare cash flow projections accordingly.

Certain prescribed public infrastructure project agreements entered into prior to 1 January 2026 between the Crown, a municipality, or a broader public sector organisation and a special purpose entity are not subject to the mandatory annual release of holdback amendments. These projects include the Ontario Line and the Scarborough Subway Extension, among others.

## OTHER AMENDMENTS

A variety of other changes are relevant for industry stakeholders, including:

- An invoice is a “proper invoice” unless the owner objects within seven days of receipt and details the deficiencies;
- A lien claim may be joined in the same proceeding as a claim for breach of trust;
- A “written notice of lien” now includes the copy of the lien registered or given, not just the prescribed form; and,
- Designers and planners have lien rights if the owner retains holdback after 1 January 2026 and the planned improvement is not commenced.

## CLOSING THOUGHTS

Changes to the Construction Act are welcome. They are designed to improve cash flow, create predictability in payment schemes, and clarify previously confusing procedural pitfalls in adjudications. Stakeholders can look forward to a more streamlined framework for prompt payment and adjudication.

The Construction Act remains a difficult regime to navigate, particularly the transition provisions, but Beale & Co in Toronto is available to assist. If you have any questions regarding the information discussed in this article, or for practical, timely guidance on protecting your interests, please contact Dylan Dilks and the team at Beale & Co Toronto.

## FIND OUT MORE

If you have any questions regarding the information discussed in this article, or for practical, timely guidance on protecting your interests, please contact:



**Andrés Durán**  
Partner (Qualified in  
Ontario and British Columbia)  
+1 437 900 7471  
a.duran@beale-law.com



**Dylan Dilks**  
Senior Associate  
(Qualified in Ontario)  
+1 437 900 7474  
d.dilks@beale-law.com

