

# Prompt Payment In Person Session Stakeholder Summary – January 2020

By Session – top selected topics of importance by participants

Gallery Walk Topic Categories	Added Topics	Edmonton Session 1 Importance	Edmonton Session 2 Importance	Calgary Session 1 Importance	Calgary Session 2 Importance
Adjudication & Enforcement		10	11	15	9
Bonding		0	0	1	2
Holdbacks		3	11	8	1
Interprovincial Rule Harmonization		6	1	0	0
Modernizing Lien Provisions		12	11	8	5
Prompt Payment		10	13	18	8
Reform of Trust Remedies		0	1	0	0
Transparency		1	3	0	5
Contract Close out	E1	6			
Public Works Act	C1/C2			1	3
Consultants	E2/C1		3	0	
Modernizing Court Proceeding Rules	C2				0

## Participant suggested solutions for top 4 selected topics



### Adjudication suggested solutions

- Limit adjudication issues of payment
- Don't duplicate existing dispute resolution different disputes require different expertise
- Explicitly add issue of whether a proper invoice to the list of what can be adjudicated
- Board could define rules Adjudicators appointed (e.g. could be retired lawyers or consultants)
- ANA vs multiple ANB's
- Process should have well defined governance to ensure timely/nimble response
- Require a government or non government (preferred) nominating authority for Adj training/ accredited/governance-complaint process/code of conduct/administration/assignment
- Enforcement - An adjudicators decision is payable in 10 days If not paid, the winning party files the adjudicators decision with the court which automatically turns into a court order to pay
- The winning party can stop work, be entitled to demo/reno cost without defaulting their contract
- Could create many issues -use a streamlined court process like family law
- ANA (Authorized Nominating Authority) - think about sharing in an extra ANA to make things cost effective

Sessions were held in Edmonton (January 14) and Calgary (January 24) with attendees represented from the following industry groups:

- General Contractor
- Trade Contractor
- Supplier
- Developer/ Owner
- Professional/Consulting
- Government
- Municipality
- University/College
- School Board / Schools
- Health Facilities



### Prompt Payment suggested solutions

- Define Proper Invoice, ensure invoice included legal name, address, gst #
- Put guidance in the legislation re: timelines (apply by sector) which would then allow flexibility in contract (timelines built directly there)
- Amend with "pay when paid" clauses (except under defined circumstances)
- Let parties determine payment periods
- Electronic Funds Transfer - Modernization/automation can help
- Establish quality assurance/quality control for interim payment with progress materials on site and inspection acceptance completion = confirmation and certification



### Holdbacks suggested solutions

- Reduction to 7.5% - incurred minus 10% doesn't make sense
- Establish reasonable timelines for release of holdback to specific work on project based on milestones
- Holdback amount negotiated per contract - min legislated Drop dollar amount of holdback upon milestone completion
- Redefine/eliminate purpose of holdback-contractors are financing projects, currently paid for costs
- Should include progressive/phased/annual release
- Industry specific holdbacks to enable different lien periods (ex concrete strength 50-60 days)
- Separate Holdbacks for deficiencies/seasonal work & clear definitions
- Clarify holdback obligations for insurance work
- Longer holdback period
- Same as for oil & gas and construction - Longer holdback period
- With greater transparency, holdback become less necessary
- Mandatory Release/Progressive Release
- Holdback accounts-not trust
- Review Holdback amounts-potential to reduce or eliminate
- Modernize stat Dec's with respect to holdbacks
- Clarify alternative forms of holdbacks-i.e. letter of credit/bondA bond in lieu of cash could improve cash flow
- Holdback account created by owner and managed by owner and GC
- Interest on overdue payments Lien - Holdbacks could be used for Contractor Payments
- Eliminate minor lien holdbacks

### Modernizing Lien Provisions suggested solutions

- Better timelines - 45 days too short a period in this economy - make 90 days for all
- 120 is needed to allow for some time to try resolution first and lien as a last result. This may actually expedite process & save relationships
- Modified BLA could be the solution with out prompt payment
- 90 day lien period more realistic to reflect current practices
- Increase minimum \$ threshold
- Revisit definitions to add clarify i.e. add demolition as "improvements"
- Better justification/proof to file lien with consequences for liens proven to be frivolous consider test to validate lien filing
- Better proof to remove lien by other than lienholder
- Change time clock to job completion-to facilitate project being sold and interests being promoted
- Lien goes on as soon as projects starts and removed upon payment
- Extend or eliminate timeline & consistent for all"
- Online registry that flags addresses, Searchable, Link to timeline, Real time info
- Transparent to other jobs, more detail/detriment from vexatious liens
- Eliminate the requirement to be physically on site
- Strengthen progressive release provisions

