



Prompt Payment Stakeholder Online Survey Text Response Summaries (Feb-May 2020)

Topic	Summary What We Heard	Common Concerns	Common Proposed Options
General Comments	<ul style="list-style-type: none"> • Consultation needs to be explicitly included • Lien period is too short in the current economic environment • Residential liens have little to no effect as homeowners are not planning on moving or financing • Large companies tend to control the pace of payment and there needs to be better ways that that smaller companies have recourse for payment • Legislation cannot be overly complicated and create more or new problems • Where possible enable technology or automation 	<ul style="list-style-type: none"> • There is no current provision to dispute an invoice without the risk of a lien • Ruining business relationships by filing liens and getting blacklisted • Lack of understanding on proposed changes • Current resolution time takes too long if it goes to court • Any new legislation will create limitations and lower potential opportunity 	<ul style="list-style-type: none"> • Following the implementation of prompt payment, lien holdback should be phased out • Change work needs to be considered when adopting prompt payment • Modernize the builder's lien act first and then enact Prompt Payment after thorough review of other jurisdictions
Program Governance	<ul style="list-style-type: none"> • All aspects of adjudication governance decision making should be made by an Arm's length government controlled agency, board or commission • Courts have a role if there is review or appeal of adjudication decision • Government should be involved in establishing monetary limits for disputes • Adjudicators should have knowledge of contract law, practical experience of different levels of industry including both project size and roles within industry • Need to have training program and additional professional development requirements for all adjudicator • Adjudication timeline should ideally take up to 22 days • Decisions are binding with potential for one appeal/review 	<ul style="list-style-type: none"> • Potential for adjudicators to have conflict of interest • Adjudicators without the proper training/knowledge will lack the ability to make impartial decisions 	<ul style="list-style-type: none"> • All parties should be allowed to start adjudication process • Adjudicators should be ranked by level of knowledge and experience • Courts/governing body appoint an adjudicator if one cannot be agreed upon by involved parties • Create a dispute resolution process

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<p>Prompt Payment n=794</p>	<ul style="list-style-type: none"> • Overall Prompt Payment should apply to all construction projects • All projects/people should benefit from prompt payment • A Proper Invoice should initiate prompt payment • The proper invoice should include Contractor’s name address, date and period of services, amount payable and where payment should be sent • Ideally a proper invoice would also include the GST #, purchase order, change orders • Payment should be due within a 28-30 day window. It is important to ensure the date is within the right to lien period (45 days) • Many corporations work across provincial borders so harmonizing with other provinces would be beneficial • Contracts should not be able to waive or negotiate around Prompt Payment Rules • Some flexibility is required however it would require all parties to agree in writing in advance • Strict rules need to be in place for Set-Off allowances-potentially only within current stages of project and not across other contracts • Interest penalties should be included but allow for parties to contract different requirements if needed • Interest is the only real consequence of late payment if the amount is significant • Definitions/guidelines around partial payment provides stability to the sub-contractors • Solely relying on contracts ensures that the owner writes the contract in their own best interest • Legislation will provide consistency, and rules that everyone has to follow • Majority of responses believe “Pay when Paid” clauses need to be eliminated and to use legislation to do so 	<ul style="list-style-type: none"> • Proper Invoice will be too complicated or difficult to complete • Invoices will be rejected to delay payment/project • Timelines not compatible with financing and draw process • Setting arbitrary thresholds may exclude business’s from the process • The cost of process may be too high on small contracts/business • Government involvement will take away freedom of contract • General Contractors would not pay or delay payment if they are able to waive rules • Set off could penalize other parties because of deficiencies out of their control • How will interest penalties be enforced • Without legislation contracts can be written to the detriment of the non-owner • General Contractors are concerned they will go out of business if “Pay when Paid” clauses are eliminated • Government should not be involved and it will only cause more issues/delays with legislation 	<ul style="list-style-type: none"> • Build it into individual contracts-this is a solution to all questions asked about prompt payment • Government contracts have to be bound to specific rules • Private sector retains the freedom to contract so they can work around financing • Do not adopt prompt payment • Waiving of rules should be permitted under strict guidelines i.e. financial draws • If bonding is in place allow for more options to negotiate • Ability to negotiate for better/quicker terms i.e. bonus for early finish • Legislation sets maximum and minimum interest amount, freedom to contract within those ranges • Interest provisions similar to Ontario • Allow for a grace period before interest accrues • Prompt payment should not allow partial payment 28 days should be enough time to complete full payment • Use contract only to define payment timelines and then adjudication for delays • Prompt Payment will alleviate the problems with “Pay when Paid” • If there was more transparency when contractors are paid, subs would be more comfortable with the ‘pay when paid’ clause • Create a timeline for ‘pay when paid’ that falls within current lien timeline

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<p>Modernizing Lien Provisions n=629</p>	<ul style="list-style-type: none"> • Overall need to have more clearly defined definitions for current terms • Visit current BLA forms and make them more user friendly. There should be periodic review of the minimum lien amounts • Lien amounts that fall under the jurisdiction of the Provincial Court should be able to be adjudicated there • Extend the period to allow up to 90 days to file a lien • Extending lien periods allow for more time for parties to negotiate • The lien period needs to work within parameters of Prompt Payment • Fee structure should be reviewed and kept cost effective but an amount that deters frivolous liens • Lienor should be able to recover the cost of filing the lien • If the time to commence court action is shortened, resolution will be faster 	<ul style="list-style-type: none"> • 45 days to file a lien can damage a business relationship and cause trade to not be hired or at worst blacklisted • Extending the lien period will only extend the amount of time it takes to get paid-will not make pay happen faster • Frivolous/vexatious liens are common and can stall project financing • 180 days is too much time to commence an action 	<ul style="list-style-type: none"> • Allow a 60 to 90 day lien period • All sectors should have the same amount of days • Impose penalties for frivolous liens • Incremental increase tied to amount being liened • Continue with a flat fee to keep simple

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Adjudication n=407	<ul style="list-style-type: none"> • Support Arm’s length government controlled agency, board or commission to oversee all aspects of adjudication • GoA ministry was the alternate choice for adjudication governance and oversight • Majority believe a claim can be initiated by any party involved with contract • Experience in construction industry is required to qualify as adjudicator • Parties mutually decide on adjudicator within 4 business days • If unable to agree on adjudicator one is appointed within an additional 4 days • Appointed adjudicator must receive documents within 7 days and make their decision within 7 • From appointment to decision should be a maximum 22 days • Adjudicator’s decision should carry the same weight as a court decision • 	<ul style="list-style-type: none"> • Concern that adjudicators will remain unbiased • Stakeholders within the construction industry are known to each other which could create conflict of interest for adjudicators • Could create more costs to the industry, (payment for adjudicators, recertification and professional development costs, delays in contract (penalties)) 	<ul style="list-style-type: none"> • Periodic recertification with requirement for ongoing professional development • Have levels/ranking of adjudicators that can be appointed based on scope of claim • Create dispute resolution process • Desire a minimum timeline for adjudicator decision within 12 days and maximum timeline to decisions 86 days • One appeal process/then appeal decision is binding • Do not use adjudication-continue to use contracts
Holdbacks n=633	<ul style="list-style-type: none"> • Majority of responses concurred current 10% holdback is sufficient • Contracts can be adequate for holdbacks but some guidelines for deficiency holdbacks in contracting would be beneficial, guidelines would need to be determined • Majority of respondents indicated they do not use BLA minor or major lien funds for holdbacks • Timelines for release of holdbacks do not work and create cash flow problems • Holdbacks and lien funds are being misused and giving too much power to General Contractors • System needs to be simplified 	<ul style="list-style-type: none"> • Contractor’s holdback money arbitrarily • The amount of the Holdback substantially is often more than the cost of deficiencies • Lien holdback is often used as a deficiency holdback 	<ul style="list-style-type: none"> • Use a 3rd party to determine the value of deficiencies • Create an industry standard (e.g. set to the cost of deficiencies plus a set %) • Deficiency holdbacks should be dealt with progressively • Use progressive release of holdback as project advances • Holdback should relate the trade specific completion not entire project • Require funds to be put in a trust account • Extend lien period to 90 days

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Transparency n=480	<ul style="list-style-type: none"> • Transparency issues arise mostly in commercial industry • Publication/Notification when funds are released-electronically and available on the job site • Required to be industry wide not just on publicly funded projects • Ensure that website/phone number can give trade specific answers not just that an invoice had been paid 		<ul style="list-style-type: none"> • Consider using a third party method that confirms that General contractors get paid • Legislated communication guidelines • Standardized Payment rules
Bonding n=425	<ul style="list-style-type: none"> • Public projects should be bonded • Bonding should be decided by owner/general contractor • Value of contract/project should determine whether bond is required • \$500,000 is the suggested threshold • Risk and duration should also be considered in necessity to bond • Bonds should not affect ability to adjudicate • Bond claim should have no effect on trust remedies • Bond claims should not affect ability to file a lien • Bonding should be treated one of numerous remedies to collect payment 	<ul style="list-style-type: none"> • Eliminated non-bondable workers from the workforce • Bonding increases project costs • Too much of a cost on small projects • Restricts small/new businesses from growing 	<ul style="list-style-type: none"> • Should be required for all public work • Follow Ontario's model for bonding threshold • Bonding required only if requested • If bond is paid, the amount should offset adjudicated amounts • A filed lien should freeze the bond
Reform of Trust Remedies n=309	<ul style="list-style-type: none"> • If trust remedies remain in legislation they need to be strengthened with more accountability and consequences • Clarify the current legislation so there is better understanding among industry 	<ul style="list-style-type: none"> • Current trust provisions are not being used as intended 	<ul style="list-style-type: none"> • Do not remove trust provisions • Specific trust accounts, protects from outside contractors
Interprovincial Rule Harmonization n=332	<ul style="list-style-type: none"> • Consider what other jurisdictions do, and align where it is beneficial but ensure Alberta interests are protected • Harmonization makes it easier and less complicated for companies that work in other provinces to work in Alberta or across Canada 	<ul style="list-style-type: none"> • Different challenges in different regions/industry can make aspects of harmonization unfair • If it makes legislation more stringent companies may not want to work in Alberta 	<ul style="list-style-type: none"> • Harmonize to the point where Alberta standards are the minimum
Statutory Declarations	<ul style="list-style-type: none"> • Statutory declarations are constantly being signed falsely regarding completion of payments • Need to be enforceable-strengthen legislation and with increased accountability by the initiator • Increased transparency could resolve issue statutory declarations 	<ul style="list-style-type: none"> • If contract has 'pay when paid', statutory declarations cannot be sworn honestly 	<ul style="list-style-type: none"> • Relying on the criminal code for false affidavits • Enforce fines for false affidavits • Legislate better trust conditions and eliminate statutory declarations