

Prompt Payment

In the Construction Industry

Service Alberta

10:00 AM June 24th, 2020



Alberta

Welcome/ Opening Remarks

<u>Time Allocated:</u>	<u>Agenda Topics</u>	<u>Lead</u>
120 minutes		
10 minutes	Welcome and Introductions	Richard Schlachter
10 minutes	Meeting Facilitation	Scott Vaughan
20 minutes	Presentation of Topic Areas/Discussion Statements <ul style="list-style-type: none"> • Prompt Payment • Adjudication & Governance • Modernizing the Builder's Lien Act • Holdbacks & Transparency 	Curtis Woollard
10 minutes	Explanation of Break-out Rooms	Scott Vaughan
60 minutes	Break-out Room Discussions	All
10 minutes	Reconvene as Large Group and Next Steps <ul style="list-style-type: none"> • Next meeting: June 30 Session Three - Alignment discussions 	Scott Vaughan
5 Minutes	Closing Remarks	Richard Schlachter



Alberta

Purpose of Today and Upcoming Meeting

Session 2 & 3

Session Today - June 24

- ▶ *Present topic areas with corresponding proposed discussion statements with (via infographics)*
- ▶ *Discuss the topic areas with proposed discussion statements (via break-out groups), gather feedback, find out which ones you are comfortable with and which ones you are not as comfortable with and need more work/discussion (those will move on to session 3)*

Session Next Week - June 30

- ▶ *Discuss and further refine the identified “need more work - less comfortable” topic areas/discussion statements and any new areas raised in break-out groups.*

Who is Doing What in this Session

- ▶ **Welcome and Introductions** - Richard Schlachter,
Executive Director - Land Titles and Surveys
- ▶ **Presenter of Topic/Discussion Statements** -
Curtis Woollard, Director - Land Titles and Surveys

Break-Out Groups

- ▶ **Lead Facilitator** - Scott Vaughan and **Co-Facilitator** - Marci Scharle
- ▶ **Technical Support** - Shahnaz Shantoosi
Alberta Culture, Multiculturalism and Status of Women
- ▶ **9 Break-Out Room Facilitators** - Service Alberta
- ▶ **9 Note-Takers** - Land Titles and Survey

Chatbox – Purpose and Function

- ▶ You can ask your question by utilizing the chatbox feature on your screen
- ▶ The chatbox has 3 designations of people you can ask a question or obtain assistance from:

If its related to content - choose *“subject matter expert”*

If its related to the process - choose *“clarity on agenda process today”*

If its related to zoom/tech help you need - *“choose Zoom technical assistance”*



Prompt Payment

89% of respondents chose to answer questions regarding Prompt Payment

58%
Agree with the Ontario Prompt Payment Timeline

Discussion Statements

- A1** A Proper Invoice should initiate prompt payment and include a Contractor's name, address, date and period of services, amount payable, GST #, purchase order, change orders and where payment should be sent.
- A2** Payment should be due within a 28 day window.
- A3** The payment due date remains within the right to lien period.
- A4** Interest penalties or cease work options should be included but allow for parties to contract within legislated requirements.
- A5** Once final payment is made, right to lien will be waived
- A6** Legislation will provide consistency and rules that everyone has to follow.
- A7** Majority of responses agree "Pay when Paid" clauses should be eliminated by use of legislation

83%

Suggest the Proper Invoice Initiates Process



86%

Agree with a Statutory Interest Penalty

89%

Suggest Prompt Payment rules should apply to everyone

Adjudication & Governance

46%

of respondents chose to answer questions around Adjudication

Governing Authority should appoint an Adjudicator if required

93%
Yes

5%
No

2%
Don't know

Of respondents indicated that Adjudicators should have experience in the construction industry

74%

87% Suggest that an adjudicator's decision should have the same force of a court judgement

Discussion Statements...

- B1 All aspects of adjudication governance decision making should be made by an Arm's length government controlled agency, board or commission.
- B2 Majority suggest a claim can be initiated by any party in the construction project.
- B3 Parties mutually decide on a adjudicator within 4 days and if unable to, one is appointed by the governing authority within 4 days.
- B4 From adjudicator appointment to payment decision, should be a maximum of 22 days.
- B5 Adjudicator's decision should carry the same force as a Court of Queen's Bench decision.



Modernizing the BLA



70% of respondents chose to answer questions around Modernizing the BLA

Jurisdictional Scan



- ON 60 Days Lien Period
- BC 45 Days Lien Period
- SK 40 Days Lien Period
- Canada average – 48 Days
- ON No Minimum Amount
- BC \$200 Minimum Amount Owing
- SK \$100 Minimum Amount Owing



Discussion Statements...

- C1 Increase the amount of days to file a Builder's Lien to 90 days/Oil and Gas Remain at 90 days
- C2 Increase the minimum amount owing to file a Builder's Lien to \$700, up from \$300
- C3 Periodic review of minimum lien amount to be set by regulation
- C4 Use the Provincial Court to protect BLA claims within its jurisdiction-Max \$50,000
- C5 Update and clarify definitions-include ability to lien

What Should Stay the Same?

- Retain Flat Rate Cost Model
- Retain timeline of 180 days to File a Certificate of Lis Pendens



Holdbacks & Transparency

Transparency Impacts

- Over 60% said they are affected by a lack of information (33%— very frequently & 36% somewhat frequently)
- 73% indicated commercial contracts are the highest area of impact

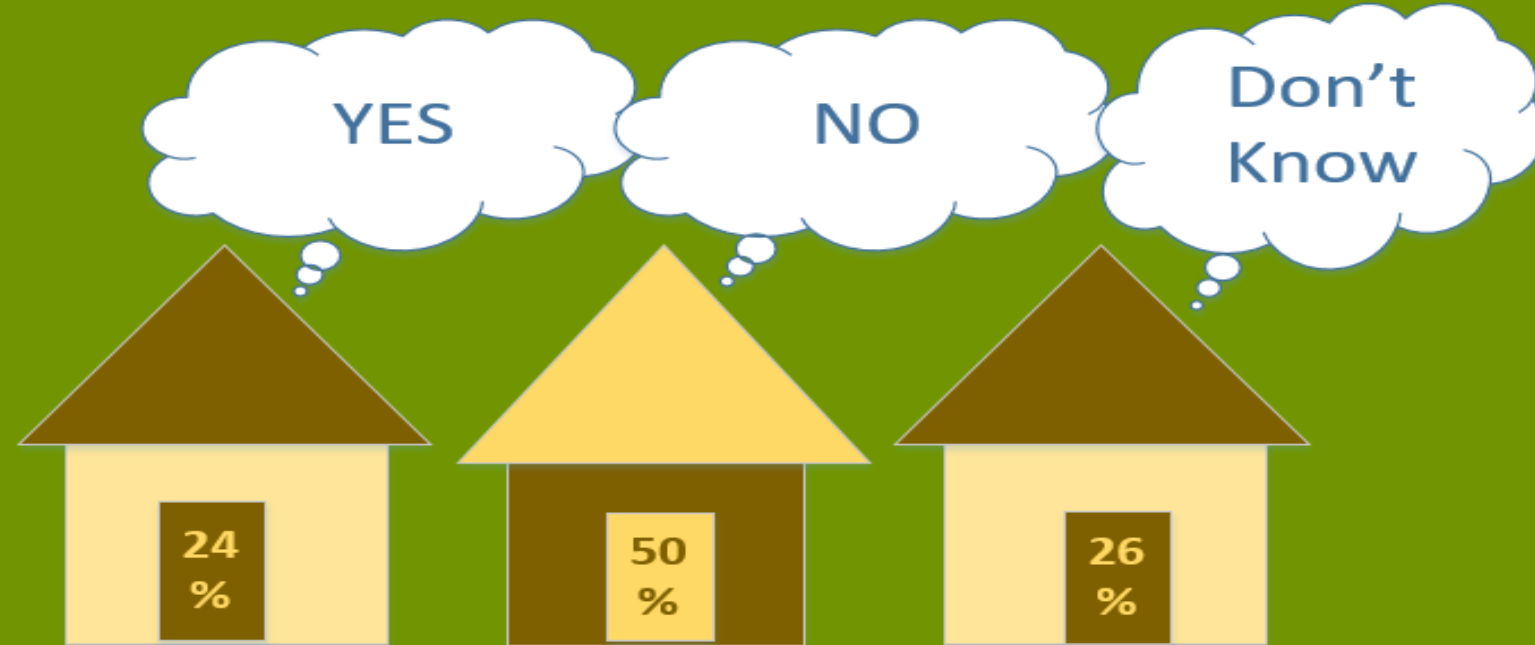
59%

In favor of retaining the 10% Holdback

Discussion Statements

- D1 Eliminate minor or major lien funds and establish a new definition for annual and progressive holdback release (Lien fund).
- D2 Use project milestones for Annual Release and Progressive Release of holdbacks
- D3 Holdback should be released by trade/supplier completion not entire project
- D4 Post project awards online and provide info to all parties in the contract chain.
- D5 Incorporate disclosure of payment rules into the legislation (e.g. payment period, who is paid in full or partially paid).

Use of Minor & Major Lien Funds



71%

of respondents chose to answer questions around Holdbacks

54%

of respondents chose to answer questions regarding Transparency

Working Principles

- ▶ *Everyone has valuable perspectives*
- ▶ *Everyone's participation is encouraged and supported*
- ▶ *Listen for understanding*
- ▶ *You can change your mind*
- ▶ *There are no absolute right or wrong answers*
- ▶ *Be present*
- ▶ *We are not striving to reach consensus today*
- ▶ *Expect unfinished business*

Next Steps

Session Next Week - 10:00 AM - June 30

- ▶ *Discuss and further refine the identified “need more work - less comfortable” topic areas/discussion statements and any new areas raised in break-out groups. Seeking alignment*

Questions and Email Contact Info

- ▶ Please contact the Prompt Payment team via Email if you have any questions
- ▶ Contact: promptpayment@gov.ab.ca

Next Meetings...

June 30 Session Three

Alignment discussions



Contact: promptpayment@gov.ab.ca