

PROMPT PAYMENT FOR

OWNERS

Ontario's Prompt Payment rules are part of your legal obligations under the Construction Act. With few exceptions, they apply to construction contracts entered into on or after Oct. 1, 2019. The Prompt Payment requirement is triggered when the owner receives a "proper invoice" from the contractor or consultant.

What Owners Need to Know:

1. In the ordinary course, you must pay a contractor's invoice within **28 calendar days** of the date that you receive the invoice. The obligation to pay in 28 days applies regardless of the terms of payment in the contract.
2. You may object to the form of the contractor's invoice if, no later than **7 days calendar** after receiving the invoice, you give the contractor notice in writing of the deficiency and what is required to address it. If you fail to give timely notice to your contractor, then its invoice is deemed to be a proper invoice.

See the fact sheet **What is a Proper Invoice?**

3. You may dispute all or part of an invoice from a contractor if you give the contractor a notice of non-payment within **14 calendar days** of the date that you receive the contractor's proper invoice.
4. A notice of non-payment must be in **Form 1.1**.

You can download a copy of **Form 1.1** at this website:
<http://ontariocourtforms.on.ca/en/construction-lien-act-forms/>

5. If you fail to make payment of a contractor's proper invoice within the required timeline, or fail to give timely notice in the proper form as noted above, then the contractor may enforce its right to payment through adjudication.

See the fact sheet **Adjudication Basics** for more on this process.

6. Different rules apply to release of holdback.

See the fact sheets **How Does the Basic Holdback Work and Annual Release of Holdback**

Ready to Learn More?

See our related fact sheets:

Prompt Payment for Contractors
Prompt Payment for Subcontractors
How does the Basic Holdback Work?
What is a Proper Invoice?
Adjudication Basics
Prompt Payment for Annual Release of Holdbacks

Other resources:

- Ontario Dispute Adjudication for Construction Contracts (odacc.ca)
- COCA Webinar on Prompt Payment and Adjudication (coca.on.ca/advocacy/prompt-payment)
- Ontario Construction Act (ontario.ca/laws/statute/90c30)



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Web: coca.on.ca

Phone: (416) 968-7200

Email: info@coca.on.ca

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PROMPT PAYMENT FOR

CONTRACTORS

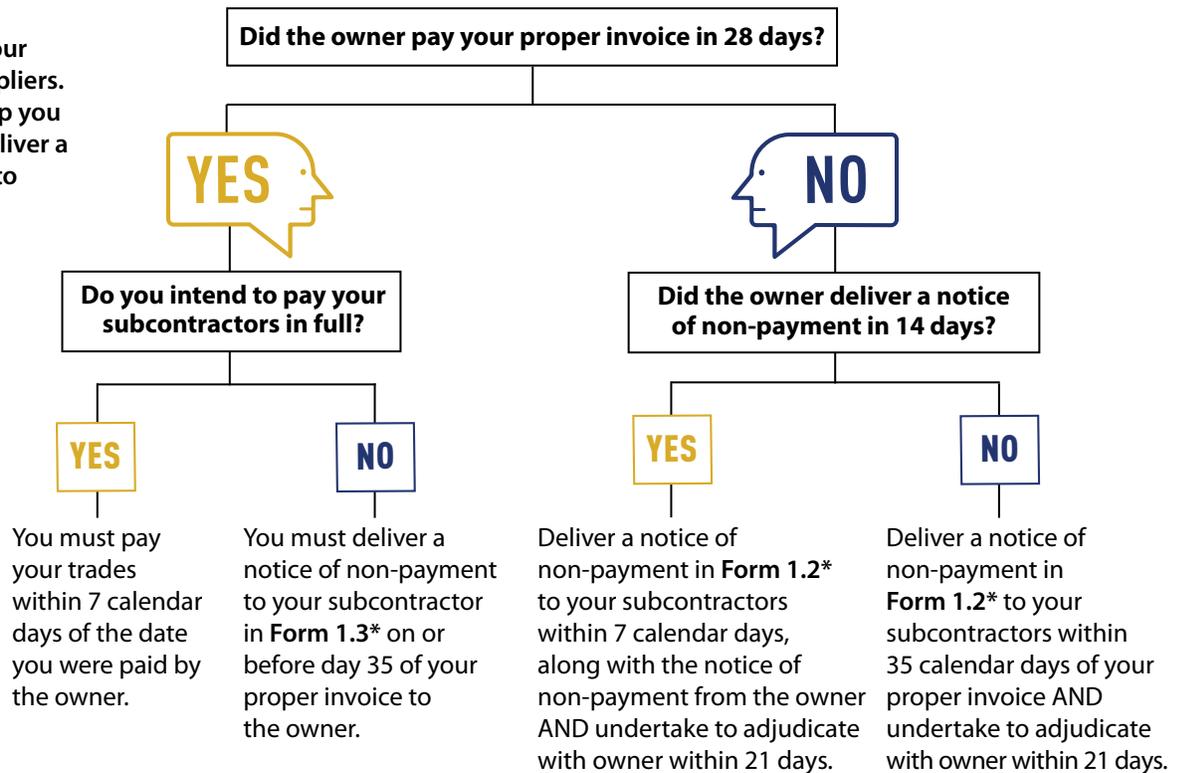
Ontario's *Construction Act* now includes timelines and rules to ensure that contractors and subcontractors are paid on time. Prompt Payment applies to construction contracts entered into on or after Oct. 1, 2019, with few exceptions. It applies to invoices you give to owners, and invoices you receive from subcontractors.

Prompt Payment Timelines

The owner has three options:

1. If the owner believes that your invoice is not a proper invoice, then the owner must give you notice in writing of the deficiency in the invoice and what is required to fix it within **7 calendar days** of the date that they received your invoice.
2. If the owner intends to pay your invoice, they must do so **within 28 calendar days** of the date they received your proper invoice.
3. If the owner disputes all or part of your proper invoice, they must give you a notice of non-payment within **14 calendar days** of receiving the invoice. The notice must be in **Form 1.1***.

Prompt Payment also applies between you, your subcontractors and suppliers. This infographic will help you decide if you need to deliver a notice of non-payment to your subs or suppliers.



*Notice of non-payment forms are available for download at <http://ontariocourtforms.on.ca/en/construction-lien-act-forms/>

Did you know?
Unless you take one of these two steps, you must pay your subcontractors within 35 calendar days of delivering a proper invoice to the owner.



Did you know?

If the owner doesn't adhere to Prompt Payment timelines and processes, they must pay your proper invoice even if there may be a valid reason not to. Your right to payment can be enforced through adjudication.

Are You a Contractor?

The *Construction Act* defines a contractor as someone who contracts directly with the owner. A prime contractor is considered a contractor for the purpose of the *Construction Act* even if they are a trade who typically works as a subcontractor. You may be a contractor on one project and subcontractor on another project.

See the fact sheet **Prompt Payment for Subcontractors** for more information.

Key Facts About Prompt Payment

1. Fixed Payment Timelines

Gone are the days when you negotiated terms of payment (i.e. 30, 60, or 90 days) with each client or supplier. Prompt Payment dictates fixed timelines for payment, regardless of the terms of your contract or subcontracts. The timeline is triggered when the contractor delivers a proper invoice to the owner. Funds then flow from the top of the construction pyramid to the bottom, generally in multiples of seven days.

2. Proper Invoice

The *Construction Act* defines a proper invoice, which is required to trigger Prompt Payment.

See the fact sheet

What is a Proper Invoice?
to learn more.

3. Limited Time to Dispute Invoices

The owner will lose its right to dispute your invoice unless it gives notice, within a prescribed timeline and format, of its intention not to pay. Keep in mind, the same applies to your right to dispute your subcontractors' invoices.

4. Pay-When-Paid

Prompt Payment generally operates on a pay-when-paid basis. One of the reasons why you may dispute the invoice of a subcontractor or supplier is that you have not been paid in full or in part by the owner.

5. Referring Disputes to Adjudication

To take advantage of "pay-when-paid," you will typically need to refer your claim against the owner to adjudication within 21 days of giving notice to your subcontractors of your intent not to pay.

See the fact sheet

Adjudication Basics
to learn more.

Ready to Learn More?

See our related fact sheets:

Prompt Payment for Owners
Prompt Payment for Subcontractors
How does the Basic Holdback Work?
What is a Proper Invoice?
Adjudication Basics
Prompt Payment for Annual Release of Holdbacks

Other resources:

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PROMPT PAYMENT FOR

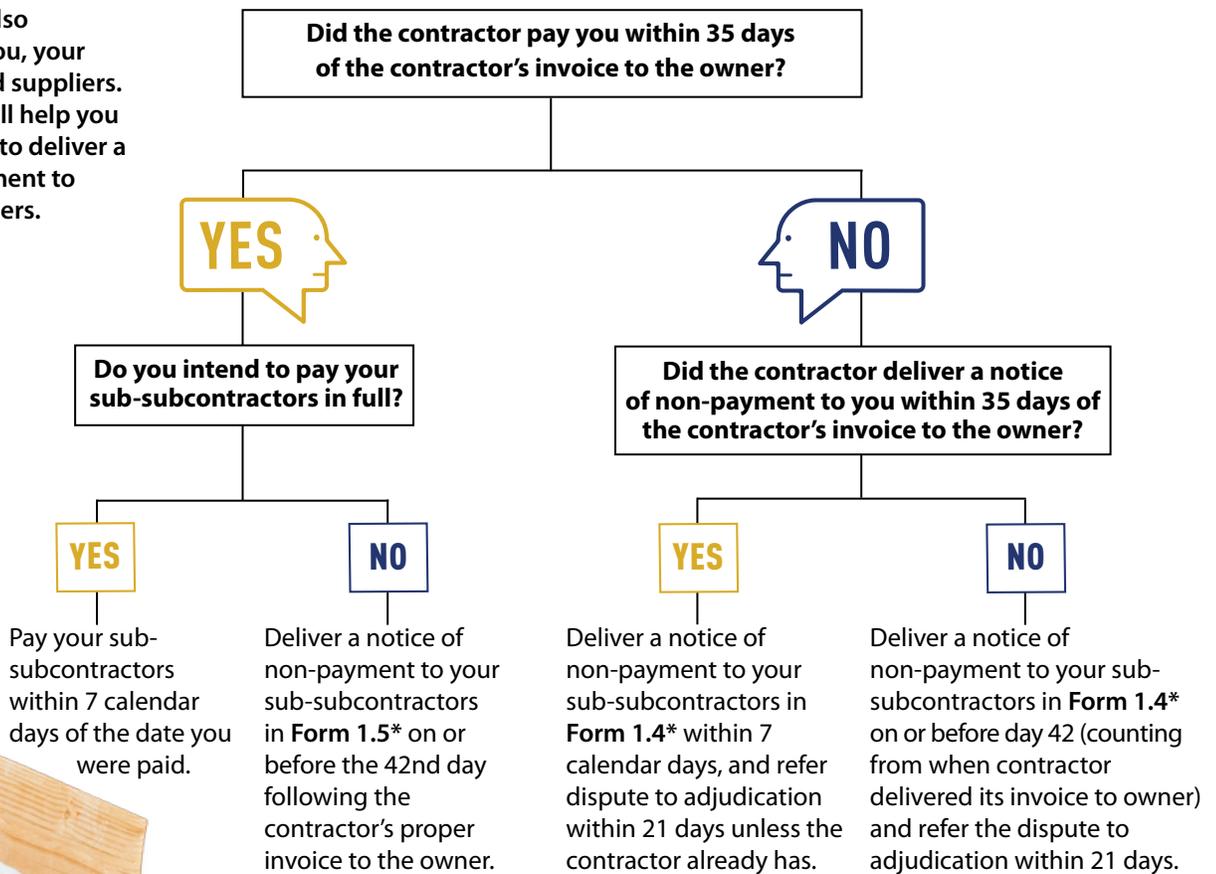
SUBCONTRACTORS

Ontario's Construction Act now includes timelines and rules to ensure that contractors and subcontractors are paid on time. Prompt Payment applies to construction contracts entered into on or after Oct. 1, 2019, with few exceptions. It applies to invoices you give to contractors, and invoices you receive from sub-subcontractors and suppliers.

Prompt Payment Timelines

If the contractor intends to pay your invoice, it must do so **within 7 calendar days** of receiving payment from the owner. If the owner doesn't pay the contractor, then the contractor must still pay you **within 35 calendar days** of its invoice to the owner unless the contractor delivers a notice of non-payment to you.

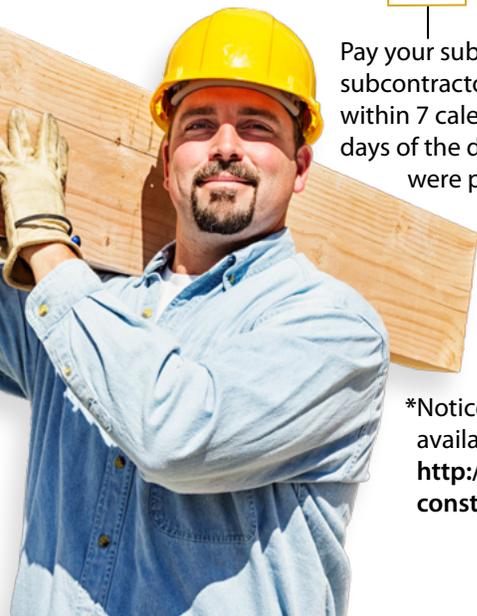
Prompt Payment also applies between you, your subcontractors and suppliers. This infographic will help you decide if you need to deliver a notice of non-payment to your subs or suppliers.



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Did you know?

Unless you take one of these two steps, you must pay your sub-subcontractor's invoice within 42 calendar days of when the owner received the contractor's proper invoice.



Are You a Subcontractor?

The *Construction Act* defines a contractor as someone who contracts directly with the owner, and a subcontractor as anyone who contracts with someone other than the owner. A prime contractor is considered a contractor for the purpose of the *Construction Act* even if they are a trade who typically works as a subcontractor. You may be a contractor on one project and subcontractor on another project.

See the fact sheet **Prompt Payment for Contractors** for more information.

Key Facts About Prompt Payment**1. Fixed Payment Timelines**

Gone are the days when you negotiated terms of payment (i.e. 30, 60, or 90 days) with each client or supplier. Prompt Payment dictates fixed timelines for payment, regardless of the terms of your contract or subcontracts. The timeline is triggered when the contractor delivers a proper invoice to the owner. Funds then flow from the top of the construction pyramid to the bottom, generally in multiples of seven days.

2. Proper Invoice

Your invoices to the general contractor must comply with the terms of your subcontract, but they do not have to be “proper invoices” as per the *Construction Act*. Although a subcontractor’s invoice does not need to be a proper invoice, it does need to comply with the requirements of the subcontract.

3. Limited Time to Dispute Invoices

The contractor will lose its right to dispute your invoices unless it gives you timely and proper notice of its intention not to pay your invoice. Keep in mind, the same applies to your right to dispute sub-subcontractor and supplier invoices.

4. Pay-When-Paid

Prompt Payment generally operates on a pay-when-paid basis. A contractor may refuse to pay your invoice because they have not been paid by the owner. The same applies to invoices from sub-subcontractors and suppliers.

5. Referring Disputes to Adjudication

To take advantage of the pay-when-paid aspect of Prompt Payment, you must refer your claim against the contractor to adjudication within 21 days of giving notice to your sub-subcontractors of your intent not to pay, unless the contractor has already referred the matter to adjudication.

See the fact sheet **Adjudication Basics** to learn more.

6. Right to Information

If you request the date on which the contractor gave a proper invoice to the owner, the contractor must provide you with that information as soon as possible.

7. Different rules apply to release of holdback.

See the fact sheets for **How Does the Basic Holdback Work** and **Annual Release of Holdback**

Ready to Learn More?**See our related fact sheets:**

Prompt Payment for Owners
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PROMPT PAYMENT FOR

ANNUAL RELEASE OF HOLDBACK

Section 22 of the Construction Act requires each “payor” on a construction contract to hold back 10% of the price of the services or materials as they are **actually supplied** under the contract. We call this the basic holdback.

For contracts that last more than one year, the owner needs to make an interim distribution of holdback shortly after each anniversary of the contract. The process for annual release of holdback is explained below.

For contracts **entered into** on or after January 1, 2026, the owner will make its first annual distribution of holdback shortly after the first anniversary of the date that the contract was entered into.

Within 14 days after the first anniversary of the contract, the owner will publish a Notice of Annual Release of Holdback in Form 6 in a construction trade news website specifying the amount of holdback that it intends to release.

Between 60 and 74 days after the Notice of Annual Release of Holdback **is published**, the owner shall pay the contractor the amount of holdback specified in the Notice **unless** a claim for lien is preserved or perfected in respect of the contract.

Not later than 14 days after the contractor receives payment of the holdback from the owner, the contractor will pay each of its subcontractors their holdback **unless** a lien is preserved or perfected in respect of the subcontract. Similarly, the subcontractor will pay its sub-subcontractors and suppliers their holdback within 14 days of the date that it receives payment from the contractor.

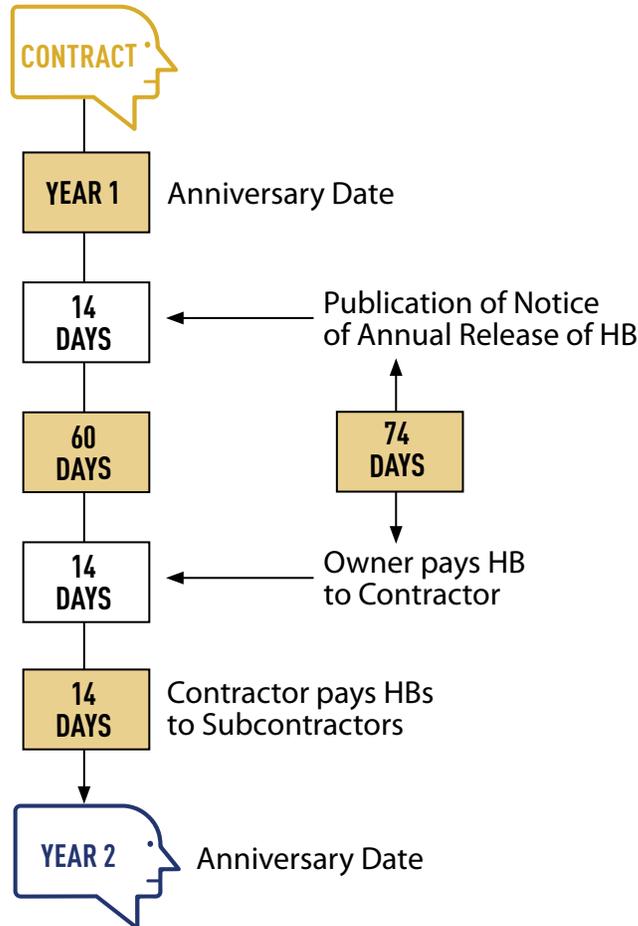
If applicable, the owner will make further interim distributions of holdback on the second and subsequent anniversaries of the contract.

On the following page is an infographic illustrating the process and timeline for the annual release of holdback.



This infographic illustrates the process and timeline for the annual release of holdback:

Mandatory Annual Release of Holdback



Did you know?

Subcontractors should ask the contractor at the outset for the anniversary date of the prime contract

For contracts entered into before January 1, 2026, the owner will make its first annual distribution of holdback on the **second** anniversary of the contract after January 1, 2026. So, for example, for a contract entered into on December 31, 2025, the owner must publish its first Notice of Annual Release of Holdback within 14 days of December 31, 2027.

At the end of a multi-year contract, the owner will release the remainder of the holdback when all liens that may be claimed against the holdback have expired, the same way it would for a contract that lasts less than one year. See the fact sheet "How does the Basic Holdback Work" for an explanation of when the final installment of holdback is released.



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HOW DOES THE BASIC HOLD BACK WORK?

Section 22 of the Construction Act requires each “payor” on a construction contract to hold back 10% of the price of the services or materials as they are actually supplied under the contract until all liens that may be claimed against the holdback have expired. We call this the basic holdback.

For contracts that last less than one year, the basic holdback is released when all liens that may be claimed against the holdback have expired. A simple example of the basic holdback is set out below. The following example also applies to the final release of holdback on a contract that lasts longer than one year.

For projects that last more than one year, the owner needs to make an interim distribution of holdback shortly after each anniversary of the contract. **See the fact sheet for Annual Release of Holdback.**

Example of a Basic Holdback

Project:
An addition to a commercial plaza

The contract requires the owner to pay 30% of the contract price upon the completion of the foundation, 30% when the addition is closed-in, and the balance upon completion. All invoices are due and payable within 28 days.

Contract Price:
\$2,000,000
plus HST

When the foundation is complete, the value of the services and materials supplied by the contractor is 30% of the contract price, or \$600,000.

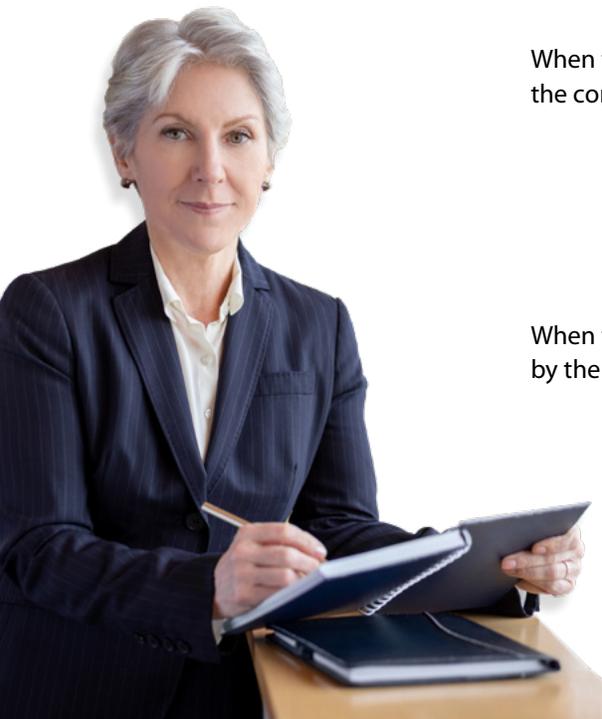
The contractor should deduct 10% for the basic holdback (i.e. \$60,000), apply HST to the balance of \$540,000 (i.e. \$70,020), and invoice the owner for a total of \$610,200. The owner should pay the invoice within 28 days.

When the addition is closed in, the value of the services and materials supplied by the contractor since its last invoice is \$600,000.

Again, the contractor should deduct 10% for the basic holdback (i.e. \$60,000), apply HST to the balance of \$540,000 (i.e. \$70,020), and invoice the owner for a total of \$610,200. The owner should pay the invoice within 28 days.

When the addition is complete, the value of the services and materials supplied by the contractor since its last invoice is \$800,000.

The contractor should again deduct the basic holdback of 10% (i.e. \$80,000), apply HST to the balance of \$720,000 (i.e. \$93,600), and invoice the owner for \$813,600. The owner should pay the invoice within 28 days.



Finally, the contractor should issue a separate invoice to the owner for the basic holdback.

The amount of the basic holdback is 10% of the contract price, or \$200,000. The contractor should apply HST to the value of the holdback (i.e. \$26,000), and invoice the owner for \$226,000.

The 28-day payment terms do not apply to the basic holdback. The basic holdback invoice is payable by the owner after any construction lien that may be claimed against the holdback relating to the contract has expired.

All construction liens will have expired **61 days after the earlier of:**

- the date that the contract is completed, abandoned, or terminated; or
- The date that a certificate of substantial performance is published in a construction trade news website

[the “Trigger Date”]

The owner should have their lawyer review title to the property on the 61st day after the Trigger Date:

- If no claims for lien have been preserved, then the owner should pay the holdback to the contractor.
- If a claim for lien is preserved before the 61st day, then the owner should not pay anything further to the contractor and seek further advice from their lawyer.

Did you know?

The obligation to maintain the basic holdback applies despite any wording in the contract to the contrary.

Ready to Learn More?

See our related fact sheets:

Prompt Payment for Owners
 Prompt Payment for Contractors
 Prompt Payment for Subcontractors
 Prompt Payment for Holdbacks
 What is a Proper Invoice?
 Adjudication Basics
 Prompt Payment for Annual Release of Holdbacks

Other resources:

- Ontario Dispute Adjudication for Construction Contracts (odacc.ca)
- COCA Webinar on Prompt Payment and Adjudication (coca.on.ca/advocacy/prompt-payment)
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WHAT IS A PROPER INVOICE?

Under the rules for Prompt Payment in Ontario, the clock starts ticking when the prime contractor delivers a “proper invoice” to the project owner. The owner is legally required to either pay a proper invoice **within 28 calendar days** or deliver a notice of non-payment for some or all of the amount within **14 days**.

To get the benefit of Prompt Payment, a contractor must ensure that its invoices meet the legal requirements of a proper invoice.

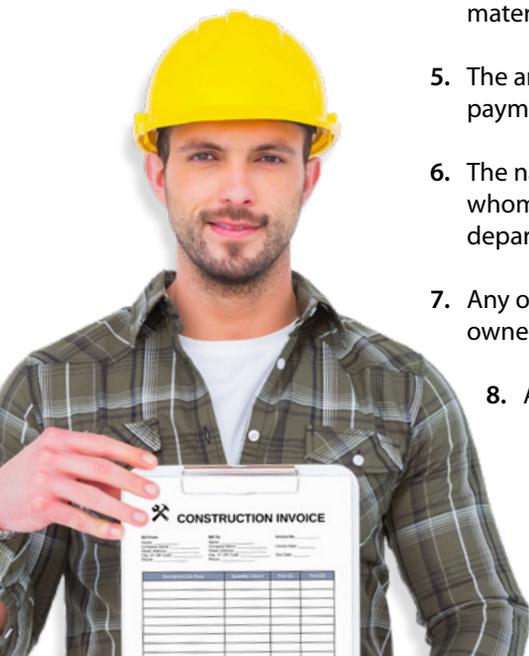
Three Steps to a Proper Invoice

Step 1:

Make sure your invoices meet the minimum criteria of a proper invoice set out in section 6.1 of the *Construction Act*.

Your invoice must include:

1. The contractor’s name and address.
2. The date of the invoice and the period, milestone or other contractual payment entitlement to which the invoice relates.
3. Information identifying the contract or other authorization under which the services or materials were supplied, such as a contract number, contract line item number or purchase order number.
4. A description, including quantity where appropriate, of the services or materials that were supplied.
5. The amount payable for the services or materials that were supplied, and the payment terms.
6. The name, title, mailing address and telephone number of the person to whom payment is to be sent or, if payment is to be sent to an office or department, its name, mailing address and telephone number.
7. Any other information that is necessary for the proper functioning of the owner’s accounts payable system that the owner reasonably requests.
8. Any other information that may be prescribed in the regulations.



Step 2:

Check for any additional, contract-specific requirements for a proper invoice.

The *Construction Act* allows the parties to expand upon the minimum criteria of a proper invoice. Many contracts will likely require statutory declarations, updated WSIB clearance certificates, and invoices for materials supplied, but the list of potential requirements for a proper invoice is limited only by the imagination of whoever drafts the prime contract.

Make it part of your practice to review the prime contract for any additional invoicing requirements.

Did you know?

While contracts may add to the requirements for a proper invoice, they may not remove any of the mandatory items listed in Step 1.

Step 3:

Deliver your invoices in the manner directed by the contract and/or the owner.

If the contract does not specify how invoices are to be delivered, ask the owner for guidance and follow that guidance.

Did you know?

The concept of a proper invoice only applies between an owner and a prime contractor. The Act is silent on the form of invoices delivered by a subcontractor to a prime contractor. A subcontractor's invoices to the contractor need only comply with the terms of their subcontract.

Ready to Learn More?**See our related fact sheets:**

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ADJUDICATION BASICS

Adjudication is a new method of dispute resolution contained in the *Ontario Construction Act*. It allows parties to a construction contract to enforce a right of payment without going to court.

Did you know?

Every adjudicator has at least 10 years' experience in the construction industry.

Ten Key Facts about Adjudication

1. Owners, contractors, subcontractors, and construction professionals in Ontario can enforce their right to timely payment through adjudication.
2. If you are a contractor, then your right to refer a dispute to adjudication expires **90 days** after the earlier of the date that your contract is completed, abandoned or terminated, unless the parties agree to an extension.
3. If you are a subcontractor, then your right to refer a dispute to adjudication expires **90 days** after the **earlier** of:
 - The date that the prime contract is completed, terminated, or abandoned;
 - The date that your subcontract is certified complete; and
 - The date of your last supply to the project.
4. Adjudication is fast: An adjudicator will generally rule on a dispute within **40 days**. Payments ordered must be made within **15 days**.
5. Adjudication is administered by Ontario Dispute Adjudication for Construction Contracts, often called "ODACC."
6. You can start an adjudication by visiting the ODACC website: <https://odacc.ca/en/>
7. You do not need a lawyer to start an adjudication, although it may be a good idea if the dispute involves a large amount.
8. ODACC generally charges an adjudication fee that increases with the amount in dispute. For example, the fee for a dispute involving between \$35,000 and \$50,000 will generally be \$3,700, divided between the parties.
9. The determination of an adjudicator can be enforced in the same way as a Court Order, through garnishment and other means.
10. The determination of an adjudicator is only binding on an interim basis. If either party to the dispute is unhappy with the determination, they are free to go to court or arbitration, where they may get a different result. The decision of the adjudicator generally remains enforceable, however, until the court or arbitrator has rendered its decision on the same issue.

Ready to Learn More?

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- Prompt Payment for Subcontractors
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