



BILL NO. 119

Government Bill

*2nd Session, 63rd General Assembly
Nova Scotia
68 Elizabeth II, 2019*

An Act to Amend Chapter 277 of the Revised Statutes, 1989, the Builders' Lien Act

CHAPTER 12
ACTS OF 2019

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
APRIL 12, 2019**

The Honourable Mark Furey
Attorney General and Minister of Justice

*Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly*

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**An Act to Amend Chapter 277
of the Revised Statutes, 1989,
the Builders' Lien Act**

Be it enacted by the Governor and Assembly as follows:

1 Section 1 of Chapter 277 of the Revised Statutes, 1989, the *Builders' Lien Act*, as amended by Chapter 14 of the Acts of 2004, is further amended by adding “*and Prompt Payment*” immediately after “Lien” in the first line.

2 Chapter 277 is further amended by adding immediately after Section 4 the following heading and Sections:

PROMPT PAYMENT

4A In Sections 4B to 4K,

(a) “prescribed” means prescribed by the regulations;

(b) “proper invoice” means a written bill or request for payment for performing work or service or placing or furnishing materials under a contract, which bill or request meets the requirements of the contract and contains

(i) the contractor’s name and address,

(ii) the date the invoice is prepared and the period during which the work or service was performed or the materials were placed or furnished,

(iii) information identifying the authority under which the work or service was performed or the materials placed or furnished,

(iv) a description, including the quantity where appropriate, of the work or service performed or the materials placed or furnished,

(v) the amount payable for the work or service performed or the materials placed or furnished and the payment terms,

(vi) the name, title, telephone number and mailing address of the person to whom payment is to be sent, and

(vii) such other information as may be prescribed.

4B (1) A proper invoice must be given to an owner at the prescribed times or intervals unless the contract provides otherwise.

(2) Subject to subsections (3) and (4), a provision in a contract that makes the giving of a proper invoice conditional on the prior certification of a payment certifier or on the owner’s prior approval is of no effect.

(3) For greater certainty, subsection (2) does not apply to a provision in a contract that provides for the certification of a payment certifier or the owner’s approval after a proper invoice is given.

(4) Subsection (2) does not apply to a provision in a contract that provides for the testing or commissioning of the work or service performed or the materials placed or furnished under the contract.

(5) A proper invoice may be revised by a contractor after the contractor has given it to the owner if

- (a) the owner agrees in advance to the revision;
- (b) the date of the proper invoice is not changed; and
- (c) the proper invoice continues to meet the definition of proper invoice.

4C (1) Subject to subsection (2), an owner shall, after receiving a proper invoice from a contractor, pay the amount payable under the proper invoice within the prescribed time.

(2) An owner who disputes a proper invoice may refuse to pay all or any portion of the amount payable under the proper invoice pursuant to subsection (1) if the owner gives the contractor a notice of non-payment, in the prescribed form and manner and within the prescribed time, specifying the amount of the proper invoice that is not being paid and the reasons for non-payment.

(3) Subsection (1) continues to apply to any amount payable under the proper invoice that is not the subject of a notice under subsection (2).

4D (1) Subject to subsection (6), a contractor who receives full payment of a proper invoice pursuant to subsection 4C(1) shall, within the prescribed time, pay each subcontractor who performed work or services or placed or furnished materials under a subcontract with the contractor that were included in the proper invoice the amount payable to the subcontractor.

(2) Subject to subsection (6), where the payment received by the contractor from the owner is for a portion of the amount payable under a proper invoice, the contractor shall, within the prescribed time, pay each subcontractor who performed work or services or placed or furnished materials under a subcontract with the contractor that were included in the proper invoice from the amount paid by the owner.

(3) For the purpose of subsection (2), where more than one subcontractor is entitled to payment,

(a) where the amount not paid by the owner is specific to work or services performed or materials placed or furnished by a particular subcontractor or subcontractors, the remaining subcontractors must be paid and any amount paid by the owner with respect to the particular subcontractor or subcontractors is payable to them on a proportionate basis, as applicable; and

(b) in any other case, subcontractors must be paid on a proportionate basis.

(4) Subject to subsection (6), where the owner does not pay some or all of a proper invoice within the time required by subsection 4C(1), the contractor shall, within the prescribed time, pay each subcontractor who performed work or services or placed or furnished materials under a subcontract with the contractor that were

included in the proper invoice the amount payable to the subcontractor to the extent that the subcontractor was not fully paid under subsection (2).

(5) Subsection (4) does not apply with respect to a subcontractor if the contractor gives to the subcontractor, in the prescribed manner and form and within the prescribed time,

(a) a notice of non-payment,

(i) stating that some or all of the amount payable to the subcontractor is not being paid pursuant to subsection (4) due to non-payment by the owner,

(ii) specifying the amount not being paid, and

(iii) providing an undertaking to refer the matter to adjudication under Section 4J within the prescribed time; and

(b) a copy of any notice of non-payment given by the owner under subsection 4C(2).

(6) A contractor who disputes, in whole or in part, the entitlement of a subcontractor to payment of an amount under the subcontract may refuse to pay all or any portion of the amount within the time required by subsection (1), (2) or (4), as the case may be, if the contractor gives to the subcontractor a notice of non-payment, in the prescribed form and manner and within the prescribed time, specifying the amount that is not being paid and the reasons for non-payment.

(7) Subsections (1) and (2) apply, with necessary changes, with respect to any amount that is the subject of a notice under subsection (5), once the amount is paid by the owner.

4E (1) Subject to subsection (6), a subcontractor who receives full payment from a contractor with respect to a proper invoice within the time required by subsection 4D(1) shall, within the prescribed time, pay each subcontractor who performed work or services or placed or furnished materials under a subcontract between them that were included in the proper invoice the amount payable to the subcontractor.

(2) Subject to subsection (6), where the payment received by the subcontractor from the contractor is for a portion of the amount payable to the subcontractor with respect to a proper invoice, the subcontractor shall, within the prescribed time, pay each subcontractor who performed work or services or placed or furnished materials under a subcontract between them that were included in the proper invoice from the amount paid by the contractor.

(3) For the purpose of subsection (2), where more than one subcontractor is entitled to payment,

(a) where the amount not paid by the contractor is specific to the work or services performed or materials placed or furnished by a particular subcontractor or subcontractors, the remaining subcontractors must be paid and any amount paid by the contractor with respect to the particular subcontractor or subcontractors is payable to them on a proportionate basis, as applicable; and

(b) in any other case, subcontractors must be paid on a proportionate basis.

(4) Subject to subsection (6), where the contractor does not pay some or all of the amount payable to a subcontractor with respect to a proper invoice within the time required by subsection 4D(1), the subcontractor shall, within the prescribed time, pay each subcontractor who performed work or services or furnished or placed materials under a subcontract between them that were included in the proper invoice the amount payable to the subcontractor to the extent that the subcontractor was not fully paid under subsection (2).

(5) Subsection (4) does not apply with respect to a subcontractor if the subcontractor required to pay under subsection (4) gives to the other subcontractors, in the prescribed manner and form and within the prescribed time,

(a) a notice of non-payment,

(i) stating that some or all of the amount payable to the subcontractor is not being paid pursuant to subsection (4) due to non-payment by the contractor,

(ii) specifying the amount not being paid, and

(iii) unless the failure of the contractor to pay is as a result of non-payment by the owner, providing an undertaking to refer the matter to adjudication under Section 4J within the prescribed time; and

(b) a copy of any notices of non-payment received by the subcontractor with respect to the proper invoice.

(6) A subcontractor who disputes, in whole or in part, the entitlement of another subcontractor to payment of an amount under the subcontract may refuse to pay all or any portion of the amount within the time required by subsection (1), (2) or (4), as the case may be, if the subcontractor gives to the other subcontractor a notice of non-payment, in the prescribed form and manner and within the prescribed time, specifying the amount that is not being paid and the reasons for non-payment.

(7) Subsections (1) and (2) apply, with necessary changes, with respect to any amount that is the subject of a notice under subsection (5), once the amount is paid by the contractor.

(8) On the request of a subcontractor who is required to make payments in accordance with this Section, a contractor shall, as soon as possible, provide to the subcontractor confirmation of the date on which the contractor gave a proper invoice to the owner.

(9) This Section applies, with necessary changes, with respect to a subcontractor who is entitled to payment in accordance with this Section and to any amounts payable by that subcontractor to any other subcontractor under a subcontract with respect to the work, service or materials.

4F A requirement to pay an amount in accordance with Section 4C, 4D or 4E is subject to any requirement to retain a holdback pursuant to Sections 13 and 13B.

4G Reasons for non-payment under Sections 4C to 4E may include the retention of trust funds under Section 44F.

4H Interest begins to accrue on an amount that is not paid when it is due to be paid under Sections 4C to 4E at the prime rate of interest then commonly charged by chartered banks plus two per cent or, where the contract or subcontract specifies a different interest rate for that purpose, the greater of the prime rate of interest plus two per cent and the interest rate specified in the contract or subcontract.

4I Nothing in Sections 4B to 4H alters the obligations of a contractor or subcontractor to pay wages as provided for by statute, contract or collective bargaining agreement.

4J A party to a contract may refer a dispute that is the subject of a notice of non-payment to adjudication pursuant to the procedure set out in the regulations.

4K (1) Sections 4B to 4J apply to contracts and subcontracts made on or after the date on which Sections 4B to 4J come into effect.

(2) Notwithstanding subsection 3(1) and subject to subsections (1), (3) and (4), Sections 4B to 4J apply to all construction contracts.

(3) Sections 4B to 4J do not apply to persons or classes of persons exempted by the regulations.

(4) Sections 4B to 4J do not apply to construction contracts or classes of construction contracts exempted by the regulations.

3 Section 48 of Chapter 277, as enacted by Chapter 14 of the Acts of 2013, is amended by

(a) striking out the period in the first line of clause (b) and substituting a semi-colon; and

(b) adding immediately after clause (b) the following clauses:

(c) prescribing information required to be included on a proper invoice;

(d) prescribing the times or intervals at which an owner must be provided with a proper invoice;

(e) prescribing the time within which an owner must pay the amount payable on a proper invoice;

(f) prescribing the time within which an owner may dispute an amount payable under a proper invoice by giving the contractor notice of non-payment;

(g) prescribing the time within which a contractor who has received full payment of a proper invoice must pay each subcontractor;

(h) prescribing the time within which a contractor who has received partial payment of a proper invoice must pay each subcontractor;

(i) prescribing the time within which a contractor who has not received payment or who has received partial payment must pay each subcontractor who was not previously fully paid;

(j) prescribing the form a contractor must use and the manner in which a contractor must give a subcontractor notice of non-payment by an owner;

(k) prescribing the time during which a contractor must give an undertaking to a subcontractor to refer a non-payment by an owner to arbitration;

(l) prescribing the form and manner in which a contractor who disputes the entitlement of a subcontractor to payment of an amount under a subcontract must give a subcontractor notice of non-payment;

(m) prescribing the time within which a contractor must give a subcontractor notice of non-payment by an owner or notice that the contractor disputes the entitlement of the subcontractor to payment of an amount under a subcontract;

(n) prescribing the time within which a subcontractor who receives full payment from a contractor of a proper invoice must pay each subcontractor under a contract between them;

(o) prescribing the time within which a subcontractor who receives partial payment from a contractor with respect to a proper invoice must pay each subcontractor under a contract between them;

(p) prescribing the time within which a subcontractor who has not received payment or who has received partial payment must pay each subcontractor who was not previously fully paid;

(q) prescribing the form a subcontractor must use and the manner in which a subcontractor must give notice of non-payment by an owner to a subcontractor under a contract between the subcontractors;

(r) prescribing the time during which a subcontractor must give an undertaking to a subcontractor under a contract between them to refer a non-payment by an owner to arbitration;

(s) prescribing the form and manner in which a subcontractor who disputes the entitlement of a subcontractor under a contract between them to payment of an amount under a subcontract must give a subcontractor notice of non-payment;

(t) prescribing the time within which a subcontractor who has received a notice of non-payment from a contractor must give notice to a subcontractor under a contract between the subcontractors of notice of non-payment by a contractor or notice that the subcontractor disputes the entitlement of the subcontractor to payment of an amount under a subcontract between the subcontractors;

(u) respecting the procedure for referring a dispute that is the subject of a notice of non-payment to adjudication;

(v) respecting the identification of persons or classes of persons who may act as adjudicators;

(w) respecting the qualifications and criteria that must be met by a person acting as an adjudicator;

(x) respecting the manner in which an adjudicator may be selected or appointed to act in an adjudication;

- (y) respecting the powers, duties and immunities of an adjudicator;
- (z) respecting the commencement, conduct, termination and determination of an adjudication;
- (za) respecting the fees and costs associated with an adjudication;
- (zb) respecting the establishment or identification of an entity responsible for maintaining a registry of qualified adjudicators and the powers and duties of such an entity;
- (zc) respecting an appeal of an adjudication determination;
- (zd) respecting the enforcement of an adjudication determination;
- (ze) respecting the compellability of an adjudicator to give evidence in an action or other proceeding with respect to a matter that was the subject of an adjudication;
- (zf) exempting persons or classes of persons from the requirements of Sections 4B to 4J;
- (zg) exempting construction contracts or classes of construction contracts from the requirements of Sections 4B to 4J;
- (zh) defining any expression used but not defined in this Act;
- (zi) respecting any matter or thing the Governor in Council considers necessary or advisable to effectively carry out the intent and purpose of this Act.

4 Section 7 of Chapter 13 of the Acts of 2018, *An Act to Amend Chapter 246 of the Revised Statutes, 1989, the Labour Standards Code, Respecting Leaves of Absence*, is repealed.

5 Section 83A of Chapter 246 of the Revised Statutes, 1989, the *Labour Standards Code*, as enacted by Chapter 14 of the Acts of 1991 and amended by Chapter 13 of the Acts of 2018, is further amended by adding “*and Prompt Payment*” immediately after “*Lien*” in the fifth line.

6 (1) Clause 52(2B)(b) of Chapter 6 of the Acts of 2001, the *Land Registration Act*, as enacted by Chapter 7 of the Acts of 2003, is amended by adding “*and Prompt Payment*” immediately after “*Lien*” the second time it appears in the first line.

(2) Clause 79(6)(i) of Chapter 6 is amended by adding “*and Prompt Payment*” immediately after “*Lien*” in the second line.

7 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.