



BILL NO. 211

Government Bill

*1st Session, 64th General Assembly
Nova Scotia
1 Charles III, 2022*

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

CHAPTER 43
ACTS OF 2022

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
NOVEMBER 9, 2022**

The Honourable Brad Johns
Minister of Justice

*Halifax, Nova Scotia
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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 2 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

- (a) relettering clause (a) as (aa);**
- (b) adding immediately before relettered clause (aa) the following clause:**
 - (a) "Adjudication Authority" means the entity designated by the Minister pursuant to clause 3A(2)(a);

and

- (c) adding immediately after clause (c) the following clause:**
 - (ca) "Minister" means the member of the Executive Council assigned to administer this Act by the Governor in Council;

2 Subsection 3(5) of Chapter 277, as enacted by Chapter 14 of the Acts of 2004, is amended by striking out "of Justice" in the third line.

3 Chapter 277 is further amended by adding immediately after Section 3 the following Sections:

3A (1) The Minister has the general supervision and management of this Act.

- (2) The Minister may
 - (a) designate an entity to act as the Adjudication Authority for the purpose of managing the adjudication of disputes referred to adjudication under Section 4J;
 - (b) terminate a designation made under clause (a) and designate a new entity to act as the Adjudication Authority; and
 - (c) act as the Adjudication Authority during a period when
 - (i) an entity has not been designated pursuant to clause (a),
 - or
 - (ii) the Adjudication Authority is not permitted by Section 2B to act.

3B An entity must meet the criteria prescribed by the regulations to be designated and to act as the Adjudication Authority.

3C The Adjudication Authority shall

- (a) develop and oversee training programs for adjudicators;

(b) qualify as adjudicators persons who meet the requirements prescribed by the regulations;

(c) establish and maintain a public registry of adjudicators;

(d) appoint adjudicators to disputes referred to adjudication under Section 4J; and

(e) perform such other duties of the Adjudication Authority as are set out in this Act and the regulations.

3D (1) The Adjudication Authority may, subject to the regulations,

(a) set fees, costs and other charges related to the administration and performance of adjudication including

(i) the training and qualification of adjudicators,

(ii) the appointment of adjudicators, and

(iii) the hearing of disputes;

(b) require the payment of fees, costs and charges set under clause (a); and

(c) exercise any other power prescribed for the Adjudication Authority under the regulations.

(2) In setting the fees, costs and other charges under clause (1)(a), the Adjudication Authority may specify the amounts or the method for determining the amounts.

(3) Fees, costs and other charges collected under clause (1)(b) belong to the Adjudication Authority and are not public money within the meaning of the *Finance Act*.

4 Section 4A of Chapter 277, as enacted by Chapter 12 of the Acts of 2019, is amended by striking out “4K” in the first line and substituting “4Q”.

5 Subclause 4D(5)(a)(iii) of Chapter 277, as enacted by Chapter 12 of the Acts of 2019, is amended by adding “, if it complies with Section 4M,” immediately after “Section 4J” in the second line.

6 Subclause 4E(5)(a)(iii) of Chapter 277, as enacted by Chapter 12 of the Acts of 2019, is amended by adding “, if it complies with Section 4M,” immediately after “Section 4J” in the fourth line.

7 Section 4J of Chapter 277, as enacted by Chapter 12 of the Acts of 2019, is amended by striking out “A” in the first line and substituting “Subject to Section 4M, a”.

8 Chapter 277 is further amended by adding immediately after Section 4K the following headings and Sections:

ADJUDICATION

4L A dispute that is the subject of a court action or other proceeding pursuant to this Act may only be referred to adjudication if the court action or proceeding has not been finally determined.

4M A dispute may only be referred to adjudication pursuant to Section 4J if the dispute pertains to

- (a) the valuation of services or materials provided under the contract between the parties;
- (b) payment under the contract between the parties, including with respect to a change order, whether it has been approved or not, or a proposed change order; or
- (c) a prescribed matter.

4N The determination of an adjudicator of a dispute referred pursuant to Section 4J is binding on the parties to the adjudication until

- (a) an order is made with respect to the matter by the court;
- (b) it is set aside on grounds set out in Section 4O;
- (c) a decision is made on the matter through an arbitration conducted pursuant to the parties' contract or the *Arbitration Act*; or
- (d) there is a subsequent written agreement between the parties on the matter.

4O A party to an adjudication may apply to the court pursuant to Section 4Q to set aside the determination by an adjudicator if

- (a) a party participated in the adjudication while under a legal incapacity;
- (b) the contract or subcontract between the parties is invalid or did not exist at the time the dispute arose;
- (c) the determination dealt, in whole or in part, with a matter not subject to adjudication under this Act or the regulations;
- (d) the determination dealt with a matter unrelated to the dispute referred to adjudication;
- (e) the adjudicator made a mistake of law;
- (f) the adjudicator did not have jurisdiction over the matter;
- (g) the prescribed adjudication procedures were not followed;
- (h) there is a reasonable apprehension of bias on the part of the adjudicator;
- (i) the determination was made as a result of fraud; or
- (j) the determination falls under a prescribed ground.

4P Notwithstanding Section 4O, nothing in this Act restricts the authority of a court or an arbitrator to consider the merits of a matter determined by an adjudicator.

4Q (1) An application for judicial review of a determination of an adjudicator must be made in accordance with the *Civil Procedure Rules*.

(2) An application for judicial review does not operate as a stay of the effect of the determination unless the court orders otherwise.

OPERATION OF LIENS

9 Section 48 of Chapter 277, as enacted by Chapter 14 of the Acts of 2013 and amended by Chapter 12 of the Acts of 2019, is further amended by

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

(ba) prescribing the duties of the Adjudicative Authority;

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

(ya) setting out the grounds for referring a dispute to adjudication;

(c) striking out clause (za) and substituting the following clauses:

(za) respecting the setting of fees, costs and other charges related to the administration and performance of adjudication;

(zaa) respecting the payment of fees, costs and other charges related to the administration and performance of adjudication;

and

(d) adding immediately after clause (zb) the following clause:

(zba) setting out the grounds for a party to apply to have the determination of an adjudicator set aside;

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