

Transitioning (again) into the Construction Act: Managing compliance

SEPTEMBER 24, 2019 3 MIN READ

Related Expertise

- [Commercial Real Estate](#)
- [Construction](#)
- [Energy](#)
- [Financial Services](#)
- [Mining and Natural Resources](#)
- [Power and Utilities](#)

Authors: [Richard Wong](#), [Joel Heard](#), [Andrew Wong](#), [Ethan McCarthy](#)

In this Update:

- Prompt payment and adjudication regime comes into effect on October 1, 2019
- Two transition provisions under Section 87.3 of the *Construction Act*
- Effect of the amendments on existing and future projects

As the flagship [amendments to Ontario's *Construction Act*](#) come into effect on October 1, 2019, stakeholders in the construction sector are grappling with which version of the legislation will apply to their projects. Ontario will have three versions of the legislation in play simultaneously starting October 1, 2019:

1. the *Construction Lien Act* and regulations as of June 29, 2018
2. the *Construction Act* with the first phase of amendments (on lien modernization) effective July 1, 2018
3. the *Construction Act* with the first phase of amendments mentioned in point two above as well as the second phase of amendments (on prompt payment and adjudication) effective October 1, 2019

The transition provisions determine which one of these three versions of the Act govern your improvement or contract. Transition provisions like this are not uncommon in new legislation and, in the case of construction, they provide industry participants who have spent considerable lead time structuring their projects and contracts some ability to continue under the old rules.

Unfortunately, the transition provisions are not straightforward or free from interpretation, and some of the subtle nuances to the analysis include the following:

- the two transition rules are worded differently from each other and focus on the following two elements: contracts and improvements
- the overall project structure matters (e.g., design-bid-build or design-build), and whether construction is performed by a single general contractor (e.g., CCDC 2) or by multiple trade contracts directly with the owner (e.g., CCDC 5A/CCDC 17)
- the nature and timing of your procurement process matters and whether the underlying lands are freehold or leasehold

Given the varying rights and remedies of industry participants under the *Construction Act*, the

choice of the applicable version is an important one. We fully anticipate that any differences in interpretation of the transition provisions will be resolved by the courts as cases arise.

Osler has developed a [free online tool](#) to assist readers in making this determination, which provides a PDF of the applicable version of the legislation (and associated regulations). Note that the tool mirrors the wording of the legislation, making it important to bear in mind (and to consider specific legal advice on) the various nuances when formulating your inputs.

In addition to the above, Osler has developed other [service offerings](#) to smoothen the transition process for our clients, such as cost-effective construction contract review services, a wide range of adjudication support services, best practices training and customizing a playbook for your organization to meet the demanding payment and adjudication timelines, and a self-help web tool ([Owner Payment Date Calculator](#)) to calculate the payment and notice of non-payment deadlines.