

## *Bill M 223— Prompt Payment Legislation in British Columbia*

On May 29, 2019, a member of the opposition party in British Columbia (Liberal House Leader, Mary Polak), introduced Bill M-223 (the Prompt Payment (Builders Lien) Act).

Bill M-223 aims to modernize the existing Builders Lien Act and to bring British Columbia in line with other jurisdictions that are introducing prompt payment reforms, including Ontario, Nova Scotia, Saskatchewan, Manitoba, New Brunswick, and Quebec. The underlying objective of prompt payment legislation is to ensure that those who provide services or materials to a construction project are paid in a timely manner. The stated intention is to minimize payment disputes and unnecessary financial hardships associated with late payment.

In Ontario, new prompt payment and adjudication amendments to that province's Construction Act took effect on October 1, 2019. British Columbia's prompt payment provisions of Bill M-223 closely resemble the new prompt payment regime adopted in Ontario; so it will be interesting to see what effect this new legislation will have on the construction industry in British Columbia.

Bill M-223 is still at first reading. The Bill would have to pass through several stages before being enacted into law. At any time during the legislative process, the Bill may be amended. If passed into law in its current form, the prompt payment framework in British Columbia under Bill M-223 would be as follows:

- A contractor must provide a "proper invoice" — as defined in Bill M-223 — to the owner on a monthly basis, which triggers the owner's payment obligation.
- The owner has 28 days to pay the contractor following the receipt of a proper invoice unless the owner provides the contractor with a notice of non-payment.
- An owner may issue a notice of non-payment to the contractor no later than 14 days after receiving a proper

invoice if the owner disputes and refuses to pay all or any portion of the amount payable under the proper invoice.

- Upon receipt of full payment of a proper invoice, the contractor has 7 days to pay its subcontractors.
- Subject to a notice of non-payment, if the owner does not pay some or all of a proper invoice within 28 days, the contractor has 35 days after giving the proper invoice to the owner to pay its subcontractors.
- Similar payment provisions would apply to subcontractors paying their own subcontractors.

The British Columbia Law Institute (BCLI) is currently undertaking a major law reform project on the Builders Lien Act. As part of its comprehensive review process, it has recently issued a Consultation Paper on the Builders Lien Act to gather comments from stakeholders and the public at large on proposed recommendations for reform of the Builders Lien Act. BCLI requests that responses to this consultation paper be sent to them by January 15, 2020. Following this date, they will begin the process of finalizing recommendations to appear in a later final report. While the BCLI's recommendations are not binding on government or the legislature, they help to contribute to and facilitate public discourse on construction law reform and may influence the implementation of new prompt payment legislation in British Columbia.

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