

# PROMPT PAYMENT AND ADJUDICATION

How will the new legislation impact Manitoba municipalities?

September 17, 2025



# LEARNING OUTCOMES

- What are the requirements of Prompt Payment for municipalities?
- What is the new adjudication process and how to best respond?
- How can municipalities prepare and comply with the new legislation



## WHY DOES IT MATTER?

- Municipalities are regular purchasers of construction services and will encounter prompt payment requirements on many projects.
- New requirements have a significant impact on project cashflow and project management requirements
- Municipalities can implement planning and strategy in advance to effectively comply with new requirements

# PROMPT PAYMENT LEGISLATION

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- Bill 38, *The Builders' Lien Amendment Act (Prompt Payment)*, received royal assent on May 31, 2023
- Legislation came into force April 1, 2025
- The amendments consist of two parts:
  - Prompt Payment
  - Interim Dispute Adjudication
- Builders' lien holdback requirements still apply – lien period extended to 60 days



## WHEN DOES IT APPLY?

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- Applies to contracts and subcontracts entered on or after April 1, 2025
- Where the new rules will **NOT** apply:
  - *Contracts or subcontracts entered into before the day before the legislation comes into force*
  - *Professional fees and charges of architects and engineers*
  - *Where The Builders' Lien Act doesn't apply (i.e. pre-existing exceptions for certain provincial highways and Manitoba Hydro contracts)*
- Unlike Saskatchewan, no industry exemptions currently contemplated in Manitoba
- Alberta has exemptions for certain public sector projects



# PROMPT PAYMENT OVERVIEW



## WHAT IS PROMPT PAYMENT?

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- The legislation establishes a scheme for prompt payment under construction contracts
- Provides a specific payment timeline for construction industry contracts
- This new scheme requires a “proper invoice”

# WHAT IS A PROPER INVOICE?

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- A proper invoice is delivered from the Contractor to the Owner
- The giving of the Proper Invoice triggers the payment timelines
- Proper invoice requirements:
  - Contractor's name and address
  - Date of the invoice, and period when the services/materials were supplied
  - Identification of the contract under which the services/materials were supplied
  - Description of the services/materials
  - Amount payable, and payment terms
  - Name and contract information of the person to receive payment
  - Meets any other requirements of the contract



# WHEN IS A PROPER INVOICE GIVEN?

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- **Unless the contract provides otherwise**, proper invoice must be given to the owner **every month**.
- Does **not** prohibit invoicing due on milestones or making a proper invoice contingent on testing or commissioning
- Therefore, monthly payment is the default unless a municipality specifies otherwise in its contract

## WHAT ARE THE TIMELINES?

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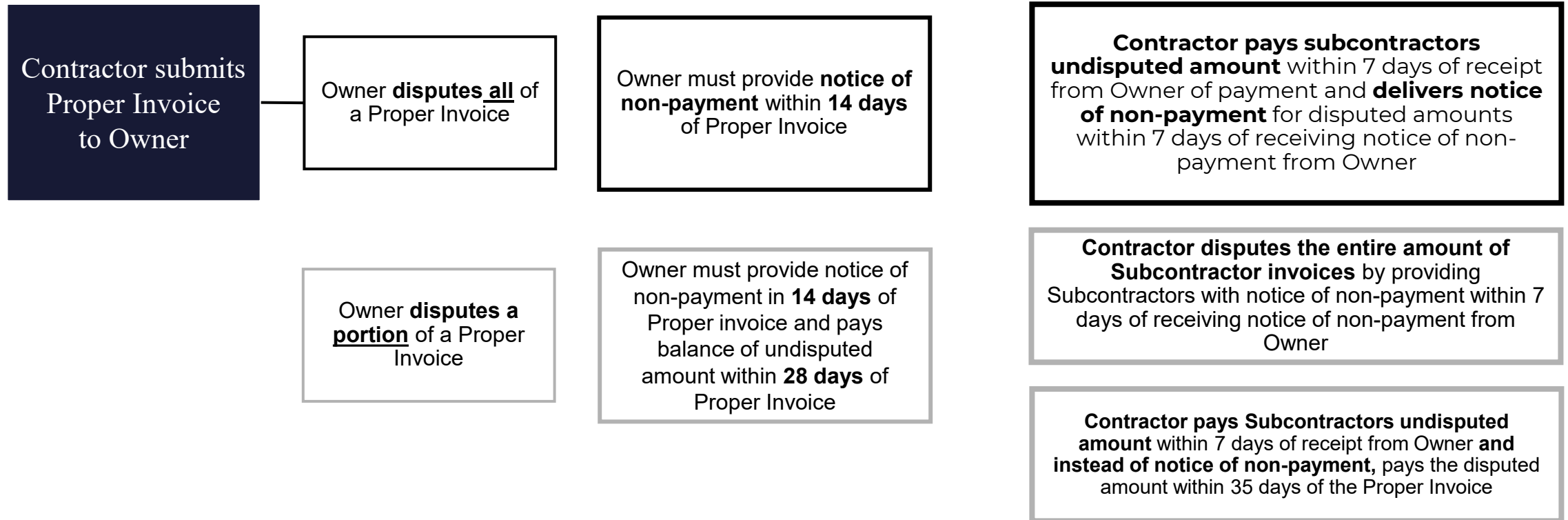
- The owner must pay the invoice within **28 days** of receiving the proper invoice from the contractor
- Parties **cannot** contract out of the 28 day payment period
- Issuing an invoice **cannot** be conditional on payment certification, but can be conditional on testing and commissioning
- Invoice reviews (including by consultants) must meet timelines

# HOW CAN AN INVOICE BE DISPUTED?

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- An owner who disputes payment, must send a notice of non-payment within **14 days** of receiving the “proper invoice”
- The notice of non-payment can be in relation to the full amount or partial amount of the proper invoice
  - An owner disputing a partial amount of the invoice, must pay the undisputed amount within **28 days** of receiving the “proper invoice” from the contractor
- Notice of non-payment must follow a prescribed form and specify the dispute amount, and reasons for non-payment
- Disputed payments may be resolved through adjudication

# PROMPT PAYMENT FLOWCHART







# ADJUDICATION OVERVIEW

# WHAT IS ADJUDICATION?

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- Fast-track dispute resolution system for payment disputes
- Described as “rough justice”
- Parties cannot contract out of adjudication
- Parties cannot preselect the adjudicator in their contract
- Each adjudication shall only concern “a single matter” unless the parties and adjudicator agree otherwise
- An adjudication decision does not restrict the authority of a court or arbitrator to come to a different decision in later proceedings

# WHEN IS ADJUDICATION AVAILABLE?

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## **A party may initiate adjudication for (section 103):**

1. A dispute that is the subject of a notice of non-payment
2. A failure to submit a proper invoice
3. A failure to make a payment in accordance with the required time periods
4. A dispute in respect of the valuation of work, services or materials provided
5. A dispute in respect of a payment under a contract or sub-contract, including in respect of a change order, whether approved or not, or a proposed change order
6. A dispute in respect of a set-off provided for by section 83
7. A matter agreed to by the parties to the adjudication
8. Any other matter set out in the regulations.

Adjudication is **not** available after a contract or subcontract is completed.

# INTERIM DETERMINATION

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- Adjudication is a “pay now, fight later” system
- Is legally binding, unless and until it is replaced by:
  - A decision of the court
  - By written agreement between the parties
  - As a result of an arbitration under The Arbitration Act
  - Or upon application to have it set aside
- Adjudication has created a potential additional layer of dispute resolution within the construction claims process
  - Traditional methods of litigation and arbitration can and will likely still follow the end of the project



# HOW TO RESPOND?

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- The timelines to respond to an adjudication are much shorter than other legal processes (such as court actions)
- Very tight timeline to respond -> will put a premium on good project/document management
- Experiences in other provinces suggest, the parties will only have about 10-15 days to respond with all reply documents and argument
- Significant advantage to claimants – can assemble documents in advance and chose the timing

# WHEN WILL A DECISION BE MADE?

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- Adjudicator must make a decision within **30-35 days** of receiving notice of adjudication, unless the parties and adjudicator agree to extend the period
  - Actual deadline depends on what date the contract documents are received by the adjudicator on (parties have up to 5 days after the adjudicator is appointed to submit contract documents)
  - In the United Kingdom, a 2012 survey found half of all adjudications are completed on an extended timetable (beyond legislated timeline)
  - Time period can be extended by 14 days at the adjudicator's request with written consent of the parties or such time period specified in the contract with written agreement and consent of adjudicator
- The adjudicator's decision must be written and state the reasons for the determination



# WHAT CAN AN ADJUDICATOR DO?

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- What an adjudicator may do:
  - *Issue directions respecting the adjudication process*
  - *Ascertain the relevant facts and law, including by making inquiries without the parties being present*
  - *Draw inferences based on the conduct of the parties to the adjudication*
  - *Conduct an on-site inspection of the applicable improvement*
  - *Obtain assistance (from a merchant, accountant, actuary, building contractor, architect, engineer or other person) before making a determination*
- What an adjudicator must do:
  - *Conduct the adjudication in an impartial matter*
  - *Make a Determination in writing with reasons in 30 days of receiving documents from initiating party (subject to procedures allowing extension of 30-day time limit)*

# WHEN MUST AN AWARD BE PAID?

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- After receiving the determination, the owner must pay the contractor the full amount determined by the adjudicator, within **10 days** of the determination
- Adjudication determinations can be enforced as an order of the Court
- If the owner defaults, the contractor or subcontractor may suspend work until receiving the full amount
  - Contractor/subcontractor is entitled to compensation for reasonable losses or costs incurred to resume work
- Unpaid party is also entitled to interest at the **higher** of the *King's Bench* interest rate or the contractual interest rate (if specified)



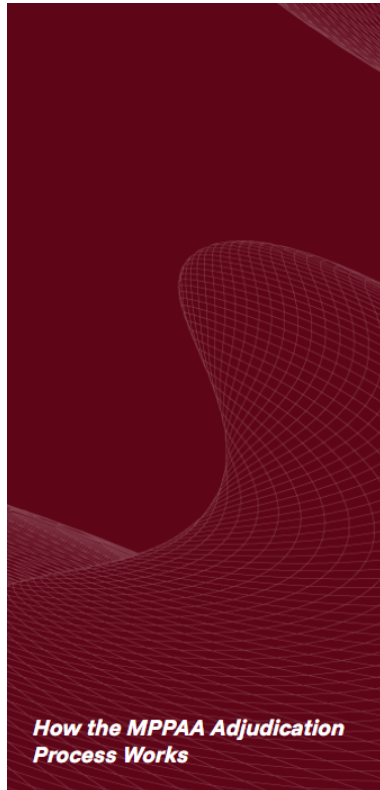
## ERRORS IN THE DETERMINATIONS

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- Potential areas of error:
  - Deciding matters outside the scope of the dispute
  - Determination is not responsive to the relief sought
  - Failure to address all or part of a submission or evidence
- Limited options for setting aside determinations (e.g. legal incapacity, invalid contract, jurisdiction, fraud, bias, procedural fairness, etc)
- Availability and application of judicial review remains to be determined

# ADJUDICATION AUTHORITY

- Manitoba Prompt Payment Adjudication Authority (MPPAA) administers the process for adjudicating construction payment disputes
- See more info on the steps: <https://mppaa.ca/adjudication/>



## ✔ Step 1

### ***Submit a Notice of Adjudication***

If a payment dispute arises, the claimant submits a Notice of Adjudication, outlining the issue and the amount in dispute. The claimant is required to pay a non-refundable application fee as well as an adjudication fee that varies based on the value of the claim. Please refer to [Fees](#) and [Forms](#).

## ✔ Step 2

### ***Adjudicator Appointment***

MPPAA maintains a list of trained, qualified and independent adjudicators. Both parties must agree on the adjudicator from the [list](#) provided. The in case of a disagreement, the MPPAA may appoint an adjudicator.

## ✔ Step 3

### ***Exchange of Information***

Both parties provide relevant documents, contracts, and evidence for the adjudicator's review. The process is designed to be straightforward and efficient.

## ✔ Step 4

### ***Adjudicator Review & Decision***

The adjudicator reviews the case and makes an interim binding determination within a set timeframe. This decision must be followed by both parties.

## ✔ Step 5

### ***Compliance & Enforcement***

If the decision is not followed, legal enforcement measures may be taken under Manitoba's prompt payment legislation.

# ADJUDICATOR'S FEE AND COSTS

## ***Filing Fee***

Fee Type	Fee Amount
Disputes under \$25,000	\$500.00
Disputes over \$25,000	\$1,000.00

The filing fees are payable to MPPAA and these fees are non-refundable

## ***Adjudication Fee Schedule***

Fee Type	Fee Amount
Disputes under \$25,000	\$1,000.00
Disputes under \$35,000	\$2,000.00
Disputes under \$50,000	\$3,000.00
Disputes between \$50,000 and \$249,999	Hourly rate of \$250.00
Disputes between \$250,000 and \$499,999	Hourly rate of \$400.00
Disputes over \$500,000	Hourly rate of \$500.00

The cost of adjudication will be pre-paid to the MPPAA and held in trust until completion of adjudication. The number of hours for adjudication over \$50k will be based off of 8 hours. The payment will be made from the claimant. The adjudicator will adjust the fees to be paid by each party as part of the decision. Accordingly, a portion of the pre-paid funds should be returned to the claimant as the dispute cost is intended to be borne equally by both parties, unless the adjudicator rules otherwise. Other expenses such as professional experts, travel, meals and accommodation expenses related to the process will be shared equally by the parties and are in addition to the above proposed fees.

Note: disputes less than \$50,000, 20% of the fee will be an administration charge that will be retained by MPPAA and disputes over \$50,000 will have an administrative charge of 25%.



# ENSURING COMPLIANCE



# KEY CONSIDERATIONS

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## **1. How are invoices handled by on construction projects?**

- What approvals does an invoice require to get paid?
- What would need to change (if anything) to ensure that any issue that would lead to non-payment (or short payment) is communicated to the contractor within 14 days?
- Is accounting/finance capable of making payment within 28 days of receipt of the invoice?
- Are any process improvements needed to meet the 14 and 28 day deadlines?

## **2. Have your contracts been updated to reflect the new payment cycle?**

- Have contract templates and guides been updated?
- What requirements does the Municipality usually have for invoicing? (timesheets reviewed and approved, specific administrative requirements, etc.)
- Is there a tracking system for which contracts/projects are covered by Prompt Payment?

# KEY CONSIDERATIONS

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## **3. What procurement model is being used?**

- Consider developing milestone payment systems for suitable projects
- Will a payment certifier be used? What invoice review timelines can be secured with the payment certifier (should be less than 14 days or it is not useful)

## **4. When may it be appropriate to require added contract security**

- Does the municipality use contract security? (bonds, letters of credit, retention funds?)
- Are contractors assessed on their financial/credit risk?

# KEY CONSIDERATIONS

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## **5. How will the municipality finance upcoming projects?**

- If reliant on outside sources (other levels of government, banks), how long does it typically take to obtain releases for payment?
- Are draw / credit conditions aligned with the new system?
- Is cashflow sufficient to make payments in case financing is delayed?

## **6. What document / project management systems are being used?**

- If a third party consultant is involved, do you have ready access to documents?
- What documents are likely to be needed if there is a dispute?
- Are project management personnel trained and experienced in handling disputes?
- Will additional people/systems be required to manage the administrative burden of faster payment and/or responding to disputes?

# PROMPT PAYMENT READINESS STRATEGIES

## 1. Templates

- a. Make sure contract templates meet the requirements*
- b. Use as an opportunity for a general refresh?*

## 2. Contracting and Procurement Strategy

- a. Can procurements/contracts be structured in a way to streamline compliance with the new timelines?*

## 3. Training

- a. Get everyone in your organization ready (project team, finance, consultants, management, etc.)*

## 4. Processes

- a. Evaluate current processes (invoice review, payment) to eliminate chokepoints that will make it difficult to meet new payment timelines*

# Q&A