

Municipal Infrastructure – The Dawn of a New Era

Presented By

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BLG
Borden Ladner Gervais

- **More than 700 lawyers, intellectual property agents and other professionals.**
- **One of Canada's largest law firms.**
- **Offices in Vancouver, Calgary, Toronto, Ottawa and Montreal.**

BLG's Practice Areas

- **Litigation Department**
 - Commercial Litigation
 - Construction Group
 - Environmental, Municipal, Expropriation and Regulatory
 - Health Law Group
 - Insurance and Tort Liability
 - Labour and Employment
- **Business Department**
 - Commercial Real Estate
 - Corporate Commercial
 - Financial Services
 - Intellectual Property Group
 - Securities and Capital Markets
 - Tax

BLG's Expertise in Infrastructure

- **Ranked Platinum Elite by ReNew Canada for 2018 in the Top 100 Project infrastructure project listing for Canada**
- **Ranked Tier 1 in the 2017 edition of Legal 500 for public procurement.**
- **Ranked Tier 2 - 2018 edition of IFLR1000 – The Guide to the World's Leading Financial Law Firms – Project Finance**
- **The highest number of ranked lawyers in Construction Law in the 2017 Lexpert®/American Lawyer Guide to the Leading 500 Lawyers in Canada**
- **30 BLG lawyers recognized in the 2017 Lexpert/ROB Special Edition on Canada's Leading Infrastructure Lawyers**
- **Top listed in Canada in Construction Law in the 2018 edition of The Best Lawyers in Canada®**
- **The only firm ranked Band 1 for Construction in the 2018 edition of Chambers Canada – Canada's Leading Lawyers for Business**

Overview – Municipal Infrastructure – The Dawn of a New Era

- **Canadian Free Trade Agreement and evolving procurement obligations**
- **Construction lien reform**
- **Progress with the Canada Infrastructure Bank**



Canadian Free Trade Agreement (CFTA)

Canadian Free Trade Agreement (CFTA) – What is it?

- **Transition to Canadian Free Trade Agreement (CFTA) from the Agreement on Internal Trade (AIT)**
- **Came into force July 1, 2017**
- **Purpose of reducing and eliminating barriers to free movement of people, goods, services and investments within Canada**
- **Municipalities are covered**



**CANADIAN
FREE TRADE
AGREEMENT**

**ACCORD DE
LIBRE-ÉCHANGE
CANADIEN**

CFTA – One Year On

- **Interesting issues for municipalities include:**
 - **Procurement Thresholds**
 - **General Exemptions**
 - **Exclusions of Bidders**
 - **Local Content or Economic Benefit**
 - **Negotiations**
 - **Limited Tendering Procurement**
 - **Dispute Procedures**

Some Resulting Best Practices

- **Ensure procurement policies align**
- **Review procurement documentation templates**
- **Establish frameworks for negotiation**

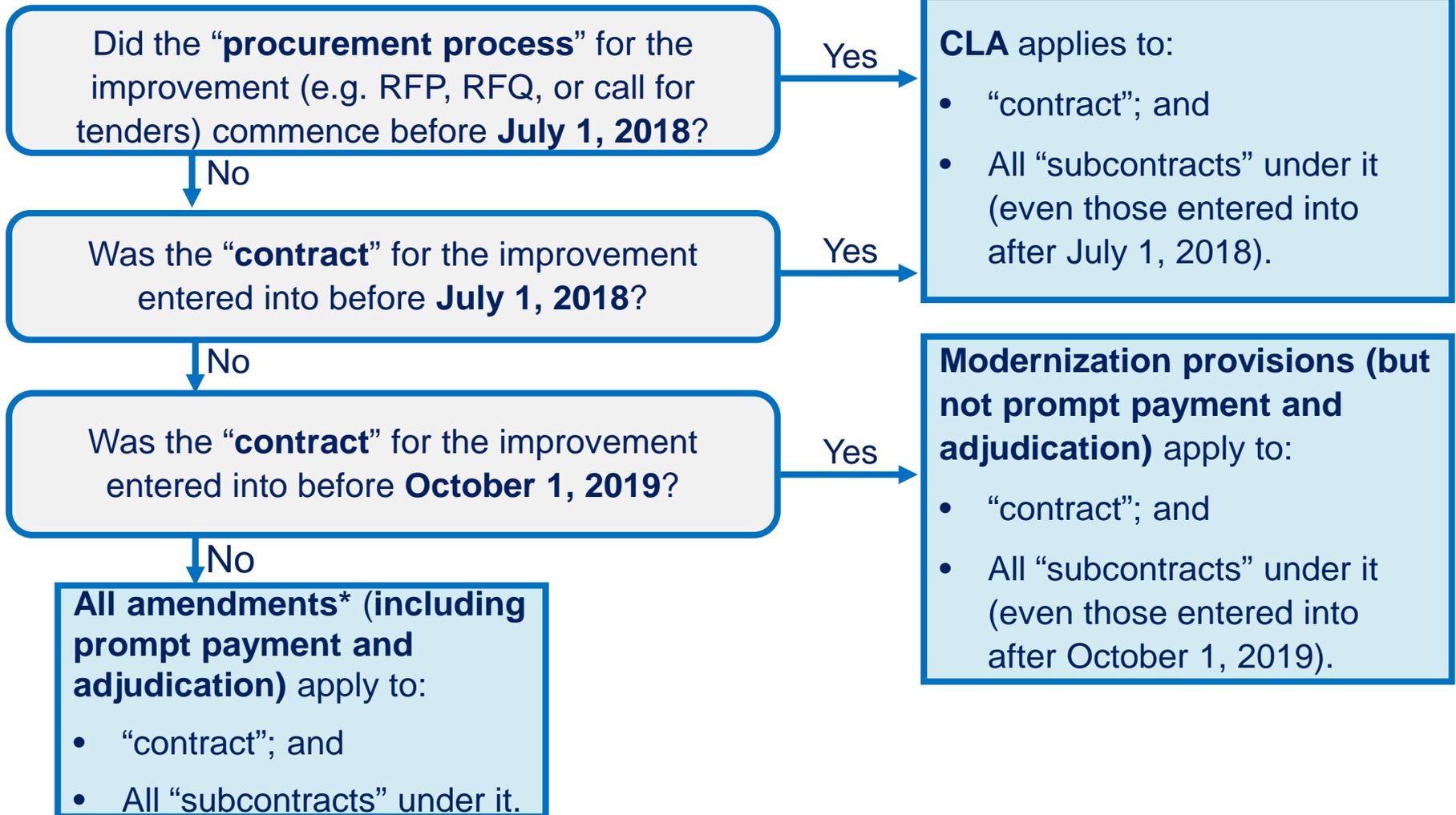


Ontario's new
Construction Act
– formerly the
*Construction
Lien Act*

The new *Construction Act*

- **Significant amendments to the *Construction Act* (formerly, the *Construction Lien Act*) were passed in December 2017, some of which are now enforceable while others will be enforced at a later time**
- **The amendments will be phased in:**
 - **Modernization of lien and holdback rules: July 1, 2018**
 - **Prompt payment and adjudication model: October 1, 2019**
- **How do you know if the old or the new Act applies?**

Transition to Construction Act



The Construction Act

What's Changed?

- **Modernization of the construction lien and holdback rules**
- **Institution of a promptness of payment regime**
- **Adoption of a new adjudication model – expedited dispute resolution**

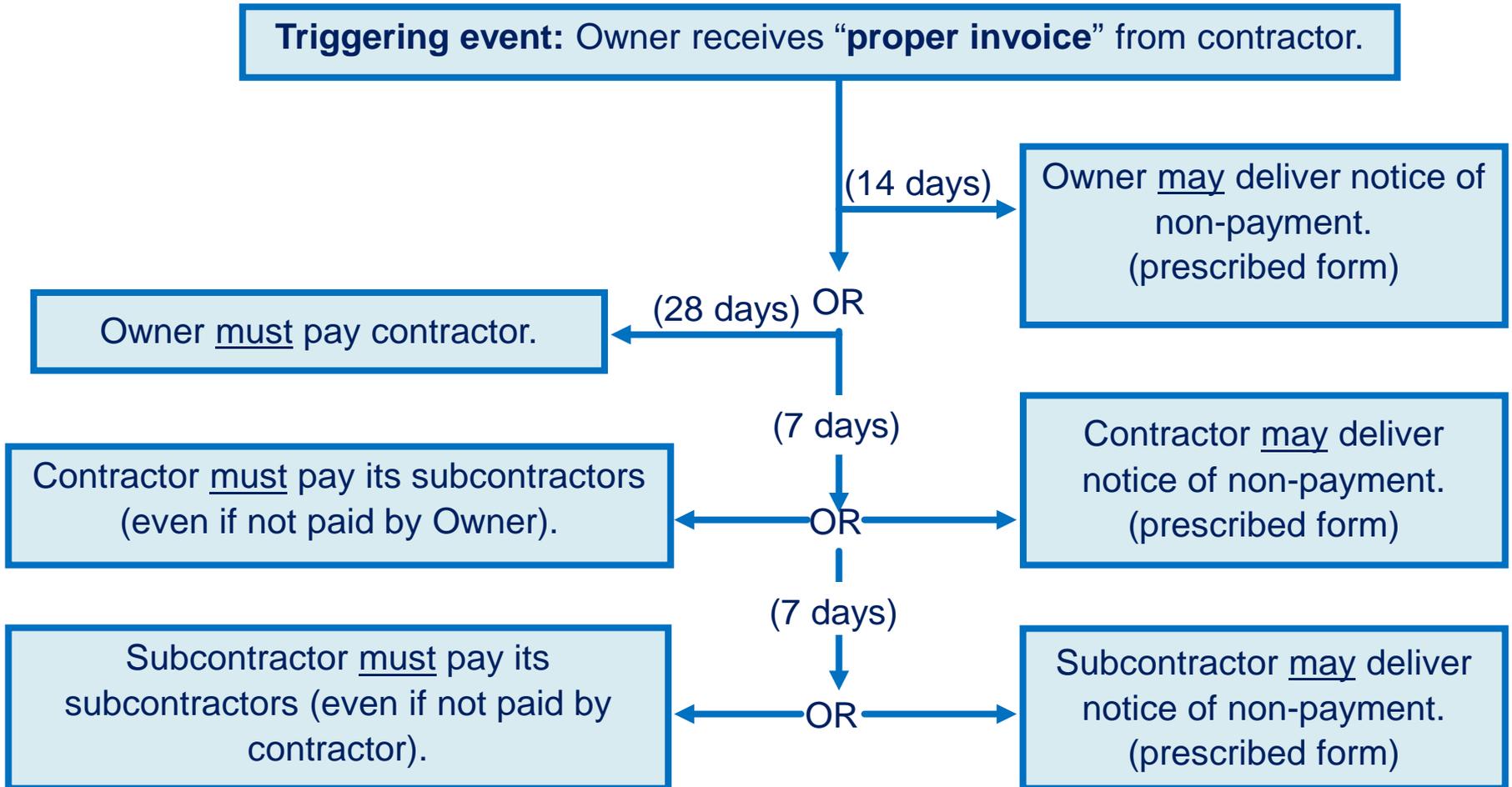
Why the Changes?

- **Changes are intended to enhance efficiency and competition**
- **They introduce new forms and statutory obligations that require new procedures**
- **Meant to modernize the construction lien and holdback rules**

Areas of Significant Revision

- **Lien changes**
- **Increased values for calculation of substantial performance:**
 - **Known deficiency of not more than 3% of the first \$1,000,000 of the contract price (increase from \$500,000)**
 - **Known deficiency of not more than 2% of the next \$1,000,000 of the contract price (increase from \$500,000)**
 - **Known deficiency of not more than 1% of the remainder of the contract price**
- **Holdback – may be retained in forms other than funds**
 - **Bundling and phasing**
- **Prompt Payment – comes into force October 2019**

Payment Regime - Timeline



Areas of Significant Revision (cont.)

- **Construction Trusts – new trust fund requirements**
- **Capital Repairs Lienable**
- **Adjudication – October 2019: certain exemptions for municipalities. E.g. cannot adjudicate:**
 - **a determination of when a PA is substantially completed;**
 - **when construction contract is substantially performed;**
 - **whether a milestone has been reached, if the milestone requires an amount to be paid; or**
 - **any other prescribed matters (none at this time).**



Canada Infrastructure Bank

Canada Infrastructure Bank Developments

- **Purpose is to build more infrastructure and to attract private sector and institutional investors.**
- **Investment of \$35 billion in infrastructure projects over the next decade.**
- **Organization of the CIB is underway.**
- ***Canada Infrastructure Bank Act* is now in force.**
 - **Key take-aways from the Act**

Thank You

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