BILL

No. 152

An Act to amend *The Builders' Lien Act*

(Assented to)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

Short title

1 This Act may be cited as *The Builders' Lien (Prompt Payment) Amendment Act, 2018*.

SS 1984-85-86, c B-7.1 amended

2 *The Builders' Lien Act* is amended in the manner set forth in this Act.

Section 2 amended

3 Subsection 2(1) is amended:

(a) by repealing clause (a) and substituting the following:

"(a) **'adjudication'** means construction dispute interim adjudication pursuant to Part II.1 with respect to a matter mentioned in section 21.21;

"(a.01) **'adjudicator'** means a person who is qualified by the Authority as an adjudicator and listed in the registry established pursuant to clause 21.12(1)(c);

"(a.02) **'architect'** means an architect registered pursuant to *The Architects Act, 1996* and includes a corporation licensed to practise architecture pursuant to the bylaws of The Saskatchewan Association of Architects;

"(a.03) **'Authority'** means the Adjudication Authority designated pursuant to section 21.12**";**

(b) in subclause (d)(iii):

(i) by repealing paragraph (B);

(ii) by repealing paragraph (C) and substituting the following:

"(C) *The Education Act, 1995***";**

(iii) by repealing paragraph (D) and substituting the following:

"(D) *The Irrigation Act, 1996***";**

(iv) by repealing paragraph (H.2); and

(v) by repealing paragraph (P);

(c) by adding the following clauses after clause (j):

"(j.1) **'minister'** means the member of the Executive Council to whom for the time being the administration of this Act is assigned;

"(j.2) **'ministry'** means the ministry over which the minister presides**"; and**

(d) in subclause (o)(ii) by striking out "Department of Energy and Mines**" and substituting "**Ministry of Energy and Resources**".**

Section 3 amended

4 The following subsections are added after subsection 3(2):

"(3) For the purposes of this Act, if an adjudicator makes a determination pursuant to Part II.1 in relation to a contract before the certification or declaration of substantial performance of a contract pursuant to section 41:

(a) any amount determined by the adjudicator to be payable by a party to the contract or subcontract shall be added to the contract or subcontract price in determining substantial performance; and

(b) any amount determined by the adjudicator to have been overpaid by a party to the contract or subcontract shall be deducted from the contract or subcontract price in determining substantial performance.

"(4) Subsection (3) ceases to apply if:

(a) the adjudicator's determination ceases to be binding on the parties to the adjudication pursuant to section 21.52; or

(b) the determination of the adjudicator is set aside pursuant to section 21.62**".**

Section 5 amended

5(1) Clause 5(2)(a) is amended by striking out "*The Highways and Transportation Act***" and substituting "***The Highways and Transportation Act, 1997***".**

(2) Subsection 5(3) is amended by striking out "*The Highways and Transportation Act***" and substituting "***The Highways and Transportation Act, 1997***".**

New Part I.1

6 The following Part is added after section 5:

"PART I.1
Prompt Payment

"Definition for Part

5.1 In this Part, **'proper invoice'** means a written bill or other request for payment for services or materials with respect to an improvement under a contract, if it contains the following information and, subject to subsection 5.3(2), meets any other requirements that the contract specifies:

(a) the contractor's name and address;

(b) the date of the invoice and the period during which the services or materials were supplied;

(c) information identifying the contract or other authority under which the services or materials were supplied;

(d) a description, including quantity if appropriate, of the services or materials that were supplied;

(e) the amount payable for the services or materials that were supplied, and the payment terms;

(f) the name, title, telephone number and mailing address of the person to whom payment is to be sent;

(g) any other prescribed information.

"Non-application of Part

5.11 This Part does not apply to prescribed persons or classes of persons.

"Requirement to pay is subject to requirement to retain holdback

5.2 A requirement to pay an amount in accordance with this Part is subject to any requirement to retain a holdback in accordance to Part IV.

"Giving of proper invoices

5.3(1) Subject to the regulations, a proper invoice must be given to an owner on a monthly basis, unless the contract provides otherwise.

(2) A provision in a contract that makes the giving of a proper invoice conditional on the prior certification of a payment certifier or on the owner's prior approval is of no force or effect.

(3) Subsection (2) does not apply to a provision in a contract that provides for the certification of a payment certifier or the owner's approval after a proper invoice is given.

(4) Subsection (2) does not apply to a provision in a contract that provides for testing and commissioning of the improvement or of services or materials supplied under the contract.

(5) A proper invoice may be revised by the contractor after the contractor has given it to the owner if:

(a) the owner agrees in advance to the revisions;

(b) the date of the proper invoice is not changed; and

(c) the proper invoice continues to meet the requirements in the definition of proper invoice.

"Payment deadline - owner to contractor

5.4(1) Subject to subsection (2) and the regulations, an owner shall pay the amount payable under a proper invoice no later than 28 days after receiving the proper invoice from the contractor.

(2) An owner who disputes a proper invoice may refuse to pay all or any portion of the amount payable under the proper invoice if, no later than 14 days after receiving the proper invoice from the contractor, the owner gives to the contractor a notice of non-payment, in the prescribed form and manner, specifying the amount of the proper invoice that is not being paid and detailing all of the reasons for non-payment.

(3) Subsection (1) continues to apply to any amount payable under the proper invoice that is not the subject of a notice pursuant to subsection (2).

"Payment deadline - contractor to subcontractor

5.5(1) Subject to subsection (6), a contractor who receives full payment pursuant to subsection 5.4(1) shall, no later than seven days after receiving payment, pay to each subcontractor who supplied services or materials under a subcontract that were included in the proper invoice the amount payable to the subcontractor.

(2) Subject to subsection (6), if the payment received by the contractor from the owner is only for a portion of the amount payable under a proper invoice, the contractor shall, no later than seven days after receiving payment, pay each subcontractor who supplied services or materials under a subcontract that were included in the proper invoice from the amount paid by the owner.

(3) For the purposes of subsection (2), if more than one subcontractor is entitled to payment, payment must be made as follows:

(a) if the amount not paid by the owner is specific to services or materials supplied by a particular subcontractor or subcontractors:

(i) the remaining subcontractors must be paid; and

(ii) any amount paid by the owner with respect to the subcontractor or subcontractors who are implicated in the dispute mentioned in subsection 5.4(2) must be paid to them on a proportionate basis, as applicable;

(b) in any other case, subcontractors must be paid on a proportionate basis.

(4) Subject to subsection (5) or (6), if the owner does not pay, in full, the amount payable under a proper invoice within the time specified in subsection 5.4(1), the contractor shall, no later than 35 days after giving the proper invoice to the owner, pay to each subcontractor who supplied services or materials under a subcontract that were included in the proper invoice the amount payable to the subcontractor, to the extent that the subcontractor was not paid fully pursuant to subsection (2).

(5) Subsection (4) does not apply with respect to an amount payable to a subcontractor if, no later than the date specified in subsection (7), the contractor gives to the subcontractor a notice of non-payment in the prescribed form and manner that:

(a) states that some or all of the amount payable to the subcontractor is not being paid within the time specified in subsection (4) due to non-payment by the owner;

(b) specifies the amount not being paid;

(c) provides an undertaking to refer the matter between the contractor and the owner to adjudication pursuant to Part II.1 no later than 21 days after giving the notice to the subcontractor; and

(d) includes a copy of any notice of non-payment given by the owner pursuant to subsection 5.4(2).

(6) A contractor who disputes, in whole or in part, the entitlement of a subcontractor to payment of an amount under the subcontract may refuse to pay all or any portion of the amount within the time specified in subsection (1), (2) or (4), as the case may be, if, no later than the date specified in subsection (7), the contractor gives to the subcontractor a notice of non-payment, in the prescribed form and manner, specifying the amount that is not being paid and detailing all of the reasons for non-payment.

(7) For the purposes of subsections (5) and (6), the contractor must give notice no later than:

(a) seven days after receiving a notice of non-payment from the owner pursuant to subsection 5.4(2); or

(b) if no notice was given by the owner, before the expiry of the period mentioned in subsection (4).

(8) Subsections (1) and (2) apply, with any necessary modification, to any amount that is the subject of a notice pursuant to clause (5)(a), once the amount is paid by the owner.

"Requirements after receipt of notice of non-payment

5.51(1) Subject to the regulations, a contractor who receives a notice of non-payment pursuant to subsection 5.4(2) shall, without delay, advise its subcontractors of the receipt of that notice.

(2) Subject to the regulations, a subcontractor who receives a notice of non-payment pursuant to subsection 5.5(6) shall, without delay, advise its subcontractors of the receipt of that notice.

"Payment deadlines - subcontractor to subcontractor

5.6(1) Subject to subsection (7), a subcontractor who receives full payment pursuant to subsection 5.5(1) shall, no later than seven days after receiving payment, pay to each subcontractor who supplied services or materials that were included in the proper invoice the amount payable to the subcontractor.

(2) Subject to subsection (7), if the payment received by the subcontractor from the contractor is only for a portion of the amount payable to the subcontractor with respect to a proper invoice, the subcontractor shall, no later than seven days after receiving payment, pay each subcontractor who supplied services or materials that were included in the proper invoice from the amount paid by the contractor.

(3) For the purposes of subsection (2), if more than one subcontractor is entitled to payment, payment must be made as follows:

(a) if the amount not paid by the contractor is specific to services or materials supplied by a particular subcontractor or subcontractors:

(i) the remaining subcontractors must be paid; and

(ii) any amount paid by the contractor with respect to the subcontractor or subcontractors who are implicated in the dispute mentioned in subsection 5.5(6) must be paid to them on a proportionate basis, as applicable; or

(b) in any other case, subcontractors must be paid on a proportionate basis.

(4) Subject to subsection (6) or (7), if the contractor does not pay, in full, the amount payable to a subcontractor with respect to a proper invoice within the time specified in subsection 5.5(1), the subcontractor shall, no later than the date specified in subsection (5), pay to each subcontractor who supplied services or materials under a subcontract with that subcontractor that were included in the proper invoice the amount payable to the subcontractor, to the extent that the subcontractor was not paid fully pursuant to subsection (2).

(5) For the purposes of subsection (4), the subcontractor shall pay the amounts no later than:

(a) seven days after the subcontractor receives payment from the contractor; or

(b) if no payment is made by the contractor to the subcontractor, 42 days after the proper invoice was given to the owner.

(6) Subsection (4) does not apply with respect to a subcontractor if, no later than the date specified in subsection (8), the subcontractor required to pay pursuant to subsection (4) gives to the other subcontractor, in the prescribed manner:

(a) a notice of non-payment, in the prescribed form:

(i) stating that some or all of the amount payable to the subcontractor is not being paid within the time specified in subsection (4) due to non-payment by the contractor;

(ii) specifying the amount not being paid; and

(iii) unless the failure of the contractor to pay is as a result of non-payment by the owner, providing an undertaking to refer the matter to adjudication pursuant to Part II.1 no later than 21 days after giving notice to the subcontractor; and

(b) a copy of any notices of non-payment received by the subcontractor in relation to the proper invoice.

(7) A subcontractor who disputes, in whole or in part, the entitlement of another subcontractor to payment of an amount under the subcontract may refuse to pay all or any portion of the amount within the time specified in subsection (1), (2) or (4), as the case may be, if, no later than the date specified in subsection (8), the subcontractor gives to the other subcontractor a notice of non-payment, in the prescribed form and manner, specifying the amount that is not being paid and detailing all of the reasons for non-payment.

(8) For the purposes of subsections (6) and (7), the subcontractor must give notice no later than:

(a) seven days after receiving a notice of non-payment from the contractor pursuant to subsection 5.5(5) or (6); or

(b) if no notice was given by the contractor, before the expiry of the period mentioned in clause (5)(b).

(9) Subsections (1) and (2) apply, with any necessary modification, with respect to any amount that is the subject of a notice pursuant to clause (6)(a), once the amount is paid by the contractor.

(10) On the request of a subcontractor who is required to make payments in accordance with this section, the contractor shall, as soon as possible, provide to the subcontractor confirmation of the date on which the contractor gave a proper invoice to the owner.

(11) This section applies, with any necessary modification, to a subcontractor who is entitled to payment in accordance with this section and to any amounts payable by that subcontractor to any other subcontractor under a subcontract with respect to the improvement.

"Reasons for non-payment

5.7 Reasons for non-payment in accordance with this Part may include the retention of amounts described in section 13 or 28.

"No effect on wages

5.8 Nothing in this Part in any way reduces, derogates from or alters the obligations of a contractor or subcontractor to pay wages as provided for by statute, contract or collective agreement.

"Interest on late payments

5.9 Interest begins to accrue on an amount that is not paid when it is due to be paid pursuant to this Part at the pre-judgment interest rate in effect pursuant to *The Pre-judgment Interest Act* or, if the contract or subcontract specifies a different interest rate for the purpose, the greater of the pre-judgment interest rate and the interest rate specified in the contract or subcontract**".**

New Part II.1

7 The following Part is added after section 21:

"PART II.1
Dispute Interim Adjudication

"Definition for Part

21.1 In this Part, **'notice of adjudication'** means a notice that meets the requirements of section 21.3.

"Non-application of Part

21.11 This Part does not apply to prescribed persons or classes of persons.

"Adjudication Authority

21.12(1) The minister may designate an entity to act as the Adjudication Authority for the purposes of this Part.

(2) An entity must meet the prescribed criteria, if any, in order to be eligible to be designated pursuant to subsection (1) or to act as the Adjudication Authority.

"Duties and powers of Authority

21.13(1) The Authority shall:

(a) develop and oversee programs for the training of persons as adjudicators;

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

(c) establish and maintain a publicly available registry of adjudicators;

(d) appoint adjudicators for the purposes of subsection 21.32(5);

(e) perform any other duties of the Authority set out in this Part; and

(f) perform any other prescribed duties.

(2) The Authority may:

(a) subject to the regulations, set:

(i) fees for the training and qualification of persons as adjudicators; and

(ii) fees to be paid to adjudicators pursuant to section 21.4, and require their payment;

(b) exercise any other power of the Authority set out in this Part; and

(c) exercise any other prescribed power.

"Minister as interim Authority

21.2(1) The minister may act as Adjudication Authority in accordance with subsection (2) on an interim basis, for any period during which an entity is not designated pursuant to section 21.12.

(2) If the minister acts pursuant to subsection (1), the minister:

(a) shall perform the duties of the Authority, other than the duty set out in clause 21.13(1)(a); and

(b) may exercise the powers of the Authority, other than the power set out in clause 21.13(2)(a).

"Availability of adjudication

21.21(1) Subject to subsection (3), a party to a contract may refer to adjudication a dispute with the other party to the contract respecting any of the following matters:

(a) the valuation of services or materials provided under the contract;

(b) payment under the contract, including with respect to a change order, whether approved or not, or a proposed change order;

(c) disputes that are the subject of a notice of non-payment pursuant to Part I.1;

(d) amounts retained pursuant to section 13 or 28;

(e) disputes respecting the amount of reasonable costs incurred pursuant to clause 21.7(5)(c) or subsection 21.7(6);

(f) failure or refusal to certify substantial performance pursuant to section 41;

(g) any other matter that the parties to the adjudication agree to;

(h) any other prescribed matter.

(2) Subject to subsection (3), a party to a subcontract may refer to adjudication a dispute with the other party to the subcontract respecting any of the matters mentioned in subsection (1), with any necessary modification.

(3) An adjudication may not be commenced if the notice of adjudication is given after the date on which the contract or subcontract is completed, unless the parties to the adjudication agree otherwise.

(4) Subject to section 21.31, an adjudication may only address a single matter, unless the parties to the adjudication and the adjudicator agree otherwise.

(5) A party to a contract or a subcontract may refer a matter to adjudication pursuant to this Part even if the matter is the subject of a court action or of an arbitration pursuant to *The Arbitration Act, 1992*, unless the action or arbitration has been finally determined.

"Adjudication procedures

21.22(1) Subject to subsection (2), an adjudication is subject to the adjudication procedures set out in the contract or subcontract, if they comply with the requirements of this Part.

(2) If the contract or subcontract does not address adjudication procedures, or if the adjudication procedures set out in the contract or subcontract do not comply with the requirements of this Part, the adjudication is subject to the adjudication procedures set out in this Part and in the regulations.

"Notice of adjudication

21.3(1) A party to a contract or subcontract who intends to refer a dispute to adjudication shall give to the other party a written notice of adjudication that:

(a) must include:

(i) the names and addresses of the parties;

(ii) the nature and a brief description of the dispute, including details respecting how and when it arose; and

(iii) the nature of the redress sought; and

(b) may include the name of a proposed adjudicator to conduct the adjudication.

(2) Subject to the regulations, a party to a contract or a subcontract who gives notice pursuant to subsection (1) shall give a copy of the notice, in the prescribed manner, to the prescribed persons or entities.

"Consolidated adjudication

21.31(1) Subject to the regulations, if the same matter or related matters with respect to an improvement are the subject of disputes to be adjudicated in separate adjudications pursuant to subsections 21.21(1) and (2), the parties to each of the adjudications may agree to the adjudication of the disputes together, by a single adjudicator, as a consolidated adjudication.

(2) If the same matter or related matters with respect to an improvement are the subject of disputes to be adjudicated in separate adjudications pursuant to subsections 21.21(1) and (2) but the parties to each of the adjudications do not agree to consolidated adjudication, the contractor may, in accordance with the regulations, nevertheless require the consolidation of adjudications.

(3) This Part applies with the following and any other necessary modifications to a consolidated adjudication:

(a) subsection 21.4(3) does not apply, and the adjudicator may determine how the adjudication fee is to be apportioned among the parties;

(b) the reference in subsection 21.42(3) to either or both parties to an adjudication shall be read as a reference to any or all of the parties to the consolidated adjudication;

(c) the references in section 21.61 to the other party to the adjudication shall be read as a reference to any party to the consolidated adjudication.

"Adjudicator

21.32(1) An adjudication may only be conducted by an adjudicator.

(2) A provision in a contract or subcontract that names a person to act as an adjudicator in the event of an adjudication is of no force or effect.

(3) The parties to an adjudication may agree to an adjudicator, in which case one of the parties must provide the proposed adjudicator with a notice of adjudication.

(4) If an adjudicator does not consent to conduct the adjudication within four days after the notice of adjudication is provided, the party who gave the notice shall request that the Authority appoint an adjudicator.

(5) The Authority shall, no later than seven days after receiving a request for the appointment, appoint an adjudicator, subject to the adjudicator's prior consent, to conduct an adjudication.

(6) Nothing in this Part or the regulations shall be read as requiring an adjudicator to agree to conduct an adjudication or to accept an appointment by the Authority to conduct an adjudication.

"Adjudicator fee

21.4(1) Subject to the regulations, an adjudicator shall be paid a fee for conducting the adjudication, which is to be determined in accordance with subsection (2).

(2) The fee payable to an adjudicator is:

(a) the fee agreed to by the parties to the adjudication and the adjudicator; or

(b) if the parties and the adjudicator do not agree to a fee amount, the amount determined by the Authority, in accordance with the regulations, if any, on the adjudicator's request.

(3) The parties to the adjudication shall split payment of the fee payable to the adjudicator equally, subject to a different determination pursuant to section 21.61.

"Documents for adjudication

21.41 No later than five days after an adjudicator agrees or is appointed to conduct the adjudication, the party who gave the notice of adjudication shall give to the adjudicator a copy of the notice, together with:

(a) a copy of the contract or subcontract; and

(b) any documents the party intends to rely on during the adjudication.

"Conduct of adjudication

21.42(1) Subject to the regulations, in conducting an adjudication, an adjudicator may do all or any of the following:

(a) issue directions respecting the conduct of the adjudication;

(b) ascertain the relevant facts and law, including making inquiries without the parties being present;

(c) draw inferences based on the conduct of the parties to the adjudication;

(d) subject to subsection (2), conduct an on-site inspection of the improvement that is the subject of the contract or subcontract;

(e) obtain the assistance of a merchant, accountant, actuary, building contractor, architect, engineer or other person in any manner that the adjudicator considers appropriate, to enable him or her to determine any matter of fact in question;

(f) exercise any other power of an adjudicator that may be specified in the contract or subcontract;

(g) make a determination in the adjudication;

(h) exercise any other power that may be prescribed.

(2) The exercise of the power to conduct an on-site inspection pursuant to clause (1)(d) is subject to the prior consent of:

(a) the owner of the premises, if:

(i) the premises is a home in which the owner resides; or

(ii) the owner is not a party to the adjudication; and

(b) any other person who has the legal authority to exclude others from the premises.

(3) If the adjudicator obtains the assistance of a person pursuant to clause (1)(e), the fee payable to that person:

(a) is to be split equally between the parties to the adjudication; or

(b) if the parties do not agree, the adjudicator may direct payment of the fee, as is reasonable and proportionate to the dispute, by either or both of the parties to the adjudication.

(4) Subject to this section, the adjudicator may conduct the adjudication in the manner the adjudicator determines appropriate in the circumstances.

(5) An adjudicator shall conduct an adjudication in an impartial manner.

"Determination

21.5(1) Subject to subsection (2) and the regulations, an adjudicator shall make a determination of the matter that is the subject of an adjudication no later than 30 days after receiving the documents required by section 21.41.

(2) The deadline for an adjudicator's determination may be extended at any time before its expiry and after the giving of documents to the adjudicator pursuant to section 21.41:

(a) on the adjudicator's request, with the written consent of the parties to the adjudication, for a period of no more than 14 days; or

(b) with the written agreement of the parties to the adjudication, subject to the adjudicator's consent, for the period specified in the agreement.

(3) If the party who gave the notice of adjudication also gave a notice of non-payment pursuant to Part I.1 in relation to the matter that is the subject of the adjudication, the party shall give notice of an extension pursuant to clause (2)(b), specifying the period of the extension, to the person to whom the party gave the notice of non-payment.

(4) If a person who receives notice of an extension pursuant to subsection (3) or this subsection also gave a notice of non-payment pursuant to Part I.1 in relation to the matter that is the subject of the adjudication, that person shall give notice of the extension, specifying the period of the extension, to the person to whom the notice of non-payment was given.

(5) Subject to the regulations, a determination made by an adjudicator after the date determined pursuant to subsection (1) or (2) is of no force or effect.

(6) The adjudicator's determination must be in writing and must include reasons for the determination.

"Termination of adjudication

21.51 At any time after the notice of adjudication is provided and before the adjudicator makes a determination, the parties to the adjudication may agree to terminate the adjudication, on notice to the adjudicator and subject to the payment of the adjudicator's fee and the fee of any person consulted pursuant to clause 21.42(1)(e).

"Effect of determination

21.52(1) The decision of an adjudicator is binding on the parties to the adjudication until:

(a) an order is made with respect to the matter by the court;

(b) a decision is made with respect to the matter as a result of an arbitration conducted pursuant to *The Arbitration Act, 1992*;

(c) there is a written agreement between the parties respecting the matter; or

(d) the order is set aside pursuant to section 21.62.

(2) Notwithstanding section 21.62, nothing in this Part restricts the authority of the court or an arbitrator to consider the merits of a matter determined by the adjudicators.

"Costs

21.6 Subject to section 21.61, the parties to an adjudication shall bear their own costs of the adjudication.

"Frivolous, vexatious etc.

21.61 If an adjudicator determines that a party to the adjudication has acted in a manner that is frivolous, vexatious, an abuse of process or other than in good faith, the adjudicator may provide, as part of the adjudicator's determination, that the party be required to pay some or all of the other party's costs, any part of the fees pursuant to section 21.4 or subsection 21.42(3) that would otherwise be payable by the other party, or both.

"Application to set aside

21.62(1) Within 30 days after the determination is communicated to the parties, a party to the adjudication may, by application to the court, seek to set aside the determination on any of the following grounds:

(a) a party participated in the adjudication while under a legal incapacity;

(b) the contract or subcontract is invalid or has ceased to exist;

(c) the determination dealt, in whole or in part, with a matter that may not be the subject of adjudication pursuant to this Part, or with a matter entirely unrelated to the subject of the adjudication;

(d) the adjudication was conducted by someone other than an adjudicator;

(e) the procedures followed in the adjudication did not comply with the procedures to which the adjudication was subject pursuant to this Part;

(f) there is a reasonable apprehension of bias on the part of the adjudicator;

(g) the determination was made as a result of fraud;

(h) any other prescribed ground.

(2) The court shall consider the following with respect to the application mentioned in subsection (1):

(a) the materials the adjudicator considered in making the adjudicator's determination;

(b) the determination of the adjudicator;

(c) any other information the court considers relevant to the application.

(3) The court may set aside the determination of an adjudicator on any of the grounds mentioned in subsection (1).

(4) In setting aside a determination pursuant to subsection (3), the court may require that any or all amounts paid in compliance with the determination be returned.

(5) An application pursuant to subsection (1) does not operate as a stay of the operation of the determination unless the court orders otherwise.

(6) If a determination is set aside on one of the grounds mentioned in clause (1)(b) or (c), the parties must not participate in another adjudication.

"Enforcement of amounts payable

21.7(1) A requirement to pay an amount in accordance with this section is subject to any requirement to retain a holdback in accordance with Part IV.

(2) Subject to section 21.62, a party who is required under the determination of an adjudicator to pay an amount to another person shall pay the amount no later than 10 days after the determination has been communicated to the parties to the adjudication.

(3) Interest begins to accrue on an amount that is not paid when it is due pursuant to this Part at the pre-judgment interest rate in effect pursuant to *The Pre-judgment Interest Act* or, if the contract or subcontract specifies a different interest rate for the purpose, the greater of the pre-judgment interest rate and the interest rate specified in the contract or subcontract.

(4) Subsection (3) does not apply with respect to any amount payable pursuant to section 5.9 that has not been referred to adjudication pursuant to this Part.

(5) If an amount payable to a contractor or subcontractor under a determination is not paid by the party when it is due pursuant to this section, the contractor or subcontractor may suspend further work under the contract or subcontract until the party pays the following amounts:

(a) the amount required to be paid under the determination;

(b) any interest accrued on that amount pursuant to subsection (3);

(c) any reasonable costs incurred by the contractor or subcontractor as a result of the suspension of work.

(6) A contractor or subcontractor who suspends work pursuant to subsection (5) is entitled to payment, by the party, of any reasonable costs incurred by him or her as a result of the resumption of work following the payment of the amounts mentioned in that subsection.

"Enforcement by the court

21.71(1) A successful party to an adjudication may, no later than the date mentioned in subsection (2), file the determination with the court to be enforced as an order of the court.

(2) The filing of a determination pursuant to subsection (1) may not be made after the later of:

(a) two years after the date of the communication of the determination to the parties; and

(b) if applicable, two years after the date of the final determination of an application pursuant to section 21.62 that did not result in the setting aside of the adjudicator's determination.

(3) A party shall, no later than 10 days after filing the determination pursuant to subsection (1), notify the other party of the filing.

(4) If a determination requiring that an amount be paid to a contractor or subcontractor is filed pursuant to subsection (1), any related requirement of the contractor or subcontractor, as the case may be, to make payment to a subcontractor is deferred pending the outcome of the enforcement.

"Immunity

21.72 No action or proceeding lies or shall be commenced against the minister, an employee of the ministry, an adjudicator, any employee of an adjudicator, the Authority or any employee of the Authority if that person is acting pursuant to the authority of this Act or the regulations, for anything in good faith done, caused or permitted or authorized to be done, attempted to be done or omitted to be done by that person or by any of those persons pursuant to or in the exercise or supposed exercise of any power conferred by this Act or the regulations or in the carrying out or supposed carrying out of any order made pursuant to this Act or any duty imposed by this Act or the regulations.

"Non-compellability

21.8 An adjudicator shall not be compelled to give evidence in any action or other proceeding with respect to a matter that was the subject of an adjudication that he or she conducted**".**

Section 41 amended

8 Subsection 41(4) is amended by striking out "an arbitrator pursuant to section 85**" and substituting "**adjudication pursuant to section 21.21**".**

Section 51 amended

9 Subsection 51(1) is amended by striking out "Department of Energy and Mines**" and substituting "**Ministry of Energy and Resources**".**

New section 52.1

10 The following section is added after section 52:

"Extension of time - lien

52.1 If the matter that is the subject of a lien is also the subject of an adjudication pursuant to Part II.1, the lien is deemed, for the purposes of sections 50, 51 and 52, to have expired on the later of:

(a) the date on which the lien would expire pursuant to section 49; and

(b) the conclusion of the 45-day period following the date of receipt by the adjudicator of documents pursuant to section 21.41**".**

Section 85 repealed

11 Section 85 is repealed.

New section 104

12 Section 104 is repealed and the following substituted:

"Regulations

104 The Lieutenant Governor in Council may make regulations:

(a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;

(b) prescribing other information to be contained in a proper invoice for the purposes of section 5.1;

(c) for the purposes of section 5.11, prescribing persons or classes of persons;

(d) for the purposes of subsection 5.3(1), respecting the frequency with which proper invoices must be given to an owner;

(e) for the purposes of subsection 5.4(1), respecting the period within which an owner shall pay the amount payable after receiving a proper invoice from the contractor;

(f) prescribing the form of a notice of non-payment and the manner in which that notice is to be given for the purposes of subsection 5.4(2);

(g) prescribing the form of a notice of non-payment and the manner in which the documents are to be provided for the purposes of subsection 5.5(5);

(h) prescribing the form of a notice of non-payment and the manner in which that notice is to be given for the purposes of subsection 5.5(6);

(i) for the purposes of subsection 5.51(1), respecting the duties of a contractor if the contractor receives a notice of non-payment pursuant to subsection 5.4(2);

(j) for the purposes of subsection 5.51(2), respecting the duties of a subcontractor if the subcontractor receives a notice of non-payment pursuant to subsection 5.5(6);

(k) prescribing the form of a notice of non-payment and the manner in which the documents are to be provided for the purposes of subsection 5.6(6);

(l) prescribing the form of a notice of non-payment and the manner in which that notice is to be given for the purposes of subsection 5.6(7);

(m) for the purposes of section 21.11, prescribing persons or classes of persons;

(n) prescribing criteria for the purposes of subsection 21.12(2);

(o) for the purposes of section 21.13:

(i) prescribing requirements for adjudicators;

(ii) prescribing other duties of the Authority;

(iii) governing fees; and

(iv) prescribing other powers that the Authority may exercise;

(p) prescribing any other matters with respect to a contract that may be referred to adjudication for the purposes of clause 21.21(1)(h);

(q) for the purposes of subsection 21.3(2), respecting the manner in which, and the persons or entities to whom, a copy of a notice of adjudication is to be given;

(r) for the purposes of subsection 21.31(1), respecting consolidated adjudications;

(s) governing the manner in which a contractor may require the adjudication of disputes to be consolidated for the purposes of subsection 21.31(2);

(t) for the purposes of subsection 21.4(1), respecting the payment, including the time of payment, of an adjudicator's fee;

(u) governing the determination by the Authority of an adjudicator's fee for the purposes of clause 21.4(2)(b);

(v) respecting the powers of an adjudicator for the purposes of subsection 21.42(1);

(w) for the purposes of subsection 21.5(1), respecting the period after receiving documents within which an adjudicator shall make a determination of the matter that is the subject of an adjudication;

(x) for the purposes of subsection 21.5(5), respecting the effects of determinations made by adjudicators after the period set out in subsection 21.5(1) or (2);

(y) for the purposes of subsection 21.62(1), prescribing any other grounds on which the court may set aside the determination of an adjudicator;

(z) increasing the amount of any contract for which there may be early release of the holdback pursuant to section 46;

(aa) prescribing any place to which claims of lien may be given pursuant to subsection 52(1);

(bb) with respect to any matter governed by this Act:

(i) adopting, as amended from time to time or otherwise, all or any part of any code, standard or guideline;

(ii) amending for the purposes of this Act or the regulations any code, standard or guideline adopted pursuant to subclause (i); and

(iii) requiring compliance with a code, standard or guideline adopted pursuant to subclause (i);

(cc) prescribing forms or the contents of forms to permit electronic forms for the purposes of this Act;

(dd) prescribing any matter or thing required or authorized by this Act to be prescribed in the regulations;

(ee) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act**".**

New section 105.1

13 The following section is added after section 105:

"Transitional

105.1(1) If a contract for an improvement was entered into before the day on which *The Builders' Lien (Prompt Payment) Amendment Act, 2018* came into force, this Act continues to apply with respect to that improvement as if *The Builders' Lien (Prompt Payment) Amendment Act, 2018* were not in force, regardless of when any subcontract under the contract was entered into.

(2) If the premises with respect to which an improvement is being made is the subject of a lease that was first entered into before the day on which *The Builders' Lien (Prompt Payment) Amendment Act, 2018* came into force, this Act continues to apply with respect to that improvement as if *The Builders' Lien (Prompt Payment) Amendment Act, 2018* were not in force.

(3) Parts I.1 and II.1 apply with respect to contracts entered into on or after the day on which section 6 of *The Builders' Lien (Prompt Payment) Amendment Act, 2018* comes into force, and with respect to subcontracts made under those contracts.

(4) An arbitration that was commenced pursuant to section 85, as that section existed on the day before the day on which *The Builders' Lien (Prompt Payment) Amendment Act, 2018* came into force, may be continued as if that section had not been repealed**".**

Coming into force

14 This Act comes into force on proclamation.

Printed by the authority of
the Speaker of the Legislative Assembly
of Saskatchewan
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