

Construction

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What was the most interesting development of 2024, and why?

The most interesting development of 2024 was the Ontario Government’s introduction and passing of [Bill 216: Building Ontario For You Act \(Budget Measures\)](#) (“Bill 216”). Once enacted, Bill 216 will make significant changes to the holdback regime in Ontario’s [Construction Act](#).

The Act currently only permits the phased or annual release of holdback in circumstances where:

1. The contract price is more than \$10 million; and
2. The parties agree.

Bill 216 eliminates the monetary threshold, and requires all owners make annual holdback payments in construction contracts with a duration of greater than a year. It also requires that the owner publish a notice of the annual holdback release. Bill 216 extends these same obligations to contractors and subcontractors.

Further, section 27.1 of the Act previously permitted non-payment of holdback by an owner or contractor if the appropriate notice was provided. However, with Bill 216 repealing section 27.1, there is now no obvious right for an owner or contractor to exercise a right to set-off or issue a notice of non-payment. Instead, owners and contractors may only be excused from releasing annual holdback payment if there are liens that have not been vacated or discharged.

Once these amendments come into effect, they will have immediate application to ongoing projects, except for projects commenced before the 2018 amendments to the Act.

What’s the primary takeaway for businesses from the past year?

Mandatory annual holdback release is a significant change which will disrupt a lot of the existing dynamics on projects of all sizes. All construction industry participants will have to consider the changes introduced by Bill 216 and may need to improve, or at least adjust, project controls and commercial strategies to reflect this new statutory scheme.

The annual release of holdback will be welcome news for contractors and subcontractors working on long term projects where holdback can sometimes remain with the owner for years. It does, however, come with additional administrative burdens which may be onerous for small projects or for small subcontractors.

Given the short turnaround for notice and payment of holdback, and the consequences of non-compliance, it will be important for owners and contractors to have a system in place to manage and keep track of the holdback deadlines.

The amendments are not without some controversy as it is unclear whether a contractor (or subcontractor) has an independent obligation to release all accrued holdback to their subcontractors, even if the owner does not comply with their obligations. This could put contractors and down-stream construction industry participants in a difficult situation if the owner makes a partial release of holdback.

What’s one trend you are expecting in 2025?

One trend we expect to see in 2025 is a shift towards a greater need to manage risk, cash flow, and claims, throughout the life of a construction project. This is in part a result of the changes to the Act, including previous changes to the legislation in 2019, which require claims to be addressed and adjudicated mid-project, and the impending changes that will require companies to manage lien and holdback claims throughout the life of the project.

The need for ongoing risk and claims management throughout the life of a project will be elevated further by the increased market risks caused by threatened tariffs on construction materials, and potential labour issues stemming from changes to immigration rules and restrictions across the continent. These factors all work together to make it more difficult than ever to defer the consideration of claims until the end of a project, and militate in favour of increased flexibility in selecting project delivery models and dispute resolution schemes.

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