



CONSTRUCTION LIEN ACT REFORMS

A NEW REALITY FOR ONTARIO'S CONSTRUCTION INDUSTRY

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AGENDA

Topic

Introduction and Background

The *Construction Lien Act* Reforms

Adjudication

Prompt Payment

Trust Obligations – by Mark Jackson

Holdbacks

Technical Amendments

Questions

BACKGROUND

- April 30, 2016 – Report
- Consultations & Recommendations.
- May 31, 2017 – *Bill 142*
- December 12, 2017 – Royal assent
- July 2018
- October 2019

THE *CONSTRUCTION LIEN* ACT REFORMS

**Adjudication
Prompt Payment
Trust Obligations
Holdbacks
Technical Amendments**

Can we
fix it Ms.
Wynne?



ADJUDICATION

*Adjudication provisions under the Construction Act will become effective as of **October 1, 2019***

- **What is the process of adjudication?**
- **Who can request adjudication?**
- **When can an adjudication be commenced?**
- **How is an adjudication commenced?**
- **Who pays for the adjudication?**
- **Is the adjudicator's decision binding?**



ADJUDICATION

What is the process of adjudication?



ADJUDICATION

What types of disputes?

- **Section 13.5(1) ...**

1. The valuation of services or materials provided under the contract.
2. Payment under the contract, including in respect of a change order, whether approved or not, or a proposed change order.
3. Disputes that are the subject of a notice of non-payment under Part I.1.
4. Amounts retained under section 12 (set-off by trustee) or under subsection 17 (3) (lien set-off).
5. Non-payment of holdback under section 27.1.
6. Any other matter that the parties to the adjudication agree to, or that may be prescribed.



ADJUDICATION

Who can request adjudication?

- Owners
- Contractors
- Subcontractors



ADJUDICATION

When can an adjudication be commenced?



ADJUDICATION

How is an adjudication commenced?



ADJUDICATION

Who pays for the adjudication?



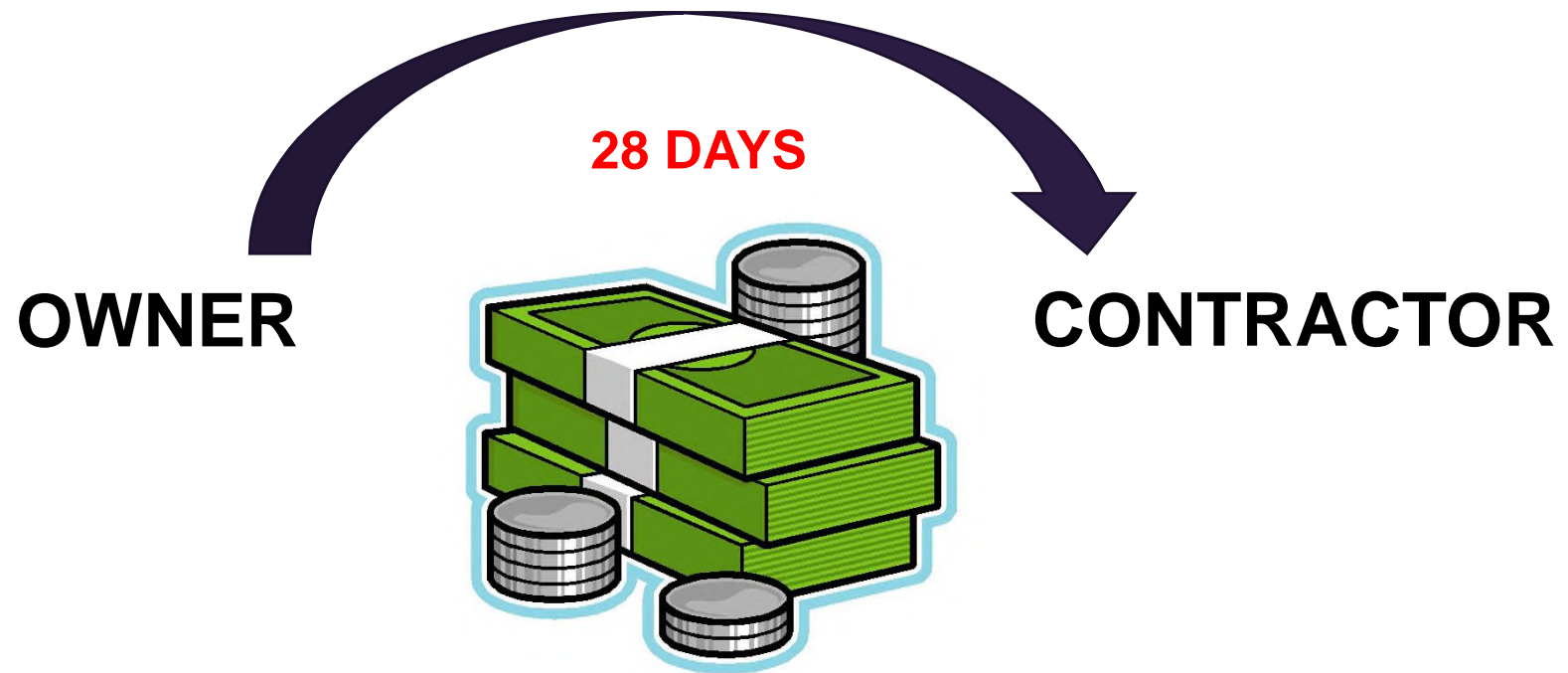
ADJUDICATION

Is the adjudicator's decision binding?



PROMPT PAYMENT

Prompt payment provisions under the Construction Act will be effective as of October 1, 2019



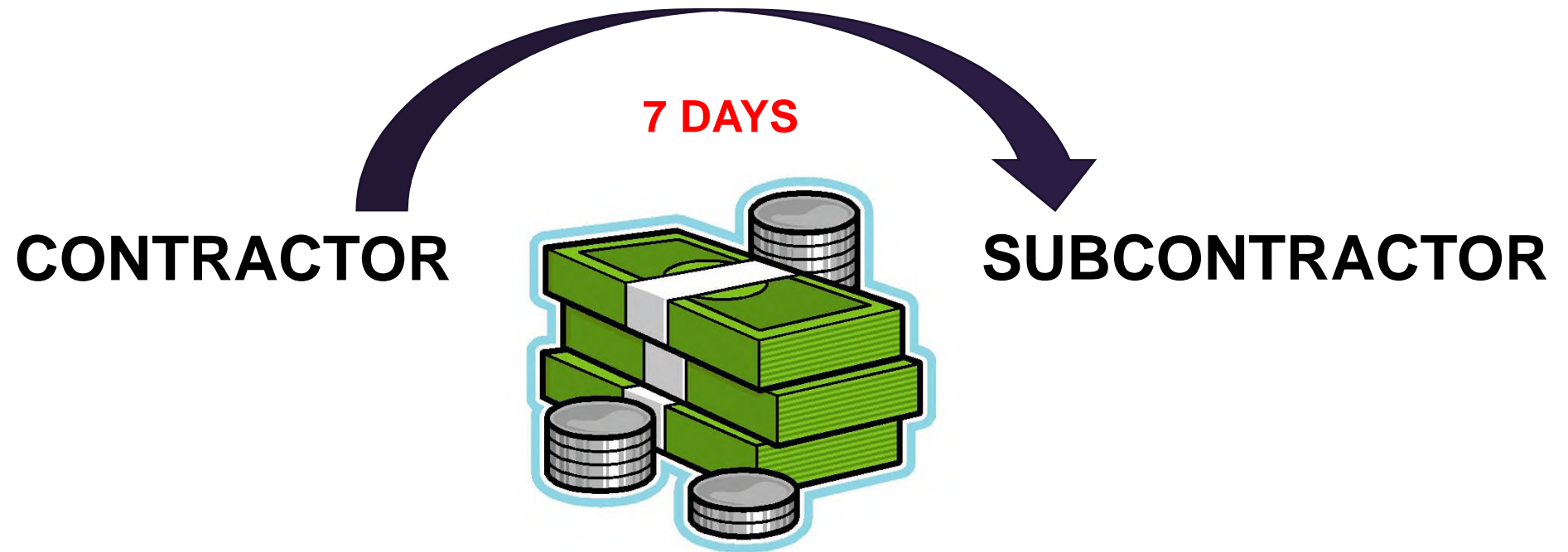
PROMPT PAYMENT

Owners can dispute an invoice but must provide written notice in a prescribed form



PROMPT PAYMENT

Prompt payment provisions under the Construction Act will be effective as of October 1, 2019



PROMPT PAYMENT

What happens if you don't pay on time?



PROMPT PAYMENT

Whether or not paid by owner, contractors can dispute a subcontractor's invoice, but must provide written notice in prescribed form



PROMPT PAYMENT

Do these provisions apply to me?



The prompt payment regime applies to

- All projects and “improvements”
- All size of projects
- All owners, contractors and subcontractors
- All payments made under contracts entered into on or after October 1, 2019

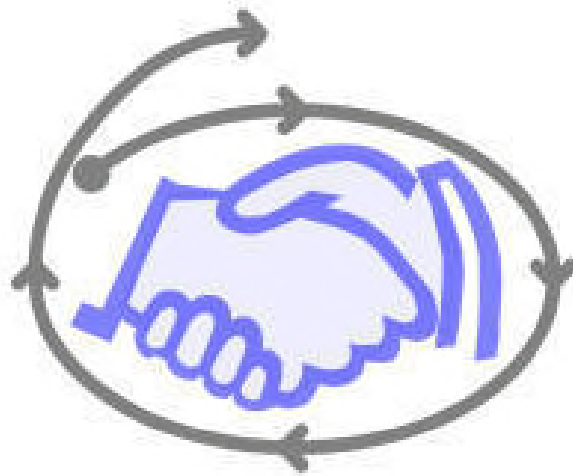
PROMPT PAYMENT

Can I exclude these provisions from the contract?



TRUST OBLIGATIONS

Mark Jackson



HOLDBACKS

*Holdback provisions under the Construction Act will be effective as of **July 1, 2018***

What changed?

- Security
- Mandatory
- Annual Payment
- Phased Payment



HOLDBACKS

A payer may make a payment of the accrued holdback if...



HOLDBACKS

A payer may make a payment of the accrued holdback on the completion of phases of an improvement if...





SURPRISE!

POP QUIZ WITH PAT

TECHNICAL AMENDMENTS

*Preservation and perfection of liens provisions under the Construction Act will be effective as of **July 1, 2018***

What changed?

Preservation of a lien – ~~45 days~~ → 60 days

Perfection of a lien – ~~45 days~~ → 90 days

TECHNICAL AMENDMENTS

- Termination of a prime contract
- Security for costs
- Leasehold improvements
- Substantial performance and completion
- Updated definitions (effective July 1, 2018)

QUESTIONS?

GOWLING WLG SPEAKERS



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