



Province of Saskatchewan

Order in Council 411/2020

Registrar of Regulations

Filed AUG 20 2020

SR 92/2020

Approved and Ordered: 19 August 2020

~~Lieutenant Governor~~ Administrator

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, makes *The Builders' Lien Amendment Regulations, 2020* in accordance with the attached Schedule.

President of the Executive Council

(For administrative purposes only.)

Recommended by: Minister of Justice and Attorney General

Authority: *The Builders' Lien Act, section 104*
JAG MM -
05-08-20

SCHEDULE to OC 411/2020

Title

1 These regulations may be cited as *The Builders' Lien Amendment Regulations, 2020*.

RRS c B-7.1 Reg 1 amended

2 *The Builders' Lien Regulations* are amended in the manner set forth in these regulations.

New section 2

3 **Section 2 is repealed and the following substituted:**

“Definitions

2 In these regulations:

‘**Act**’ means *The Builders' Lien Act*;

‘**code of conduct**’ means the code of conduct established by the Authority;

‘**mine**’ means any facility in Saskatchewan in which any mineral other than oil or gas is extracted, recovered or produced, and includes:

(a) any lands or facilities in Saskatchewan on or in which the primary production from the mine is or will be processed, refined, stored or prepared for transport; and

(b) any other lands or facilities in Saskatchewan that are or will be used in connection with a mine’s operations;

‘**mineral resource**’ means any mineral deposit that may have economic value, other than oil or gas;

‘**registry**’ means the registry established by the Authority pursuant to clause 21.13(1)(c) of the Act”.

New sections 5.1 to 5.81

4 **The following sections are added after section 5:**

“Non-application of Part I.1 of the Act

5.1 Part I.1 of the Act does not apply to:

(a) persons who enter into a contract for services or materials for any improvement with respect to a mine or mineral resource, including any activities respecting exploration, development, production, decommissioning or reclamation;

(b) architects, engineers and land surveyors;

(c) persons who enter into a contract for services or materials with respect to an improvement related to infrastructure in connection with the generation, transmission or distribution of electrical energy pursuant to *The Power Corporation Act*.

“Notice of non-payment by owner to contractor

5.2 A notice of non-payment by an owner to a contractor pursuant to subsection 5.4(2) of the Act is to be in Form A.1 of the Appendix.

“Notice of non-payment by contractor to subcontractor – subsection 5.5(5) of the Act

5.21 A notice of non-payment by a contractor to a subcontractor pursuant to subsection 5.5(5) of the Act is to be in Form A.2 of the Appendix.

“Notice of non-payment by contractor to subcontractor – subsection 5.5(6) of the Act

5.22 A notice of non-payment by a contractor to a subcontractor pursuant to subsection 5.5(6) of the Act is to be in Form A.3 of the Appendix.

“Notice of non-payment by subcontractor to subcontractor – subsection 5.6(6) of the Act

5.23 A notice of non-payment by a subcontractor to a subcontractor pursuant to subsection 5.6(6) of the Act is to be in Form A.4 of the Appendix.

“Notice of non-payment by subcontractor to subcontractor – subsection 5.6(7) of the Act

5.24 A notice of non-payment by a subcontractor to a subcontractor pursuant to subsection 5.6(7) of the Act is to be in Form A.5 of the Appendix.

“Methods of providing notice of non-payment

5.25(1) Any notice of non-payment that is required to be given pursuant to Part I.1 of the Act may be given:

- (a) by personal service made:
 - (i) in the case of an individual, on that individual;
 - (ii) in the case of a partnership, on any partner; or
 - (iii) in the case of a corporation, on any officer or director of the corporation;
 - (b) by email;
 - (c) by fax; or
 - (d) by registered mail.
- (2) In the case of service by email:
- (a) the notice must be emailed to the email address of the party receiving the notice, as set out in the contract or subcontract, as the case may be;
 - (b) the email must set out all of the following information:
 - (i) the name, address, telephone number and email address of the party giving the notice;

- (ii) the name of the party being provided the notice;
 - (iii) the date and time the email was sent;
 - (iv) the name and telephone number of a person to contact in the event of transmission problems;
 - (v) confirmation that the original notice has been signed and that it is available for inspection at the place and times specified; and
- (c) the giving of the notice is effective on the date of transmission.
- (3) In the case of service by fax:
- (a) the notice must be faxed to the fax number set out in the contract or subcontract, as the case may be;
 - (b) the fax must include a cover page that sets out all of the following information:
 - (i) the name, address, telephone number and fax number of the party giving the notice;
 - (ii) the name of the party being provided the notice;
 - (iii) the date and time of transmission;
 - (iv) the total number of pages transmitted, including the cover page;
 - (v) the name and telephone number of a person to contact in the event of transmission problems; and
 - (c) the giving of the notice is effective on the date of transmission.
- (4) In the case of service by registered mail, the giving of the notice is effective on the fifth business day following the date of its mailing unless the person to whom it is mailed establishes that, through no fault of that person, the person did not receive the notice or received it at a later date.

“Non-application of Part II.1 of the Act

5.3 Part II.1 of the Act does not apply to:

- (a) persons who enter into a contract for services or materials for any improvement with respect to a mine or mineral resource, including any activities respecting exploration, development, production, decommissioning or reclamation;
- (b) architects, engineers and land surveyors;
- (c) persons who enter into a contract for services or materials with respect to an improvement related to infrastructure in connection with the generation, transmission or distribution of electrical energy pursuant to *The Power Corporation Act*.

“Eligibility to be designated as the Authority

5.4(1) For the purposes of subsection 21.12(2) of the Act, an entity must meet the following criteria to be eligible for designation as the Adjudication Authority:

- (a) it must submit an application to the minister;
 - (b) it must agree in writing to abide by any conditions of designation specified by the minister, including any conditions respecting the term or termination of any such designation.
- (2) A designation may be terminated at the minister’s discretion.

“Requirements re adjudicators

5.41(1) The Authority may issue a certificate of qualification to adjudicate to an individual who:

- (a) has at least 10 years of relevant working experience in the construction industry;
 - (b) has successfully completed the training programs provided pursuant to section 5.43;
 - (c) is not an undischarged bankrupt;
 - (d) has not been convicted of an indictable offence in Canada or of a comparable offence outside Canada;
 - (e) has paid the Authority the required fees for training and qualification of a person as an adjudicator; and
 - (f) has agreed in writing to abide by the requirements for adjudicators set out in subsection (4).
- (2) Without limiting the generality of clause (1)(a), relevant working experience in the construction industry may include experience working in the industry as an accountant, architect, engineer, quantity surveyor, project manager, arbitrator or lawyer.
- (3) A certificate of qualification issued to an adjudicator is valid for the period specified by the Authority and, unless suspended or cancelled pursuant to section 5.42, may be renewed by the Authority for one or more further periods if the adjudicator continues to meet the qualifications set out in subsection (1).
- (4) Every adjudicator shall:
- (a) successfully complete the continuing training programs required by the Authority;
 - (b) comply with the code of conduct;
 - (c) on receiving a request from the Authority, provide the Authority with proof of the adjudicator’s eligibility to continue to hold a certificate of qualification;
 - (d) immediately notify the Authority in writing if the adjudicator ceases to meet the qualifications set out in subsection (1);

- (e) maintain records as required by the Authority and report information respecting the records to the Authority on its request;
- (f) pay to the Authority the required fees for training and qualification as an adjudicator; and
- (g) comply with the Act and these regulations, and any further directions or requirements of the Authority.

“Suspension or cancellation of adjudicator’s certificate

5.42(1) The Authority may suspend or cancel an adjudicator’s certificate of qualification if the Authority is reasonably satisfied that:

- (a) the adjudicator is no longer qualified as an adjudicator in accordance with subsection 5.41(1) or has failed to meet any requirement set out in subsection 5.41(4);
 - (b) the adjudicator is incompetent or unsuitable to conduct adjudications; or
 - (c) the Authority qualified the adjudicator on the basis of a false or misleading representation or declaration.
- (2) The Authority may lift a suspension issued pursuant to subsection (1) if the Authority is reasonably satisfied that the circumstances giving rise to the suspension no longer exist and the adjudicator meets the qualifications and requirements set out in section 5.41.
- (3) The Authority may reissue a certificate of qualification that had been cancelled if the Authority is reasonably satisfied that the circumstances giving rise to the cancellation no longer exist and the person is eligible to be qualified as an adjudicator.
- (4) A person whose certificate of qualification is suspended or cancelled ceases, for the duration of the suspension or cancellation, to be authorized to conduct adjudications or to continue to conduct any ongoing adjudication.

“Additional duties of Authority

5.43(1) For the purposes of clause 21.13(1)(f) of the Act, the Authority shall:

- (a) create initial and continuing training programs for prospective and current adjudicators;
- (b) ensure that initial and continuing training programs are available to prospective and current adjudicators;
- (c) in accordance with subsections (2) and (3), create a code of conduct and make the code of conduct publicly available on its website;
- (d) establish and make publicly available on its website a complaints process for accepting and dealing with complaints against adjudicators from persons involved in adjudications;
- (e) develop procedures and take other reasonable steps to ensure that adjudication is available throughout Saskatchewan;

- (f) develop procedures and take other reasonable steps to ensure that the aggregate breadth of expertise and working experience of adjudicators is sufficient to account for the industry sectors in which parties refer matters to adjudication and the nature of the matters in dispute;
 - (g) develop and make publicly available on its website educational materials respecting the adjudication process;
 - (h) prepare an annual report in a form and manner satisfactory to the minister;
 - (i) on the request of any person, provide information that is published on the Authority's website in a format accessible to the person; and
 - (j) provide administrative support services for the purpose of facilitating the conduct of adjudications.
- (2) The code of conduct mentioned in clause (1)(c) is to address the following:
- (a) conflicts of interest and related procedural matters;
 - (b) principles of proportionality in the conduct of an adjudication and the need to avoid excess expense;
 - (c) principles of civility, procedural fairness, competence, and integrity in the conduct of an adjudication;
 - (d) the confidentiality of information disclosed in relation to an adjudication;
 - (e) procedures for ensuring the accuracy and completeness of information in the registry.
- (3) The Authority shall:
- (a) indicate on its website the effective date of every change to the code of conduct, except those of a typographical or similar nature; and
 - (b) maintain an archive of all previous versions of the code of conduct, other than versions that only reference changes of a typographical or similar nature.

“Fees

5.5 For the purposes of clause 21.13(2)(a) of the Act, the Authority shall, subject to the approval of the minister, establish and maintain a schedule of fees that is made publicly available on the Authority's website.

“Notice of adjudication

5.51(1) A notice of adjudication must be given by personal service on the other party, or any other method set out in *The Queen's Bench Rules* for the service of documents.

(2) A notice of adjudication mentioned in subsection 21.3(1) of the Act is to be in Form A.6 of the Appendix.

(3) A party to a contract or subcontract who gives a notice of adjudication pursuant to subsection 21.3(1) of the Act shall, within 1 day after giving that notice, give a copy of the notice in electronic format to the Authority.

“Notice of consolidation of adjudications

5.52(1) For the purposes of subsection 21.31(2) of the Act, a contractor who seeks to consolidate two or more adjudications shall give to the parties to each of the adjudications and to the adjudicator, if any, of each adjudication a written notice of consolidation that includes:

- (a) with respect to each adjudication:
 - (i) the names and addresses of the parties;
 - (ii) the nature and a brief description of the dispute, including details respecting how and when the dispute arose;
 - (iii) the nature of the redress sought; and
 - (iv) a copy of the notice of adjudication; and
- (b) the name of a proposed adjudicator, if any, to conduct the consolidated adjudication.

(2) A contractor shall, as soon as possible after giving the last notice of consolidation, provide a copy of the notice in electronic format to the Authority.

(3) A notice of consolidation must not be given more than 5 days after an adjudicator receives the documents required pursuant to section 21.41 of the Act.

“Consolidation of adjudications

5.6(1) For the purposes of subsection 21.31(1) of the Act, if two or more adjudications are consolidated, each adjudicator appointed to conduct any of those adjudications is deemed to have withdrawn from the adjudication:

- (a) on the day on which the adjudicator receives notice that the parties to the adjudication have agreed to consolidation pursuant to that subsection; or
- (b) on the day on which the adjudicator receives a notice of consolidation in accordance with section 5.52.

(2) An adjudicator mentioned in subsection (1) may be selected or appointed pursuant to section 21.32 of the Act to conduct the consolidated adjudication, subject to the requirements set out in that section.

(3) For the purposes of subsection 21.32(4) of the Act, the date on which the notice of adjudication is provided is to be read as the earlier of:

- (a) the day on which the parties to each of the adjudications agreed to the consolidation of the adjudication; and
- (b) the day on which the contractor gave the last notice of consolidation.

(4) The requirement pursuant to section 21.41 of the Act, as modified by subsection 21.31(3) of the Act, to provide documents to the adjudicator and to every other party applies with respect to each of the parties who gave a notice of adjudication in each adjudication being consolidated.

(5) For the purposes of subsection 21.5(1) of the Act, the day on which the documents required pursuant to section 21.41 of the Act are received by the adjudicator of a consolidated adjudication is, if the adjudicator has not already been provided with those documents, 10 days after the adjudicator agrees or is appointed to conduct the adjudication.

“Responses to receiving notice of adjudication

5.61(1) For the purposes of subsection 21.41(2) of the Act, a party who receives a notice of adjudication and who intends to respond to that notice must, within 5 days after receipt of the documents mentioned in subclause 21.41(1)(a)(ii) of the Act, give a response that includes any documents that the party intends to rely on to the party who gave the notice.

(2) A party responding to a notice of adjudication shall provide copies of the response mentioned in subsection (1) to the adjudicator and, in the case of a consolidated adjudication, every party other than the party who gave the notice.

(3) Unless the adjudicator directs otherwise, the response mentioned in subsection (1) and the copies of the response mentioned in subsection (2) must be given to the persons mentioned in those subsections by any method set out in *The Queen's Bench Rules* for the service of documents.

“Adjudicator withdraws

5.7(1) An adjudicator may, at any time, withdraw from an adjudication of a matter if the adjudicator determines that:

- (a) the adjudicator is in a conflict; or
- (b) the adjudicator is not able or competent to conduct the adjudication.

(2) The adjudicator shall promptly give written notice of the withdrawal to the parties.

“Consequences re failure by adjudicator to provide determination, withdrawal

5.71(1) If an adjudicator fails to provide a determination in accordance with section 21.5 of the Act or withdraws pursuant to section 5.7 of these regulations:

- (a) the adjudicator shall immediately return all materials to the Authority; and
- (b) the party who gave the notice of adjudication may ask the Authority to appoint a new adjudicator in accordance with section 21.32 of the Act.

(2) An adjudicator who fails to provide a determination is barred from acting as adjudicator again in relation to the same dispute.

“Adjudicator fees – failure to provide or late determination

5.8(1) If an adjudicator withdraws from an adjudication as described in section 5.7, fails to provide a determination in accordance with section 21.5 of the Act or provides a determination after the deadline set out in subsection 21.5(1) or (2) of the Act, the adjudicator's entitlement to be paid a fee and the amount of the fee is to be determined:

- (a) by agreement between the parties to the adjudication and the adjudicator; or
- (b) if no agreement is reached, by the Authority on the adjudicator's request.

(2) In determining a fee in accordance with subsection (1), the Authority shall consider the work completed by the adjudicator and the circumstances in which the adjudicator failed to provide a determination.

(3) For the purposes of clause (1)(b), a party to the adjudication shall give to the Authority, on its request, any information in the party's possession relating to the adjudication that is reasonably required by the Authority to assist it in making a determination of the fee.

(4) This section applies where an adjudicator fails to provide a determination because the adjudication is consolidated.

“Responsibilities of adjudicator re determination

5.81(1) For the purposes of subsection 21.5(1) of the Act, an adjudicator shall provide the parties to the adjudication with a signed electronic copy of the determination on the day on which it is made, and a paper copy on request.

(2) An adjudicator who makes a determination may, on the written request of a party or on the adjudicator's own initiative, make any changes to the determination that may be necessary to correct an error that is of a typographical or similar nature.

(3) An adjudicator who changes a determination pursuant to subsection (2) shall provide to the parties a signed electronic copy of the corrected determination on the day on which the change is made”.

Appendix amended

5 The Appendix is amended by adding the following forms after Form A:

“Form A.1

[Subsection 5.4(2) of The Builders' Lien Act]

Notice of Non-payment – Owner to Contractor

Name of owner: _____

Address: _____

Description of premises: _____

Name of contractor: _____

Address: _____

BUILDERS' LIEN AMENDMENT REGULATIONS, 2020

The owner disputes the proper invoice dated _____, 20 _____, submitted to the owner by the contractor with respect to the improvement.

The owner will not pay the following amount payable under the invoice:

(Use A or B, whichever is applicable)

- A. The full amount of the proper invoice, being \$ _____.
- B. A portion of the amount of the proper invoice, being \$ _____.

The reasons for non-payment are as follows:

Date: _____

(Owner)

"Form A.2
[Subsection 5.5(5) of *The Builders' Lien Act*]
Notice of Non-payment – Contractor to Subcontractor

Name of contractor: _____

Address: _____

Description of premises: _____

Name of subcontractor: _____

Address: _____

The contractor submitted a proper invoice to the owner with respect to the improvement on _____
20 _____ .

The contractor has not received payment from the owner and will not pay the subcontractor the amount under the subcontract that was included in the proper invoice within the time specified in subsection 5.5(1) or (2) of *The Builders' Lien Act*.

Amount that will not be paid:

(Use A or B, whichever is applicable)

- A. The full amount of the services or materials supplied by the subcontractor,
being \$ _____ .
- B. A portion of the amount of the services or materials supplied by the subcontractor,
being \$ _____ .

The contractor hereby undertakes to refer the matter to adjudication pursuant to Part II.1 of *The Builders' Lien Act* no later than 21 days after giving this notice of non-payment to the subcontractor.

A copy of the Notice of Non-payment pursuant to subsection 5.4(2) of *The Builders' Lien Act* is enclosed.

Date: _____

(Contractor)

"Form A.3
[Subsection 5.5(6) of The Builders' Lien Act]
Notice of Non-payment – Contractor Disputing Entitlement to Payment

Name of contractor: _____

Address: _____

Description of premises: _____

Name of subcontractor: _____

Address: _____

The contractor submitted a proper invoice to the owner with respect to the improvement on _____,
20 _____.

The contractor disputes the entitlement of the subcontractor to payment of an amount under the subcontract that was included in the proper invoice. The contractor will not pay the following amount:

(Use A or B, whichever is applicable)

A. The full amount of the services or materials supplied by the subcontractor,
being \$ _____.

B. A portion of the amount of the services or materials supplied by the subcontractor,
being \$ _____.

The reasons for non-payment are as follows: _____

Date: _____

(Contractor)

"Form A.4
[Subsection 5.6(6) of The Builders' Lien Act]
Notice of Non-payment – Subcontractor to Subcontractor

Name of subcontractor giving notice of non-payment: _____

Address: _____

Description of premises: _____

Name of contractor: _____

Address: _____

Name of subcontractor receiving notice of non-payment: _____

Address: _____

The contractor submitted a proper invoice to the owner with respect to the improvement on _____,
20 _____.

(Use A or B, whichever is applicable)

- A. The subcontractor giving notice has not received payment from the contractor and will not pay the subcontractor receiving notice the amount under the subcontract that was included in the proper invoice within the time specified in subsection 5.6(1) of *The Builders' Lien Act*.
- B. [Non-payment to a subcontractor who is entitled to payment from a subcontractor in accordance with subsection 5.6(11) of *The Builders' Lien Act*]. The subcontractor giving notice has not received payment from another subcontractor and will not pay the subcontractor receiving this notice the amount payable under the subcontract that was included in the proper invoice within the time specified in subsection 5.6(1) of *The Builders' Lien Act*.

Amount that will not be paid:

(Use A or B, whichever is applicable)

- A. The full amount of the services or materials supplied by the subcontractor receiving this notice, being \$ _____.
- B. A portion of the amount of the services or materials supplied by the subcontractor receiving this notice, being \$ _____.

(Include the following where applicable)

The subcontractor giving this notice hereby undertakes to refer the matter to adjudication pursuant to Part II.1 of *The Builders' Lien Act*, no later than 21 days after giving this notice of non-payment.

A copy of any Notice of Non-payment received by the subcontractor giving this notice is enclosed.

Date: _____
_____ (Subcontractor)

"Form A.5
[Subsection 5.6(7) of *The Builders' Lien Act*]
Notice of Non-payment – Subcontractor Disputing Entitlement to Payment

Name of subcontractor giving notice of non-payment: _____

Address: _____

Description of premises: _____

Name of contractor: _____

Address: _____

Name of subcontractor receiving notice of non-payment: _____

Address: _____

The contractor submitted a proper invoice to the owner with respect to the improvement on _____
20 _____.

The subcontractor giving this notice disputes the entitlement of the subcontractor receiving this notice to payment of an amount under the subcontract that was included in the proper invoice in accordance with subsection 5.6(7) or (11) of *The Builders' Lien Act*. The subcontractor will not pay the following amount:

(Use A or B, whichever is applicable)

- A. The full amount of the services or materials supplied by the subcontractor, being \$ _____.
- B. A portion of the amount of the services or materials supplied by the subcontractor, being \$ _____.

The reasons for non-payment are as follows: _____

Date: _____

(Subcontractor)

"Form A.6
[Section 21.3 of The Builders' Lien Act]
Notice of Adjudication

TO: _____

FROM: _____

TAKE NOTICE that pursuant to *The Builders' Lien Act* the following dispute is referred to the Authority for adjudication:

(Check whichever is applicable)

- A. non-payment of proper invoice by owner to contractor, described below; or
- B. non-payment of proper invoice by contractor to subcontractor, described below; or
- C. non-payment of proper invoice by subcontractor to subcontractor, described below; or
- D. other – see subsection 21.21(1) of the Act.

(Description of the contract or subcontract and details of services or materials provided)

BUILDERS' LIEN AMENDMENT REGULATIONS, 2020

(Describe here the dispute to be referred, including details respecting how and when it arose)

(Nature of redress sought)

Owner's name and address: _____

Contractor's name and address: _____

Subcontractor's name and address: _____

Name of proposed adjudicator (if any): _____

Day/Month/Year

Signature of person making request

Address for service of person making request

”.

Coming into force

6(1) Subject to subsection (2), these regulations come into force on the day on which section 1 of *The Builders' Lien (Prompt Payment) Amendment Act, 2019* comes into force.

(2) If these regulations are filed with the Registrar of Regulations after the day on which section 1 of *The Builders' Lien (Prompt Payment) Amendment Act, 2019* comes into force, these regulations come into force on the day on which they are filed with the Registrar of Regulations.

