

The “Proper Invoice” under the *Construction Act*

Prompt payment obligations (applicable to all contracts procured after October 1, 2019) are kickstarted when the contractor gives a “proper invoice” to the Owner.

Proper Invoice Requirements

- to comply with the *Act*, the proper invoice **must** contain the following information:
 - the date of the invoice, the contractor’s name/address and the name, title, telephone number and mailing address of the person to whom payment is to be sent;
 - the amount payable and the payment terms applicable;
 - a description (including quantities where appropriate) of the services or materials supplied and the period during which the supply occurred; and
 - the “authority” (in the contract or otherwise) under which the services or materials were supplied. (By this we believe the basis of the approval should be referenced, be it original scope of contract, approved Change Order, Change Directive, Site Instruction, verbal approval, etc.);
- the contract **may** also specify additional requirements for a proper invoice. Contractors are already familiar with such requirements, such as statutory declarations, WSIB clearance certificates, or evidence of insurance, as well as close-out documents for final invoices. The contract, however, cannot make the giving of the proper invoice conditional upon the approval of the owner or the certification of a payment certifier.

Giving the Proper Invoice

- the *Act* requires that a proper invoice be given to the owner monthly, unless the contract provides otherwise. Determining how and when it is given is not simple:
 - the *Act* states that documents may be served as one would serve a court document or by certified or registered mail, in which case and “in the absence of evidence to the contrary” the document shall be deemed to have been received on the fifth day following the date on which it was mailed, exclusive of Saturdays and holidays; and
 - using registered mail to give a document will require parties to mail the document 5 days before the deadline, which in some cases will be impractical. Hand delivery will suffice, as long as someone can affirm the delivery by Affidavit. Email delivery may be possible if the parties agree to the practice, although an affidavit of personal delivery will be required to prove it was received. See our [Guide to Giving Documents under the *Act*](#) for a discussion of possible options in this regard.

Considerations for Owners and Contractors

- as the owner will have only 14 days upon receipt to review a proper invoice and decide if it should be paid, processes which will allow the owner to better assess the invoice might be considered. These could include allowing the owner to assess the quality and value of work in a more efficient and timely fashion, through shared access to software databases or interim information or backup, for example. In addition, owners who use a consultant will have to ensure that he or she will be available, monthly, to review and assess each proper invoice in a very timely fashion. Contractors should also be prepared to address any questions or concerns that an owner has about an invoice in a timely fashion, to help facilitate the owner’s review.