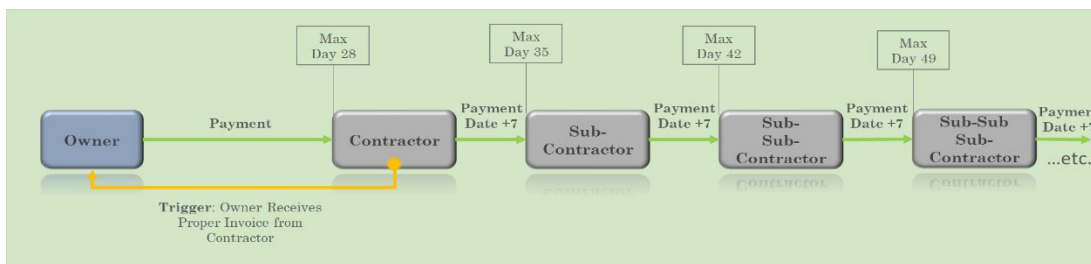


## **Prompt Payment Under the Construction Act for Contracts Procured after October 1, 2019**

The payment obligations under the *Act* are kickstarted when the Contractor gives a proper invoice, containing the information set out at s. 6.1 of the *Act*, to the Owner. An Owner must pay the Contractor's proper invoice within 28 days unless it has given a Notice of Non-Payment to the Contractor within the first 14 days. Thereafter, the Contractor and Subcontractors have an obligation to pay those beneath them for their portion of what was included in the proper invoice unless they give a Notice of Non-Payment to those they have a reason not to pay. There is no such thing as a 'Subcontractor's proper invoice'. All payment obligations are triggered by the Contractor giving the Owner a proper invoice. Any Subcontractor can ask the Contractor when this occurred, under s.6.6(10) of the *Act*. Prompt payment does not apply to the maintenance or operations portion of a P3 project.

### **Where No-One Disputes A Payment Obligation**

- where no one disputes a payment obligation, the Owner must pay within 28 days and the payment obligations then arise on a rung by rung basis every 7 days: each payee must pay within 7 days of the day it was or should have been paid (whichever is earlier). There is no obligation to pay amounts not included in the Contractor's proper invoice. The figure below shows the payment obligations where no-one gives a Notice of Non-Payment.



### **Anyone Can Dispute a Payment Obligation by Giving a Notice of Non-Payment**

- any payer in the construction ladder can avoid the obligation to pay if they give a Notice of Non-Payment (in the form prescribed by the *Act*) to the person they have a reason not to pay, within the required timeframes under the *Act*:
  - the Owner must give its Notice of Non-Payment within 14 days of being given a proper invoice by the Contractor. Thereafter, the Contractor and each Subcontractor must give a Notice of Non-Payment before the day that it would otherwise have to make a payment or within 7 days of receiving such a Notice of Non-Payment from the person above them in the ladder or, whichever is earlier;
  - beware that the Notices of Non-Payment must be “given” in accordance with the, *Act*, which can be a difficult process to manage. See our Guide to Giving Documents under the *Act* for more information in that regard;
- if a Contractor or Subcontractor's reason for giving a Notice of Non-Payment is that the person above has not paid, the person giving the Notice must undertake to take the person above them to Adjudication within 21 days. (If another reason for the non-payment is the sole reason given, no undertaking to adjudicate is required);
- there are rules in place to govern how and when partial payments from above must be distributed to those below, which vary depending on the circumstances.