

Interim Payments



Payment Provisions under the Construction Act

- For all contracts in excess of 45 days, stage payments should be made.
- All contracts must have an adequate mechanism for deciding what payments are due and when.
- Contractor has right to suspend works if full payment of the “notified sum” is not made by the final date for payment.
- “Notified sum” is set out in either:
 - A Payment Notice
 - A Default Notice
 - A Payless Notice
- Any provision making payment under a construction contract conditional on the payer receiving payment from a third party is ineffective.



Key Dates

- Due date:
 - As set out in the contract, otherwise
 - When the contractor makes an application for payment
- Final date for payment:
 - As set out in the contract, otherwise
 - 17 days from the Due Date



Payment Notices

- A Payment Notice to be issued as set out in the contract otherwise five days after the due date.
- A Default Notice which cannot be issued until there is a failure to issue a Payment Notice.
- In the absence of a Payment Notice, an Application for Payment can automatically become a Default Notice where there is provision in the contract permitting or requiring an Application for Payment to be made prior to the due date.
- For a Payless Notice to be effective, it must be issued as set out in the contract otherwise not later than 7 days before the final date for payment.



Interim Payment Applications

- Parties can agree requirements as to the form, content and substantiation of an interim application provided they do not conflict with the Construction Act.
- An interim application needs to be clear that it is intended to be such an application.
- Important that the application is issued in accordance with the requirements of the contract.
- The basis of calculating the sum claimed needs to be provided with the application.
- Claims within an application do not necessarily have to be sufficiently substantiated for the application to be valid.

