

# **Vancouver Island Construction Association Construction Procurement Community of Practice**

## **OVERVIEW OF SIGNIFICANT CHANGES IN CCDC 2 – 2020**

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(E&OE)**

# Note – BCCA free Guides

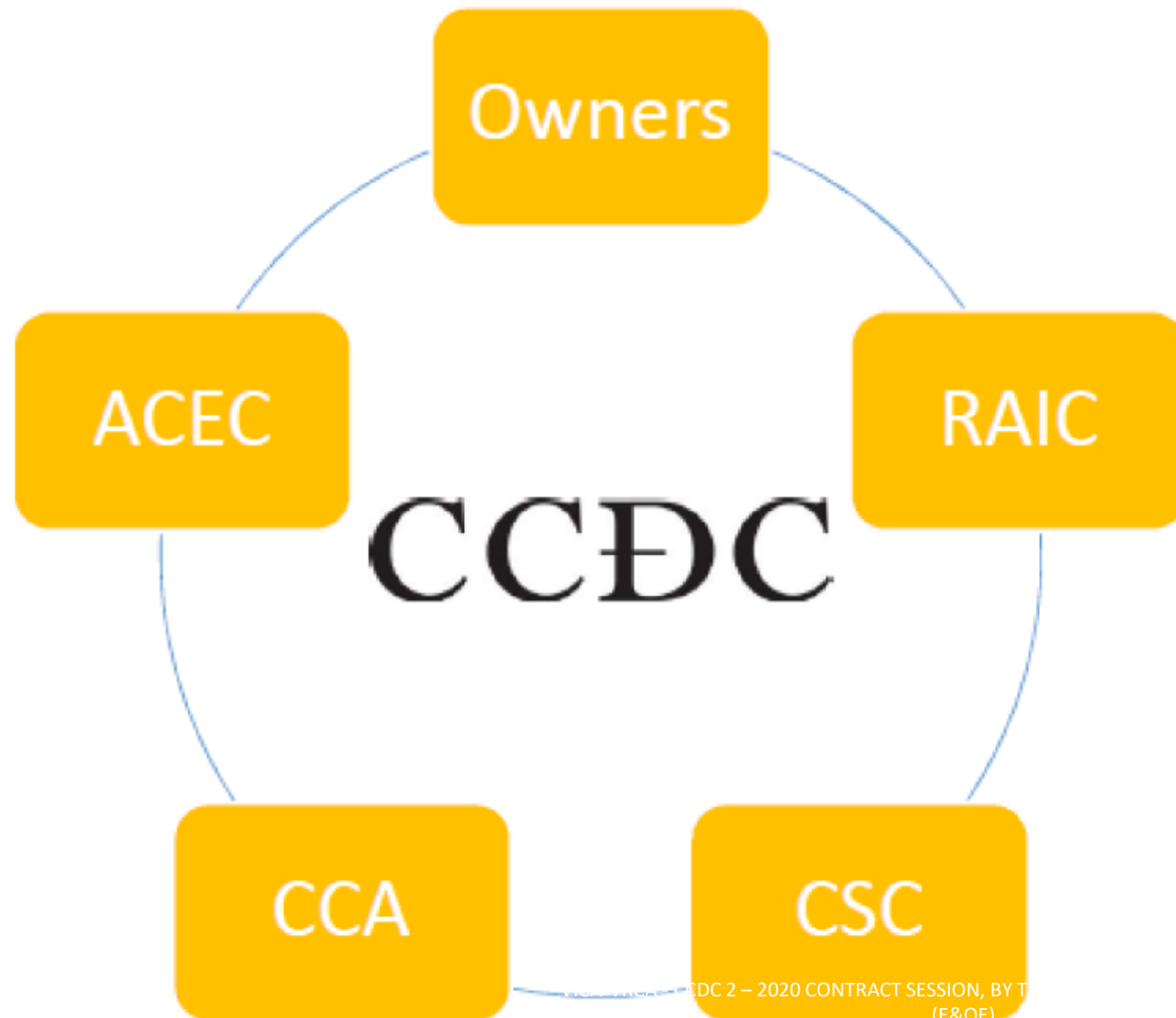
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BCCA has just published a [Guide to the Closeout of Construction Contracts and Projects](https://bccassn.com/procurement/closeout-guide/), available on their website, free to download, at <https://bccassn.com/procurement/closeout-guide/>

BCCA also has available [A Guide to the Builders Lien Act](https://bccassn.com/procurement/builders-lien/), free, at <https://bccassn.com/procurement/builders-lien/>

And another very good free BCCA document is [Read your Contract](https://bccassn.com/read-your-contract/), at <https://bccassn.com/read-your-contract/>

# Canadian Construction Documents Committee



Owners	4
ACEC	3
CCA	4
CSC	3
RAIC	3
*Legal Prof.	1
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Total	18

\**Ex-officio*

# CCDC Contracts

**CCDC 2 - 2020 - Stipulated Price Contract**

**CCDC 2MA - 2016 – Master Agreement between Owner and Contractor**

**CCDC 3 - 2016 – Cost Plus Contract**

**CCDC 4 – 2011 – Unit Price Contract**

**CCDC 5A – 2010 – Construction Management Contract – for Services**

**CCDC 5B – 2010 – Construction Management Contract – for Services and Construction**

**CCDC 14 – 2013 – Design-Build Stipulated Price Contract**

**CCDC 15 – 2013 – Design services Contract between Design-Builder and Consultant**

**CCDC 17 – 2010 – Stipulated Price Contract for Trade Contractors on Construction Management Projects**

**CCDC 18 – 2001 – Civil Works Contract**

**CCDC 30 – 2018 – Integrated Project Delivery Contract – “IPD”**

**CCDC 31 – 2020 – Service Contract between Owner and Consultant**

# BC Builders Lien Act (BC-BLA)

With current industry market conditions, and with the definition of “Substantial Performance of the Work” in CCDC 2 – 2020 now meaning “...as defined in the lien legislation applicable to the Place of the Work.” (plus the term “Project-in-Use Date” in CCDC 5A – 2010), there has been a heightened awareness of BC’s BLA, and more of a focus on its requirements for ALL parties to comply with the BLA.

This includes Contractors, Subcontractors, Owners and Consultants.

And the BLA uses the word “must” in many places, which means there is no “wiggle room” to not comply.

# **The law takes precedence over any Contract terms – you cannot “Contract out” of the law**

**The BC-BLA states (S) 42.2:**

**(2) An agreement that this Act is not to apply, or that the remedies provided by it are not to be available for a person's benefit, is void.**

**And remember, CCA 1 – 2021 has a clause (SCC 10.2.1) that says:**

**“The laws of the Place the Work shall govern the Subcontract Work.”**

**(and most CCDC & CCA contracts have similar clauses)**

# Holdbacks

Keep in mind that there can be two holdbacks:

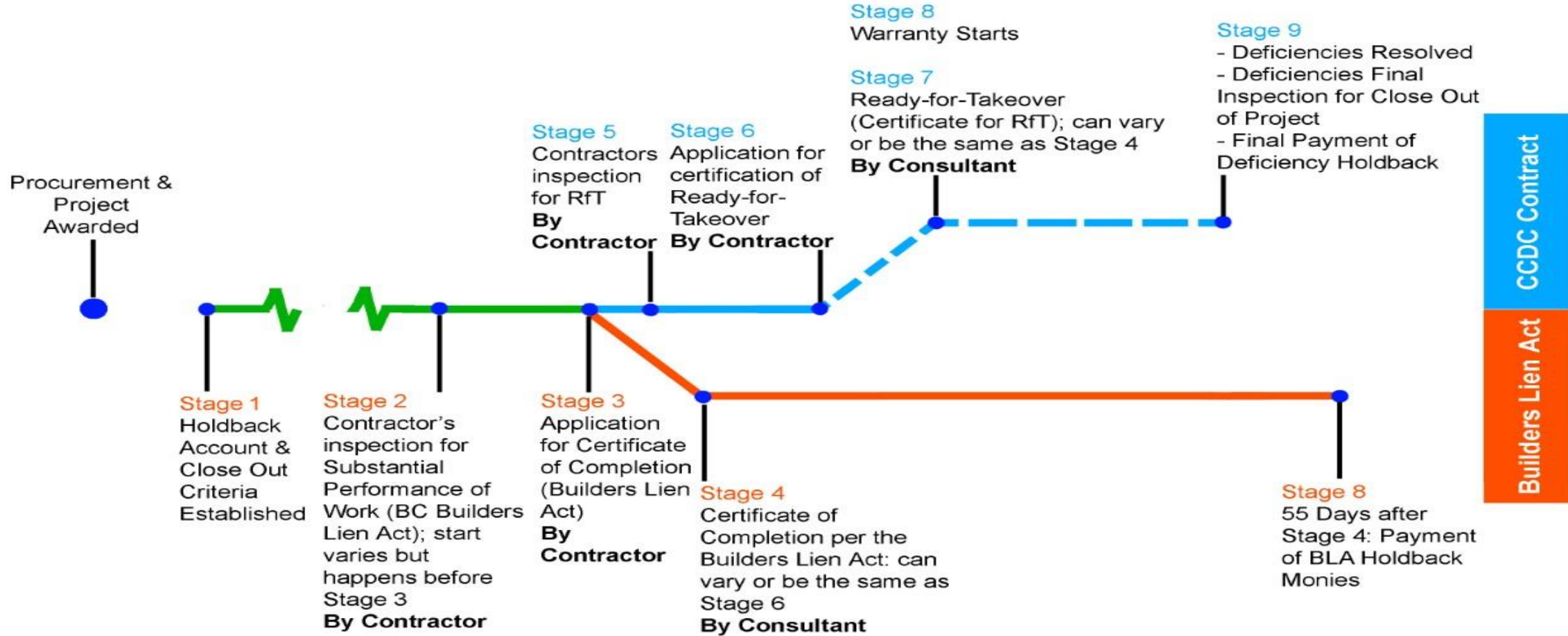
- the 10% builders Lien Act “trust” funds (the “law”)
- A deficiency holdback at the time of Ready-for-Takeover (the “Contract”)

And the Builders Lien Act says (Section 4 (1) ):

“The person primarily liable on each contract, and ...subcontract...must retain a holdback equal to 10%...of...the value of the work...”

The law does not require any funds to be held back – that may be a contractual condition for deficiencies, but not for the lien holdback.

# Sequence of Events Timeline





# The BC Builders Lien Act Expects the Payment Certifier (Consultant) to issue the Certificate of Completion – otherwise they are liable for damages

## Certificate of completion

7 (1) In this section, "payment certifier" means

(a) an architect, engineer or other person identified in the contract or subcontract as the person responsible for payment certification

(3) On the request of a contractor or subcontractor, the payment certifier must, within 10 days after the date of the request, determine whether the contract or subcontract has been completed and, if the payment certifier determines that it has been completed, the payment certifier must issue a certificate of completion.

(9) A payment certifier who fails or refuses to comply with subsection (4) or (7) is liable to anyone who suffers loss or damage as a result.

# Some BLA Exceptions

Holdback – (s) 4 – “(6) Despite subsection (1) (a), a holdback must not be retained from a **worker, material supplier, architect or engineer.**”

There are also exceptions to the BLA requirement to set up a **holdback account** - **but NOT the requirement to retain the 10% holdback:**

Holdback Account – (s) 5 (8) - “(8) This section does not apply to

(a) if it is an owner, **the government, a government corporation** as defined in the *Financial Administration Act* or any other public body designated, by name or by class, by regulation, or

(b) a contract in respect of an improvement, if the aggregate value of work and material provided is **less than \$100 000.**”

## (s) 41 – Right to Information

41 (1) A lien holder or a beneficiary of a trust **under this Act may, at any time, by delivering a written request, require**

(a) from the **owner**

(i) **the terms of the head contract** or contract under which the lien holder or beneficiary claims, including the names of the parties to the contract, the contract price and the state of accounts between the owner and the head contractor,

(ii) the **name and address of the savings institution in which a holdback account** has been opened, and the account number,

(iii) **particulars of credits to and payments from the holdback account**, including the dates of credits and payments, and the balance at the time the information is given, and

(iv) **particulars of any labour and material payment bond** posted by the contractor with the owner in respect of the head contract or contract under which the lien holder or beneficiary claims, and

# BC LAW INSTITUTE Report # 29 – Report on Builders Liens after the Shimco Case

Date: February 2004

This project examined the decisions of the **British Columbia Supreme Court** and **British Columbia Court of Appeal** **in *Shimco Metal Erectors Ltd. v. Design Steel Constructors Ltd.***, and the court's interpretation of provisions of the *Builders Lien Act*.

This report examines the decisions of the **British Columbia Supreme Court** and **Court of Appeal** **in *Shimco Metal Erectors Ltd. v. Design Steel Constructors Ltd.*** **These decisions changed the understanding of the holdback provisions of the *Builders Lien Act*.**

In *Shimco*, landowners hired a general contractor to build a tennis facility who subsequently hired several subcontractors to assist with construction. Upon completion of contract **the subcontractors filed claims of builders liens**. Only some of the claims were perfected, and the sum owed amounted to less than the holdback fund.

**The owners desired to use the remainder of the holdback fund to set off certain deficiencies and applied to the court for a declaration that the rights of the unperfected lien claimants had been extinguished.**

**The court held however that the subcontractors were entitled to pursue not only the lien against the land, but also **a lien against the holdback funds**, even if its lien against the land had been extinguished.**

CCDC 2

stipulated price contract

2008

Apply a CCDC 2 copyright seal here. The application of the seal demonstrates the intention of the party proposing the use of this document that it be an accurate and unamended form of CCDC 2 – 2008 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

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CCDC 2

Stipulated Price Contract

2020

[Name of Project]

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# Copyright Seals are required on the cover page of all CCDC Contracts

## CCDC 2 – 2020 – Seal (available at your Construction Association)

**“Apply a CCDC 2 copyright seal here. The application of the seal demonstrates the intention of the party proposing the use of this document that it be an accurate and unamended form of CCDC 2 – 2020 except to the extent that any alterations, additions, or modifications are set forth in supplementary conditions.”**

## Copyright - each page of the CCDC Contracts have a Copyright note in the footer

**“This contract is protected by copyright. Use of a CCDC 2 document not containing a CCDC copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 2 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 2 – 2020 except to the extent that any alterations, additions, or modifications are set forth in supplementary conditions.”**

## Significant Changes to CCDC 2 – 2020 include:

- Introduction of the term “Ready-for-Takeover”
- Removal of “work requirements” ( considered project-specific) from the
- Contract to a new companion Document – CCDC 01 – Master Specification for Division 01 - General Requirements
- Changes to language in GC 1.1 – Contract Documents
- Introduction of the Concept of Payment Legislation
- Changes to Construction Safety
- Changes to Reimbursable Costs for Change Directives
- NOTE - Many smaller changes through-out the Contract



# Biggest Change – “Ready-For-Takeover”

New definition, new GC 12.1, 12.2

CCDC “de-coupled” the two milestones in the CCDC 2 Contract:

- The statutory requirements of the BC Provincial Builders Lien Act, vs
- The contractual requirements outlined in the in the contract documents

Now Substantial Performance of the Work means **“as defined in the Lien Legislation applicable to the *Place of the Work*.”**

Benefits both parties – can allow the earlier release of the lien holdback funds, and recognizes significantly more prerequisites to achieve Ready-for-Takeover.

**So now, in the new CCDC 2 – 2020, the two milestones in the Contract (the law & the Contract) are more clearly separated, and defined as:**

***“Substantial Performance of the Work*** is as defined in the Lien Legislation applicable to the *Place of the Work.*”

***“Ready-for-Takeover*** shall have been obtained when the conditions set out in paragraph 12.1.1 of GC 12.1 – Ready-for-Takeover have been met, as verified by the *Consultant* pursuant to paragraph 12.1.4.2 of GC 12.1 – Ready-for-Takeover.”

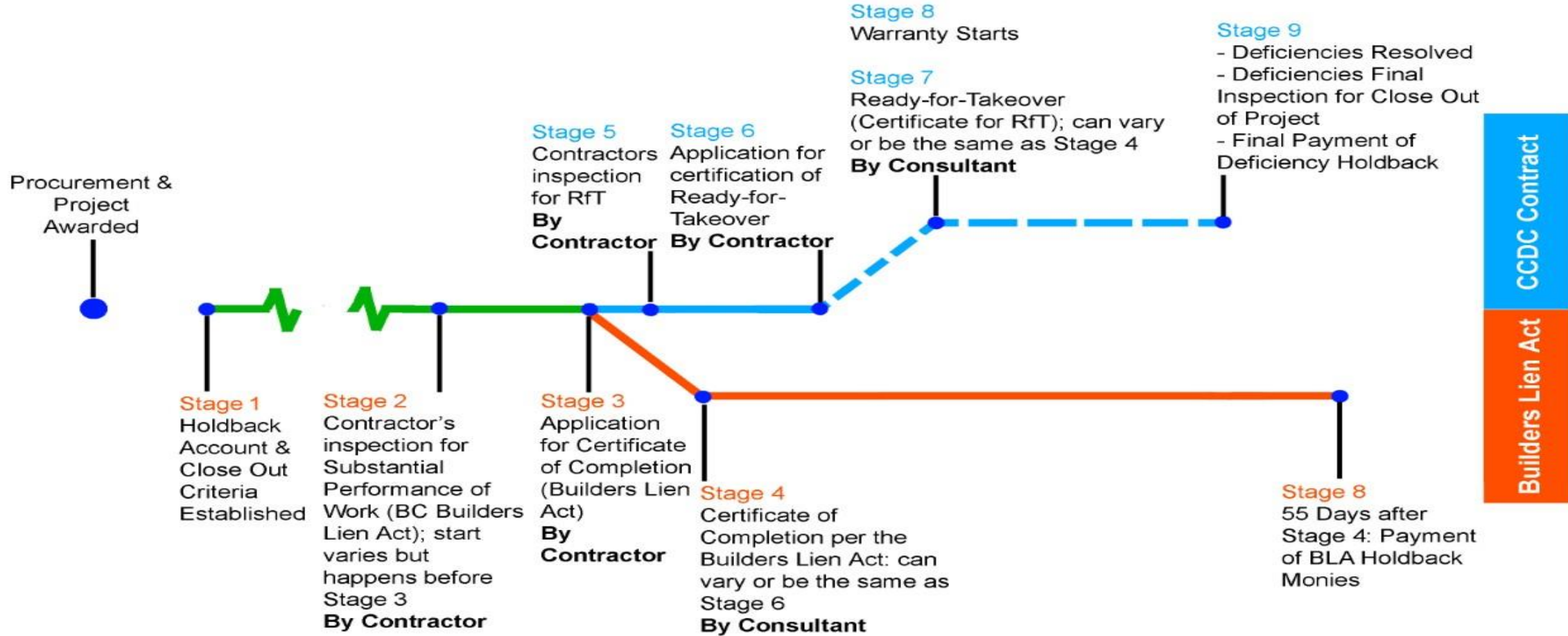
# The Lien Legislation is specific to each Province - in BC, it is:

s 1.2 – “a head contract, contract or subcontract is substantially performed if the work to be done under that contract is capable of completion or correction at a cost of not more than (a) 3% of the first \$500 000 of the contract price, (b) 2% of the next \$500 000 of the contract price, and (c) 1% of the balance of the contract price”,

And

s 1.3 – “an improvement is completed if the improvement or a substantial part of it is ready for use or is being used for the purpose intended.”

# Sequence of Events Timeline



# **THE BC BLA DOES NOT REQUIRE A HOLDBACK BE RETAINED AT SUBSTANTIAL PERFORMANCE OF THE WORK (SPOTW)**

**At Substantial Performance of the Work, it is understood that the Work is in progress.**

**The SPOTW is strictly a mathematical evaluation of the work completed to that point in time - no different than saying that the drywall is 30% done, or the electrical is 70% done.**

**If I say my drywall is 30% done, the intent is to evaluate at that point in time as to the completeness of the Work.**

**The only time a deficiency should be relevant to the Owner is at Ready-for-Takeover. Up until that time, the "care, custody & control" of the improvement is still in the hands of the Contractor, and they will continue to reduce the Work "needing correction or completion" as they work toward Ready-for-Takeover.**

# GC 12.1 – Ready-for-Takeover

## Prerequisites to attain Ready-for-Takeover:

- GC 12.1.1.1 - Consultant has verified Substantial Performance of the Work
- GC 12.1.1.2 - Evidence of compliance for Occupancy
- GC 12.1.1.3 - Cleaning & waste removal
- GC 12.1.1.4 – Delivery of O&M Manuals, reasonably ready for operation & maintenance
- GC 12.1.1.5 – Copy of as-builts completed to date
- GC 12.1.1.6 – Startup & testing required for immediate occupancy
- GC 12.1.1.7 – Secure access to site
- GC 12.1.1.8 – Demonstration & training is scheduled

**(Full copy in Handout)**

# Other Considerations for Ready-for-Takeover:

GC 12.1.2 – Ready-for-Takeover shall not be delayed **by conditions reasonably beyond the Contractor's control**

GC 12.1.3 – the Contractor still is required to **provide a comprehensive list of items to be completed or corrected**

GC 12.1.4 – the Consultant **must** review the Work within **10 calendar days**

GC 12.1.5. – the Contractor (in consultation with the Consultant) **shall** **“immediately”** establish a reasonable date for finishing the Work

GC 12.1.6 – These provisions are **subject to GC 12.2** – Early Occupancy by the Owner

# Remember, many clauses in the Contract are tied to the Ready-For-Takeover milestone:

- **Article A-1.3 - Contract Time**
- **GC 11.1 – Insurance**
- **GC 12.3 – Warranty**
- **GC 13.1 – Indemnification**
- **GC 13.2 – Waiver of Claims**



# Also a new related clause – GC 12.2 – Early Occupancy by the Owner

12.2.1 – must be with the agreement of the Contractor

12.2.2 – Owner needs the prior approval of the authorities having jurisdiction

12.2.3 – If the Owner takes occupancy...before Ready-for-Takeover has been attained:

.1 – deemed occupied when taken over;

.2 – Owner becomes responsible for the “care”;

.3 – warranty starts

12.2.4 - if the Owner takes early occupancy of the Improvement, the requirements for Ready-for-Takeover shall be deemed to have been achieved. (Full copy in Handout)

# **New CCDC Document**

## **CCDC 01 – 2020 - Master Specification for Division 01 - General Requirements**

### **The new Document – CCDC 01 – 2020 - General Conditions:**

- **Any clauses considered “project specific” moved to CCDC 01**
- **CCDC 01 is available in a Microsoft Word format**
- **CCDC 01 is fully editable – fill in the blanks, add, delete**
- **Comprehensive – provides instructions, guides, suggestions**
- **Guide to CCDC 01 is 89 pages**
- **“General Conditions” is included in the Contract Documents - CCDC 01**

**CCDC 01**

Guide to the use of  
CCDC Master Specification for  
Division 01 – General Requirements

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# Clauses moved from CCDC 2 – 2008 to CCDC 01 include:

- GC 3.9.1 – Documents at the Site
- GC 3.10.3 – Submittals Schedule
- GC 3.10 – Shop Drawings – Parts moved (3.10.5, 3.10.7, 3.10.11)
- GC 3.11.1 – Contractor’s use of the Premises
- GC 3.11.2 – Protection of Work
- GC 3.12.2 – Coordination of Work
- GC 3.12.4 – Cutting and Patching (partially)
- GC 3.13.1 – Cleaning (partially)
- GC 3.13.3 - Closeout Procedures

**Note - GC 11.2.1, 11.2.2 – Contract Security Requirements - have been moved to Division 00 - 2018 – Master Specification: Procurement and Contracting Requirements**

- Note – some clauses have been relocated within CCDC 2

## 3.8 - Shop Drawings – still in the Contract

3.8.1 – provide shop drawings as required by the contract documents

3.8.2 – provide to the Consultant as per agreed schedule, so as to not delay the Work

3.8.3 – review shop drawings, to verify specifics & coordinate with other requirements

3.8.4 – Consultant's review is for conformity to concept and general arrangement

3.8.5 – Contractor to advise Consultant of any deviations

3.8.6 – Consultant's review does not relieve the Contractor of responsibility of errors or omissions, or for meeting the requirements of the Contract Drawings

3.8.7 – Consultant will review & return as per schedule, or so as to not delay the Work.

# Changes to GC 1.1 – Contract Documents

GC 1.1.2 – Added a sentence – **performance required only to the extent consistent with the Contract Documents**

GC 1.1.3 – shall review Contract Documents **for the purpose of facilitating coordination and execution of the Work**

GC 1.1.4 – if perceived errors/omissions/inconsistencies, promptly report to Consultant **and do not proceed with the Work**

# Inclusion of Concept of Payment Legislation

Including:

- Added a definition:

*“Payment Legislation means such legislation in effect at the Place of the Work which governs payment under construction contracts.”*

- Article A-5 – Payment subject to any Payment legislation
- GC 5.2.1 – Applications for payment go to **Owner & Consultant**
- GC 5.2.6 – Schedule of Values to comply with Payment Legislation
- GC 5.3.1.1 – if rejected/modified, **Owner must “promptly” advise** why
- GC 5.3.1.2 – Owner shall pay within **28 days** (subject to Legislation)
- Part 5 – Payments – all subject to Legislation – Holdbacks, final, etc

# Changes to Construction Safety

In CCDC 2 – 2008 – GC 3.2.2.2 – the Owner was responsible for all health & safety, if separate contracts were awarded at Place of Work. In CCDC 2 – 2020, that GC is gone.

In CCDC 2 – 2020, an expanded GC 9.4 - Construction Safety:

- GC 9.4.1 – The Contractor is responsible for all health and safety at site
- GC 9.4.2 – The Owner and Contractor shall comply with health & safety at site
- GC 9.4.3 – Owner and Contractor shall comply, as per applicable legislation
- GC 9.4.4 - The Owner, Owner’s forces, Consultant, and Other Contractors shall comply
- GC 9.4.5 - Determination of liability as per applicable H&S legislation, not the Contract

Always subject to GC 1.2.1 - “The law of the *Place of Work* shall govern the interpretation of the *Contract*”.



- **Changes to Reimbursable Costs for Change Directives**

**GC 6.3.7** –adds in a new clarification - “**as it contributes directly to the *Change Directive***”.

**Reorganizes the cost of the Work into separate groupings:**

- **Labour;**
- **Products, Construction Equipment and Temporary Work;**
- **Subcontract (pricing mechanism approved by Owner); and**
- **Others**

**Labour** section specifies exactly what labour costs are recoverable:

- .1 rates that are listed in the schedule or as agreed by the *Owner* and *Contractor* including wages, benefits, compensation, contributions, assessments, or taxes incurred for such items as employment insurance, provincial or territorial health insurance, workers' compensation, and Canada or Quebec Pension Plan for:
- (1) trade labour in the direct employ of the *Contractor*;
  - (2) the *Contractor's* personnel when stationed at the field office;
  - (3) the *Contractor's* personnel engaged at shops or on the road, in expediting the production or transportation of materials or equipment; and
  - (4) the *Contractor's* office personnel engaged in a technical capacity, or other personnel identified in Article A-3 of the Agreement – CONTRACT DOCUMENTS for the time spent in the performance of the *Work*.

## Products, Construction Equipment and Temporary Work includes:

- .2 all *Products* including cost of transportation thereof;
- .3 in the absence of agreed rates, cost less salvage value of *Construction Equipment, Temporary Work* and tools, exclusive of hand tools under \$1,000 owned by the *Contractor*;
- .4 rental cost of *Construction Equipment, Temporary Work* and tools, exclusive of hand tools under \$1,000;
- .5 cost of all equipment and services required for the *Contractor's* field office;

## Subcontract:

- .6 *Subcontract* amounts with pricing mechanism approved by the *Owner*;

There is some lack of clarity around the new GC 6.3.7 - .3, .4, Products et al - .3, .4 - “exclusive of hand tools” – is that intended for the cost of the tool? Or its current value? (ie – 5 years old, is it worth half its original value?)

Also .4 – rentals – cost of the tool or rental cost? IE - \$250/month rental, for 5 months = \$1,250?

This new clarification of no Contractor cost recovery for “hand tools or rental tools under \$1,000” means that Contractors are unable to recover costs for small tools and rentals in a Change Directive (“cost-plus”) scenario. His own tools will wear out, saw blades and drill bits, etc, will need to be replaced, and rental costs will have to be paid.

So likely contractors will have to recover these expenses with a higher Fee for Change Directives, as outlined in GC 6.3.6.3: *The Contractor’s fee shall be as specified in the Contract Documents or as otherwise agreed by the parties.*

The “Others” section includes:

- .7 **travel and subsistence expenses** of the *Contractor's* personnel described in paragraph 6.3.7.1;
- .8 **deposits lost provided that they are not caused by negligent acts or omissions of the Contractor;**
- .9 **charges levied** by authorities having jurisdiction at the *Place of the Work*;
- .10 **royalties, patent license fees, and damages** for infringement of patents and cost of defending suits therefor subject always to the *Contractor's* obligations to indemnify the *Owner* as provided in paragraph 10.3.1 of GC 10.3 – PATENT FEES;
- .11 **premium for all contract securities and insurance** for which the *Contractor* is required, by the *Contract Documents*, to provide, maintain and pay in relation to the performance of the *Work*;
- .12 **losses and expenses sustained by the Contractor** for matters which are the subject of insurance under the policies prescribed in GC 11.1 – INSURANCE **when such losses and expenses are not recoverable** because the amounts are in excess of collectible amounts or within the deductible amounts;

- .13 **taxes and duties**, other than *Value Added Taxes*, income, capital, or property taxes, relating to the *Work* for which the *Contractor* is liable;
- .14 **charges for voice and data communications**, transmittal and reproduction of documents, and petty cash items;
- .15 cost for **removal and disposal of waste** products and debris;
- .16 **legal costs**, incurred by the *Contractor*, in relation to the performance of the *Work* **provided that they are not:**
  - (1) relating to a dispute between the *Owner* and the *Contractor* unless such costs are part of a settlement or awarded by arbitration or court,
  - (2) the result of the negligent acts or omissions of the *Contractor*, or
  - (3) the result of a breach of this *Contract* by the *Contractor*;
- .17 **cost of auditing** when requested by the *Owner*; and
- .18 **cost of *Project* specific information technology** in accordance with the method determined by the parties.

# Examples of Other Smaller Changes

- 1. New Definitions – Other Contractor; Ready-for-Takeover, Substantial Performance of the Work; One definition – “Provide” – moved to Division 01.**
- 2. Addition to GC 1.1.5 – Order of Priority of Documents – added:  
.5 noted materials and annotations shall govern over graphic indications.**
- 3. GC 4.1.4 – Cash Allowances - previously, in the 2008 Contract, the last sentence stated that multiple Cash Allowances could not be combined. Now, unexpended amounts can be transferred to another Cash Allowance, with no additional amount for overhead and profit.**

# Examples of Other Smaller Changes (Continued)

4. GC 4.1.5 - re-written – clarifies that unexpended portions of Cash Allowances are deducted from the Contract Price **without adjusting for the Contractor's overhead and profit.**

5. Part 7 – DEFAULT NOTICE – both GC 7.1.2 (Owner) and GC 7.2.3.4 (Contractor), in order to initiate default, now have **“to provide detail of such failure to comply with the requirements of the *Contract* to a substantial degree.”**

6. GC 8.2.1 – Dispute Resolution - Nothing in the Contract shall affect the right of the parties to **resolve any dispute by adjudication...**