

# The New Brunswick Construction Remedies Act (CRA)

**DTI – Contract Management**

Rev 03 : Mar 08, 2022

# Key changes impacting our Branch

- Replaces the Mechanic's Lien Act
- Applies to highways and all construction
- Changes in the holdback period
- Lien is available even to sub-contractors and their contractors
- Various forms introduced
- Applicable to Crown/ Provincial and Local government
- Virtual Lien applicable for highways

# Applies to Whom?

- Applies to the Crown
- Applies to the Local Government
  - » Includes Public Bodies, Corporations, Subsidiary Corporations, Municipalities
  - » Not applicable to First Nations government.



## When ?

---

Mechanic's Lien Act will continue to apply to contracts entered into prior to November 1, 2021.

---

The New N.B. Construction Remedies Act will apply to all contracts entered into on or after the November 1, 2021.

# What are the Changes

- Application to Highway Improvement
  - » Defined as any alteration, addition or capital repair to the highway.
  - » Any construction, erection or installation on the highway (includes installation of industrial, mechanical, electrical or other equipment on the highway ; or to any building, structure or works on the highway essential to the normal or intended use of the highway
  - » Complete or partial demolition or removal of any building , structure or works on the highway.

Muhammd Ghouri



# Building/ Land Improvement

- » any alteration, addition or capital repair to the land,
- » any construction, erection or installation on the land, including the installation of industrial, mechanical, electrical or other equipment on the land or on any building, structure or works on the land that is essential to the normal or intended use of the land, building, structure or works, or
- » the complete or partial demolition or removal of any building, structure or works on the land.



# Highway Improvements



- As per Mechanics Lien Act (MLA)

- A lien does not attach to and claim for a lien cannot be registered against the Crown or local government in a highway or highway improvement.

- As per the new Construction Remedies Act (CRA)

- Lien can be raised as CHARGE on Holdback amount
- Before releasing payment to contractor, Resident Eng./Contract Admin should cross verify whether any liens are filed.

# Lien Under CRA

- A person who supplies services or materials for highway improvement , has a **CHARGE on holdback retained** under Section 34 ( Talks about Holdback Amounts)
  - for the amount of wages owed to the person (OR)
  - for the contract price or subcontract price of those services or materials(OR)
  - for as much of those amounts that remain owing to the person (AND)
  - the provisions of this Act shall have effect without requiring the registration of the claim for lien against local governments estate or interest in the highway and highway improvement



# Lien against Crown

- In case of Lien against Crown, a copy of the claim for lien shall be given to
  - (a) a public body
    - (i) by leaving it at the office / person prescribed by the regulation, if any, or
    - (ii) if no office or person has been prescribed by regulation, then by leaving it with the Attorney General/barrister/solicitor employed in the Office of the Attorney General AND
  - (b) to a Crown corporation or Crown agency
    - (i) by leaving it at the office prescribed by regulation or with the person prescribed by regulation, if any, or
    - (ii) if no office or person has been prescribed by regulation, by leaving it with the chief executive officer or chief administrative officer of the Crown corporation or Crown agency.

# Time for registering claim for the Lien

- A contractor may register a claim for lien for the supply of services or materials any time after the lien arises **until the expiry of 60 days after the occurrence of the earlier of the following:**

- »(a) a certificate of substantial performance is signed, or a declaration of substantial performance is made in respect of the contract; and
- »(b) the contract is completed, abandoned or terminated.

- If a contract has been certified or declared to be substantially performed and the owner, contractor or a subcontractor proceeds to complete it, the contractor may register a claim for lien for the supply of services or materials to complete the substantially performed contract any time after the lien arises until the expiry of 60 days after the contract is completed, abandoned or terminated.

## Effect of written notice of Lien

- On receiving a written notice of lien, an owner shall retain the amount claimed in the written notice of lien from the amount payable to the contractor under whom the lien is derived

AND the amount retained by the owner is in addition to a holdback required to be retained under Section 34 ( Holdbacks)

# Labour & Material Payment Bond

- Bonds are mandatory above this threshold of \$500,000
- Bonds should be minimum 50% of the contract price
- New Claims process included for the bonds with strict timelines.

2021-81 *Loi sur les recours dans le secteur de la construction* 2020, ch. 29

**FORM 18**  
**LABOUR AND MATERIAL PAYMENT BOND**  
*(Construction Remedies Act, S.N.B. 2020, c.29, s.83(4)(a) and s.84(3)(a))*

New form

No. \_\_\_\_\_ (the "Bond") Bond Amount \$ \_\_\_\_\_  
\_\_\_\_\_  
*(name of the contractor\*)*

as a principal, hereinafter [collectively] called the "Contractor", and  
\_\_\_\_\_  
*(name of the surety company\*\*)*

a corporation created and existing under the laws of \_\_\_\_\_  
*(place of incorporation)*

as a surety, and duly licensed under the *Insurance Act* to transact guarantee insurance or surety insurance and hereinafter called the "Surety" are held and firmly bound unto \_\_\_\_\_ as obligee,  
*(name of the owner\*\*\*)*

hereinafter called the "Owner", in the amount of \$ \_\_\_\_\_ hereinafter called the "Bond Amount",  
*(Bond Amount in figures)*

for the payment of which sum the Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns, in accordance with the provisions of this Bond (the "Obligation").

WHEREAS the Contractor has entered into a written contract with the Owner dated the \_\_\_\_\_ day of \_\_\_\_\_  
*(month)*  
in the year \_\_\_\_\_ for \_\_\_\_\_  
*(title or description of the contract)*

and, for the purpose of specifying the conditions of the Obligation, this contract together with amendments made in accordance with its terms are by reference made part hereof and are hereinafter referred to collectively as the "Contract";

NOW THEREFORE the condition of this Obligation is such that if the Contractor shall make payment to all Claimants as hereinafter defined in accordance with the terms of their respective subcontracts or sub-subcontracts for all services (including labour) and materials used or reasonably required for use in the performance of the Contract then this Obligation shall be null and void, otherwise it shall remain in full force and effect subject to the following conditions:

1. Every corporate or natural person who either has a direct contract with the Contractor (hereinafter called a "Subcontractor") or who has a direct contract with a Subcontractor under the Contractor (hereinafter called a "Sub-subcontractor") for services (including labour), materials or both used or reasonably required for use in the performance of the Contract is a "Claimant" under this Bond. The terms "services (including labour)" and "materials" include that part of water, gas, power, light, heat, oil, gasoline, telephone or digital service or rental equipment directly applicable to the Contract provided that a Claimant who rents equipment to the Contractor or a Subcontractor to be used in the performance of the Contract under a contract which provides that all or any part of the rent is to be applied towards the purchase price thereof shall only be a Claimant to the extent of the prevailing industrial rental value of such equipment for the period during which the equipment was used in the

44

# Claims Process - Bonds

- Every Claimant who has not been paid for services including labour and materials required for use in the performance of the Contract , after the date on which payment was due & payable under the terms of its subcontract or sub-subcontract may demand payment under this Bond.
  - A written Notice of Claim ( prescribed in Schedule A of Form 18) has to be issued to the Surety with a copy to the Contractor and Owner
  - Liability lies with the Surety for any Notice of Claims raised by the claimant ( Sub contractor or Sub-subcontractor)

# Labour & Material Payment Bond

❑ Change as per New CRA

- Labour and material payment bond extend protection to a sub- subcontractor
- ✓ **IF** sub-subcontractor were claiming a lien under the act (for Goods and services provided by the sub-subcontractor for IMPROVEMENT)

2021-81 *Loi sur les recours dans le secteur de la construction* 2020, ch. 29

**FORM 18**  
**LABOUR AND MATERIAL PAYMENT BOND**  
*(Construction Remedies Act, S.N.B. 2020, c.29, s.83(4)(a) and s.84(3)(a))*

No. \_\_\_\_\_ (the "Bond") Bond Amount \$ \_\_\_\_\_  
(name of the contractor\*)

as a principal, hereinafter [collectively] called the "Contractor", and  
(name of the surety company\*\*)

a corporation created and existing under the laws of \_\_\_\_\_  
(place of incorporation)

as a surety, and duly licensed under the *Insurance Act* to transact guarantee insurance or surety insurance and hereinafter called the "Surety" are held and firmly bound unto \_\_\_\_\_ as obligee,  
(name of the owner\*\*\*)

hereinafter called the "Owner", in the amount of \$ \_\_\_\_\_ hereinafter called the "Bond Amount",  
(Bond Amount in figures)

for the payment of which sum the Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns, in accordance with the provisions of this Bond (the "Obligation").

WHEREAS the Contractor has entered into a written contract with the Owner dated the \_\_\_\_\_ day of \_\_\_\_\_  
(month)

in the year \_\_\_\_\_ for \_\_\_\_\_  
(title or description of the contract)

and, for the purpose of specifying the conditions of the Obligation, this contract together with amendments made in accordance with its terms are by reference made part hereof and are hereinafter referred to collectively as the "Contract";

NOW THEREFORE the condition of this Obligation is such that if the Contractor shall make payment to all Claimants as hereinafter defined in accordance with the terms of their respective subcontracts or sub-subcontracts for all services (including labour) and materials used or reasonably required for use in the performance of the Contract then this Obligation shall be null and void, otherwise it shall remain in full force and effect subject to the following conditions:

1. Every corporate or natural person who either has a direct contract with the Contractor (hereinafter called a "Subcontractor") or who has a direct contract with a Subcontractor under the Contractor (hereinafter called a "Sub-subcontractor") for services (including labour), materials or both used or reasonably required for use in the performance of the Contract is a "Claimant" under this Bond. The terms "services (including labour)" and "materials" include that part of water, gas, power, light, heat, oil, gasoline, telephone or digital service or rental equipment directly applicable to the Contract provided that a Claimant who rents equipment to the Contractor or a Subcontractor to be used in the performance of the Contract under a contract which provides that all or any part of the rent is to be applied towards the purchase price thereof shall only be a Claimant to the extent of the prevailing industrial rental value of such equipment for the period during which the equipment was used in the

44

New form



# Performance Bond

- ❑ Bonds are mandatory on contracts above the threshold of \$500,000.
- ❑ Bonds should be minimum 50% of the contract price
- ❑ New Claims process for bonds are included.

2021-81 *Loi sur les recours dans le secteur de la construction* 2020 ch. 29

**FORM 19**  
**PERFORMANCE BOND**  
*(Construction Remedies Act, S.N.B. 2020, c. 29, ss. 83(4)(b) and 84(3)(b))*

New form

No. \_\_\_\_\_ (the "Bond") Bond Amount \$ \_\_\_\_\_

(name of the contractor\*)

as a principal, hereinafter [collectively] called the "Contractor", and

(name of the surety company\*\*)

a corporation created and existing under the laws of \_\_\_\_\_  
(place of incorporation)

as a surety, and duly licensed under the *Insurance Act* to transact guarantee insurance or surety insurance and hereinafter called the "Surety", are held and firmly bound unto

(name of the owner\*\*\*) as obligee, hereinafter called the "Owner",

in the amount of \$ \_\_\_\_\_ hereinafter called the "Bond Amount",  
(Bond Amount in figures)

for the payment of which sum the Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns, in accordance with the provisions of this Bond (the "Obligation").

WHEREAS the Contractor has entered into a written contract with the Owner dated the \_\_\_\_\_ day of \_\_\_\_\_  
(month) in the year \_\_\_\_\_ for \_\_\_\_\_  
(title or description of the contract)

and, for the purpose of specifying the conditions of the Obligation, this contract together with amendments made in accordance with its terms are by reference made part hereof and are hereinafter referred to collectively as the "Contract";

NOW THEREFORE the condition of this Obligation is such that if the Contractor shall promptly and faithfully perform the Contract then this Obligation shall be null and void; otherwise it shall remain in full force and effect, subject to the following terms and conditions:

1. **Written Notice**

1.1 The Owner may make a written demand on the Surety in accordance with this Bond, by giving notice to the Surety substantially in the form attached as Schedule A (the "Notice"). Except for a Pre-Notice Meeting in accordance with Section 2.1, the Surety shall have no obligation under this Bond until it receives a Notice.

1.2 Where the Surety includes two or more companies, the Notice may be delivered to the first listed Surety on behalf of all Sureties. The first listed Surety is hereby authorized to respond to the Notice on behalf of the Sureties, and the Owner is not required to give separate Notice to each Surety and is entitled to correspond with the first listed Surety on behalf of all Sureties.

## New Two-Tier Bond

- Applicable for contracts with a threshold greater than \$500,000
- Every person who either has a direct contract with the Contractor( Subcontractor) or who has a direct contract with a Subcontractor under the Contractor is a “Claimant” under this bond
- Sub-Subcontractors – Limited to holdbacks from the owner ( Not complete holdback)

# Holdbacks

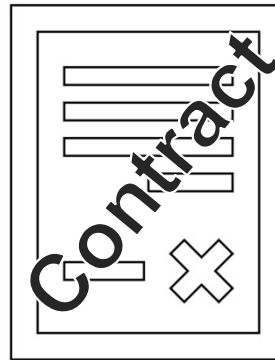
- Shall retain holdback equal to 10% of the contract price by default. (or)
- Shall retain a holdback equal to 5% of the contract price on Provincial Government Bonded work until the expiry of the holdback period
  - Provided, as per section 34(4) of the CRA the contractor is required to provide a labour and material payment bond and performance bond to an owner & the owner is the Crown/Province, under subsection 83(4).



# Holdback Periods

As per Section 47(1) - the holdback required to be retained under subsection 34(1) w.r.t the contract & any subcontract under the contract shall be retained for 60 days **after the date the certificate of substantial performance is signed** or the declaration of substantial performance is made.

If Certified (or)  
Declared to be  
substantially  
performed



If not been Certified  
(or) Declared to be  
substantially  
performed

As per Section 47(2) - the holdback required to be retained under subsection 34(1) with respect to the contract and any subcontract under the contract shall be retained for 60 days **after the contract is completed, abandoned or terminated.**

# Payment Certifier



A payment certifier can be Engineer, Architect or personnel identified in the relevant contract as payment certifier.



If there is a payment certifier , then the payment certifier will determine whether the contract has been substantially performed & certify the substantial performance of the contract by signing a certificate of substantial performance.



If there is no payment certifier with respect to the contract, then the contractor and owner shall jointly determine whether the contract has been substantially performed, and if so, determined they shall certify the substantial performance by signing a certificate of substantial performance



# Certificate of Substantial Performance ( Incase of Payment Certifier)

- Payment certifier has 7 days to determine whether the contract has been substantially performed & sign the certificate of Substantial Performance.
- A payment certifier shall give a copy of a certificate of substantial performance to owner and contractor within 3 days after the certificate is signed.

2020, c.29	Construction Remedies Act	2021-81
<b>FORM 7</b>		<b>FORMULE 7</b>
<b>CERTIFICATE OF SUBSTANTIAL PERFORMANCE OF THE CONTRACT</b> <i>(Construction Remedies Act, S.N.B. 2020, c.29, s.42)</i>		<b>CERTIFICAT D'EXÉCUTION SUBSTANTIELLE DU CONTRAT</b> <i>(Loi sur les recours dans le secteur de la construction, L.N.-B. 2020, ch. 29, art. 42)</i>
<i>(County and Rural Community/Regional Municipality/Town/City/Village in which land is located)</i>		<i>(Comté et communauté rurale / municipalité régionale / ville / cité / village où le bien-fonds est situé)</i>
<i>(civic address or, if there is no civic address, the location of the land)</i>		<i>(adresse de voirie du bien-fonds ou, s'il n'y en a pas, l'emplacement de celui-ci)</i>
Name of owner: _____		Nom du propriétaire : _____
Address for service: _____		Adresse aux fins de signification : _____
Name of contractor: _____		Nom de l'entrepreneur : _____
Address for service: _____		Adresse aux fins de signification : _____
Name of payment certifier (if applicable): _____		Nom du certificateur pour paiement, s'il y en a un : _____
Address: _____		Adresse : _____
I/We certify that the contract for the improvement described below to the identified land was substantially performed on: _____ <i>(date the contract was substantially performed)</i>		Je certifie / Nous certifions par les présentes que le contrat pour l'amélioration décrite ci-dessous au bien-fonds indiqué a fait l'objet d'une description substantielle le : _____ <i>(date à laquelle le contrat a fait l'objet d'une exécution substantielle)</i>
_____		_____
<i>(short description of the improvement)</i>		<i>(courte description de l'amélioration)</i>
Date certificate signed: _____		Date de la signature du certificat : _____
_____		_____
<i>(payment certifier (if there is one))</i>		<i>(certificateur pour paiement, s'il y en a un)</i>
_____		_____
<i>(owner and contractor, (if there is no payment certifier))</i>		<i>(propriétaire et entrepreneur, s'il n'y a pas de certificateur pour paiement)</i>
		23



# Certificate of Substantial Performance ( Incase of NO Payment Certifier)

- A Contractor and owner shall both sign a certificate of substantial performance within 7 days after a request is made by the contractor or after they determine that the contract has been substantially performed , whichever is later.

2020, c.29	Construction Remedies Act	2021-81
<b>FORM 7</b>		<b>FORMULE 7</b>
<b>CERTIFICATE OF SUBSTANTIAL PERFORMANCE OF THE CONTRACT</b> <i>(Construction Remedies Act, S.N.B. 2020, c.29, s.42)</i>		<b>CERTIFICAT D'EXÉCUTION SUBSTANTIELLE DU CONTRAT</b> <i>(Loi sur les recours dans le secteur de la construction, L.N.-B. 2020, ch. 29, art. 42)</i>
_____ <i>(County and Rural Community/Regional Municipality/Town/City/Village in which land is located)</i>		_____ <i>(Comté et communauté rurale / municipalité régionale / ville / cité / village où le bien-fonds est situé)</i>
_____ <i>(civic address or, if there is no civic address, the location of the land)</i>		_____ <i>(adresse de voirie du bien-fonds ou, s'il n'y a pas l'emplacement de celui-ci)</i>
Name of owner: _____		Nom du propriétaire : _____
Address for service: _____		Adresse aux fins de signification : _____
Name of contractor: _____		Nom de l'entrepreneur : _____
Address for service: _____		Adresse aux fins de signification : _____
Name of payment certifier (if applicable): _____		Nom du certificateur pour paiement, s'il y en a un : _____
Address: _____		Adresse : _____
I/We certify that the contract for the improvement described below to the identified land was substantially performed on: _____ <i>(date the contract was substantially performed)</i>		Je certifie / Nous certifions par les présentes que le contrat pour l'amélioration décrite ci-dessous au bien-fonds indiqué a fait l'objet d'une description substantielle le : _____ <i>(date à laquelle le contrat a fait l'objet d'une exécution substantielle)</i>
_____ <i>(short description of the improvement)</i>		_____ <i>(courte description de l'amélioration)</i>
Date certificate signed: _____		Date de la signature du certificat : _____
_____ <i>(payment certifier (if there is one))</i>		_____ <i>(certificateur pour paiement, s'il y en a un)</i>
_____ <i>(owner and contractor, (if there is no payment certifier))</i>		_____ <i>(propriétaire et entrepreneur, s'il n'y a pas de certificateur pour paiement)</i>
		23

## Contd..

- As per Section 41(9) - Within seven days after receiving a copy of a certificate of substantial performance, or after signing a certificate with an owner, as the case may be, a contractor shall
  - (a) post a copy of the certificate, or cause a copy to be posted,
    - (i) at the office at the site of the improvement, if there is one, otherwise, in a prominent place at the site of the improvement, or
    - (ii) on a website maintained by or on behalf of the owner if the following requirements are met:
      - ✓ (A) all lienholders in respect of the improvement are given the website address and any other information required to view the posted certificate; and
      - ✓ (B) no fees are charged for posting certificates, searching the website or viewing the posted certificates, and
  - (b) if the regulations provide for any additional manner of publication, publish the certificate in accordance with the regulations.

# Failure in certifying substantial performance

- If there is failure or refusal to certify the substantial performance of a contract within a reasonable time , any person **may apply to the court** , and the court on being satisfied that the contract has been substantially performed , and on any terms as to costs may declare that the contract has been substantially performed.

# Holdback Payment Release

- Once the substantial performance certificate is signed, then the holdback payments **shall be retained for 60 days** from the date of signing,

➤ Provided ; all liens in respect of the contract has been extinguished , discharged or otherwise provided for under the act

➤ The holdback period has expired

# Holdback Payment Release ( Annual Basis)

- However, An owner may make payments from a holdback **for projects greater than \$10,000,000** if
  - ✓ (a) the contract provides for a completion schedule that is longer than one year
  - ✓ (b) the contract provides for making of payments from the holdback on an annual basis
  - ✓ (c) the contract price at the time the contract is entered into exceeds the amount prescribed by the regulation
  - ✓ (d) as on relevant payment date – there are no liens or all liens are extinguished, discharged

## Holdback Payment Release ( Phased Basis)

- An owner required to retain a holdback under subsection 34(1) may make payments from the holdback on the conclusion of phases of an improvement, in relation to the services or materials supplied during each phase, if the below conditions are met:
  - (a) the contract provides for the making of payments from the holdback on a phased basis and identifies each phase,
  - (b) the contract price at the time the contract is entered into exceeds the amount prescribed by regulation, and



## Contd...

(c) as of the relevant payment date,

- (i) there are no claims for lien in respect of the contract
  - (A) registered under paragraph 55(a) or given under subparagraph 55(b)(i) or (ii), or
  - (B) that are the subject of an action to enforce the lien, or
- (ii) all liens in respect of the contract have been extinguished, discharged or otherwise provided for under this Act.

## Late Payment of Holdback - Interest

- An owner required to retain a Holdback (as per section 34) who does not make a payment **within 5 days after the expiry of the relevant Holdback Period** is liable to the person entitled to payment for **Interest ( 7%)** on the amount which should have been paid.

## Written notice of Lien

- Lienholder may give an owner a written notice of lien ( as prescribed in Regulation ( Forms))
- Notice shall contain following information:
  - Name, mailing address of lienholder , of the owner , of the person for whom the services or materials are supplied
  - Description of the services or materials that were supplied
  - Amount claimed in respect of services or materials supplied
  - A Statement that, **in addition to a HOLDBACK RETAINED, the owner is required to retain the amount referred above**, from the amount payable to the contractor.

# Amendments to Crown Construction Contracts Act

Section	Before	After
Section 1	Definition of Payment Bond	Repealed/ removed definition
Section 6	Heading “ Payment Bond”	Repealed/removed Heading “ Payment Bond”
Section 6	Talks about Payment Bond – Section 6(1) to 6(7)	Repealed/ removed
Section 7	Heading “ Withholding of payment by Crown”	Repealed/removed Heading “ Withholding of payment by Crown”
Section 7	Talks about Terms of Withholding of payment by Crown –Section 7(1) to 7(5)	Repealed/removed
Section 8	Section 8(i) – procedures to be followed with respect to claims	Repealed/removed

# Amendments to Regulation 82-109 under the Crown Construction Contracts Act

Section	Before	After
Section 4	Under section 4.1, no amount prescribed	The amount prescribed for Section 2.1(1) of the Crown Construction Contracts Act is \$100,000
Section 5	Talks about Form 77-1408 and 77-1120	Repealed / removed
Section 15 (4)	Labour and material payment bond & performance bond shall be supplied to Crown in accordance with the provisions of Section 17 by same or another surety company	Labour and material payment bond and performance bond shall be supplied to the Crown in accordance with provisions of Section 83 of the Construction Remedies Act by the same or another surety company

## Contd..

Section	Before	After
Section 17	Talks about timeline of submission, value of the Performance and labour and material payment bond – Section 17 (1) to 17(3)	Repealed / Removed
Section 18	Talks about Notice of Claims – Section 18 (1) to 18(4)	Repealed / Removed
Section 19	Terms of Claim – Section 19 (1) to 19 (3)	Repealed / Removed
Section 21(4)(a)	Where required by section 17, provide a performance bond and a labour and material payment bond in the amount stipulated	Provide a labour and material payment bond and performance bond in the amount stipulated , if required to do so under Section 83 of the Construction Remedies Act



# Alignment of Definitions

- Substantial Performance
  - ✓ When the improvement under the contract is ready for use or is being used for the purpose intended.
  - ✓ When the improvement is capable of completion, or, if there is a known defect, of correction , at a cost of not more than
    - a) 3% of the first \$250,000 of the contract price
    - b) 2% of the next \$250,000 of the contract price
    - c) 1% of the balance of the contract price

# Alignment of Definitions

- Completion
  - ✓ When the improvement is ready for use or is being used for the purposes intended and the owner and contractor agree not to complete the improvement expeditiously. (or)
  - ✓ Due to reasons beyond the control of the contractor, the improvement cannot be completed expeditiously , the value of the services or materials remaining to be supplied and required to complete the improvement shall be deducted from the contract price in determining the substantial performance.

# Alignment of Definitions

- Deficiency Retention & Completion Retention - Should be defined and aligned during the agreement sign-off
- Should be above the Holdback ; not as part of Holdback funds.

# Completion of Contract

- A contract is completed
  - when the cost of completing it OR
  - correcting a known defect OR
  - Supplying the services or materials remaining to be supplied for the improvement

**IS not more than 1% of the CONTRACT PRICE**

# Rights to Information- Section 87



WHAT  
YOU  
NEED  
TO  
KNOW

- Enhanced rights to all lienholders
  - ✓ Substantial completion certificate should be posted
  - ✓ Posting of notice of surety bonds ( Labour and material payment bonds)
  - ✓ Right to information

A party receiving a written request for information must provide it within twenty-one (21) days. A party who fails to provide the requested information within the twenty-one (21) day time limit or who knowingly or negligently misstates the information requested is liable to the person who made the request for any damages suffered as a result.

# List of CRA Forms

Form No.	Description
Form 1	LANDLORD'S NOTICE TO LIENHOLDERS
Form 2	WRITTEN NOTICE OF LIEN
Form 3	AFFIDAVIT VERIFYING INFORMATION IN WRITTEN NOTICE OF LIEN
Form 4	NOTICE OF WITHDRAWAL OF WRITTEN NOTICE OF LIEN
Form 5	LETTER OF CREDIT
Form 6	HOLDBACK RELEASE BOND
Form 7	CERTIFICATE OF SUBSTANTIAL PERFORMANCE OF THE CONTRACT
Form 8	CERTIFICATE OF COMPLETION OF SUBCONTRACT
Form 9	NOTICE TO OWNER
Form 10	CLAIM FOR LIEN
Form 11	AFFIDAVIT VERIFYING CLAIM FOR LIEN
Form 12	CERTIFICATE OF PENDING LITIGATION

Form No.	Description
Form 13	CERTIFICATE OF DISCHARGE
Form 14	AFFIDAVIT OF EXECUTION
Form 15	AFFIDAVIT OF CORPORATE EXECUTION
Form 16	RELEASE OF LIEN BOND
Form 17	NOTICE OF LIEN
Form 18	LABOUR AND MATERIAL PAYMENT BOND
Form 19	PERFORMANCE BOND
Form 20	NOTICE OF EXAMINATION ON CLAIM FOR LIEN
Form 21	NOTICE OF TRIAL
Form 22	JUDGEMENT ( LIEN ATTACHES TO LAND)
Form 23	JUDGEMENT ( LIEN AGAINST PUBLIC OWNERS HOLDBACK)



## References:

1. ACEC\_NB\_Construction Remedies Act\_ppt – McInnis Cooper presentation to the Association of Consulting Engineering Companies (ACEC) Jan 7, 2022

Link: <https://register.gotowebinar.com/recording/3107549034312534031>

2. Government of New Brunswick, Department of Justice New Brunswick. “New Brunswick Acts and Regulations - General.” Laws.gnb.ca, laws.gnb.ca/en/showfulldoc/cr/2021-81/#anchorse:3.

Accessed 9 Feb. 2022.

Link: [Construction Remedies Act \(gnb.ca\)](#)

3. “Change Afoot: New Brunswick’s Construction Remedies Act.” Cox & Palmer, 18 Nov. 2021, coxandpalmerlaw.com/publication/10672/.

Link: [Change Afoot: New Brunswick's Construction Remedies Act - Cox & Palmer \(coxandpalmerlaw.com\)](#)

4. “New Brunswick Acts and Regulations - General.” Laws.gnb.ca, 26 Oct. 2021, laws.gnb.ca/en/showfulldoc/cr/2021-81/20211108.

Link : <https://laws.gnb.ca/en/showfulldoc/cr/2021-81/20211108>

**Prepared by :**

**Archana Kanakarajan**

**DTI Contracts Administrator**

Created :	Feb 10, 2022
Rev 01 :	Feb 28, 2022
Rev 02 :	Mar 03, 2022
Rev 03:	Mar 08, 2022