



**INTERIOR SYSTEMS CONTRACTORS
ASSOCIATION OF ONTARIO**

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Mr. James Rajotte, MP for Edmonton-Leduc
Chair of the House of Commons Standing Committee on Finance

Mr. Chairman and Committee Members,

Thank you for the opportunity to address you on this issue, which we believe to be of critical importance both to the construction industry and to economic development and job creation in Canada.

The construction industry is widely acknowledged as one of the primary drivers of economic growth. Yet all too often construction contractors are made to wait unreasonable lengths of time to get paid while maintaining their own obligations to pay their employees, remit income tax deductions to the Canada Revenue Agency, pay Workplace Safety Insurance Board premiums, Employer Health Tax premiums, and health and welfare benefit plan contributions.

This is unfair and it creates a serious imbalance that undermines the liquidity of employers and their ability to help drive the economic growth of our province.

Construction is unique in how employees get paid. Developers control the money through private investors and bank financing. In most cases developers hire general contractors, who often act as project managers, overseeing the project and contracting out work to the various trade contractors for structural, electrical, plumbing, and interior finishing work, as examples.

Often the trade contractors will further sub-contract portions of their work to other companies or individuals, the result being a pyramid structure where those who control the money do not directly employ most of the employees who do the work. General contractors are forced to wait to get paid by developers before they in turn can pay their trade contractors and sub-trades.

Those at the bottom of the pyramid are sometimes forced to wait as much as 120 days to get paid for the work they have completed. It is worth noting that more than half of the workers in this industry are employed by firms with fewer than 20 employees.



“In 2012, the construction industry provided employment to 434,000 Ontario workers. This represented 6.4% of overall employment in the provincial economy.” (The Need for Prompt Payment Legislation in the Construction Industry – Prism Economics and Analysis P. 11) The same study also points out that construction accounts for 40% of all active apprentices in the province, making the industry the largest investor in apprenticeship training.

The existing inequity imperils employment and apprenticeship growth, and inhibits the ability of small and medium-sized contractors to invest in machinery and equipment, as well as bid on additional work and grow their business. That means fewer jobs are created and slower economic growth for the province.

There are approximately 40,000 construction employers in Ontario, trade contractors, who have been pushing for provincial legislation that would compel owners and developers to pay for construction work within 30 days of it being certified as complete.

Other provinces have been watching to see what happens in Ontario. The Journal of Commerce reported only a week ago that the British Columbia construction industry is gearing up for its own legislative push for prompt payment.

Construction employers have bills to pay. They have to meet payroll every week, make health and welfare/benefit plan contributions, pay income tax, employer health tax, harmonized sales tax, property tax, WSIB premiums, heat and hydro, and shoulder other costs that come with running a business and providing jobs for employees.

Yet most of the financial risk of any construction project is being unfairly transferred to them by owner/developers. Those who are least able to afford it are effectively financing projects for those who stand to profit and gain the most.

Delinquent payment for completed construction work is rampant within the industry and is becoming a larger problem every day.

On a typical large construction site with perhaps 300 workers, the assumption is that all of them are hired by a general contractor. In actual fact, likely only a handful of workers are direct employees. The remainder, 95% or so, are employees of the various trade and sub-contractors that the general hires to do the form work, masonry, electrical, drywall, or any one of dozens of other trades.

These trade contractors, those who do the work and create the jobs, are often being made to wait months in order to get paid. And delinquent payment in the construction industry starts with the owner/developer and has a huge ripple effect all the way down the line to the sub-contractor at the bottom of the payment pyramid.

It impacts a contractor's ability to grow his business by preventing him from hiring new employees or apprentices. It impacts investment in new machinery and equipment. It impacts a

contractor's ability to bid work, because his or her cash flow is stretched too thin, thereby shrinking the pool of eligible, reputable contractors and driving up the cost of construction.

Ultimately, it contributes to the insolvency of businesses, which we are seeing more frequently and in growing numbers.

A vast majority of jurisdictions in the developed world have prompt payment legislation in place for the construction industry, recognizing the value of its contribution in driving job creation and economic growth. The federal US government, 49 US States for public sector projects, 31 US States for private sector construction, the United Kingdom, Republic of Ireland, all countries in the European Union, New Zealand, all have prompt legislation in place, many of them for 10 or 20 years, and some for as many as 30 years already. Why don't we?

The principles of prompt payment are simple: pay for completed work 30 days after it's certified as being complete.

Late payment risk drives up the cost of construction as contractors have to factor in the risk of late payment into their bids.

It is as prevalent in the Industrial, Commercial, and Institutional (ICI) sector of the industry as it is in residential construction, and equally as bad, if not worse, in public sector projects as in the private sector.

During efforts to secure provincial legislation governing private and public sector construction, a significant amount of opposition came from municipal governments and school boards who denied their own culpability in growing the problem of delinquent payment. In fact, they admonished that enacting such legislation would drive up the cost of construction to the taxpayer.

The reality is that municipalities and school boards are some of the worst offenders when it comes to delinquent payment. And contrary to their claims, delaying payment does not translate into a more prudent and cautious expenditure of taxpayer dollars. As previously mentioned, delayed payment drives up the cost of construction because contractors have to build the risk of late payment into their bids if they want to remain solvent, and late payment will shrink the pool of qualified bidders as many struggle to manage their cash flow.

At the federal level, we recognize that the government's involvement would only be in federally-funded government projects.

We therefore implore the federal government to demonstrate leadership by setting the example for provincial and municipal level governments to follow.

This may be as simple as a change of regulation or procurement policy to require payment within 30 days of certification of completion. In the absence of that, we ask for a commitment to enact legislation that would require the government and its agencies to pay for completed construction work within 30 of it being certified as complete, or for progress payments within 30

days of achieving completed milestones on larger projects. We also ask that such legislation allow for interest to accumulate and be paid to the contractor and for the contractor to have the freedom to halt work on a project without penalty of being in default of the contract if payment is not forthcoming within a reasonable timeframe. We further ask that such legislation require that all primary or general contractors be compelled to follow a similar practice of flowing payment to their various sub-contractors within 30 days of certified completion of work.

No respectable contractor will ever stop working so long as he or she is being paid for the work they do. Nor should any legislation condone or endorse de-mobilization for frivolous reasons. All it would do is empower a contractor to cut his or her losses if they are not getting paid for several months.

An example of late payment that comes to mind is the residential drywall contractor quoted in the media several months ago as having \$7.6 million in accounts receivable, \$6 million of which was more than 120 days past due.

This legislation is imperative for all the right reasons. Nobody disagrees with the principle of fair and prompt payment. How could they? To do so would be morally reprehensible and indefensible. The purpose and intent are very simple, and those are to ensure that contractors get paid within a month of completing their work, not in three or four months, as is common practice. If there are work deficiencies, then an owner does not have to certify the work and doesn't have to pay for it.

We implore the members of this committee to consider this carefully and make an appropriate recommendation to the Ministry of Finance. Your committee is considering six key themes for pre-budget consultations. I believe this addresses all six. I would welcome an opportunity to appear in person before the committee and answer any questions.

Sincerely,



Jeff Koller
Government Relations Coordinator