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**Official Report
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(Hansard)**

Wednesday 19 March 2014

**Journal
des débats
(Hansard)**

Mercredi 19 mars 2014

**Standing Committee on
Regulations and Private Bills**

Prompt Payment Act, 2014

**Comité permanent des
règlements et des projets
de loi d'intérêt privé**

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE
ON REGULATIONS
AND PRIVATE BILLS**

**COMITÉ PERMANENT DES
RÈGLEMENTS ET DES PROJETS DE LOI
D'INTÉRÊT PRIVÉ**

Wednesday 19 March 2014

Mercredi 19 mars 2014

The committee met at 0900 in committee room 1.

**PROMPT PAYMENT ACT, 2014
LOI DE 2014 SUR
LES PAIEMENTS RAPIDES**

Consideration of the following bill:

Bill 69, An Act respecting payments made under contracts and subcontracts in the construction industry /
Projet de loi 69, Loi concernant les paiements effectués aux termes de contrats et de contrats de sous-traitance dans l'industrie de la construction.

The Vice-Chair (Mr. John Vanthof): The Standing Committee on Regulations and Private Bills will now come to order. Good morning, everybody. We're here for public hearings on Bill 69, An Act respecting payments made under contracts and subcontracts in the construction industry. Please note that written submissions received on this bill are on your desks. Just before, we've allotted four minutes for each presentation and six minutes for questions. If the committee is in agreement, we'll allow two minutes per party. Is everyone okay with that? Thank you.

SURETY ASSOCIATION OF CANADA

The Vice-Chair (Mr. John Vanthof): I would like to call our first presenter, the Surety Association of Canada. I would ask you, sir, to please give your name for Hansard. Once again, as I explained, you have four minutes for your presentation and six minutes for questions. When you have about a minute left, I'll give you a sign for your presentation and we'll go from there.

Mr. Steve Ness: A trap door. Thank you, Mr. Chairman. My name is Steve Ness. I'm the president of the Surety Association of Canada. Good morning to the committee members.

Just to tell you a little bit about who we are, we're the national trade advocacy association for the writers of surety bonds across the country. Surety bonds are guarantee instruments that provide financial protection to owners and trades and suppliers to the construction industry. We do that by two instruments: a performance bond, which protects the owners in the event that a contractor should fail from financial loss; and a labour and material payment bond, which protects subtrades

from non-payment in the event of failure. I think in your handout you'll see specimen copies of each of those instruments.

Off the top, I want to say that the Surety Association of Canada is very supportive of the principles behind Bill 69. Obviously, this goes right to our heart. We're people who guarantee construction performance and we have a vested interest in seeing that our contractor clients get paid. The most common cause of contractor default is insolvency, often due to cash flow issues.

We do, however, have some serious issues with Bill 69 as it's currently drafted, a lot by what it doesn't say as what it does. We think that in its current form it could possibly hurt the very people it's trying to protect. There are a lot of issues, and I'm going to leave it to some of our later presenters to elaborate on a lot of the construction-related issues, but I'm going to go at one today which is near and dear to our heart. It has the potential to undermine the surety and contractor relationship and provide real problems.

The bill is silent on what happens should a contractor exercise their rights under section 8 to either suspend or terminate the contract. We think that further clarification is required to prevent a rash of claims coming at our performance bonds.

Interestingly, in the consulting draft that was prepared prior to the legislation being tabled, there was a provision in there to require that a contractor exercising their rights to terminate or suspend could not be deemed in breach of their contract. That was not present in the legislation as it's tabled. While there is a loose provision in there to say that the contract is so amended to incorporate the terms of the act, that's, in fact, cold comfort. We can see a scenario developing where, under the performance bond, you could have a claim as a result of simply exercising your rights.

The other thing I'm going to leave you with is that right now we have an instrument that goes to protect trades and suppliers. It's called a labour and material payment bond, which is required by law in the United States, in all 50 states and nation-wide. Perhaps some thought should be given to bringing that up here in a more prescriptive form. We're going to suggest that perhaps this bill should be taken back, reconsidered and reworked to bring in more protections and make it a lot clearer than it currently is.

With that, I'll thank the committee. I'm happy to answer any questions.

The Vice-Chair (Mr. John Vanthof): Thank you very much, sir. I'd like to start this question round with the Progressive Conservatives.

Mr. Monte McNaughton: Great. Thank you very much for coming this morning. Just two quick questions: any reason why that one provision was taken out, in your opinion? Secondly, was there enough consultation done on this bill?

Mr. Steve Ness: To answer to the first question, I wish I knew. I'm puzzled that it was left out. It seems like such an obvious requirement. So the answer to that, I don't know.

Do I think enough consultation was provided? No. I think it should have been submitted to a wider audience and given far more extensive consideration by all stakeholder parties.

Mr. Monte McNaughton: Was your group consulted prior to this bill?

Mr. Steve Ness: Through the back door, kind of, yes. We sort of peeked in through the keyhole and found out what was going on. We work closely, of course, with the Ontario general contractors and NTCCC, so we were able to keep abreast of what was going on.

Mr. Monte McNaughton: Thanks.

The Vice-Chair (Mr. John Vanthof): Third party?

Mr. Percy Hatfield: Thank you. I'm not familiar with—I think you mentioned it was an American labour and material containment bond. Is that what it was?

Mr. Steve Ness: A labour and material payment bond.

Mr. Percy Hatfield: Payment bond. Are there any in Canada?

Mr. Steve Ness: Oh, yes, they are required in Canada, but it's simply by requirement of the owner. Most public bodies do require them, but not all do. Those that don't, trades are very vulnerable to failure to pay by the general.

Mr. Percy Hatfield: Right. You say there was not enough consultation on this bill, from your perspective. From your perspective, if this bill, as you have suggested, is taken back, reconsidered and made to work, do you see any repercussions to anybody, if that was to take place at this point?

Mr. Steve Ness: That's an open-ended question. I mean, it depends on what came out of the chute at the end. I'll just go back to what I said off the top, that, in principle, we're very supportive of prompt payment. We think that that would grease the wheels and do wonders for construction in the province of Ontario and, really, across the country. Because I know other provinces are watching us closely here.

Mr. Percy Hatfield: So, I mean, you're supportive of it?

Mr. Steve Ness: We're supportive of the principles, certainly.

Mr. Percy Hatfield: Of the principles, but you have serious concerns?

Mr. Steve Ness: Yes, sir.

Mr. Percy Hatfield: I guess the question is, if this was put on a back burner and given more consultation, more input, do you see, at the end result, it being a better bill as opposed to just a delay of a bill?

Mr. Steve Ness: Oh, yes. Absolutely, yes. I think this bill could be much better, and with broader consultation, I think that would almost certainly be the case.

Mr. Percy Hatfield: Thank you.

The Vice-Chair (Mr. John Vanthof): Liberal Party, please.

Mr. Steven Del Duca: Thanks, Mr. Chair. Thank you, Mr. Ness, for being here this morning and for your presentation, and also for the written submission, which, I think, members of the committee will have a chance to review in greater detail.

Just a quick question, actually, following up a little bit on what Mr. Hatfield asked a second ago. I'm looking at the written submission. The labour and materials payment bond that you were referencing in your oral presentation—can you perhaps describe for the committee why, and you might have alluded to it in your answer to Mr. Hatfield, that isn't necessarily the tool that is providing adequate protection for everyone throughout the payment chain in the industry currently? Is there a particular reason that's not the case?

Mr. Steve Ness: I don't think that's quite what I said. It's not in universal use here.

Mr. Steven Del Duca: So it's the lack of—

Mr. Steve Ness: Yes, exactly.

Mr. Steven Del Duca:—universal usage, in your estimation, that—

Mr. Steve Ness: There are some jurisdictions that require it; others don't. It's a very, very effective tool for giving that “sleep comfortably” feeling to trades and suppliers, knowing that they're going to get paid for work done and materials supplied.

Mr. Steven Del Duca: Do you think the lack of—let's call it that—universal usage or broader usage of that particular tool is one of the reasons that there seems to be an increasing problem with late payment in the industry?

Mr. Steve Ness: Possibly.

Mr. Steven Del Duca: Great. Thanks very much.

The Vice-Chair (Mr. John Vanthof): Thank you very much, Mr. Ness, for your presentation.

Mr. Steve Ness: Thank you.

CITY OF MISSISSAUGA

The Vice-Chair (Mr. John Vanthof): Our next presenter will be from the city of Mississauga. As you're coming to the mike—

Mr. Steven Del Duca: Chair, just for clarification, will the start of the questions rotate or will it always be the official—

The Vice-Chair (Mr. John Vanthof): The start will rotate.

Mr. Steven Del Duca: Okay. Thank you.

The Vice-Chair (Mr. John Vanthof): Thank you. You'll have four minutes for your presentation, and six

minutes has been allotted for questions. Could I ask you to give your names for Hansard? Then you can begin.

Ms. Hazel McCallion: Myself, Hazel McCallion; Mary Ellen Bench, our solicitor, and—

Ms. Wendy Law: Wendy Law, deputy city solicitor.

The Vice-Chair (Mr. John Vanthof): Welcome.

0910

Ms. Hazel McCallion: Thank you very much for the opportunity to be here and to deal with Bill 69 and to express our grave concerns about this bill, not that we are opposed to the principle of contractors and sub-contractors being paid promptly for work that they do, but the payment has to be justified. In fact, the city of Mississauga justifies all payment of all bills, because we represent the taxpayers to protect them from payment of bills, expense statements etc.—which sometimes the province and federal governments don't do. But we do it in the city of Mississauga.

Consequently, unfortunately, despite its impact, the bill has been put together with no consultation with all those involved. That is unacceptable today. In fact, I'm surprised that it would be allowed to get to the point it has without consultation. Therefore, it is the city of Mississauga's position that the bill should be brought back to a government bill, with the provincial government engaging in full consultation with the whole industry, and to do your homework, which is what all governments should do before they pass any legislation—do their homework, consult with those that are affected and then make a decision. That has not been done in this case. Therefore, our solicitor has prepared a detailed presentation, which will be submitted, on the impacts of this legislation on the city.

Secondly, we have the MOU process of the province of Ontario that any bill that goes to the Legislature that affects municipalities, we are consulted with as an MOU. This has not been done, and AMO will present that position.

So all I can say, as mayor, is to do your homework before you pass legislation. Think about it very seriously, and involve the people who are affected. This has wide impact on many aspects and certainly on the municipalities. Small contractors, you know, sure, they should be paid properly, but we must justify the cheque that we issue at the city level. My gosh, the taxpayers expect that of us and expect it of you as a provincial government.

This bill does not allow that to happen. Therefore, I strongly recommend that it go back as a government bill—and that the present government believes in consultation. They would never have appointed—the only province, Ontario—the Liberal government has given us the right to deal with legislation that affects municipalities before it's passed. No other province has that right, and we're delighted with it as AMO, and it works, that we have an opportunity to say how it affects us.

Therefore, my position is, as mayor of the city of the Mississauga that has dealt with many contracts, I can assure you that if this bill passes the way it is, it will have serious implications on the municipalities of Ontario.

Therefore, I recommend that you do your homework before this passes. We are not at all opposed to small contractors getting paid promptly for the work they do—no question about it. Who would ever disagree with that? But there's got to be a process, and a proper process, that is followed to justify the payment of a bill by a municipality or by the province or by the federal government. This bill does not allow that.

The Vice-Chair (Mr. John Vanthof): There's time for questions. Thank you very much for your presentation. We will start the questions with the NDP.

Mr. Percy Hatfield: Thank you, Mr. Chair. Welcome, Mayor McCallion. It's nice to see you again.

Perhaps my first question would be to—is it Wendy, the lawyer? Has Mississauga taken a legal position on the fact that if the MOU process has not been filed, whether this committee discussion is even in order or out of order?

Ms. Hazel McCallion: Well, no. Just because I phone the province and say I don't like what's going on doesn't mean they have to listen, that they have to follow my request. The point is, they must give the opportunity to be heard, and this bill has not given us the opportunity to be heard.

Mr. Percy Hatfield: I understand that, Mayor. I'm just thinking if the legislation is there and that the MOU process is to be followed, and it hasn't been followed because municipalities weren't consulted on this private member's bill—

Ms. Hazel McCallion: Well, it should go—the MOU process allows the departments to come before the MOU and tell us what legislation they are proposing.

Mr. Percy Hatfield: Yes, I understand that.

Ms. Hazel McCallion: And we consult. We tell them what the impacts are on the municipality.

Mr. Percy Hatfield: That's on government bills as opposed to private members' bills.

Ms. Hazel McCallion: Well, no. In fact, I've raised the question that private members' bills should come to the MOU. Private members' bills are very dangerous—I have to say—because not enough homework is done on them.

Mr. Percy Hatfield: Okay.

Ms. Hazel McCallion: It's somebody who has a vision, or has a position, that has not been fully analyzed, and very little consultation. That's the problem with private members' bills.

Mr. Percy Hatfield: I guess my final question—

The Vice-Chair (Mr. John Vanthof): You're out of time.

Mr. Percy Hatfield: I'm out of time? All right, thank you.

The Vice-Chair (Mr. John Vanthof): To the government, please.

Mr. Steven Del Duca: Thank you, Mayor McCallion. Thanks for being here today—it's great to see you—and for your presentation, and obviously the written package that I know members of the committee will be eager to delve into.

A couple of things: Again, not to make this sound too repetitious, but I'm going to follow up a tiny bit on what the member from the NDP said a second ago. Just to clarify for everyone who's here in the room, my understanding of the AMO MOU is that that, quite rightly, is the opportunity for the government to officially engage with the municipal sector on government initiatives. This is, of course—we just referenced it a second ago and you did as well—a private member's bill, which, to my understanding, doesn't necessarily trigger the guarantees or provisions in the AMO MOU, but your point about the importance of engaging those who are impacted is well taken.

The question I had—it's in a more, sort of, technical nature—for the city of Mississauga, understanding that we all hold as a very important thing for governments to do at all levels: to guarantee and protect taxpayers' interests. I'm just wondering from the standpoint of construction costs for the city of Mississauga and for other municipalities, has there been analysis done around the notion of how increasingly endemic late payment in the system is actually inflating your construction costs? Because general contractors and subtrades and their subs and their suppliers have to build in the notion of financing late payment. I'm just wondering if you factor that in or if you've heard of any of that kind of calculation or analysis that's being done.

Ms. Hazel McCallion: I'm going to have Mary Ellen answer that because she's thoroughly familiar with all the contracts.

Ms. Mary Ellen Bench: We have canvassed staff in the city of Mississauga in terms of preparing for this hearing, and actually our record is very good. Late payment is not an issue in Mississauga once progress has been certified.

Mr. Steven Del Duca: If I can just clarify the question: What I mean, though, is that—

The Vice-Chair (Mr. John Vanthof): Mr. Del Duca, you've run out the clock with your question.

Mr. Steven Del Duca: Okay—perhaps with some of the others from the municipal sector.

Thank you very much for being here today.

The Vice-Chair (Mr. John Vanthof): Thank you very much for your—

Interjection.

The Vice-Chair (Mr. John Vanthof): Sorry about that. To the PC Party, please. It was not intentional.

Mr. Monte McNaughton: No, no. Thank you very much. We'll be quick, Mayor.

This is, in my understanding, the second time that this bill has come forward. I believe it was introduced originally, prior to my election in October 2011, by Mr. Levac. I was wondering if Mississauga took a position four or five years ago, or whenever this was actually first introduced.

Ms. Mary Ellen Bench: When that bill was introduced, it never made it through the system to a point where we felt it was appropriate to take a position. We were not consulted at that time either.

Mr. Monte McNaughton: So, as a council, do you wait until bills get to the committee stage before you reach out? I'm just curious—

Ms. Hazel McCallion: Well, why would we do it? It didn't get to any status. We don't waste our time in Mississauga. We're not overstaffed in Mississauga.

Mr. Monte McNaughton: I'm just curious. I mean, this is the second time the bill has come forward. Mr. Del Duca, obviously, introduced it this time, but I was just curious if you had a position the first time that this came forward four years ago or so.

Ms. Hazel McCallion: We watch all bills that go to the House and we watch all private members' bills that go to the House. It's hard to keep up with the private members' bills.

Mr. Monte McNaughton: Agreed.

Ms. Hazel McCallion: I am concerned, as mayor of the city of Mississauga for 36 years, that private members' bills are very dangerous because there's not enough homework done on them, and they can slip through easily, especially in an election year.

Mr. Monte McNaughton: Agreed.

Ms. Hazel McCallion: So I really am concerned.

Mr. Monte McNaughton: And there are lots of issues, obviously, raised with this bill and around that consultation piece specifically. Thank you.

The Vice-Chair (Mr. John Vanthof): Thank you very much for your presentation.

Ms. Hazel McCallion: Thank you very much for the opportunity.

0920

ASSOCIATION OF MUNICIPALITIES OF ONTARIO

The Vice-Chair (Mr. John Vanthof): Our next presenters will be from the Association of Municipalities of Ontario. I'll ask you to, please, give your names for Hansard, and you have four minutes for your presentation, six minutes for questions, and I will give you a sign when you have one minute left for your presentation.

Mr. Russ Powers: Thank you, Mr. Chair. Good morning, everyone. My name is Russ Powers. I'm a councillor in the city of Hamilton, and I'm the president of the Association of Municipalities of Ontario. On my right is Monika Turner, our director of policy for the Association of Municipalities of Ontario.

As my allotted time is short, I am leaving a more detailed analysis of the bill and its challenges along with my remarks.

You have already heard from my colleague and AMO member, Her Worship Hazel McCallion, the mayor of Mississauga, regarding her city's concerns with Bill 69. They are shared by many.

When this bill was introduced, AMO said to its sponsor and others in the Legislature that the bill is so poorly conceived and drafted that the best advice we

could offer was to exempt municipal governments from it.

Other associations and groups do not support it either. In fact, you're hearing that members of the construction industry see significant flaws within the bill.

Yes, there is prompt payment legislation in other jurisdictions, but this bill goes so far beyond those pieces of legislation that it actually causes problems. We believe this bill is seeking to remedy a challenge born out of the structure of the construction industry by tying the hands of the owners and contractors. We don't believe this is the right response.

Let me be clear: This bill will fundamentally affect your provincial government's, our municipal governments' and the broader public sector's ability to exercise due diligence over public funds.

Of late, the provincial Legislature has been seized by the need for strong diligence in the expenditure of its public funds. That is why there is some surprise that this bill has progressed through the Legislature to this point.

The bill is fundamentally flawed. I suspect that you will feel overwhelmed by the scope and scale of the proposed amendments presented to you—and to do it all within a three-hour period. Amending a bill is, in some ways, a cherry-picking venture: Will you land on the right amendment? Solve the right problem? Achieve balance? Will amendments to one section create problems in others? While I believe this committee wants to do a good job, I ask you: Might your few hours of review here create legislation that could include a wealth of unintended consequences? You have a heavy task. The committee will need to consider what will happen if you don't get this bill right.

After the witnesses have been heard and the bill is examined clause by clause, this committee votes on the bill as a whole and whether to report it to the House. Our best advice is, don't report it back. This is the request made in a recent letter to the party leaders from a variety of groups, to which AMO was a signatory. You have a copy of it.

Let the stakeholders sit down to address the issue of fair and timely pay for workers on construction sites, a principle that is very, very worthy of our consideration. Let the stakeholders discuss the problems and solutions. This has never happened. This bill was landed out of the blue. There was no true consultation with AMO when Bill 69 was drafted, and I would venture to say not with others in the broader public sector.

I would hope that each of you will agree that, after listening to all the stakeholders, this legislation should not proceed, that this committee should report to the Legislature that its advice is that the stakeholders undertake a coordinated review of payment issues.

Give us the time to work together to identify the problems and solutions. We all have an obligation to create public policy that works, that provides an appropriate balance of oversight of public funds, quality work and timely payment. Thank you for the time.

The Vice-Chair (Mr. John Vanthof): Thank you very much for your presentation. We'll start our questions with the government.

Mr. Steven Del Duca: Thank you, Mr. Chair. Thanks, Mr. Powers, for being here. Good to see you. Again, as I've said earlier with the other witnesses so far, thanks for the written and the oral submission.

I guess with my limited time to ask, I want to follow up and clarify what I was trying to get at with Mayor McCallion on my second question—

Mr. Russ Powers: Certainly.

Mr. Steven Del Duca: —and perhaps I didn't explain it clearly. What I was trying to get at was, has the municipal sector contemplated that as general contractors and subcontractors and the subs, the subs, the suppliers etc., the rest of that payment chain that exists in the construction industry, comes forward to bid work for municipalities or any other construction owner in the province—my understanding is that, over time, as late payment becomes increasingly—I'm not singling out any particular municipality, but, generally speaking, across the industry—becomes more and more of a pressing problem, I find, from what I understand from the analysis that I was able to do, that more and more other participants in the system further down the payment chain from owners build into their pricing the notion that, from a financing standpoint, they have to carry a disproportionate amount of what I'll call the "payment risk" in the system. From my perspective, this implies that your construction costs, perhaps in a more hidden way, are actually inflated.

I'm wondering if AMO or any other of your municipal participants have done any kind of analysis around how much that might be inflating costs for all taxpayers across the province of Ontario?

Mr. Russ Powers: From an AMO perspective, we have not done a broad analysis. I am aware of a couple of the municipalities, one of which is my own, that have done the analysis with regard to the impact. On the basis of performance requirements, our delivery and our payments are deemed to be on time and don't adversely impact the contractors that do the municipal jobs associated with our communities.

I'm sure any business would put in a provision clause in order to ensure that they have bridging funds for it, but other than a couple of municipalities that I know that have done it, from a broad perspective it has not taken place.

Mr. Steven Del Duca: Great. If I can really quickly, because you are—

The Vice-Chair (Mr. John Vanthof): No, no, no. You've already passed your question.

To the PCs, please.

Mr. Bill Walker: Thank you very much for your presentation this morning. Can you share with me whether any of the municipalities within your membership asked you as an association to explore this matter, that it truly is a concern?

Mr. Russ Powers: Very much so. I think you'll find, in a package that's been provided to you, letters from a

substantial number of municipalities asking that the—the principles espoused in this bill are worthy of consideration, worthy of fair and, I'm going to say, advance discussions. You'll find in a package that's provided to you over on the table here substantial numbers of concerns raised by municipalities throughout the province.

Mr. Bill Walker: So I think you're consistent with Mayor McCallion and the first presenter that there was no consultation with this. It was rushed through. It's being expedited—and I'll maybe use the word “steam-rolled”—which we, again, can't really understand. Everybody supports in principle the reality of prompt payment and fair payment terms.

My question was more, though, actually not in respect to the bill being introduced. Were any of your municipalities asking you, prior to this bill being introduced, to find legislation that would protect them for prompt payment? Was this a burning issue for municipalities?

Mr. Russ Powers: Could I ask Ms. Turner to respond to that question?

Ms. Monika Turner: No, it's not an issue that's come up from a policy perspective, in the sense of prompt payments being a major public policy issue.

Mr. Bill Walker: Thank you, Jane?

Mrs. Jane McKenna: So ultimately, if all of the amendments aren't made that you clearly want to have done, what will be so catastrophic if things don't get changed and amendments aren't made?

Ms. Monika Turner: It's the combination of all the different parts. One of the things you've heard is that the progress reports are based on time, not on milestones; also, the concept that municipalities must certify that the work has been done and it's been properly done. Again, the provisions don't allow for it. Even down to the level of—it says there will be an application for progress reports, but it doesn't define what an application is, and often applications may not have the right documentation. There may be issues with it.

Basically, the time frames are so dear, plus there's a reverse onus that if you do not respond within 10 days, you're deemed to have paid it. You can't manage public funds prudently within those time frames, without being able to certify that the work's been done to spec.

The Vice-Chair (Mr. John Vanthof): Thank you.

Mr. Russ Powers: Our written submission on that provides answers.

The Vice-Chair (Mr. John Vanthof): The third party, please.

Mr. Percy Hatfield: Thank you, Mr. Chair. Hi, guys.

Ms. Monika Turner: Hi.

Mr. Percy Hatfield: We heard from Mississauga that late payment is not an issue in Mississauga once progress is certified. On page 2 of your written submission, you raised the grave concern about estimates and contractors wanting to be paid once a reasonable estimate of work has been done. Could you just expand on your concern over that issue?

Mr. Russ Powers: I'll let Ms. Turner start and then I'll jump in.

0930

Ms. Monika Turner: Basically, again, we're looking at it from the point of the scrutiny of public funds and also what an auditor would look at: that if you pay for something that actually hasn't happened, you end up then doing many reconciliations, but one could be said not to be doing prudent management of public funds. You need to be able to say, “The work has been done. It's been done to spec. Therefore, prompt payment follows from there.” That's the concern with estimates.

We do understand—and again, municipal governments can speak to this in more detail—that there may be provisions in a contract, that they can order things and, with that purpose, there can be money flowed. But that's within a contractual situation.

Mr. Russ Powers: The other thing is—and just like yourself, if you were making renovations to your own home, where it's something that's being certified by the building inspectors of the various municipalities, you really can't proceed to the next steps until there has been a sign-off on that. The larger projects are deemed to be similar in nature. The timelines or the draws for certified progress make all kinds of sense, but the requirement to pay based on estimates or materials provided or ordered or delivered—whatever the case is—causes some really major problems for justification of payment.

The Vice-Chair (Mr. John Vanthof): Thank you very much for your presentation.

CITY OF TORONTO

The Vice-Chair (Mr. John Vanthof): Our next presenters will be from the city of Toronto. As you're making your way to the mike, just for time constraints, you have up to four minutes for your presentation, and six minutes has been allotted for questions from committee members. If I could please ask you to state your names for Hansard.

Ms. Anna Kinastowski: Thank you, and good morning. My name is Anna Kinastowski. I'm the city solicitor for the city of Toronto. I have with me Michael D'Andrea, who is an engineer and the executive director of engineering and construction services for the city, as well as Tanya Litzenberger, a solicitor in our offices. We have submitted written submissions to you and they're in blue, so they should be standing out on your desk.

The proposed legislation that we're dealing with will transform how payments are made in the construction industry, yet, as you've heard, unbelievably, there has been no consultation with public sector owner groups in the drafting of it.

The city of Toronto is a large user of construction services. We spent about \$1.2 billion on construction in 2013, on almost 700 projects, everything from Union Station to water pumping stations, to roads, bridges and replacing water mains. Yet, as such a large owner of these kinds of projects, we had no input into this bill.

Ms. Litzenberger has taken a very careful review of the bill, and we are astounded by the impact that it's

going to have on taxpayers. Mayor McCallion made that point: We're here to protect the taxpayers. We suspect that the province and some of your construction arms will also have these same concerns, so we do support the presentations that have come before us.

The onerous requirements and the stringent timelines in the bill are going to be virtually impossible for us to meet and could lead to work stoppages. Allowing for deemed approvals of deficient payment applications is irresponsible to our taxpayers, and I think Mayor McCallion made the point clearly: It's going to add costs to the city.

We've taken a great number of steps over the last years to be more efficient, to contain our costs and to deal with these issues in a better manner. This will be a step backwards.

The bill is unbalanced, in favour of the trades, so that a subcontractor may be able to terminate work if we are one day late in making the payment to a contractor, even if the subcontractor has been paid. Yet when work is deficient, we can't retain anything from the progress payments to contractors. We've detailed these issues in our written submissions.

We've attempted to provide you with amendments to the bill, but it was no easy task. They're attached, with reasons for them, but we really feel that no version of the bill, as submitted, should be enacted.

The city of Toronto, as others, supports prompt payment in the construction industry, and balanced legislation that will achieve these goals—and I stress, balanced legislation. Bill 69 has so many issues and negative consequences, not all of which we know at this point, that we feel it simply cannot proceed. I'm sure you'll hear various positions. Various groups have different positions.

So given the amount of opposition to this bill from the different sectors, excluding the trades, we feel as well that the committee should put the brakes on this legislation and engage the various industry stakeholders for a proper discussion and consultation on prompt payment legislation that we all support.

Our final submission is that the bill cannot be enacted even with the amendments as it currently stands. Thank you.

The Vice-Chair (Mr. John Vanthof): Thank you very much. Our first question's from the official opposition.

Mr. Monte McNaughton: I'm just curious: Has the city of Toronto looked at other prompt payment legislation in other jurisdictions, such as the UK, Australia, the EU?

Ms. Tanya Litzenberger: Yes, we have looked at some of the legislation—not in depth. Certainly I know that when I was looking at the state of Michigan's legislation, there is an ability for payment to be certified and then there are timelines to make that payment that are much greater than the timelines in Bill 69.

Mr. Monte McNaughton: Okay. We have no further questions.

The Vice-Chair (Mr. John Vanthof): Thank you. The third party.

Mr. Percy Hatfield: Just to clarify in your written executive summary—first of all, thank you for being here and taking the time to make your views known—you write that “contractors can terminate on seven days’ notice if payment is late; subcontractors can terminate immediately, even if they are paid, if the owner is one day late in making a payment to the contractor; erroneous payment applications may be ‘deemed approved’ and become payable....” In your due diligence to your taxpayers in Toronto, when you saw this, what was your initial reaction to it?

Ms. Anna Kinastowski: Our initial reaction was that it would be very unfair to our taxpayers. We have processes in place. We have put a lot of systems in place to ensure that the invoices that are being paid are proper. We take steps to ensure that those payments are made as promptly as possible, but there is a limit to how much one can do.

Mr. Percy Hatfield: Has there been a problem in Toronto of your municipality not paying in a timely fashion?

Mr. Michael D'Andrea: The comment that I'd like to make is perhaps a point of clarification in terms of the definition of a late payment. What you will often find in construction projects is there is some discussion with the contractor in regard to completion of tasks and the project as it unfolds at different stages. So there may be some discussion, some dialogue back and forth between our project manager and the contractor to confirm the progress certificate that has been submitted, both in terms of our unit rate contracts, as well as on our lump sum. I would not deem that to be a delay. It is simply a point of clarification. As the city solicitor has noted and the mayor of Mississauga has noted, we have a due diligence with respect to our taxpayers, and we need to make sure that we are certifying payment for goods and services that are received.

Mr. Percy Hatfield: Do you have a reputation for paying your bills on time or—

The Vice-Chair (Mr. John Vanthof): Excuse me. Your time is up.

Ms. Anna Kinastowski: We hope we do.

The Vice-Chair (Mr. John Vanthof): You do.

Ms. Anna Kinastowski: We hope that we do.

The Vice-Chair (Mr. John Vanthof): The government, please.

Mr. Steven Del Duca: Thanks, Mr. Chair. I don't have a lot a lot of time, so I guess really quickly—thank you for being here. Thank you for continuing the discussion. It's great to see you again.

I just wonder, earlier in questioning that was posed to another witness, the member from Lambton-Kent-Middlesex asked the question about—given that this is the second time a bill of this nature has been introduced in the Legislature, the last being in the fall of 2011, three-plus years ago; given that this bill was first introduced and achieved second reading passage in May 2013; and

given that, by your own admission, the city of Toronto is such a large public sector construction owner that takes such an interest in what is happening in the construction industry, I'm just curious if you could explain to us, have you ever voluntarily reached out to the other components of the construction industry, like the general contractors, like the subtrades, to work on solutions around some of these problems?

I haven't had a chance to read your written submission just yet. I don't know if you have suggestions in there around what a different kind of prompt payment bill might look like, but I am curious to know if the city of Toronto, being such a large municipality, has voluntarily undertaken to help solve some of these problems?

Ms. Tanya Litzenberger: As far as I know, we have not been approached to—

Mr. Steven Del Duca: No, but I meant proactively. I meant proactively if you've done it—in four years, proactively, if you've done that.

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Ms. Tanya Litzenberger: We have not proactively, but we are open to becoming engaged in discussions and consultation, which is desperately needed on this legislation.

Mr. Steven Del Duca: Terrific. Thank you very much for being here.

The Vice-Chair (Mr. John Vanthof): Thank you very much for your presentation.

ONTARIO ASSOCIATION OF SCHOOL BUSINESS OFFICIALS

The Vice-Chair (Mr. John Vanthof): Our next presenters will be from the Ontario Association of School Business Officials. As you make your way up to the mike, you have four minutes for your presentation, and six minutes has been allotted for questions from committee members. If you could please, before you start your presentation, state your names for Hansard.

Mr. Glenn Clarke: Glenn Clarke and Tim Robins.

We would like to thank you for allowing us to address the concerns with the Prompt Payment Act as they relate to public sector construction contracts and, more specifically, school boards. We are speaking on behalf of five school board associations, including: OASBO, OCSTA, OPSBA, Association des conseils scolaires des écoles publiques de l'Ontario and Association franc-ontarienne des conseils scolaires catholiques. Together, these groups serve over 1.8 million students in 4,921 schools. This is not a small sector in the construction industry, and over the past 10 years the Ministry of Education has allocated \$12.2 billion for school building projects.

Paying invoices on time for approved construction work is a good practice for school boards as it is an essential component of a successful construction project. However, the terms under the proposed Prompt Payment Act would have a negative impact on long-established construction processes in Ontario.

The first area of concern is with the technical language in the bill, which will create problems with the standard construction contracts in the Construction Lien Act. The existing school board construction contracts allow boards to better manage school construction projects and protect the capital expenditures in a manner that ultimately benefits the taxpayers and the students of Ontario.

Concerns with the terms in the bill are detailed in the OASBO reports—which are included in your packages there—including the one entitled Ontario's Bill 69, Prompt Payment Act, 2013: A Failed Framework. These reports, together, have been submitted as noted. Specifically, the unreasonable terms in the bill would impact school board construction projects with added construction costs, payment for incomplete work, project delays and late school openings. In the end, the act would not provide best value to the Ontario taxpayers.

Secondly, in the past two years the contractors have been developing the framework for this bill, yet there's been no public consultation with Ontario's public and private owners of construction projects. The contractors need to discuss their payment concerns to allow the owner representatives to understand the issues and consider the many positive solutions, one of which is for the general contractors to voluntarily make revisions to their contracts with the subcontractors. This positive action is contrasted with the legislation, which will only add to the challenges in managing projects, resulting in substantial legal costs.

The requirement for open consultation was acknowledged recently by the contractors' association, where it is reported that they are now calling for the government to put the brakes on the Prompt Payment Act. The contractors are now proposing a series of discussions with the owners. This step should have occurred well prior to the introduction of the bill.

Thirdly, there is a lot of misrepresentation and misinformation that has been introduced, and owners have not had an opportunity to respond to this incorrect messaging until now. For example, it's been reported that the US, UK and Ireland all have prompt payment acts, so we need one too. Yes, these countries do have this legislation; however, the terms are very different. For example, they don't have language about paying contractors for future work. Bill 69 mirrors some of these other acts in name alone. Industry research also shows that the concerns are between the general contractors and subcontractors, and not necessarily with the owners.

In summary, Bill 69, if enacted in its current format, would impose a number of significant obligations with school board construction projects by allowing for overpayments to contractors; not enabling boards to retain the required funds to complete deficiencies; adding significantly to the cost of building schools; and delaying school construction openings, with direct implications to the learning environments of our students.

The school boards' associations recommend that the Prompt Payment Act not be approved. It's also proposed that the measures stipulated in the bill be considered in a

consultative and cooperative process by the many parties to achieve a workable solution. This recommendation is also supported by the construction associations.

Bill 69 is like a building with a flawed foundation. A coat of paint, like the wordsmithing in the act, may make the building look nice, but it will still be structurally unsound. The basic premises of the Prompt Payment Act need to go back to the drawing board and be re-engineered.

The Vice-Chair (Mr. John Vanthof): Thank you, sir. Third party: first question.

Mr. Percy Hatfield: Thank you, Mr. Chair. I don't know if the sky is falling or if at some point we'll get a balance from the other side of the argument, but everything we've heard so far indicates that, boy, this is problematic for us all.

I think Mr. Del Duca has asked several delegations before: In the previous incarnation of this bill, has your association been involved? Have you provided input in the past? How did you become aware of this? Is this your first time jumping into this, or have you been involved before?

Mr. Glenn Clarke: This is the first time that we have been involved in reviewing this. I was not aware of the earlier Prompt Payment Act, nor was our group, but once we became aware of it, we had some significant concerns that were raised, and we offered to meet with various parties to talk about the concerns with the bill.

Mr. Percy Hatfield: And obviously you are of the opinion, as are others so far this morning, that this bill should be taken away for due diligence, proper consultation, with a broader scope?

Mr. Tim Robins: Absolutely.

Mr. Percy Hatfield: Thank you.

The Vice-Chair (Mr. John Vanthof): The government.

Mr. Steven Del Duca: Good to see you again. From a clarification standpoint, if I could acknowledge as well, for the committee and for those in the room, Mr. Clarke and the rest of the folks from the school boards' associations did proactively reach out to me quite some time ago to begin a dialogue about this particular bill. So I want to thank you for taking that very proactive step, actually a number of months ago, to come and see me and talk to me about your concerns.

I guess because so far this morning we've heard largely from the municipal sector, and though you're also representing a public sector construction owner, I just wanted to have a follow-up to the follow-up that I started by asking Mayor McCallion and then the folks from AMO around how late payment risk, I guess is the best way for me to phrase it, that exists in the system may be inadvertently or almost invisibly below your own radar, inflating construction costs for school boards and therefore for taxpayers, ratepayers, whatever the case may be. Have you noticed that? Have you contemplated that, and do you have any suggestions for how, going forward, we might work towards reducing that late payment risk for all participants, therefore reducing your

construction costs and improving the overall effectiveness of the system?

Mr. Tim Robins: In response to the question, it hasn't been an issue for school boards. Based on our current contracts around CCDC and the application of our project teams in certifying payment, the importance of a project schedule for schools is very, very important, as funding from the Ministry of Education through the province comes in a timely fashion for growth for schools. So we are very, very succinct in terms of our planning of our schools, the construction of our schools, the certification of payments in our schools and, most importantly, the opening of the schools in time, as the students arrive at school. Late payments for the school board sector has not been a factor for us, and based on our current CCDC documents and our certification of payments, all the way through the construction process—

Mr. Steven Del Duca: I don't know how much time before the Chair drops the gavel on me here.

The Vice-Chair (Mr. John Vanthof): Very little.

Mr. Steven Del Duca: It may be that I'm not asking the question clearly enough, so I apologize.

I'm not suggesting that I know for certain that a particular school board is a late payer per se. What I'm saying is, when a general contractor comes forward to bid on a school and when the subtrades bid to do the work on that particular school, they are currently contemplating late payment as an assumption in the industry. Because it exists and is endemic, they're building it into their construction costs, they're passing it to you, and you're passing it to us. So my—

The Vice-Chair (Mr. John Vanthof): Thank you.

Mr. Glenn Clarke: It shouldn't be an issue for school boards, because we have 40-day payment.

Mr. Steven Del Duca: Okay. Thank you.

The Vice-Chair (Mr. John Vanthof): The official opposition.

Mr. Monte McNaughton: Actually, I'd like you to answer his question.

Mr. Glenn Clarke: In our construction contracts, we have a 40-day payment period, and it may be longer than—no, it certainly is longer than the 20-day period that's proposed in the act, but the 40-day period gives us enough room and time to work through the processes so that we do make payment for the work that has been completed properly and certified, and that's one of the challenges in the act. It doesn't even talk about the requirement for delivery of a proper progress draw. It could be incorrect, it may not have the required documents attached, and the values could be incorrect.

Mr. Monte McNaughton: Just to follow up, I asked the city of Toronto this and I'd like to ask you this. I think you mentioned it in your opening remarks, about other prompt payment legislation in other jurisdictions. We know that that legislation is quite different. Would you support prompt payment legislation that is similar to Australia, the UK, Ireland?

Mr. Glenn Clarke: Well, it's interesting, because they vary significantly. For instance, in Ireland, they've

got a 45-day payment period. New York has a 75-day payment for road construction. In, I believe, New Zealand they've got legislation banning "pay when paid" clauses, which is important. So there's a lot of terminology in those acts that, yes, could be considered.

Mr. Monte McNaughton: But is your organization opposed to prompt payment legislation in general, or are you supportive of a sensible prompt payment legislation act?

Mr. Glenn Clarke: I think the first thing we need to consider is what are the issues out in the industry, because the research has shown that the issues are not with the owners generally, but between the general contractors and the subs. Through that process, as owners, we'd like to understand what the concerns are and then have dialogue and then make a decision following that.

Mr. Monte McNaughton: Okay. You answered that exactly like some cabinet ministers in question period—

Interjection.

Mr. Monte McNaughton: Yes, I'm not going to get a yes or no, I'm assuming, from you on this. But I do know that there is legislation that is quite different in other jurisdictions that maybe should be looked at.

The Vice-Chair (Mr. John Vanthof): Thank you very much for your presentation.

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ELECTRICAL CONTRACTORS ASSOCIATION OF ONTARIO

The Vice-Chair (Mr. John Vanthof): Our next presenters will be the Electrical Contractors Association of Ontario. Just to reiterate, you have four minutes for your presentation and six minutes for questions. If you could please state your names for Hansard before your presentation, and welcome.

Mr. Eryl Roberts: Good morning. My name is Eryl Roberts. I'm the executive vice-president of the Electrical Contractors Association of Ontario. I want to thank you for the opportunity to present the views of the ECAO regarding this important and groundbreaking legislation.

ECAO represents 850 electrical and line contractors, mostly small to medium-sized family-owned businesses, employing over 15,000 electricians and apprentices, all of whom are eagerly awaiting passage of legislation which will ensure that they get paid on time and for the work they expertly perform.

I want to highlight two fundamental rules that the Prompt Payment Act deals with. The first is the golden rule, not the one you learned in kindergarten: The guy with the gold makes the rules. The construction payment system is organized in a top-down pyramid, with owners on top, followed by the general contractor, and then the base of the pyramid is made up of trade contractors who directly perform and pay for 80% of the average project. There is a fundamental power imbalance as a result of the real-time costs that they have, such as labour and materials, being at the bottom of the pyramid, while the funds to reimburse those costs are way up at the top. Further-

more, the funds have to pass through two potential choke points: one between the owner and the general, and the second between the general and the trade contractors. There may be more, depending on how many subcontracting relations there are.

One function of the Prompt Payment Act is to fix this and empower contractors and subcontractors as payees with certain rights, so as to improve their chances of being paid on time for work properly performed. Really, it's only about work properly performed. I've heard a lot to the contrary today already.

The second rule, and it's a basic economic rule that doesn't seem to work in the municipal sector: Time is money. There is a chronic and worsening culture of late payment in construction. I'm going to give you a real-life example of the sheer magnitude of the problem. Let me give you some ECAO labour finance costs, and this is just labour. On average, ECAO contractors are waiting 70 days to get paid. ECAO contractors are financing labour costs in the amount of \$250 million on a regular, rotating line of credit, and that's just labour. If you want to add material into that, you can double it. We're at half a billion dollars, and that's just ECAO contractors. I can count every man hour that they perform, and I know what each one costs. There's no compensation for such huge and illicit borrowings.

When contractors are not paid on time, they are saddled with unauthorized, involuntary, capacity-sucking debt not of their own making. Their ability to bid for more work and employ more workers is severely reduced. Along with loss of capacity and over-extension comes greater and potentially fatal business risk: a project that goes bad, interest rates that go up, the economy might falter, and any number of other things that are beyond your control, like a municipality doesn't pay.

In recent years, there has been a massive, and I mean massive, downloading of financing for construction projects to the trade contractors who actually perform the work. We're at a tipping point. I've given you the numbers just for my trade. Something has to be done, and that something is to pass Bill 69. The ECAO's vision for Bill 69 is to simply be paid on time for the work that we've performed—

The Vice-Chair (Mr. John Vanthof): Excuse me, sir. You're going into the question time, so you'll have less time for questions, so if you could wrap it up very quickly.

Mr. Eryl Roberts: Just to wrap it up, we want to free up \$100 million of capacity by reducing the age of receivables and protecting those 850 small to-medium-sized contractors.

The Vice-Chair (Mr. John Vanthof): Thank you. The governing party.

Mrs. Donna H. Cansfield: Thank you very much for your presentation. I look forward to a more thorough review of what you've presented to us.

Like most things, there's balance in this world, and I want to say thank you. Having spent 15 years on the school board, I'm well aware of the challenges with

small business folks—who are, by the way, the heart and soul of this province. If it wasn't for small businesses, we wouldn't have quite the economic engine that we do.

There's that famous saying, "Houston, we have a problem." We have a problem. I don't think there's anybody in this room who doesn't realize we have a real challenge here. We've identified a way to be able to address it. It doesn't mean it's absolutely perfect in its format, but the fact is, it needs to be addressed. So from your perspective, what is it you think we can do in terms of next steps?

Mr. Eryl Roberts: I think there has to be a review of the legitimate possible amendments that have been suggested, but I mean legitimate ones, not that are going to gut the principle of the bill and, furthermore, not be simply a delay tactic.

Mrs. Donna H. Cansfield: Thank you. Would you be prepared to put forward any types of those amendments that you could see being an improvement to this bill?

Mr. Eryl Roberts: Yes. There's a series of them. They'll be presented by later supporting speakers on the 26th.

Mrs. Donna H. Cansfield: Right Thank you very much.

The Vice-Chair (Mr. John Vanthof): Thank you. The official opposition.

Mr. Bill Walker: Thank you very much for the presentation. Certainly some of the earlier speakers were talking about the concerns of pretty stringent deadlines, timelines, or perhaps not realistic timelines. Would you just give some comment? Is there room for flexibility in there? The last presenter, I think, said a 45-day period as opposed to a 20-day.

Mr. Eryl Roberts: Look, Bill 69 was not conceived as a vehicle for exposing municipal inefficiencies or for correcting them. If it happens to do that, that's a good thing for the taxpayers of the province.

The timelines that are in the bill are actually taken from standard construction documents, CCDC 2 and CCA 1, subcontract. They're pretty standard in the industry and would be applicable to 99% of the work. I don't see that they're stringent at all.

Mr. Bill Walker: So you generally would be pleased if this bill went through right now the way it is, in its current form, or do you believe that there actually is a better process, that we slow things down and do full due diligence and involve all stakeholders?

Mr. Eryl Roberts: I think the number of amendments that the bill needs to make it stronger and more effective and easier to implement are not that many.

Mr. Bill Walker: So you would be supportive—

Mr. Eryl Roberts: So I think this process is the appropriate process to do it. We have about another three weeks. I can talk to stakeholders along with Mr. Del Duca. I don't think the bill is unfixable. As a matter of fact, it's in pretty good shape right now.

Mr. Bill Walker: Have you done anything proactive with some of the other countries that have enacted legislation? Would you suggest that there's one or others

out there that are already better than this that we could compare with?

Mr. Eryl Roberts: Well, there are plenty of pieces of legislation in other jurisdictions that I would love to import here. Somebody—

Mr. Bill Walker: Specific to this bill.

Mr. Eryl Roberts: The banning of contingency payments is a great thing. I tried to get it into the consensus document, but I failed.

The Vice-Chair (Mr. John Vanthof): Thank you. The third party.

Mr. Percy Hatfield: Thank you, Mr. Chair. Welcome, Mr. Roberts. You've been here all morning. Was there anything that you heard from Mississauga or AMO or Toronto that you take great issue with and disagree with?

Mr. Eryl Roberts: Well, I generally disagree with the fact that anyone in the construction chain can't exercise their responsibilities with respect to moving the payments along and with sufficient rapidity to meet the contractual requirements. However, if we need a year or so for the municipalities to get together and sort it out for implementation, that would work for me.

It's interesting, the city of Toronto—their transportation department has, for probably more than a decade, had an electronic billing system for maintenance. My contractors said to tell this committee, if I get an opportunity to say so, that that's a very good and efficient system. They just key it in. Somebody comes and checks to make sure that that intersection has been fixed, and they get paid in 30 days. Why it has to be isolated to one little department of the overall scheme is beyond me. But you can do it. It can be done. It's not impossible.

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Mr. Percy Hatfield: Just for clarification, did you say a year or so for municipalities to work out their differences with this bill would be satisfactory to you?

Mr. Eryl Roberts: As long as it did not exempt them at the end. I think exemption would be the totally wrong thing to do. That would be a slap to the taxpayers of Ontario.

Mr. Percy Hatfield: Thank you.

The Vice-Chair (Mr. John Vanthof): Thank you very much for your presentation.

Mr. Eryl Roberts: Thank you.

ONTARIO HOME BUILDERS' ASSOCIATION

The Vice-Chair (Mr. John Vanthof): Our next presenters will be the Ontario Home Builders' Association. As you are making your way to the mike, you'll have four minutes for your presentation and six minutes for questions. I will give you a one-minute warning. If you could, state your name for Hansard before you start your presentation.

Mr. Joe Vaccaro: Good morning; my name is Joe Vaccaro.

Mr. Stephen Hamilton: Stephen Hamilton.

Mr. Joe Vaccaro: I'm here on behalf of the Ontario Home Builders' Association. My name is Joe Vaccaro; I serve as the chief executive officer. Joining me is Stephen Hamilton, manager of government relations. It is our pleasure today to speak to you on Bill 69, the Prompt Payment Act. The Ontario Home Builders' Association is the provincial advocacy group for a network of 31 local associations from Niagara Falls to North Bay, Windsor to Ottawa, and London to Toronto.

As has been noted in debates at Queen's Park, OHBA first raised our concerns with Bill 69 in an email to all MPPs on May 16. Specifically, we highlighted our concerns with the right-to-information provision in part III. In addition to this item, we believe that Bill 69 takes away important and necessary contract flexibility for construction parties to negotiate specific terms for projects. Our deputation today will speak to a couple of the larger issues about the legislation.

But first I want to recognize the work of MPP Steven Del Duca. He is a strong supporter of construction contractors and the construction sector as a whole. His work on this file has started an important conversation within the construction industry. Although OHBA does not support this particular bill, we do support the principle of contractors being paid on time for quality work that they have completed.

OHBA will be submitting additional comments on the bill, but at this point, we want to focus on two aspects of the legislation. Part III of the bill deals with the right to information, which allows a contractor to "at any time request in writing that the owner provide updated financial information, and the owner shall promptly provide the information..." We strongly believe that this provision should be retracted. This provision is unnecessary and an unprecedented intrusion into private enterprise by other private companies. The residential sector involves both public and private companies, with complicated management and ownership structures. The ability for any firm providing construction services on behalf of an owner to request at any time the owner's financial information represents an intrusive level of disclosure that we are not aware existing in North America.

In addition, the right appears to define all contracting relationships, including home renovation projects. Mandating that a homeowner must provide a contractor their financial background when completing a deck or basement renovation seems completely unreasonable. Part 3 states: "a contractor may at any time request in writing that the owner provide updated financial information." What does this mean in this context? Would this mean audited financial statements? Tax returns? Current bank accounts? The legislation is unclear.

The flow of information may mean that potentially hundreds of parties would have access to the owner-developer's financial information. The legislation provides that all subcontractors on a site, where there is often two degrees of separation or more, have a right to this information. How can the owner have confidence

that this information will not be abused, considering the sheer number of subcontractors on a project who would have access to this information?

The second area I want to focus on is the administrative burden this would have on millions of small contracts in Ontario. There are numerous short-term contracts of small value that would be captured by 31-day payment terms. In the owner's reporting requirements in the legislation, if a homeowner is having their house painted or a carpenter is trimming a home in six weeks, the payment terms they would be subjected to are unreasonable. Not all construction projects are built over several years. Unfortunately, this legislation literally treats building a backyard shed on par with building a hospital.

In order to address this, OHBA recommends that only construction contracts valued over \$5 million should be captured. In addition, there should be an exemption for smaller residential projects, such as custom homes or small development projects. This is similar to how prompt payment works in Massachusetts, where there is both a dollar threshold and a residential exemption in place.

We haven't even touched on the issue of warranty provisions. A builder does have a responsibility to provide warranty coverage up to seven years. It's important that there is some means for the builder and the homeowner to secure a warranty bond. This legislation does not provide that opportunity.

Again, these items do not represent all of our concerns. I want to note that OHB was a signatory to a letter dated March 17, along with a broad cross-section of both private and public owners and stakeholders, outlining our concerns. Although OHB will be providing amendments to the act, the result of these are of such significant scope that it would essentially serve to rewrite the legislation. This is not a criticism—

The Vice-Chair (Mr. John Vanthof): Excuse me. Your time is up, so we'll allow more time for questions.

Go ahead, official opposition.

Mr. Monte McNaughton: Great. Well, thank you very much, Joe, and thanks to all your members in the Ontario Home Builders' Association for raising some of these issues. I know you were the first ones sort of out of the gate on this bill.

Because this is the first time I believe I've heard of this, I just wondered about this warranty coverage. I didn't quite catch what you were saying. How would this bill impact the seven-year—

Mr. Joe Vaccaro: Well, I'll give you two examples from our two membership groups. If you're a builder in the province of Ontario, you need to register with Tarion. Tarion has a mandatory warranty program that a builder must sign on to. Some of that warranty extends out for as far as seven years.

Through the construction process, whether it's a condominium or a low-rise home, whatever it may be, the reality is that not only are you completing that work, that work needs to be tested and secured and, more important-

ly, you as a builder are responsible, based on the warranty coverage, for up to one year, two years or seven years—on a structural issue, maybe seven years.

For a condominium builder, it's in their interest to secure some sort of a warranty bond against the contractor who did the foundation work on that building to ensure that if in that seven-year period there is a warranty issue, there's an opportunity for redress. It's an opportunity to deal with that issue.

For a homeowner, it's much the same situation. If you're hiring a renovator to organize and plan a renovation of your basement, to finish that basement, that renovator is going to provide that homeowner some sort of a warranty. In the case of RenoMark, one of our programs, our renovators provide a \$2-million warranty. But the reality is that a renovator is organizing other trades and wants to be able to secure warranty bonds with those other trades, so if the foundation that they have re-wrapped does leak in a year, there's an opportunity for redress.

Warranty provisions are important, not just for ourselves but also, as you've heard, for the broader public sector construction owners. They need warranty provisions in order to ensure that when these issues come up, they have redress.

I would just end by saying that we are concerned that the private members' process does not provide an opportunity for the kind of dialogue we need on this bill. We are suggesting that any changes to any kind of contract law of this scope need to be made through the appropriate government consultation process before legislation is tabled.

Mr. Monte McNaughton: Thank you.

The Vice-Chair (Mr. John Vanthof): The third party.

Mr. Percy Hatfield: My question was to allow you to finish your written presentation, but I think you just did, did you not?

Mr. Joe Vaccaro: I did.

Mr. Percy Hatfield: Well, sometimes when you write these things, you save the punch for the end, and he didn't get to the punch, but he slipped it in there. It's a left hook, I think.

I guess I was interested more in following up on your financial disclosure argument, that if I hire a renovator to fix up my home, you're suggesting I have to provide him with all of my pertinent financial information, and that information could be shared as it goes down to the electrician, to the plumber, to the bricklayer and so on. Is that what you're suggesting?

Mr. Stephen Hamilton: Yes, I think that's accurate. The legislation just speaks to construction contracts. It doesn't make a distinction between \$10-million projects and a \$5,000 bathroom renovation. I think it speaks to who is consulted early on in the process. I don't think that type of model really works for the renovation industry.

Mr. Joe Vaccaro: The legislation does provide an opportunity for anyone working on that home renovation

to make a request for information, so whether you are the renovator who has the original contract or the person coming and doing the tile work, the legislation does provide a flow of information where you can make that request.

Mr. Percy Hatfield: Thank you.

The Vice-Chair (Mr. John Vanthof): The governing party.

Mr. Steven Del Duca: To both of you, thank you for being here today. I guess also, really, really quickly, thank you for participating in this process. You referenced in your opening remarks the fact that you actually brought forward questions and concerns as early as May 2013, when the bill was first introduced, so thank you for that.

A couple of things by way of clarification: If I understand it correctly, the bill right now, as it relates to the disclosure of information, leaves it to the regulations to define exactly what that would look like, so we don't know for sure at this point in time, in the legislation itself, what it would require at this point. Just so we're clear, some of the things you mentioned as possibilities could only be fully played out by regulations—number one. Number two, we have heard loud and clear about the notion that it's important to have some kind of carve-out for the home renovation sector. I don't think anyone here, certainly on this side, would argue with that concept.

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Lastly, going back to the disclosure-of-information piece and the discussion we've already had here today around warranty programs, I'm wondering, for Tarion specifically, can you talk to us a little bit about any disclosure-of-information requirements that exist in that warranty program that perhaps might satisfy some of what's being contemplated in this bill?

Mr. Joe Vaccaro: Sure. Just to your first point about the regulations, we'll scope out exactly how that piece works. You can appreciate how uneasy that makes us, unsure of what that really means. There's a legislative process here. Our view is that the legislative process should provide the security that we are looking for, for anyone in this process, whether it's a homeowner or a developer, on this right to information. Our view of the world is that if you're going to do something through a legislative process, this is an area where you should be doing something. Our view is simply to retract it, but amendments are necessary in the legislation, not to be left to regulation.

On the Tarion side, builders, as they annually file and renew with Tarion, have a responsibility to provide financial information, along with also providing—so that information includes how they plan to continue to fulfill their statutory requirements under Tarion for projects that they have built. Do they have the capital? Do they have the resources to deal with those past ones? Furthermore, they also project out their expectation of homebuilding that year. So builder A may say, "I expect to build 500 homes this year," and Tarion will say, "Okay, show me the financial wherewithal you have to actually construct

those homes and provide the servicing warranty required.” That’s part of the renewal. If Tarion is uncomfortable with those financials, they will restrict the amount of homes that you can build, and every project goes through a similar process to get Tarion-registered.

Mr. Steven Del Duca: Thank you.

The Vice-Chair (Mr. John Vanthof): Thank you very much for your presentation.

Mr. Joe Vaccaro: Thank you.

AECON GROUP INC.

The Vice-Chair (Mr. John Vanthof): Our next presenters will be Aecon Group Inc. As you’re coming to the mike, you will have four minutes for your presentation, six minutes for questions. I will give you a one-minute warning, and if you could please state your name for Hansard before you begin your presentation.

Mr. Yonni Fushman: Good morning. My name is Yonni Fushman. I am vice-president and assistant general counsel with Aecon Group Inc. Based here in Toronto, Aecon is the largest publicly traded construction company in Canada, with deep roots in Ontario dating back to our first office in Brantford in 1877. Aecon’s work touches every aspect of the construction industry in Ontario, from small home renovations to large infrastructure projects.

I’m here this morning to express Aecon’s concerns about Bill 69. Although Aecon supports the principle of prompt payment, we believe that this vehicle, which was drafted without broad industry consultation, will play havoc with the way the entire industry operates, affecting everyone from homeowners conducting renovations to the successful and timely completions of major projects.

First, the act would increase costs, and those costs would be passed on to taxpayers and consumers. Following are a few examples:

Contractors would incur financing costs to pay money to subcontractors that they have not yet received from the owner.

Projects would incur additional bonding costs to replace the security that the act would prohibit.

All contractors and subcontractors would be forced to incur significant administrative costs to implement the vague but onerous notice-of-payment requirements of the act.

Second, the act would result in more litigation and delay. Reflective of the limited consultation process, the act is vague on many points and is not aligned with existing legislation like the Construction Lien Act. Those issues would lead to disputes, costs, delays and a strain on the already overburdened court system.

Also, the act seems almost designed to encourage delays and litigation by compelling contractors to take extreme measures, such as suspension or lien, in order to obtain basic commercial protections.

Third, the act would increase risk, which in turn would increase cost. The most fundamental flaw of Bill 69 is

that it incorrectly assumes that rigidly fixing payment on a 30-day cycle would be a panacea for contractors. It ignores the reality that on most large infrastructure projects, including most of the projects procured by Infrastructure Ontario, payment is typically not tied to monthly payment cycles but to completion of milestones or even the completion of the entire project. Milestone payments allow the owner to mitigate risk by tying payment to completion of a measurable part of the work, such as the power plant turning on when the switch is flipped or a road opening to traffic. Prohibiting the freedom of sophisticated parties to enter into payment arrangements that are tailored to the risk profile of the project will make projects riskier and therefore more expensive, reduce the abilities of governments to revitalize their infrastructure, squeeze small businesses out of the market, and cost jobs.

We have heard references made by the proponents of Bill 69 to prompt payment legislation in other jurisdictions, the suggestion being that this type of legislation works in other places and it will work here too. However, after examining prompt payment statutes in the US, the UK and Australia, we have concluded that they are different than Bill 69 in a number of very important ways. Those acts continue to allow parties to agree to payment terms, unlike Bill 69’s rigid approach to a monthly payment cycle. Those acts were products of long periods of consultation with all stakeholders, whereas this morning is the first real opportunity that many key stakeholders have had to make their views known. Those acts differentiate between private and public projects, whereas Bill 69 indiscriminately applies to every single construction project, large or small, public or private.

For those reasons, Aecon’s view is that this private member’s bill must not be passed in its current form. The government should appoint an advisory panel to consult with stakeholders, prepare draft legislation that harmonizes with the Construction Lien Act and incorporates the best practices of international legislation, and then circulate the draft bill widely for comment. The process that led to the adoption of the Construction Lien Act in 1983 is a useful model.

Thank you.

The Vice-Chair (Mr. John Vanthof): Thank you very much for your presentation. We will start the rotation with the third party.

Mr. Percy Hatfield: Thank you for coming in, Yonni. Have you met specifically with Mr. Del Duca, who has presented this private member’s bill? What has been his reaction to your suggestion that they appoint an advisory panel to consult with the stakeholders on a wider basis?

Mr. Yonni Fushman: I have not met personally with Mr. Del Duca. I know that the Ontario General Contractors Association has, and some of my peers at other construction companies have, but Aecon has not directly met with him.

Mr. Percy Hatfield: Did your company get involved in the prior version of this bill, when it was Mr. Levac’s?

Mr. Yonni Fushman: No; I think we have the same response as an earlier speaker, that we were aware of that bill, we were tracking it, but it never really got far enough for us to engage directly on it.

Mr. Percy Hatfield: Have you consulted with other large contractors? You're the biggest. Do the other large groups share your views?

Mr. Yonni Fushman: Yes. Some of them are in the room, and I'm sure they're nodding vigorously.

Mr. Percy Hatfield: Thank you.

The Vice-Chair (Mr. John Vanthof): To the government.

Mr. Steven Del Duca: Thanks very much, Mr. Chair. I don't take it personally that we haven't had a chance to meet directly—

Mr. Yonni Fushman: It's a pleasure.

Mr. Steven Del Duca: —regarding this bill or any other matter, and I do appreciate you being here today and some of the—if you'll excuse the pun—constructive comments that you've made with respect to Bill 69.

I don't have a question per se in this regard. I just wanted to say that I think it's good that you're here. It's good also that you're keeping an open mind, recognizing that given that some of the relevant legislation that impacts the construction industry hasn't been updated in more than a generation and given that the construction

industry has evolved in such a complex way, it does make sense for legislators to work with the industry to move towards making sure that the system is functioning at an optimal level for all participants in the system. So really just a word of thanks for you being here today.

Mr. Yonni Fushman: Thanks.

The Vice-Chair (Mr. John Vanthof): The official opposition.

Mr. Monte McNaughton: I echo those comments as well. Also I'm glad, in your last paragraph here, that you were the first presenter today that recommended that this legislation should be harmonized with the Construction Lien Act. That was a note that hasn't been brought up before but is definitely duly noted today. Thank you very much for your presentation, and we look forward to working on amendments to this bill and seeing where it goes according to the person who wrote it.

Mr. Yonni Fushman: Thanks for your time.

The Vice-Chair (Mr. John Vanthof): Thank you for your presentation.

That concludes our list of presenters for today. I'd like to thank them all for their time.

I believe it also concludes our business for this meeting, so I would like to call this meeting adjourned.

The committee adjourned at 1018.

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