



ISSN 1180-4319

**Legislative Assembly
of Ontario**

Second Session, 40th Parliament

**Assemblée législative
de l'Ontario**

Deuxième session, 40^e législature

**Official Report
of Debates
(Hansard)**

Wednesday 26 March 2014

**Journal
des débats
(Hansard)**

Mercredi 26 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**

Loi de 2014 sur
les paiements rapides

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Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

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 26 March 2014

Mercredi 26 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 Chair (Mr. Peter Tabuns): The Standing Committee on Regulations and Private Bills will now come to order. We're here to continue public hearings on Bill 69, An Act respecting payments made under contracts and subcontracts in the construction industry.

ELLISDON CORP.

The Chair (Mr. Peter Tabuns): Our first presenter is EllisDon Corp. Could we have the presenters come forward, please? You have up to four minutes for your presentation. Six minutes have been allocated to the members of the committee for questions. If you'd please introduce yourselves for Hansard.

Ms. Jody Becker: Good morning. I'm Jody Becker, senior vice-president and general counsel with EllisDon.

Mr. Chris Moran: I'm Chris Moran, senior counsel at EllisDon.

The Chair (Mr. Peter Tabuns): Proceed.

Ms. Jody Becker: Good morning. I'm here this morning to express EllisDon's significant concerns with Bill 69.

EllisDon was founded in London, Ontario, in 1951 as a small general contractor. In its 63 years of operations, EllisDon has grown to become one of Canada's greatest success stories. EllisDon achieved this success by developing strong relationships with owners, subcontractors and the thousands of men and women employed on its construction projects.

EllisDon's success has been founded on the belief that good work deserves fair and prompt payment. However, Bill 69, as the proposed delivery of this principle, is, in our view, fundamentally flawed.

Bill 69 sets out a prescriptive framework for making payments without taking into consideration the relative complexity of the project, the commercial needs of the players, or its interaction with existing laws. The bill eliminates the ability of parties to freely contract terms that meet the needs of the particular project.

Some of our key concerns are as follows:

—The bill prohibits milestones and other performance-based payments.

—The bill permits payment applications based on reasonable estimates, resulting in an increased potential for over- or under-certification of work.

—The bill provides for expansive rights to financial information, including in respect of small businesses, sole proprietors and homeowners.

—Contractors and subcontractors who are not being paid promptly are forced to put their projects in jeopardy by suspending or terminating their work.

As heard by this committee, concerns with the bill have been expressed by players across the construction industry. As more scrutiny is received, more concerns are being expressed. While supportive of the principles behind the bill, even its strongest proponents have acknowledged its flaws. The Electrical Contractors Association went so far as to suggest that consultation with municipalities take place over the next year.

The consultative process on the Construction Lien Act is of useful comparison. Broad industry consultation commenced in the late 1970s, resulting in the publication of a discussion paper in November 1980. A formal advisory committee was established in 1981, with the release of a full report in 1982. Following full legislative scrutiny, the act was ultimately passed in 1983. No such consultative process has been implemented for Bill 69.

It remains unclear what the long-term impacts of the bill will be. It is clear, however, that this bill will result in increased disputes, increased litigation and increased costs. The current form of the bill incites parties to dispute the timeliness and quantum of payments. A simple dispute over the amount of a payment would result in the disruption and potential failure of an entire project.

An increase in disputes and litigation can only mean an increase in costs and risks borne by the industry and by taxpayers. Contractors will account for the cost of financing their payments to subcontractors. Increased dis-

putes increase the likelihood of insolvencies, and more insolvencies mean fewer jobs.

As the result of the inability to withhold additional funds as security for performance, owners and contractors will remain beholden to current industry players, making the industry overall less competitive.

For all of these reasons, we at EllisDon are deeply concerned with the bill in its current form and we implore this delegation to reconsider.

The Chair (Mr. Peter Tabuns): Your four minutes are up. Thank you. Nicely timed. The first round of questions: to the government.

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

Thank you for being here this morning and for your presentation. I have one question: Last week, when we did the first round of public hearings—it was likely my fault; I wasn't able to clearly articulate what I was trying to get at with some of my questions, so I'm going to try harder this morning.

You mentioned at the outset that one of the concerns that you have about the bill is this notion that it removes the opportunity for different parties to freely enter into a contract. It does that by design, obviously, and the reason it does that by design is because the risk of late payment continues, from my perspective, to increase in the industry, or at least it's becoming more prevalent. It seems, from most of the conversations I've had, that there is a—I guess I would call it an out-of-balance or unfair bargaining relationship between the people who, up until this point, have tried to enter into contracts so-called freely.

I'm just wondering if you think there is a way, and if you think there is a way—quickly, if you can explain what that way would be around how we can remove that notion of an unfair bargaining relationship.

EllisDon is a large company, a significant company, but as you well know, there are thousands and thousands of others that participate in the construction industry that don't have your size or capacity that are left to the existing contractual frameworks to try and defend themselves, and it's not working for them. So I'm just wondering if you could discuss that for a bit.

Ms. Jody Becker: Sure. EllisDon didn't—

The Chair (Mr. Peter Tabuns): Keep going. You have 30 seconds.

Mr. Steven Del Duca: Sorry. I failed again.

Ms. Jody Becker: EllisDon didn't start as a \$3-billion company. It started as a small construction company in London, Ontario. It was able to work with industry players by building relationships. Those relationships continue to exist today. If we didn't treat our subcontractors fairly, they would stop working with us.

In addition to that, the Construction Lien Act already exists to protect payments down the construction pyramid. It provides a greater remedy than exists under Bill 69. It provides the right—

The Chair (Mr. Peter Tabuns): I'm sorry to say that he had two minutes and he used up most of it. So we have to go to the opposition.

Mr. Monte McNaughton: Thank you very much for your presentation. You mentioned the Construction Lien Act, and I was going to ask you about that. Would it be possible for that act to be amended to include the goals of prompt payment?

Ms. Jody Becker: We think it can, with proper consultation. As I was about to say, the Construction Lien Act already provides a greater remedy than Bill 69 does in that it allows parties who haven't been paid to register a claim for lien against the title to the property on which they've performed their services.

That right commences from the first day that any of those parties perform work on the project, and it provides the proper incentive for owners and general contractors to work with those trades over issues of payment in order to have that lien vacated. It also prevents further payments from flowing on that construction project until that payment issue is dealt with, either by paying the lien claim or by registering security in support of that claim.

Mr. Monte McNaughton: Has EllisDon talked to some of their clients about Bill 69 and their views?

Ms. Jody Becker: We have, and what we're hearing from both our public and private owners is that the time frames contemplated for payment under Bill 69 are unworkable. What we suspect will happen is what's already happening in the industry, in that those owners will include in their tender documents privilege clauses that prohibit contractors from bidding their work in the event that there's an ongoing dispute. So if we at EllisDon were to raise a concern under Bill 69, we could effectively be prohibited from bidding further work with that particular owner.

Mr. Monte McNaughton: Thank you very much.

The Chair (Mr. Peter Tabuns): Thank you. Third party?

Mr. Percy Hatfield: Thank you. Hi, Chris. Good morning, Ms. Becker. Thank you for coming in. I keep wondering why we're here, in the sense that some people in the industry don't see a problem, that somebody has seen a problem and that's why it's been raised and the member brought the motion forward. So from your perspective at EllisDon, has there been a problem that you've been made aware of that you want to fix or do you want the status quo?

Ms. Jody Becker: No. As I said at the outset, we're certainly supportive of the principle. We believe everybody who performs good work should be fairly paid.

Mr. Percy Hatfield: But are they being fairly paid now in a prompt fashion?

Ms. Jody Becker: On our projects, they are. I can't speak to what's happening down the line. There are certainly circumstances—we've had one recently where a large mechanical subcontractor became insolvent. Certainly there were issues with payment on that project. However, if we had been bound by the rules under Bill 69, that mechanical subcontractor's trades would not have been paid but for the fact that EllisDon withheld further funds from that mechanical subcontractor in the face of its pending insolvency.

Mr. Percy Hatfield: Thank you.

The Chair (Mr. Peter Tabuns): No further questions?

Mr. Percy Hatfield: No.

The Chair (Mr. Peter Tabuns): Thank you very much.

MANION WILKINS
AND ASSOCIATES LTD.

The Chair (Mr. Peter Tabuns): Our next presenter, then, is Manion Wilkins and Associates Ltd. You have up to four minutes to present. There will be six minutes of questions. If you'd introduce yourself for Hansard.

0910

Ms. Lisa Watt: Good morning. My name is Lisa Watt, and I'm from Manion Wilkins and Associates. We are a third party administrator that does benefit and pension plans for Ontario construction industry workers. This presentation is supported by our submission, which I believe will be distributed to each of you. I will summarize it in this presentation.

Prompt payment legislation is supported by most trustees and administrators responsible for the management of benefit and pension plans. Late payment of contributions due to these plans, which we in this industry refer to as delinquency, is costly and disruptive to the benefit plans and directly impacts the employees' entitlement to benefits.

Analysis of 2013 statistics for our Ontario construction trade plans pointed out six things. In that time frame, 19% of the contributions due to the benefit and pension plans were received late; they were delinquent. Hundreds and hundreds of hours were collectively spent by trustees, administrators and their councils dealing not only with trying to obtain these contributions, but with frustrated employees who found that they were without benefit coverage or that benefit coverage was jeopardized because their contributions to their benefit plans and their pension plans were not received on time. In addition, thousands of dollars are being spent on legal and professional fees to collect outstanding contributions.

In the submission, there are two examples, but those two examples provide six points. In one point, we spend \$328,000 just in legal fees to collect about \$1.5 million in outstanding contributions. Those assets could be better spent providing the benefits that those plans are supposed to provide, as opposed to paying legal expenses.

Pension calculations are often delayed for individuals. In the sample I reviewed, 90 individuals who were retiring had their pensions paid late or had to be rerun because all of their pension contributions had not been received at the time they were retiring. In some instances, their first pension payment was actually delayed because we were waiting for outstanding contributions from their employers.

Vacation pay payouts—these plans have vacation pay—are late and are not received on time by the members. We had an example of an employee who actually died and was out of benefit and did not have life

insurance coverage because the company had not paid the contributions into the trust fund on time. With a lot of work and effort, we did have the insurer pay that life insurance claim, but there was a financial hardship for the family as they waited for us to prove to the insurer that the individual should actually have been insured had contributions been received on time.

The Chair (Mr. Peter Tabuns): You have a minute left.

Ms. Lisa Watt: Okay. Hundreds of hours are spent and thousands of dollars are spent in legal fees. People who do not receive their pension on time will receive pension payments without their true contributions. When it's a defined contribution plan, if those pension contributions are not in the bank and earning interest, then those individuals not only don't have those contributions, but they've lost out on interest entitlement in their pension plan.

In summary, prompt payment legislation will reduce benefit plan expenses; will ensure that employees and families receive the benefits they're entitled to, including their pension benefit entitlements and vacation pay; and will support the trust funds and the trustees' fiduciary responsibilities to the members who participate in them.

The Chair (Mr. Peter Tabuns): Thank you. The first question to the opposition.

Mr. Monte McNaughton: I just want to say thanks for presenting today. It was very detailed. We'll take a look at it again, but we don't have any questions.

The Chair (Mr. Peter Tabuns): The third party.

Mr. Percy Hatfield: Thanks for coming in. In your opinion, prompt payment is good. Other presenters have suggested that what has been proposed is so flawed that it's going to be litigated so much—it will be litigated more than the Construction Lien Act. So if you're hoping for prompt payment out of what is on the table, your hopes may be dashed. Do you have an opinion on that train of thought?

Ms. Lisa Watt: In respect of what's happening now, the prompt payment legislation or Bill 69 as it is, or as it is amended by the committee and those involved—if, in its true form, it does cause payment to occur faster to my industry, that's going to help the employees. I don't have an opinion as an administrator with respect to whether or not it will increase or decrease legal fees. My hope is that any legislation will supplement the lien act or what's currently in place to make sure that these members do not suffer any further than they are now.

Mr. Percy Hatfield: Are you at liberty to disclose any of the companies that you know to be routinely delinquent in getting their prompt payments in so that benefits are covered?

Ms. Lisa Watt: I am not at liberty. We deal with trust funds. Those trust funds are managed by boards of trustees, so they would not be at liberty to disclose those, nor do I have any on the top of my head at this point.

Mr. Percy Hatfield: Thank you.

The Chair (Mr. Peter Tabuns): To the government: Mr. Del Duca.

Mr. Steven Del Duca: Thanks very much for your presentation this morning. You may have said this in your comments and I might have missed it: Do you notice that the risk of late payment is affecting the work that you do and the people you serve and whether or not that's an increasing risk? Is it more prevalent now than perhaps five or 10 years ago? Any opinion on that?

Ms. Lisa Watt: I've worked at my firm for 30 years, and I've noticed that—I don't have specific statistics, but I would say that over the last five to six or seven years there is a little more of an incidence to it and there's definitely more work involved. When I first started in this industry, it was easier to collect delinquent contributions, but it is harder and tougher, because of the economy, I would say, for trust funds and for trustees to get employers to meet their obligations.

Mr. Steven Del Duca: Terrific. Thanks very much for being here today.

The Chair (Mr. Peter Tabuns): Thank you for your presentation.

CARPENTERS' DISTRICT COUNCIL OF ONTARIO

The Chair (Mr. Peter Tabuns): Our next presenter is the Carpenters' District Council of Ontario, if you'd come forward. You have up to four minutes for your presentation and, as you've gathered, up to six minutes of questions. If you'd have a seat and introduce yourselves for Hansard.

Mr. Mike Yorke: Hi. Good morning, everyone. My name is Mike Yorke. I'm vice-president of the Carpenters' District Council of Ontario. I also happen to be president of Carpenters' Local 27 of that district council. With me today is Joe Ragusa, who does some legislative work with the carpenters' union.

I'm here today to offer support for the prompt payment bill and to give you the views of the Carpenters' District Council, representing 22,000 men and women across the province.

We're aware that this committee, even this morning, has heard from a number of presenters on both sides of the issue. It will come as no surprise to you that the carpenters' union supports Bill 69 and urges you, and all members of the assembly, to pass this legislation at your earliest possible opportunity.

What may be less obvious to you is why we attach such urgency to the passage of the bill, which, although new for Ontario, will be similar to the legislation that already exists in dozens of other American states and many other countries. Quite frankly, the situation that exists today is undesirable and begs for improvement. In our organization, we see too many grievances, too much litigation and too many people not being paid the money that they're entitled to. Included on that list of people who are not receiving what they're entitled to are our carpenters—our members—our subcontractors and our contractors.

We understand that in an industry such as construction, where over \$80 billion of activity takes place each

year in this province, there are going to be numerous commercial disputes and there must always be mechanisms in place to deal with those disagreements. We always hope that those disagreements are few and far between.

Bill 69 seeks to correct a somewhat different situation, however. The Prompt Payment Act would put an end to the routine withholding of payments from contractors, subcontractors and their employees. This practice has become far too commonplace, and really needs to end.

One of the things that we at the carpenters' union are very proud of is that we maintain excellent working relationships with our contractors and our management partners, while at the same time looking out for the best interests of our members. We believe that labour, management and even government, working together, will lead to positive results for everyone. We would like to see a legislative requirement on payments so that people who do good work and deserve to be paid receive their money in a timely manner. When people are spending time and money on litigation, obviously, they're not working.

Bill 69 will help in this regard, but even this important step will likely not be enough. On that note, the carpenters' union would like to see the government of Ontario undertake meaningful construction lien reform in the near future. We believe that the time has come to refresh this legislation.

0920

Finally, I want to put this issue into a perspective that decision-makers at Queen's Park can appreciate. Everyone in and around government understands the importance of investments in infrastructure. Not only does society benefit from new roads, hospitals and schools that are built, the economy benefits—

The Chair (Mr. Peter Tabuns): You have a minute left.

Mr. Mike Yorke: I have a minute.

We buy a lot of lumber, concrete and steel, which is good. That's all to do with infrastructure. The real benefit, the real stimulus, however, comes from the trickling down of government funding and project approval for our contractors, our subcontractors and employees who use that in the broader community.

In conclusion, we would urge you and your colleagues to pass Bill 69 as soon as you can, so that those of us in the construction industry can get on with the work of building our great province and putting that infrastructure spending to good use. Thank you for your consideration.

The Chair (Mr. Peter Tabuns): Thanks. Third party: Mr. Hatfield.

Mr. Percy Hatfield: Thank you, Mr. Chair. Thank you for coming in today. You want this bill passed as soon as possible. Is that without any amendments, just as is?

Mr. Mike Yorke: No. I think that the process of discussion in committee is excellent, and if there are further amendments required, that's an important step in the whole process. The principle of the bill is very positive, and our members really need to see that. As has been

mentioned by a previous speaker at the table, those are things that our members face every day. They're not getting their benefits paid and the pension plan paid. Those are some of the driving forces why we think this bill is so important.

Mr. Percy Hatfield: You also call for a reform of the Construction Lien Act. Would it be best to do the two together, in your opinion, or do this first?

Mr. Mike Yorke: I think they're separate issues, but I do think that the Construction Lien Act is important because, look, if there are legitimate contractual disagreements, those have to be dealt with in a separate bill.

Mr. Percy Hatfield: From your perspective, who are the biggest offenders in not paying your people on time?

Mr. Mike Yorke: I don't think we have a direct answer for that. It's quite common throughout the whole industry, so I think we need to see some addressing of that throughout the industry.

Mr. Percy Hatfield: Thank you.

The Chair (Mr. Peter Tabuns): Thank you. Government?

Mr. Steven Del Duca: Thanks for being here this morning. I'll ask you the question I asked the representative from Manion Wilkins. Has the carpenters' union noticed an increased incidence of late payment or late payment risk in the industry over the last number of years?

Mr. Mike Yorke: We certainly see it when there's a bit of a downturn in the industry, and what we often would see is that employers would use withholding of funds to basically finance the next job. So that's one of the concerns for us. In the last few years, it's probably been very stable, but it's a driving—it's a real issue out there. I don't think we've seen a spike in it.

Mr. Steven Del Duca: Could you quickly elaborate on that point? You mentioned a second ago about people hanging on to payment that should be flowing in order to—

Mr. Mike Yorke: Sure. To purchase materials and property and develop job sites is very expensive. So if the funds that legitimately should be flowing to subcontractors and members for pension funds and other benefits are withheld to finance a subsequent job or another job, we take the position that that's improper and it's extremely unfair.

Mr. Steven Del Duca: Thanks very much.

The Chair (Mr. Peter Tabuns): Thank you. Opposition?

Mr. Monte McNaughton: Thanks for coming this morning. I wanted to just follow up from the question that Mr. Hatfield asked about the Construction Lien Act being amended to meet the objectives of prompt payment. You said that you prefer a separate piece of legislation for prompt payment, and if so, why?

Mr. Mike Yorke: We think that there are two separate items there. One is—look, if there are legitimate contractual differences, that should be separate from the prompt payment because prompt payment is for work that's been done effectively and that should flow through

to the—whether through to the subcontractors, the contractors and then to the members.

Mr. Monte McNaughton: Because there have been a number of presenters that have touched on the Construction Lien Act and maybe incorporating prompt payment into that piece of legislation, so I was just curious for an opinion on that.

Mr. Mike Yorke: Sure.

Mr. Monte McNaughton: Thank you very much.

The Chair (Mr. Peter Tabuns): Okay. Thanks very much.

Oh, I apologize. Mr. Walker.

Mr. Bill Walker: Just a point. One of the things I've been struggling with in all of this deliberation is the ability for milestones. Many of the bigger projects are built on milestones and that's a way—the way I'm interpreting this is that it basically takes away that ability. So my concern would be, particularly when I hear you speak, that you want this expedited. That, to me, is a pretty significant clause that needs to be looked at in more detail.

Mr. Mike Yorke: I'm not sure I understand the question because—you're right around construction bidding and payments would be based on milestones. So if a certain amount of work has been accomplished, there's an agreement: Is that work done to code? Is it done to standard? Then the payment should be made. There are certainly milestones there, and we understand that in the industry.

Mr. Bill Walker: One of the pieces here says it will be payable to contractors 20 days following a submission of an application without regard to the actual value of work performed. How does that work? If I go down to my home renovation project, I'm not prepared to crack a cheque if that work is not done to the expectation I have it to on the timeline that we agreed on.

The Chair (Mr. Peter Tabuns): Mr. Walker, you've used your time. Thank you very much.

Mr. Mike Yorke: Thank you very much.

INTERIOR SYSTEMS CONTRACTORS ASSOCIATION

The Chair (Mr. Peter Tabuns): Our next presenter: Interior Systems Contractors Association. As you know, you have up to four minutes to present and up to six minutes to answer questions. Please introduce yourself.

Mr. Ron Johnson: Thank you very much. I appreciate the committee listening to my thoughts from the Interior Systems Contractors Association. My name is Ron Johnson. I'm the deputy director of ISCA as well as a director on the National Trade Contractors Coalition of Canada.

I had the opportunity, as you know, last week to listen to a number of the submissions. There are some patterns that have developed. But when I saw that EllisDon was coming today I was actually pleased, because some of you may or may not know, but Geoff Smith from EllisDon actually authored what he called a contractor's bill of rights. That was published in the Daily Commercial

News. In that contractor's bill of rights, Mr. Smith talked about the importance of paying people promptly. When they were on the list, I assumed they'd be here cheer-leading Bill 69 because it's consistent with their corporate philosophy to pay contractors on time. But that's not what was said.

What was said is what has been said by everybody: that everybody believes in the concept of prompt payment. They don't necessarily believe in the practice of prompt payment. So on that 30th day, when Mr. Smith has to cut a cheque to the subtrades, his hand obviously shakes a little bit and he gets nervous about doing so.

The truth is that prompt payment is really a concept that needs to become a reality, and that disconnect is what Bill 69 aims to address. The concept of prompt payment does not pay the bills of the thousands of contractors in this province: small and medium-sized family businesses. It doesn't pay the bills for those contractors. Nor does the concept of prompt payment put food on the table for the nearly 450,000 people in this province who earn their living in the construction sector.

Let's talk just a moment about what the bill really does, putting all the rhetoric aside. What the bill does is simply enshrine in law the requirement to pay, within 30 days, for work that has been certified to be complete, not work that a contractor claims has been completed, not work that a contractor performed but not adequately enough: work that has been certified as complete. That's what the bill does.

What is the recourse if, in fact, the payment has not been made? It simply gives the owner of that small company—or the general contractor, quite frankly—the opportunity to make a business decision: “Do I stay on the job site? I haven't been paid. Or do I go? Do I pack up my tools and go home?” That's all the bill does. Pay in 30 days for work certified, and it gives the owner the right to make a business decision as to whether or not they stick around. That's what the bill does.

There's no other business or industry where an individual or business is required to continue to provide services under law without being compensated for those services.

The Chair (Mr. Peter Tabuns): You have a minute left.

Mr. Ron Johnson: Thank you.

What are our expectations? I can tell you that the expectations of the individuals and the companies and businesses that I represent, the contractors and the thousands they employ, are that this committee will continue to show leadership, will get this bill through the clause-by-clause stages in the next two weeks, and that all three parties will urge the bill forward for third reading and that all three parties will actually support the bill at third reading. That's our expectation.

You folks have an opportunity to take the concept of prompt payment and make it a reality in the province of Ontario—much like, by the way, a lot of other jurisdictions have done. They have realized they needed a legislative solution to slow payment in construction.

Thank you very much, and I'll take your questions.

The Chair (Mr. Peter Tabuns): Thank you. First question is to the government.

Mr. Steven Del Duca: Thanks very much for being here this morning, Mr. Johnson. I'm going to ask a question I've asked earlier today, which you've heard me ask two others. Have your members noticed that this is becoming an increasing problem? Is it a decreasing problem? If you can help us understand how much of a problem this is for your members.

0930

Mr. Ron Johnson: Yes, I have no problem addressing that. Look, we've got a lot of anecdotal evidence suggesting that our contractors now are waiting a great deal longer for payment than they used to. We're looking at payment terms that are averaging somewhere around 75 days. So then, hence, when the Construction Lien Act question comes up, people say, “Well, we have a lien act option.” The truth is, you do not. You have to file a lien within 45 days of last being on the job—the last time you did any meaningful work on the job. But if your payment terms aren't until 70 days or 60 days or 90 or 120, your lien rights have long expired before you realize that you are not getting paid. So that's the challenge with applying a lien act solution to a prompt payment solution.

The lien act, quite frankly—I know I'm segueing a little bit here—is really not accessible to a lot of small businesses and companies. It's slow and it's time-consuming, and it's very expensive. That's the challenge for a small business. It's expensive to access that system.

Mr. Steven Del Duca: I'm not sure how much time I have left.

The Chair (Mr. Peter Tabuns): You have 45 seconds.

Mr. Steven Del Duca: What do your members do when they aren't paid on time and they don't exercise their lien rights, or if they can't? What do they do?

Mr. Ron Johnson: The truth is, they have to sometimes litigate to get their money. More often than not, they end up cutting a deal with the general contractor to take 50 cents on the dollar because they need the cash flow. These sorts of deals are always made, because the subtrades are in an inferior position on the bargaining side with respect to the general.

Mr. Steven Del Duca: Thank you.

The Chair (Mr. Peter Tabuns): Thank you.

To the opposition.

Mrs. Jane McKenna: Thank you so much for coming in. I have a couple of questions.

First, we've had so many people come in already, and if more than five people have something to say, there's usually validity in it.

When you look at this PMB, this bill, the way it is right now, we've had a lot of submissions, with a lot of amendments made to this because people felt that they weren't adequately consulted in this at all. Do you see that there need to be a lot of amendments made to this?

Mr. Ron Johnson: I definitely think there should be some. On my attachment there to the written submission, you'll see that there are six or seven amendments that we are suggesting. Many of those amendments, quite frank-

ly, do reflect some of the concerns that have been aired by other presenters.

So, yes, there need to be a few amendments, and we recognize that. However, any amendments that are made cannot affect the integrity of the bill, the concept of the bill, which is that contractors need to be paid for work that's certified as being complete. You'll find that the recommendations that we make in terms of amendments do not affect the integrity of the bill but do, in fact, address some of the concerns that people have.

Mrs. Jane McKenna: Don't you think that if you're putting a bill together, it's a bit reckless and irresponsible not to have consulted all the people that it ultimately is supposed to—the person that it's supposed to do the best for, ultimately, in the end, that's concerning to all these people who are here, that it's not going to. So don't you think it's the right thing to do?

Mr. Ron Johnson: I would suggest that if it was a government bill, you'd be absolutely correct, but there's a significant distinction between a government bill and a private member's bill, with all due respect, and this is a private member's bill.

I would also tell you that I believe there was a lot of consultation done. Nobody got caught off guard with this bill. This bill was first introduced back in 2011. It was reintroduced almost a year ago again—nine months, I believe. So nobody has been caught off guard by this bill.

The fact that some organizations have chosen to put their heads in the sand and ignore it up until this point—there's nothing we can do about that, but we have reached out. The trade contractors have reached out—

The Chair (Mr. Peter Tabuns): Thank you. I'm sorry; we've got to move on.

Mr. Ron Johnson: Okay.

The Chair (Mr. Peter Tabuns): The third party.

Mr. Percy Hatfield: Thank you, Chair.

Ron, nice to see you again.

Mr. Ron Johnson: You too.

Mr. Percy Hatfield: I want you to clarify for me. As I wrote down my note, you were saying that you can be paid within 30 days once the work has been certified as complete. Other people have said that those are milestones that aren't in the bill and what's being proposed is estimates: that you have to pay when the estimates are in. Clarify that for me.

Mr. Ron Johnson: Yes. I can, to a degree. When a payment application is made—on the 20th of the month, for example—there is an estimate taken into account. That's current contract language now. That goes on every day on every job site in this province. There's an estimate done to the end of the month—“What are the labour and material costs going to be until the end of the month?”—and they include that in their payment application.

But the bottom line is, if you have a certification time frame, which this bill does have—it's 10 days, and could easily be expanded to 20; that's one of our recommendations—that work will not be paid for until somebody has certified that the work has been done. So yes, on the payment application it goes forward, but at the end of the

day, before a cheque is cut, that work is certified to be completed before the cheque is cut.

Mr. Percy Hatfield: Why do you think the MUSH sector is so adamantly opposed to this proposed bill?

Mr. Ron Johnson: I would think that it's obvious. I think that the MUSH sector has a really hard time trying to be efficient. In my view, some of the concerns that they have are legitimate, and we do try to address those in a few amendment proposals, but the truth is that there's a lot of mismanagement in the MUSH sector, and this bill has, I think, highlighted some of those inefficiencies that they suffer from. I don't think they like that, quite frankly.

Mr. Percy Hatfield: Are you suggesting that the MUSH sector is some of the people who delay prompt payment on a regular basis?

Mr. Ron Johnson: I'm telling you that, without a doubt, the taxpayers are paying a lot more for construction in this province than they should because public sector buyers of construction are slow to pay, and they're the worst offenders.

The Chair (Mr. Peter Tabuns): Thank you, Mr. Johnson. Thank you for your presentation; thank you for the questions.

Mr. Ron Johnson: Thank you.

ONTARIO MASONRY CONTRACTORS' ASSOCIATION

The Chair (Mr. Peter Tabuns): We're on to the next: the Ontario Masonry Contractors' Association. Have a seat, please. You know you have up to four minutes to present. You've seen the drill.

Ms. Sandra Skivsky: I have.

The Chair (Mr. Peter Tabuns): If you would introduce yourself.

Ms. Sandra Skivsky: Good morning, and thank you for the opportunity to be here today. My name is Sandra Skivsky and I'm with the Ontario Masonry Contractors' Association. I'm also a representative of the National Trade Contractors Coalition of Canada.

I'm here today speaking on behalf of the people who employ tradespeople, who train apprentices and journey-persons, make payroll, pay benefits and pension contributions, pay taxes, and actually do the work.

You've heard mostly from the top of the construction food chain, who have argued against Bill 69. Other than some ethereal principle, their opposition to the fairness and equity of the proposed legislation is characterized by a host of potential problems, some of which can easily be addressed. It is more properly explained by a feudal belief system, where those closer to the bottom of the food chain should just accept their situation and that which is done to them, and that would be the trade contractors.

Bill 69, as Mr. Johnson said, is simply about being paid for work that's done to satisfaction. It's not being paid for deficiencies or work not done or providing over-payment possibilities—work that's done and approved. Okay?

It also gives the contractor the right to mitigate damages—which is a concept that everybody has access to—when they're not getting paid. It does not compel contractors to suspend work. It preserves the right of a contractor to make a business decision, weighing the likelihood of getting paid and deciding whether to continue bleeding or to try and stem it. Nobody walks off a job when they're getting paid. As the saying goes, if you're in a hole and you need to get out, maybe you should stop digging.

There are differences in prompt payment legislation across all sorts of jurisdictions; statutes vary from place to place. What's important, though, is the sheer number of jurisdictions that believe that prompt payment, with payment timelines, is important to have—except here, where we can't seem to get it right.

Bill 69 was not created from some utopian wish list. It mirrors the current unaltered standard documents. These are supposedly consensus documents developed by a broad spectrum of the construction industry and are promoted by organizations like the Canadian Construction Association and the OGCA. The language for Bill 69 was developed by the OGCA and the National Trade Contractors to reflect these construction practices; however, there are those who don't use these contracts as intended. As soon as you modify standard documents, guess what? They are no longer standard and unaltered. So it's okay for some to talk a good talk as long as they don't need to act on it.

The Chair (Mr. Peter Tabuns): You have a minute left.

Ms. Sandra Skivsky: I'd also like to point out that the province invests a lot of money into apprenticeship. There are enhancement funds, grants, incentives, seat purchase; however, as you invest and attempt to increase the number of apprentices, without prompt payment legislation, you're tying the hands of the very people who employ apprentices. Construction employs over 40% of all apprentices, and the vast majority work for trade contractors, who are facing increasing risk from uncertain cash flows, while those higher up the food chain say, "Let them eat cake."

In closing, Bill 69 is the right thing to do. Are there some amendments? Yes, and they've been proposed and they address some of the concerns that have been raised. But some of the issues that are raised around prompt payment are simply wrong or not well interpreted. Representing thousands of contractors and hundreds of thousands of workers, we ask that you do the right thing by Bill 69. Thank you.

The Chair (Mr. Peter Tabuns): Thank you. To the opposition.

Mr. Monte McNaughton: Great. Thank you very much. Just your last line there: You said that some issues that are being raised are wrong. What do you mean by that?

Ms. Sandra Skivsky: It does not compel people to walk off the job. In fact, it says that if there isn't anything in the contract that addresses work suspension, then you refer to Bill 69, and it has a process there. These folks are

on the job 60 days, under optimal circumstances, before they can expect to see the first cheque. Then there's the whole process of notification up and down stream before—and things have to be done before somebody says, "Okay, I'm out of here." That's not something that someone undertakes frivolously.

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Paying for overpayment: This mirrors exactly what the standard documents contain. People talk about, "on the altered documents," and "no seal, no deal." None of this is an invention or something that's new. All we're asking is that it be enshrined in a way that people can access it.

Mr. Monte McNaughton: Okay, I know we only have a minute. Amendments to this bill: What are some of the things you'd like to see changed?

Ms. Sandra Skivsky: We talked about renovations for single-family homeowners—that could be excluded from the bill. Financial disclosure for municipalities, school boards, the crown: That could be excluded. Let me think. We have some more defined terms around what financial disclosure does mean, in the cases where it would apply. As I said, there are about six or seven that do address some of the concerns that were raised before, but the integrity of the bill and the payment structure needs to remain the same.

Mr. Monte McNaughton: Thank you.

The Chair (Mr. Peter Tabuns): Okay. Third party.

Mr. Percy Hatfield: Thank you for coming in and making your presentation today. I guess, along the lines of what Mr. McNaughton was just getting through with the proposed amendments to the bill: We heard, as you know, from the MUSH sector. They're concerned about timelines and estimates. They say that if they're looking after the municipal tax dollar, they have to prove and certify that the work has been done, not based on an estimate that it will be done next week. I want you, if you could, to address that issue for us.

Ms. Sandra Skivsky: Again, as Mr. Johnson said, invoicing comes in at the 20th or 25th of the month, so there is an estimate of a number of days of what's going to be accomplished. But that's that month; there's a whole other month before that payment gets made. So there's a time frame for someone to go and certify, "Yes, that's done; yes, that's to code; it's good," and that's the amount that gets paid.

I'll tell you, I've got a letter from the MUSH sector with what they said were the reasons they couldn't apply these timelines, and they listed "the mail," "vacations," and "other priorities." I've got to tell you, my members are not impressed.

Mr. Percy Hatfield: The suggestion has been made, as well, that the various ministries of the provincial government, knowing the red tape involved and the bureaucracy, will never be able to meet any of the deadlines that are proposed in this bill. Do you have a reaction to that suggestion?

Ms. Sandra Skivsky: I don't know. I've looked at a number of states and municipalities that have prompt payment. Atlanta, for example: 15 days' payment to general and three days' payment after that to the sub-

contractors—the city of Atlanta. It has actually got tighter timelines than the state of Georgia. It's being done.

I believe in this province, and I believe that we are capable, and the technology is there, to make improvements. I haven't seen the exact reasons on how this can be done—no one has quantified it for me—but if others can do it, surely we can here too.

The Chair (Mr. Peter Tabuns): Thank you. Now we go to the government.

Mr. Steven Del Duca: Thanks, Mr. Chair. How many members do you represent, and how many employees would they represent themselves, or employ?

Ms. Sandra Skivsky: Our association, specifically, has about 600 masonry contractors in this province. They would employ somewhere between 3,000 and 4,000 at any given time.

Mr. Steven Del Duca: So on their behalf, you've put a lot of time and effort into this process.

Ms. Sandra Skivsky: Absolutely.

Mr. Steven Del Duca: Last week, we heard a certain mayor from a certain municipality talk about the need to “do our homework” on this bill, and earlier this morning, the Conservative member from Burlington suggested that the process that led to this bill was reckless. I'm just wondering how you and your members would feel about both of those claims.

Ms. Sandra Skivsky: We would feel that that's misinformation. We're trade contractors, for starters. We don't have direct relationships, for the most part, with owners. For 18 months we did negotiate with our partners, the general contractors, so there was a long period of time for anyone that had any concerns about what is happening here to raise them.

The language was finalized last February. The bill was in the House. Anybody that's following this—I know that the letters from the MUSH sector came in the fall. Nobody has come up with solutions or how they'd like to approach this. They knew it was there. As I said, it's a private member's bill.

My job is to represent my members and do the best for them. We negotiated with the people that we work for.

The Chair (Mr. Peter Tabuns): Thank you very much.

Ms. Sandra Skivsky: You're welcome.

DRAGADOS CANADA, INC.

The Chair (Mr. Peter Tabuns): We'll go to the next presenter, Dragados Canada. You have up to four minutes to present. Six minutes has been allocated for questions. If you'd introduce yourself for Hansard.

Mr. Patrick Dolan: Sure. Thank you. Good morning, committee. My name is Patrick Dolan. I'm senior legal counsel at Dragados Canada. We're a Spanish-owned general contractor that has been active in Canada since 1998. I'm here as part of Fair Payment Reform Ontario. We're a coalition of general contractors who support the principle that contractors and subcontractors should be paid promptly for work performed well. We also support the consideration of prompt payment through a consulta-

tive process which would solicit input from all stakeholders in the industry and which would avoid the destabilizing effects that Bill 69 could have.

You'll see in the presentation material in front of you that I'm going to focus a bit on foreign prompt payment acts. You've heard from a number of proponents of the bill that Bill 69 already exists in much of the world—the EU, the UK, Australia and the United States. That is simply not true. Bill 69 is quite unlike the prompt payment legislation that exists elsewhere.

One important feature that is unique to Bill 69 is that it mandates monthly payments based on an undefined notion of value. Under Bill 69, parties are not free to agree on the value and timing of payments. They're not free to agree on the criteria for determining when work is complete, whether in part or in whole, and they're not even allowed to agree on what documentation needs to be provided with an invoice, such as monthly work reports, which owners and general contractors need to manage the project. Quite simply, no other country prevents parties from mutually agreeing on the timing, value and conditions for payment.

The EU and US laws, for example, focus on the number of days that the owner or contractor has to make payment after invoices have been submitted and approved in accordance with the agreed contract. They do not impose an obligation to make monthly payments or get into the complex exercise of valuing those payments. This is left to the parties to the contract, who are best placed to do so.

I'd just take a step back and say that interim payments in construction are a delicate balance. The value of interim work is very hard to deduce. The cost of doing half the work can far exceed the value to the owner of a half-finished job. In making interim payments, the owners take a certain risk that the finished work is not going to function the way it is supposed to. This risk, however, is balanced against the fact, and the commercial reality, that interim payments are vital to contractors and subcontractors to manage their cash flow.

However, by unsettling this balance that owners negotiate with contractors and contractors with subcontractors—

The Chair (Mr. Peter Tabuns): You have a minute left.

Mr. Patrick Dolan: —thank you—Bill 69 will result in cost inefficiencies and lead to disputes and litigation. In the end, citizens and taxpayers are going to end up paying more, either through their funding of public projects or as business and homeowners who engage contractors directly.

This is just one example of how Bill 69 will unsettle the construction industry in Ontario. These are complex issues, and Fair Payment Reform Ontario is pushing to have them considered in a consultative process led by the Ministry of the Attorney General, in particular, because many aspects of Bill 69 are unprecedented, both in Canada and anywhere in the world.

Thank you for your time. If there are any questions, I'd be happy to answer them.

The Chair (Mr. Peter Tabuns): Thank you, Mr. Dolan. We start with the third party. Mr. Hatfield.

Mr. Percy Hatfield: Thank you, Mr. Chair. Hello, Mr. Dolan. You're with Dragados?

Mr. Patrick Dolan: Dragados, yes.

Mr. Percy Hatfield: You're involved with the Herb Gray Parkway in Windsor?

Mr. Patrick Dolan: That's right.

Mr. Percy Hatfield: One of the companies there is Freyssinet.

Mr. Patrick Dolan: That's right.

Mr. Percy Hatfield: When you were working with them on the girders, you failed to get them to post a performance bond.

Mr. Patrick Dolan: I'm unable to speak to that matter right now. We are suing Freyssinet for their work on the project, so we obviously have issues with how Freyssinet has performed.

Mr. Percy Hatfield: Yes, and so do the suppliers in Windsor who haven't been paid. Prompt payment is good, and I've commended Mr. Del Duca for bringing it forward, but it doesn't address when one of the companies that you took on and didn't require them to post a bond—when they stopped payment of bills, there was no money there and no way to go back after them to pay the local suppliers.

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Mr. Patrick Dolan: Well, I do acknowledge that there are issues with the Windsor-Essex parkway. I mean, our company, as you're aware—there is this issue with Freyssinet. We've never been claimed that Dragados or the construction company has failed to make prompt payment to its contractors or subcontractors. So I think, insofar as this bill is going to address prompt payment, we agree with that concept and we fulfill that in our work.

Mr. Percy Hatfield: But you don't think what's on the table is going to satisfy your company?

Mr. Patrick Dolan: I think what is on the table goes far broader than what exists in other jurisdictions, and probably far broader than what is needed in Ontario.

Mr. Percy Hatfield: Would you agree there is something that's needed so the little guy in this province gets paid in a prompt and fair fashion for work that has been provided?

Mr. Patrick Dolan: Yes. I think that Fair Payment Reform Ontario, the coalition that we support—you know, we think this issue is important and that it should be considered by the industry as a whole, not just looking at it from one aspect.

The Chair (Mr. Peter Tabuns): Thank you. Sorry. We're going to go to the next. Government?

Mr. Steven Del Duca: Thank you for being here this morning and for providing us with the sheet of paper that does provide a bit of an explanation around how other prompt payment acts that exist in other jurisdictions operate.

I don't actually have a question. I do appreciate you being here. I did just want to say, just so it is clear from my perspective and also based on, I think, most of the

testimonies and presentations that we've heard both this week and last week and in debate in the Legislature, that I don't actually recall many, if any, saying that Bill 69 exists in other parts of the world, which you did claim in your opening remarks. What I've heard, and what I've certainly said as the sponsor of this bill, is that there are many other jurisdictions that have prompt payment acts, not specifically Bill 69. I just wanted to clarify that. But thank you very much for being here today and for making your presentation.

The Chair (Mr. Peter Tabuns): Okay. Thank you. To the opposition.

Mr. Monte McNaughton: Thank you very much. I just wanted to ask: The last line here says, "Bill 69 does not consider Ontario's uniqueness." I wondered if you could just expand on that some more.

Mr. Patrick Dolan: I think it's an important fact that the prompt payment legislation—I acknowledge Mr. Del Duca's comment that there is prompt payment legislation in a number of countries. In the EU, for instance, it's not just limited to construction; it's the entire commercial realm. Whereas in other states in the US for instance, it might be limited to public construction or non-road-building construction.

I think it's important too that Ontario take a look at the structure of its industry and see where prompt payment has a place and where it is so important that the Legislature has to say, "This is a mandatory term in every contract." It's a big step, and I think we have to be careful about how broadly it is applied and how it can be tailored to our specific situation.

Mr. Monte McNaughton: Okay. Excellent. Thank you very much.

The Chair (Mr. Peter Tabuns): Further questions? Mr. Walker?

Mr. Bill Walker: No.

The Chair (Mr. Peter Tabuns): No? Okay. Thank you very much.

Mr. Patrick Dolan: Thank you.

ONTARIO CONSTRUCTION FINISHING INDUSTRIES ALLIANCE

The Chair (Mr. Peter Tabuns): Our next presenter, then: Ontario Construction Finishing Industries Alliance—if you'd have a seat. As you've seen, you have up to four minutes to speak, and then up to six minutes of questions. If you'd state your name for Hansard.

Mr. Jeff Koller: Thank you, Mr. Chairman and committee members. My name is Jeff Koller, here on behalf of the Ontario Construction Finishing Industries Alliance.

Much has been said about protecting the best interests of taxpayers this week and last, but nobody has mentioned anything about protecting the best interests of 434,000 Ontario taxpayers who earn their living from construction, or the 40,000 employers who pay business taxes, personal income taxes, WSIB premiums, employer health tax, harmonized sales tax, property tax, and who provide jobs to the previously-mentioned 434,000 Ontario taxpayers.

You've heard from municipalities and school boards who say that late payment is not an issue with them and that it's impossible to certify a project as being complete and paid within a month. Public sector owners are some of the worst offenders when it comes to late payment. Does anyone here truly believe that municipalities and school boards are the best guardians of the public trust and the most efficient examples of how to wisely spend taxpayer dollars? Wasn't it Brampton earlier this month that reportedly lost \$704 million that was earmarked for construction and infrastructure?

They were asked last week if they had reached out proactively to proponents of this bill over the last three or four years to work out any differences of opinion. The question should be: Why would they? They are fundamentally opposed to the principles of this bill because it requires efficiency and accountability. As Eryl Roberts said last week, this legislation is not designed to expose the deficiencies and inefficiencies of public sector purchasers of construction. It only does that as an unintended consequence. Maybe that's one of the unintended consequences they speak of.

They complain about a lack of consultation, but the reality is that no amount of consultation, short of scrapping this bill, would make them happy. They haven't become engaged before now because, as they freely admit, they never thought this private member's bill would get this far. This is their day in court, as it is for those of us who represent the 434,000 Ontario taxpayers who earn their living from construction. This is the public process, and I find it a little arrogant of them to appear before this committee and claim that they are not being provided with an opportunity to be heard.

As far as general contractors go, this is not the first time they've worked in partnership with other associations for the betterment of the industry, only to turn around and stab them in the back by pulling their support at the last minute. But their association was part of this process from the beginning and helped co-author this bill. They're welcome to engage in more complex contracts with owner developers, which they say this bill doesn't address, so long as they fill their obligations to pay their subcontractors every 30 days, because the subcontractors, in turn, have to pay their employees every Thursday, who, in turn, have to put food on their families' tables.

Much has been said about contractors being able to arbitrarily stop work, which would drive up costs and lead to delays. The reality is that no reputable contractor would ever stop work as long as he or she is being paid. This legislation does not allow for frivolous—

The Chair (Mr. Peter Tabuns): You have a minute left.

Mr. Jeff Koller: —work stoppages. It does give a contractor an ability to cut his or her losses if they are made to wait an unreasonable amount of time for payment.

Prompt payment does not drive up the cost of construction. Bureaucratic inefficiency resulting in late payment drives up the cost, because it shrinks the pool of

qualified bidders as cash flow is stretched too thin and as contractors have to build late payment risk into their bids.

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.

I implore the members of this committee to press forward with this bill and amend it as needed, but in such a way as to preserve the spirit and intent—and a list of agreeable amendments are included in my written submission—and recommend that it be brought before the Legislature for third reading as soon as possible. The livelihoods of hundreds of thousands of Ontario construction workers, who also happen to be taxpayers, depend on this.

The Chair (Mr. Peter Tabuns): Thank you.

Mr. Jeff Koller: Thank you.

The Chair (Mr. Peter Tabuns): We'll go to the government first.

Mr. Steven Del Duca: Thanks very much. Thank you for being here today, Mr. Koller. You mentioned that in your written submission you have some suggested amendments. Could you perhaps discuss a couple of those with us right now and let us know what you think needs to be done?

Mr. Jeff Koller: Absolutely. Thank you. Number one, we would have no objections, as I said, to the general contractors entering into their own arrangements with owner developers. That would address the more complex contracts that they talk about.

Number two, we have no objection to extending the deemed certified provision, which the school boards and municipalities say is unattainable, from 10 to 20 days, or even longer, as long as a cheque follows on that 30th day.

Number three, we would exempt homeowners, because the reality is, if a homeowner engages a contractor for home renovations, they're going to be paying upfront anyway, with the balance due upon completion. So this really doesn't apply to them.

Number four, we would be agreeable to allowing a one-year implementation period for this legislation to allow the industry to adjust.

What else? Financial disclosure requirements: We have no objection to excluding the municipalities and school boards from that, as they do have a bottomless supply of taxpayer dollars that they can draw on, so likely they'll never be unable to pay.

Mr. Steven Del Duca: Thank you very much.

The Chair (Mr. Peter Tabuns): Okay. Opposition?

Mr. Monte McNaughton: Thank you very much for your presentation. I just wondered if you have any statistics on how long it takes municipalities and school boards to pay their bills. Do you know what the average term would be? Would it be 60 days, 90, 120?

Mr. Jeff Koller: Generally, the industry is seeing upwards of 90 days on average. There's an example that was quoted in the media a few months back, where a

residential drywall contractor had \$7.6 million in arrears, \$6 million of which was more than 120 days past due.

Mr. Monte McNaughton: Okay. Now, do you know how that compares to the private sector?

Mr. Jeff Koller: There would be a mix, but as Eryl Roberts said last week, and as it details in the presentation, this legislation isn't designed to expose inefficiencies in the public sector, but the reality is, you read stories about Brampton losing money, and you read stories about pencil sharpeners costing \$147 to install. They don't have the best reputation. A lot of this is anecdotal, for sure, but I think, as Mr. Del Duca mentioned last week, the city of Toronto has spent over \$1 billion in construction and hasn't reached out proactively to proponents of this bill for consultative purposes. Why? Well, because they don't want this bill.

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Mr. Monte McNaughton: Thank you very much.

The Chair (Mr. Peter Tabuns): No further questions? I'll go to the third party: Mr. Hatfield.

Mr. Percy Hatfield: We've heard from various people in the industry that when the government went, say, on infrastructure projects from the old traditional method to the P3s, some of the companies had contracts for the subs that were 800 pages long and so on. Since the government has gone to the P3 model, do you think that within the industry the issue of prompt payment to the local subs has been greater because the money isn't trickling down the way it used to?

Mr. Jeff Koller: The money still trickles down slowly. It's an endemic problem in the construction industry that isn't tolerated in any other industry, and it's getting worse.

Mr. Percy Hatfield: It's getting worse. So—

Mr. Jeff Koller: You're seeing more instances of business insolvencies because their cash flow is stretched too thin.

Mr. Percy Hatfield: And as far as the amendments, you have included some here. Is that the extent to which you would agree that this bill could be enhanced, or might there be something else other than what you have suggested?

Mr. Jeff Koller: I think the bill is good as it is, but these are amendments that we would be agreeable to, that we don't think would significantly alter the purpose and intent of the bill, which is that contractors get paid within 30 days of certified completion of work.

Mr. Percy Hatfield: And what is your expectation of this committee as far as a report to the Legislature? What's the timeline?

Mr. Jeff Koller: Well, we would like to see it referred back to the Legislature after clause-by-clause hearings, to be recalled for third reading as soon as possible, and before a spring budget, in the event that the spring budget fails and this then dies. There's a lot of time and effort that has gone into this, and any delay could result in businesses going bankrupt and employees not being able to feed their families.

The Chair (Mr. Peter Tabuns): Thank you. We've come to the end of the two minutes.

REGIONAL MUNICIPALITY OF WATERLOO

The Chair (Mr. Peter Tabuns): Our next presenter, then: the Regional Municipality of Waterloo. As you've seen, you have up to four minutes to present and up to six minutes of questions. If you would introduce yourself for Hansard.

Mr. Richard Brookes: Thank you, Mr. Chair, and members of the committee. My name is Richard Brookes. I'm a solicitor with the region of Waterloo. I have been employed by the region of Waterloo's legal department and practising in the area of construction law for up to 16 years.

Just as background, the region of Waterloo consists of the cities of Kitchener, Waterloo and Cambridge. In 2014, we have a budget of \$200 million for capital projects, plus we're going to begin our light rail transit project, which is a significant light rail rapid transit project for our area, and extremely expensive too.

Hearing the other delegates, the one thing that I wanted to first of all say is that, again, I've been in this area for 16 years. It was only through an advisement from AMO, the Association of Municipalities of Ontario, that I actually became aware of this private member's bill. That may be because we're not from the GTA, we're outside of the GTA, and maybe we're not part of the loop, but I was not personally aware of it, nor were any of our other senior members of staff.

The other thing that I wanted to emphasize is that at least in the region of Waterloo, we meet on an annual basis with our local construction associations. We give them feedback about our concerns for the past year, they give us their concerns, and I am not aware of our local construction associations bringing forward any concerns about prompt payment, so this is somewhat new to us.

As far as I know from dealing with our construction engineers, prompt payment is not a big problem at the region of Waterloo. Where we do have problems is the fact that contractors make payment applications, we then review them and say that either the payment applications are deficient, which goes to inefficiencies of the contractors; or, more commonly, unfortunately, the reason we have a problem with it is because there are deficiencies in the work. As a private person or a public entity, we don't want to pay for work that is either deficient or is not properly complete. That really becomes the real bone of contention between the owner and the contractor, at least from our perspective. So that's a bit of the background.

I have provided a handout. The handout has just some main bullet points. It also has the letter of our regional chair, Ken Seiling, who has also provided his views and the views of our regional council to the leaders of the three parties.

The one major thing that I wanted to hit on, coming from a lawyer's perspective, is that I don't want to be here two years from now and litigating, "What does this section mean? What does that section mean?"

One of things that we're concerned about, for example, is under bullet number 3. In this section, it

requires the owner to go through an analysis to determine whether or not they are under their private contract or if the owner is under the Bill 69 legislation, because it says that if you have final payment, then you—

The Chair (Mr. Peter Tabuns): You have a minute left.

Mr. Richard Brookes: The comment that I wanted to make and emphasize is that when you're in that analysis, we may have our interpretation, the contractor will have their interpretation, and then we'll be litigating about whether Bill 69 applies to us or not.

One of the beauties of the Construction Lien Act is that it's minimum legislation. It says, "Every contract is deemed to include the following." So I don't have to say to myself, "Does the Construction Lien Act apply here or doesn't it?" I just know: 45 days, we've got to hold the money back.

One of the suggestions I would make, if the province is going to proceed with this legislation, is that, number one, there be—and I hate to say this—more consultation. At least bring in AMO and bring in the owners. Let's talk about this and see what the problems are. Let us understand where the contractors are coming from. And then talk about, maybe, a new structure that is something about minimum legislation, rather than something where we have to figure out, "Am I in this scheme or am I outside this scheme?"

Those are my submissions. Thank you, sir.

The Chair (Mr. Peter Tabuns): Thank you very much. Questions start with the opposition.

Mr. Monte McNaughton: Thank you very much for your presentation. We don't have any questions.

The Chair (Mr. Peter Tabuns): Thank you. Third party?

Mr. Percy Hatfield: Thank you. When Mayor McCallion was here, she took some exception to the private members' bill process, calling it "very dangerous," as opposed to a government bill with a wider consultation. Do you share that view?

Mr. Richard Brookes: I would agree that we would have liked more consultation. I think the consultation we would have preferred is that the construction associations, first of all, would have come to us directly, either to AMO or even to us as an individual municipality, and say, "Look, these are some of the real, fundamental problems that we have. Let's start working through them."

To give you an example, a common contract in Ontario is CCDC, which is actually made up of members of both the construction industry and the owner industry. They work together to come up with a contract that everybody can live with. That would have been my first suggestion. Let's deal with this outside of government first. If we can't resolve it, let's use government as the last resort.

Mr. Percy Hatfield: When you did become aware of this—and it took you by surprise; you saw the AMO bulletin that went out to all 444 municipalities—did you take it upon yourself to contact Mr. Del Duca to see

where he was coming from and what your input could be to help shape his comments in any way?

Mr. Richard Brookes: No, we didn't, because, really, we look to AMO to be our representative. AMO put out the information and they provided us with a draft letter that they were sending to the leaders of the three parties. They suggested we do the same, so we went to our regional council and did it as well.

We're quite willing to go to the table now and really talk about, "Here are your concerns; here are our concerns. Let's work together."

Mr. Percy Hatfield: You've been at it for 16 years. This is not the first time that a proposed bill of this magnitude, I guess, came forward. I think the Speaker, Mr. Levac, brought it some time ago. Did you take part in those discussions then?

The Chair (Mr. Peter Tabuns): Mr. Hatfield, I'm sorry, your two minutes are up.

To the government.

Mr. Steven Del Duca: Thanks, Mr. Chair. A couple of things—I'm going to try to do this really quickly. One is, the letter that your regional municipality sent to all three party leaders, taking off from where Mr. Hatfield left off: I noticed that it was addressed to all three party letters, and then it was actually copied to a number of other individuals. I just want to say on the record, as the person who sponsored this bill, in keeping with your notion of consultation, I'm a little disappointed I wasn't even copied on the letter that came from your municipality. That's number one.

Number two, I think you might have heard earlier today from other deputants that, in fact, what's fundamental to this bill is that work that's completed and certified as complete—therefore, not incomplete work and not deficient work—should get paid on time or within a reasonable time frame. That's kind of fundamental to the bill.

Lastly—again, I don't like spending too much time talking about consultation, because we've been over this ground many, many times. This is the second time this kind of bill was introduced in the Legislature. The first time was in 2011. This bill was introduced for first reading in May 2013, which is almost a year ago. There have been a number of consultations, and I think that while, again, it is different from a government initiative as a private member's bill, I just wanted to clarify on the record and say that from a private member's standpoint, I think there was as much consultation for this kind of a complex bill.

Lastly, private members' bills—last week, Mayor McCallion mentioned that they are dangerous. I would say into the record: certainly no more dangerous than many of the municipal resolutions I've seen come up over the years in municipalities across the province of Ontario.

With that, I'm done. Thank you very much for you being here today.

The Chair (Mr. Peter Tabuns): Thank you very much.

We've had all our presenters. I want to thank all of those who came this morning and presented before the committee. You were very to the point.

COMMITTEE BUSINESS

ELECTION OF VICE-CHAIR

The Chair (Mr. Peter Tabuns): We have further items of business. We move to the appointment of a Vice-Chair. Mr. Hatfield, do you have a motion?

Mr. Percy Hatfield: I do. I'd move the appointment of Catherine Fife as Vice-Chair—the member from Kitchener–Waterloo.

The Chair (Mr. Peter Tabuns): Any discussion? Shall the motion carry? All those in favour?

Mr. Monte McNaughton: Would you like hands?

The Chair (Mr. Peter Tabuns): Yes, I would like hands. All those in favour? Opposed? Carried.

That concludes our business for today. I'd like to remind members that the deadline to file amendments with the committee Clerk is this Friday, March 28, at 12 noon.

The committee is adjourned until 9 a.m. on Wednesday, April 2, for clause-by-clause consideration of Bill 69.

The committee adjourned at 1011.

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Mr. Monte McNaughton (Lambton–Kent–Middlesex PC)

Also taking part / Autres participants et participantes

Mrs. Jane McKenna (Burlington PC)

Clerk / Greffière

Ms. Valerie Quioc Lim

Staff / Personnel

Mr. Jerry Richmond, research officer,
Research Services

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