

July 24, 2020

Standing Committee on Finance and Economic Affairs
c/o, Julia Douglas, Committee Clerk
99 Wellsley St. W. Room 1405, Whitney Block
Toronto, ON M7A 1A2

Re: the *Economic and Fiscal Update Act, 2020* and the impacts of the COVID-19

Dear Members of the Standing Committee on Finance and Economic Affairs:

This letter, written on behalf of the members of the Ontario General Contractors Association (OGCA), serves as a formal submission to the Standing Committee on Finance and Economic Affairs in response to the Economic and Fiscal Update Act, 2020 and the impacts of the COVID-19 crisis on the ICI Construction sector of the economy. Our members account for approximately \$12 billion of construction each year in Ontario, focusing on supplying the infrastructure needed to support our growing communities. The OGCA has worked to build Ontario by assisting our members in delivering construction excellence in the Industrial, Commercial and Institutional (ICI) Sectors. Members include small, medium and large firms representing both union and open-shop contractors. With this purpose in mind, we are providing this submission on the Government's response to COVID-19.

The OGCA supports the overall legislative objectives of the Economic and Fiscal Update Act, 2020, and acknowledges how the Government of Ontario has risen to the challenge of a worldwide pandemic. In this document, the OGCA would like to address the impact of COVID-19 on ICI tendering in Ontario, to do this we will provide a short overview of the state of the industry, highlight the need for force majeure to address delays, and demonstrate the importance of a long term strategy for infrastructure projects in 2021/2022.

With the best safety record and the ability to expand our employment base, our sector offers the Ontario economy the opportunity to be rejuvenated. The industry has experienced a systemic shortage of skilled labour. The economic upheaval we have experienced is an opportunity for many to establish their second carrier in the ICI construction industry. We encourage the government to define an infrastructure plan for Ontario that is also instrumental to the success of Ontario's COVID-19 economic and employment recovery.

What is the current status of the ICI sector?

As with the other sectors of the economy, the ICI sector's state has been continuously evolving as restrictions were put in place on contractors. As of June 30, 2020, only 5% of contractors report that all their construction activities remain shut, while at its peak, 64% of ICI projects were halted.¹

Above all else, security is still top of mind, with a potential second wave of COVID-19 and the health and safety of workers a top concern for all contractors. The OGCA Safety Committee is currently assessing contact tracing solutions and has worked hard to ensure the highest safety standards on worksites. Concerns also remain for maintaining productivity while meeting physical distancing requirements and the ability to get skilled labour. This has resulted in a 13% increase in project costs.² Contractors are also investing to meet the new sanitation and safety requirements to protect workers. Investments include

¹ <https://iciconstruction.com/wp-content/uploads/2020/06/Coronavirus-Contractor-Survey-3-Reeemergence-Adaptation.pdf>

² Ibid.

strengthening the supply chains, temperature checking, digitization of processes and BIM. In the next few months, many contractors will face a financial crisis resulting from tacking on the cost of job closer, increased costs of safety and PPE and the contractual and legal issues imposed by the pandemic delays and costs.

The OGCA recommends that the Government of Ontario provide contract and risk relief for owners of ICI construction, general contractors and other trade contractors unable to survive the financial burden of COVID-19.

The Need for Contract Relief and Force Majeure

The OGCA has been advocating for fair procurement practices well before the onset of COVID-19. Despite issues before the pandemic, contractors are bearing the actual costs associated with delays, and this problem is getting worse, with 41% of work scheduled to start this year remains delayed.

Under the Municipal Act, 2001 and the City of Toronto Act municipalities can transfer as much of the risk as possible including, but not limited to: infractions, Notice of Default issued by the municipality, Days contractors has suspended or ceased work on a project, inability to work cooperatively, and performance issues. Construction contracts often include a force majeure clause to protect contractors, professional service providers and consultants from events outside the contractor's control. This clause excludes liability for a party's failure to perform its contractual obligations in the face of a force majeure event.

In general, owners have been accommodating contractors in terms of delays and contractual issues, with 69% of contractors reporting that owners had been very flexible or somewhat flexible, and 18% said owners were somewhat inflexible.³ This may be working in some cases, but it is not a long-term solution that will solve the problem, this can only be done by using force majeure to reflect the pandemic's impact.

The OGCA recommends that the Executive Council of Ontario adopt a transparent and standardized force majeure clause retroactively into all contracts under the Emergency Management and Civil Protection Act that includes "quarantine restrictions," and "pandemics" as triggering events.⁴ By taking this action, the Government would be able to protect the parties while allowing them to continue to build under challenging and uncertain conditions. Importantly, there are no Canadian judicial decisions that have considered force majeure in the context of a severe outbreak or pandemic.

Need for shovel-ready projects

Above all else, the ICI sector and Ontario's economic recovery are dependent upon shovel-ready projects of all sizes being announced and approved as quickly as possible.

Statistics Canada released Investment in Building Construction numbers for May, showing that investment in ICI construction in Ontario returned to pre-pandemic levels after a dramatic April drop. Monthly ICI investment in the province averaged \$1.95 billion from January-March this year and amounted to \$1.93 billion in May.⁵ Contractors are starting to bid on more work, with 53% now doing the same amount or more bidding than usual, compared to 38% at the time of the previous survey.⁶ Despite this recovery, 73% of contractors forecasted that their calendar year revenue would be down compared to

³https://iconstruction.com/wp-content/uploads/2020/06/Coronavirus-Contractor-Survey-3_-Reemergence-Adaptation.pdf

⁴ For more information please see the letter from the Construction and Design Alliance of Ontario to Minister Rod Phillips on May 20, 2020. <https://ospe.on.ca/wp-content/uploads/2020/05/Minister-Phillips-May-20-2020.pdf>

⁵ <https://iconstruction.com/2020/07/21/economicupdatejuly222020-2-2-2-2/>

⁶ Ibid.

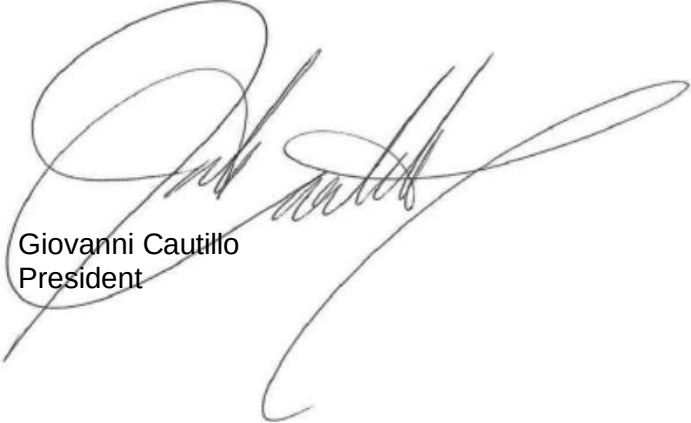
2019.⁷ The pandemic stopped much of the planning and approvals for construction in 2021. As a result the industry will go into recession in 2021 if governments do not fund stimulus investments.

The OGCA supports Bill 197: COVID-19 Economic Recovery Act, including the proposal to expedite building approvals and cut unnecessary red tape. We encourage the Government to reduce red tape and provide further transparency while increasing the number of non-P3 projects in 2021 and 2022. The OGCA believes this is the only way the ICI sector will fully recover. It will also further promote the trades and encourage investment in training and apprenticeship for unemployed people due to the pandemic.

Thank you for your time and consideration. If you would like more information on the impact of COVID-19 and how general contractors are protecting workers, please feel free to reach out to David Frame, Director of Government Relations at david@ogca.ca.

Sincerely,

ONTARIO GENERAL CONTRACTORS ASSOCIATION



Giovanni Cautillo
President

⁷ <https://iciconstruction.com/wp-content/uploads/2020/06/Coronavirus-Contractor-Survey-3-Reeemergence-Adaptation.pdf>