

FRIDAY, AUGUST 28, 2020



**ELECTRICAL
CONTRACTORS
ASSOCIATION OF
ONTARIO**

SUPPORTING SUBMISSIONS TO THE STANDING
COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS
PRESENTATION ON AUGUST 27, 2020.

PRESENTED BY: R. GRAEME AITKEN
EXECUTIVE DIRECTOR

ECAO: THE ELECTRICAL CONTRACTORS ASSOCIATION OF ONTARIO

SERVING OVER 550 MEMBERS ACROSS ONTARIO.

The Electrical Contractors Association of Ontario was founded in 1948 to serve and represent the interests of the electrical contracting industry. Over our history, ECAO has been committed to addressing the needs of the industry by providing a variety of services directly to the membership, and by making representations on behalf of the entire industry to government and industry colleagues. Our success has been due to the support and active participation of our community. ECAO membership consists of *bona fide* electrical contractors in a contractual relationship with the International Brotherhood of Electrical Workers (IBEW).

ECAO'S MISSION.

To create a fellowship of electrical and communications contractors that band together for support and advancement of the electrical/communications industry in Labour, Government and Public Relations.

ECAO'S VISION.

To differentiate ECAO contractors and their IBEW partners across Ontario as being industry leaders in delivering safe, stable, predictable, high quality electrical/communications construction and maintenance services.

ORGANIZATIONAL/INDUSTRY OVERVIEW.

In addition to our direct contractor members, ECAO also includes; in our community clients, owners, service providers, suppliers, general contractors, institutions, government, and others. There are a number of sectors of electrical work engaged in by ECAO members, the most notable of which are:

- ICI (industrial, commercial, institutional).
- Residential (houses, high-rise, and low-rise).
- Road (street lighting, traffic lights/control, etc.).
- High-voltage (line work, cabling and terminations, substations).
- Communications.
- Renewable energies (wind, solar).
- Maintenance (including service work, on demand/on call).

ACKNOWLEDGEMENT OF POSITIVE STEPS TAKEN BY THE ONTARIO GOVERNMENT REGARDING PREVIOUSLY RAISED COVID-19 CONCERNS.

ECAO believes it is important to acknowledge measures already taken to assist our industry throughout the pandemic, to assist our industry and our Province as we continue to move forward, and to demonstrate that working together as a greater community we have provided leadership and solutions.

- 1. Lifting of suspension of limitation and procedural time limits under the *Construction Act* by the Attorney General.** On March 20, the Ontario Government issued Ontario Regulation 73/20 as part of the *Emergency Management and Civil Protection Act*. The regulation suspended any limitation period arising under any statute, rule, bylaw or order of the government. The resultant effect was to freeze all time periods arising under any statute—including the *Construction Act*. It is the *Construction Act* that provides the statutory mechanism by which payments are made from a mortgagee, to an owner, to the general contractor on a project and, then, to our members (and other subcontractors) in a typical construction project setting. As a general rule a mortgagee and/or an owner will not advance funds to the contractor and the subcontractor's if liens or potential liens are subsisting. In other words, funds for construction are not to be advanced in the face of a lien or a potential lien.

ECAO, numerous other construction industry partners, as well as many in the Province's legal community, brought to light this clearly unintended consequence of stopping the flow of cash in an industry predicated on cash flow. Upon recognizing this situation the Attorney General lifted these suspensions under the *Construction Act*.

- 2. Elevated H&S protocols in the construction industry (and others) by the Minister of Labour, Training and Skills Development through Ontario's Chief Prevention Officer.** This is, perhaps, the finest example of collaboration at the onset of the pandemic and continuing to this day; as employers, trade unions, employees, members from all political parties, the Ministry (and Minister) of Labour, Training and Skills Development, the office of the Chief Prevention Officer, safety associations, construction associations, clients, and owners shared a single objective- keep Ontario safe.
- 3. Emphasis on skilled trades by the Minister of Labour and Premier.** The recognition that this previously-undertaken initiative required a "restart" quickly will, in our view, be critical for the health of our skilled trades in the future.

4. **Bill 190 amendments to the *Commissioners for Taking Affidavits Act* and the *Notaries Act* to allow for remote or virtual commissioning and notarization, by the Attorney General.** Without the ability to safely have statutory declarations, necessary for payment, notarized; this was another significant factor impeding the flow of cash in our industry. Once again, once recognized as such the Office of the Attorney General consulted with those in (and outside) our industry and provided a solution.

REMAINING/CONTINUING ISSUES.

There are a number of “next steps” that our community feels must be contemplated immediately; next steps ECAO and many in our communities have brought to light and the attention of those who may be able to work with us to achieve. Furthermore, we continue to seek assistance on additional issues that we feel must be considered as Ontario moves forward together.

1. We support the call of the thirty (30) members of the Council of Ontario Construction Associations (COCA), and others, for action from the government to prevent large industry bankruptcy. *“Financing costs, insurance costs, bonding costs, and equipment rental costs are just a few of the expenses that will continue to accrue even as projects sit idle or are delayed. None of these costs were anticipated when the projects were bid and there will have to be a further discussion on how they will be addressed so that bankruptcies do not sky rocket.”*

The first part of the solution is legislation or a regulation that exempts contractors and subcontractors from liability for delays caused by the pandemic.” Such legislative exemption should include, at the very least, schedule and change orders to the extent that they are/were caused by the pandemic. *“The second part of the solution is giving relief to construction owners. Owners are our customers. We will need construction owners to be in good economic health so construction can bounce back after the crisis has passed. Therefore, we encourage the Province to work with the federal government to grant construction owners relief from financing and other costs resulting from the pandemic.”*

2. In our view the Province, municipalities and their various agencies and ministries have a critical role to play in “leading the way” on providing recourse to contractors who have been severely impacted by the pandemic.

An excellent start to this is to ensure that any current and future tender documents, for government and government-funded projects, not allocate the risks of the pandemic solely to contractors and subcontractors. It is our further view that having the Province “lead the way” may negate the need to legislate private owner/clients if they follow the Government’s lead. The upside to such a step by the Province and its municipalities would be ensuring that each continues to receive competitive pricing from the industry, without the necessity of contractors including for these contingencies and immeasurable risks in their bid prices or, even more harmful, “hiding” such costs.

And, rather than punitive clauses prohibiting costs for COVID-19 safety measures, a standard clause requiring all parties to agree upon/negotiate for reasonable costs of COVID-19 impacts (subsequent waves and restrictions in addition to safety measures) during the life of the project.

3. We also believe that a time-limited hiatus on claims for COVID-19 related construction delays in Ontario (including the enforcement of liquidated damages) should be legislatively imposed, as our contractors and subcontractors remain exposed to such contractual claims. It seems to us quite unanticipated and unduly harmful for these contractors and subcontractors to be exposed to delay claims and damages because of the pandemic. Without such legislative intervention they may have no recourse against such penalties in their respective contracts.

Our industry appreciates that this would have the Government intervening in contractual provisions in private contracts, yet we believe this may be a necessary step that will be critical to ensuring the stability of the construction industry and our economy. It should be kept in mind that our federal and provincial governments have already engaged various strategies to both contain the spread of COVID-19 and manage the economic impacts of the virus; including the legislative imposition of contractual terms and conditions. These have altered the way parties had previously allocated risks between them, in an effort to curb the spread of the virus. Legislatively allocating risks in an effort to manage the economic impacts of the virus could well be the next necessary step.

4. We feel it is critical to legislate fair extensions of time and fair compensation for reasonable costs incurred due to COVID-19. Compensation for reasonable costs and lost productivity may include, but are not limited to, any unanticipated expenses incurred relating to:
 - Demobilization, remobilization, and site safety;
 - Interruptions of the supply chain and increased costs of certain materials;
 - Extended rentals, site security; and
 - Unanticipated and extended overheads during the pandemic.

MOVING FORWARD (1); IN CONTEMPLATION OF SUBSEQUENTS WAVES.

Although we are, with everyone else, hoping that our actions will help to minimize any future outbreaks of COVID-19, nonetheless it is important to plan for such occurrences. Ergo, ECAO offers the following considerations for contemplation well in advance of any subsequent waves of COVID-19 or any other such events.

As partners, the construction industry and the Province of Ontario must address the challenges ahead in a comprehensive and coordinated manner. There is certainly an important role we should be playing collectively to work with other levels of government and owners on a variety of fronts, including: how to mitigate/control supply chain issues; restart costs not contemplated in contracts; loss of key individuals; and during the recovery phase, the industry will need time to return to full productivity as supply chains ramp up and some of the workforce may still be under quarantine or healing.

We suggest forming a small, and active, committee between legislative members and representatives from the industry as a first step for communicating industry-wide concerns.

1. ECAO urges you to consider allowing the construction industry to maximize the opportunities to perform construction safely in circumstances, which might be superior to the “pre-pandemic” norm, due to the lack of congestion; and with a minimum of risk to workers.

Examples of this include public schools, colleges, universities, and government buildings currently vacant or nearly so. We have found this to be beneficial in road and utility construction, street lighting, traffic lighting, and electrical transmission/distribution. There are, no doubt, other examples that provide the opportunity to perform work without compromise to the safety of workers and with fewer members of the public to/from whom COVID-19 might be spread. Out of all industries in Ontario, construction has the heaviest safety burdens and meets those burdens daily. Allowing Industrial/Commercial/Institutional projects to continue under such circumstances will trigger a return of cash flow to an industry that is premised almost exclusively on cash flow. Furthermore, and as it pertains to health and safety in the event of subsequent waves, the construction industry has (as set forth in greater detail above) a stellar record in this regard.

2. Elimination of “no COVID relief” clauses in all public documents. Penalizing contractors and subcontractors for providing effective and necessary COVID-19 preventative measures (whether in the form of personal protective equipment (PPE), physical distancing, sanitization supplies, cleaning, or the myriad of other measures) is counterproductive. Prohibiting them from including such costs when the measures are demanded by the client is unconscionable.

3. Enact legislation which prohibits penalty clauses, specifically those which prohibit bidding if the potential bidder has a “legal action” with the owner/client, from all contracts in our industry. These types of penalty clauses are even more repugnant when one considers that the *Construction Act* was recently amended to assist in prompt payment in Ontario. Ergo, such clauses would serve to discourage a party from accessing the very legislation that was created to assist them in such a situation.
4. Ontario supply chains. ECAO was very encouraged by this government's actions on Ontario produced items for COVID-19. In our view, we should extend such initiatives and funding opportunities for construction materials. In addition to “scrambling for” the necessary PPE and other items/supplies needed at the outset of the pandemic, our industry also saw an interruption to our supply chains. We feel that there may be a “made in Ontario” type solution/initiative that could help lessen such supply chain interruptions in future.
5. Childcare. We need our skilled tradespeople. Many of them need childcare. We need to work, as a Province, a society, on a manner in which this can be effectively addressed.
6. Ensure infrastructure, building, maintenance, etc. performed throughout the Province; not just in one geographic jurisdiction (for example the GTA). Ontario's recovery should be to the benefit of the entirety of our great Province. To paraphrase from another country- no area should be left behind.
7. ECAO also encourages construction job site testing.

MOVING FORWARD (2); ECAO'S CONTINUED INVOLVEMENT.

For ECAO it is not a matter of simply providing a list of issues from time to time, whether on request or as a result of what we feel is necessary. ECAO desires to be part of the Ontario solution; to be involved, engaged, and proactive. Thus, in addition to our gratitude for the opportunity to appear before the Standing Committee on Finance and Economic Affairs and these submissions, ECAO also offers our interest in and commitment to assisting your Committee and, of course, the government in your efforts to strengthen Ontario's economy and people.

All of which is respectfully submitted on behalf of the Electrical Contractors Association of Ontario.