

Presentation Notes on  
Bill 69 - Prompt Payment Act, 2013

for  
Ontario's Provincial Standing Committee  
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Presented by:  
Glenn A. Clarke, P.Eng, PMP  
Simcoe Muskoka Catholic District School Board  
(OASBO Representative)

and  
Tim Robins, B.A.S., M.Ed.  
Durham Catholic District School Board  
(OASBO Representative)

**Introduction:**

I would like to thank you for allowing us to address the concerns with the Prompt Payment Act as they relate to public sector construction contracts, more specifically school boards.

I am speaking on behalf of a number of school board organizations including:

- Ontario Association of School Business Officials;
- Ontario Catholic School Trustees' Association;
- Ontario Public School Boards' Association;
- Association des conseils scolaires des écoles publiques de l'Ontario; and
- Association franco-ontarienne des conseils scolaires catholiques.

Together these groups serve over 1.8 million students in 4,921 schools. This is a not a small sector in the construction industry, and over the past 10 years the Ministry of Education has allocated \$12.2 billion for school building projects.

**Overview:**

Paying invoices on time for approved construction work is a good practice for school boards as it is an essential component of a successful construction project.

However, the terms under the proposed Prompt Payment Act would have a negative impact on long-established construction processes in Ontario.

The first area of concern is with the technical language in the Bill which will create problems with the standard Canada-wide CCDC construction contracts and the Construction Lien Act. The existing standard school board contracts allow boards to better manage school construction projects and protect the capital expenditures in a manner that ultimately benefits the taxpayers, and the students of Ontario. Concerns with the terms in the Bill are detailed in the OASBO reports including the study entitled: *Ontario's Bill 69, Prompt Payment Act, 2013 –a Failed Framework*. These reports, together with other supporting documentation, have been submitted to the Standing Committee.

Specifically, the unreasonable terms in the Bill would impact school boards construction projects with:

- Added construction costs;
- Payment for incomplete work; and
- Project delays and late school openings.

In the end, the Act would not provide best value to the Ontario taxpayers.

Secondly, in the past 2 years the contractors have been developing the framework for this bill yet there has been no public consultation with Ontario's public and private owners of construction projects.

The contractors need to discuss their payment concerns to allow the owner representatives to understand the issues and consider the many positive solutions; one of which is for the general contractors to voluntarily make revisions to their contracts with the subcontractors. This positive action is contrasted with the legislation which will only add to the challenges in managing projects resulting in substantial legal costs.

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

Thirdly, there is a lot of misinformation that has been introduced and owners have not had an opportunity to respond to this incorrect messaging until now.

For example: It has been reported that the US, UK and Ireland all have Prompt Payment Acts, so we need one too. Yes, these countries do have this legislation, however their terms are very different. –for example, they don't have language about paying contractors for future work. Bill 69 only mirrors some of these other Acts in name alone.

There are also implications that owners are not making timely payments. Our organization does make timely payments for approved work as authorized by the project consultant. Industry research also shows that the concerns are between the general contractors and subcontractors, and not necessarily with the owners.

### **Summary Comments:**

In summary, Bill 69, if enacted in its current format, would impose a number of significant obligations with school board construction projects by:

- allowing for overpayments to contractors;
- not enabling boards to retain required funds to complete deficiencies;
- adding significantly to the cost of building schools;
- providing for an imbalance with the contracts that would not benefit Ontario's taxpayers; and
- delaying school construction openings with direct implications to the learning environment of our students.

The school boards' Associations recommend that the Prompt Payment Act not be approved. It is also proposed that the measures stipulated in the Bill be considered in a consultative and cooperative process by the many parties to achieve a workable solution. This recommendation is also supported by the construction association.

Bill 69 is like a building with a flawed foundation: - a coat of paint, like the word-smithing of the Act, may make the building look nice, but it will still be structurally unsound.

The basic premises with the Prompt Payment Act need to go back to the drawing board and be re-engineered.

Thank you.