

Re-Opening Ontario Safely

2021 Pre-Budget Submission

Council of Ontario Construction Associations

180 Dundas Street West, Suite 2001
Toronto ON M5G 1Z8

T: 416-968-7200
F: 416-968-0362

www.coca.on.ca

The Council of Ontario Construction Associations (COCA) is a federation of 29 construction associations representing more than 10,000 general and trade contractors operating in the industrial, commercial, institutional and heavy civil segments of the construction industry, working in all regions of the province and who employ approximately 400,000 workers. COCA is committed to working with decision makers at Queen's Park to ensure that Ontario's legislative and regulatory environment supports success in the construction industry and prosperity across the province. COCA is the largest and most representative voice for the non-residential construction industry in Ontario.

In order to build the foundation for Ontario's recovery from the ravages of the pandemic and the economic disaster it caused, we strongly recommend the following measures be seriously considered:

1. Provide relief for contractors from pandemic related delay claims and unanticipated costs
2. Strengthen the province's workers' compensation system
3. Invest in public infrastructure maintenance and expansion; Deliver fully on your planned Infrastructure Program
4. Provide clarity and fairness in Community Benefits clauses
5. Develop a new Skilled Trades and Apprenticeship System

1. Relief for Contractors from Pandemic Costs and Delay Claims

Contractors win work based on a competitive bidding process. One of the most important criteria in a bid for construction work are the prices that contractors submit in their bids. In preparing a bid, a contractor must consider all input costs and anticipate all foreseeable risks. Because of the competitive bidding process, profit margins are extremely tight. In considering including the possible costs associated with a global pandemic in their bids, contractors believed that advances in medicine since the last global pandemic more than 100 years ago, made the current public health crisis seem impossible. Nonetheless, it happened.

Contractors feel very fortunate that the majority of construction work has been deemed to be "essential" and allowed to continue through the pandemic. New elevated health and safety procedures have been embraced by the construction industry and the transmission of the novel coronavirus on construction worksites has been remarkably low.

The containment of the novel coronavirus, though, has imposed new costs on contractors that were not included in their winning bids and the resulting costs could never have been foreseen. These new costs include the costs of PPE and the costs of constant sanitization of construction sites. Further, the new elevated health and safety protocols, necessary to protect workers and keep them safe, reduced productivity. As a result, it has taken considerably longer to complete the work than the project schedule allowed. This leads to very costly delay claims.

We are asking that steps be taken to provide contractors working on both public and private construction projects be given relief from delay claims and from the additional costs incurred caused by the pandemic. Without this relief, the construction industry could be decimated with bankruptcies.

In this regard, we ask that the following measures be considered:

- a. Exempt contractors and subcontractors from liability for delays caused by the COVID-19 pandemic.
- b. Work with the federal government to grant construction owners relief from financing and other costs resulting from the pandemic.
- c. Legislate fair extensions of time and fair compensation for reasonable costs incurred due to COVID-19. Compensation for reasonable costs 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.
- d. Ensure that any current and future tender documents for government and government-funded projects NOT allocate the risks of the pandemic to contractors and subcontractors. If private owners do not follow the government's lead in this regard, it should be legislated that private contracts for construction services must not allocate the risks of pandemic to contractors and subcontractors. This measure will ensure that that the Province and its municipalities will continue to receive competitive pricing from the industry, without the necessity of contractors including for these contingencies and immeasurable risks in their bid prices.
- e. Contractors and subcontractors will continue to accrue financing costs, insurance costs, bonding costs, and equipment rental costs when projects sit idle or are delayed due to pandemic measures. None of these costs were anticipated when the projects were bid and there must be further consideration about how they will be addressed so that bankruptcies do not skyrocket. Legislation or regulation will be required that that exempts contractors and subcontractors from liability for delays caused by the pandemic.

Such legislative exemption should include, at a minimum, schedule and change orders to the extent that they were caused by the pandemic. In addition, construction owners will require relief. Owners are the construction industry's customers, and we need them to be in a stable financial condition so construction can play its role rebuilding the provincial economy once 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.

- f. Despite the ravages of the pandemic and all the important supports our governments have put in place, contractors and subcontractors remain bound by the terms of their pre-pandemic contracts and exposed to delay claims. A time-limited hiatus on claims for COVID-19 related construction delays in Ontario (including the enforcement of liquidated damages) should be legislatively imposed. Delays in construction work brought on by the pandemic could not have been anticipated and the delay claims and damages they cause are unduly harmful for contractors and subcontractors. Without such legislative intervention contractors and subcontractors may have no recourse against such penalties in their respective contracts.
- g. To protect construction workers, the Executive Council of Ontario should adopt a transparent and standardized force majeure clause retroactively into all contracts for construction under the Emergency Management and Civil Protection Act that includes “quarantine restrictions,” and / or “epidemics” as triggering events. By taking this action, the government would be able to protect the parties while allowing them to continue to build under extremely difficult and uncertain conditions. None of the parties should be penalized because of delays arising from this unprecedented event.

2. Workers’ Compensation System Improvements

a. Ministerial Oversight of the Workplace Safety and Insurance Act

The WSIB is among the very largest group insurance schemes in North America. Workers compensation systems are extremely complex. Understanding the Workplace Safety and Insurance Board requires significant financial and actuarial expertise. The Ministry of Labour Training and Skills Development does not have the necessary financial and actuarial expertise for competent oversight. The ministry oversight of the WSIA should be transferred to the Ministry of Finance which is better equipped for this responsibility.

b. WSIB Funding Policy

Over the past several years, the WSIB has engineered a remarkable financial turnaround, the unfunded liability has been eliminated and the current funding level stands at approximately 113%. However, in this post-unfunded liability situation, the WSIB has no funding policy. We believe that the WSIB should always target to be at least 100% funded. However, there are externalities beyond the control of the WSIB that can impact the funding level. For example, there will be times when employment falls unexpectedly and assessed payroll doesn’t meet the WSIB’s projections, creating a deficit on operations. There could be times when the financial markets recede and the WSIB fails to meet its investment target.

We recommend that a funding policy be established that defines an ongoing funding corridor of

between 95% and 110% in which the funding level can fluctuate without the need to adjust the rate setting calculations. When the system is funded beyond the upper limit, there should be a mechanism through which the WSIB can return monies to employers. When it falls below 95% premium adjustments should be made.

c. Eliminate the 72 Month Lock-In Provision

The 72-month lock-in benefit allows injured workers who have been off work for 72 months as a result of a workplace injury, to have their benefits “locked-in” after 72 months duration. As a result of this provision, in many cases, injured workers do whatever they possibly can to stretch it out to the 72 month threshold in order to have their benefits locked-in. Once their benefits are locked-in, the workers are absolved of any return to work obligations.

A study conducted by the Institute for Work and Health revealed that workers that receive 72-month lock-in benefits are on average being over compensated. This was not the intention of the government that established the 72-month lock-in provision. Ontario is the only jurisdiction that provides this benefit. We strongly recommend that the 72-month lock-in provision be abolished.

3. Infrastructure Investment

In order to reopen Ontario’s economy safely, our Province must compete globally for the investments that are the foundation of job creation and growth. To win these investments, Ontario must have modern transportation infrastructure to get goods to markets and people to work efficiently. The province must also have up-to-date social infrastructure to support a way of life that is attractive to investors from around the world and that fosters a highly productive workforce.

We encourage the government to deliver fully on its infrastructure commitment for 2021 and on its planned \$144 billion investment over the next 10 years. The government must continue to make significant investments in the renewal and expansion of Ontario’s public infrastructure.

4. Community Benefits Clauses

Increasingly governments are using their procurement of construction services to achieve certain social policy objectives. This blending of construction procurement with social policy objectives is referred to as social procurement or “community benefits”. This has never been more important than in the pandemic and post-pandemic world when low income and disadvantaged workers have been especially hard hit.

In Ontario, contracts for public infrastructure projects sometimes include community benefits clauses that oblige contractors to engage a specific number of apprentices or to hire a certain number of workers from underserved populations. In other jurisdictions contractors have been asked to contribute an unspecified public good at no cost, e.g., a park, a fence, an arena. Community benefits clauses in Ontario government construction projects must be explicitly defined and must be voluntary and aspirational; hard quotas must not be considered.

5. Skilled Trades and Apprenticeship System

The government has committed to disbanding the Ontario College of Trades and replacing it with a more modern and efficient skilled trades and apprenticeship system. The development of a modern and efficient skilled trades and apprenticeship system must continue to be a high priority of the government to ensure that Ontario has the workforce to meet the demands of today and tomorrow.

Ontario needs an apprenticeship system overseen by a single entity operating outside of the provincial government and that:

- addresses the needs of the province's labour market and focuses on in-demand trades,
- is easy to access,
- delivers up-to-date curriculum effectively,
- provides the necessary supports for apprentices and sponsors including financial supports
- holds training delivery agents and employers of apprentices accountable for the contributions they make to apprentices' learning and completion.
- Produces high apprentice completion rates
- attracts qualified young people to the fulfilling and rewarding careers in the construction industry in sufficient numbers to meet the skills gap.

Closing

In closing, COCA believes that adoption of these recommendations will better position Ontario to protect what matters most for Ontarians, to attract new investment, job creation and economic growth and create broader prosperity across the province.

This opportunity to provide our advice is greatly appreciated by our membership. Thank you.

Sincerely



Ian Cunningham
President