

2022 Pre Budget-Submission

Building Towards a Brighter Future

Council of Ontario Construction Associations

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The Council of Ontario Construction Associations (COCA) is a federation of 30 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 towards a brighter future for Ontario's society and economy as we transition past what we hope is the worst of the global pandemic, we strongly recommend the following measures be 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. Undertake a review of the Construction Act
5. Accelerate the development of Ontario's new Skilled Trades and Apprenticeship System
6. Work with the Federal Government to admit more immigrants with skilled trades qualifications

1. Relief for Contractors from Pandemic Costs, Delay Claims and Inflation

Contractors win work based on a competitive bidding process. One of the most important criteria in a bid for construction work is 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. No one, not even the smartest most prescient contractor could have predicted the highly infectious and deadly pandemic that has swept across the globe, wave after wave of new variants over the past two years. Nonetheless, it happened.

Contractors have adapted and the new elevated health and safety protocols have been implemented effectively by the construction industry. COVID transmissions on construction sites has been remarkably low. The containment of COVID however forced unanticipated costs onto contractors that were not included in their winning bids that 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 with relief from delay claims and 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 step will ensure that the Province and its municipalities will continue to receive competitive pricing from the industry, without requiring contractors to take into account 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 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 one of 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 Workplace Safety and Insurance Act and the Workplace Safety and Insurance Board currently fall under the ministerial purview of the Ministry of Labour Training and Skills Development (MLTSD). Unfortunately, the MLTSD does not possess the necessary financial and actuarial expertise for competent oversight. The ministry oversight of the WSIA and the WSIB should be transferred to the Ministry of Finance which is better equipped for this responsibility.

b) Eliminate the 72 Month Lock-In Provision

The 72-month lock-in benefit allows injured workers who have been off work for 72 months

because of workplace injuries, to have their benefits “locked-in” after 72 months duration. As a result of this provision, in many cases injured workers do whatever is necessary to extend their time off work to the 72-month threshold to cause their benefits to be 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 who 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

To compete globally for the investments that are the foundation of job creation and growth Ontario needs modern infrastructure. To win these investments, Ontario must have a modern transportation network to get goods to market and people to their workplaces 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 2022 and on its planned \$144 billion investment over the next 10 years. The government must continue to must make significant investments in the renewal and expansion of Ontario’s public infrastructure.

In rolling out infrastructure projects, the capacity of the industry must be considered to attract multiple bidders and to receive competitive pricing. The rollout of projects must be sequenced over time to smooth the demand for construction services, to ensure competitive prices from multiple bids and to avoid stretching beyond the capacity of the industry.

4. Undertake a review of the Construction Act

Following an exhaustive review conducted by construction lawyers Bruce Reynolds and Sharon Vogel and the panel of experts that involved the engagement of a vast number of stakeholders, Bill 147, Construction Lien Amendment Act 2017 passed Third Reading unanimously with all Party support on December 5, 2017, and received Royal Assent seven days later.

The name of the statute was changed to the Construction Act. Knowing that their work might not have been perfect, Reynolds and Vogel included in their report to the government following their review and prior to the introduction of Bill 142 a recommendation, recommendation #100, to conduct an independent review of the statute within five years of its enactment. While the Construction Act is a vast improvement over the former Construction Lien Act, experience with it has exposed a growing list of glitches that must be fixed to make it work fairly and efficiently.

These glitches are stakeholder neutral, they don't favour one class of stakeholders over another such as owners, general contractors, trade contractors and suppliers etc. Many of the stakeholders that were involved in the Reynolds-Vogel review including the Construction Design Alliance of Ontario, the Ontario General Contractors Association, the Ontario Bar Association and COCA have developed lists of glitches that must be fixed. Most of them are common to all lists. We implore the government to undertake the recommended review as soon as possible and not later than the end of December 2022.

5. Skilled Trades and Apprenticeship System

In its campaign leading up to the June 2018 Ontario general election, the Ontario Progressive Conservative Party committed to disbanding the Ontario College of Trades and replacing it with a more modern and efficient skilled trades and apprenticeship system. The new system was finally launched in January 2022 after two-and-a-half years of wheel spinning. It is critically important that the new system, which includes both the MLTSD and an agency called Skilled Trades Ontario (STO) become fully operational quickly and begin their work at an accelerated pace to make up the lost ground. The new system must:

- address the needs of the province's labour market and focuses on in-demand trades,
- be easy to access
- deliver up-to-date curriculum effectively
- provide the necessary supports for apprentices and sponsors including financial supports
- hold training delivery agents and employers of apprentices accountable for the contributions they make to apprentices' learnings and completions
- produce high apprentice completion rates
- evaluate trade equivalencies quickly and appropriately
- attract qualified young people to the fulfilling and rewarding careers in the construction industry in sufficient numbers to meet the skills gap.

6. Work with the Federal Government to admit more immigrants with skilled trades qualifications

The skilled trades shortage that was predicted more than a decade ago is finally with us in full force. BuildForce Canada, an organization that develops labour market forecasts for all construction trades across Canada including five regions of Ontario annually, has painted a picture of shortages in all trades. In the coming years a significant number of journeypersons will be retiring from the construction industry. The industry will lose their knowledge and high productivity and their abilities to teach and mentor that were gained through years of experience. These attributes cannot be replaced with a newly graduated journeyperson.

A pipeline of trained-in-Ontario- journeypersons will help to fill the gap in the long run. But the journey from new apprentice to graduate journeyperson takes at least four years in most trades. The industry needs help now.

We strongly encourage the government of Ontario to advocate with the government of Canada for the admission of more immigrants with skilled trades qualifications into Canada and Ontario. This will not only help to fill the shortfall of construction trades workers but also bring to Ontario all the positive qualities that new immigrants contribute.

Closing

In closing, COCA believes that the adoption of these recommendations will position Ontario to build towards a brighter future for all Ontarians and to attract new investment, job creation and economic growth and create broader prosperity across the province.

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

Sincerely

A handwritten signature in blue ink, reading "Ian Cunningham", with a long horizontal flourish extending to the right.

Ian Cunningham
President