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Ontario prompt payment blueprint reached

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The Ontario caucus of the National Trade Contractors Coalition of Canada (NTCCC) and the Ontario General Contractors Association (OGCA) have reached agreement on a blueprint for what could ultimately become the basis for Canada's first legislation governing prompt payment.

"After more than a year of collaboration, we now have the groundwork for a workable piece of legislation that will see fairness from the sub-sub to the trade contractor and general contractor and right up to the owner," said OGCA president Clive Thurston.

He said the key to success was the fact that the parties involved in the negotiations "were actual general contractors and subcontractors who were willing to set aside their prejudices and beliefs and respect each other's points of view."

The draft legislation, called an act respecting the protection and viability of construction contractors, details in part the payment obligations of the respective parties.

"This is a total industry effort," said NTCCC director Richard McKeagan, president of the Mechanical Contractors Association of Canada. "This is great for the relationship between the trades and generals with benefits for all concerned. Prompt payment legislation will help address problems in all sectors, and up and down the construction supply chain."

The proposed legislation was drafted by a joint task force of the OGCA and the national trade contractors' coalition.

"We had some real players at the table on both sides," said Eryl Roberts, executive vice-president of the Electrical Contractors Association of Ontario and one of the NTCCC representatives on the joint task force. He said the most important structural aspect of the proposed legislation is that it is a consensus document.

"It includes all the parties in the construction chain from owners, generals and subs on down, each of which have the obligation to pay promptly and the right to be paid promptly. Unlike most other prompt payment legislation, this is more than just the subs versus the general contractors."

The legislation has been drafted in accordance with the principles of CCDC2 and the Canadian Construction Association's subcontract document.

From the perspective of the NTCCC, which represents 11 trade associations, Roberts said the most important provisions pertain to rights to information in the payment sphere. "For the subtrades, it is the obligation of a general contractor to notify them of payment received from the owner," he said. "This information is critical to managing prompt payment and agreement

on it was key to reaching a deal. The discussions around this topic were most enlightening for both parties as it goes to the heart of the problem.”

Task force meetings were facilitated by Geza Banfai, a partner in Heenan Blaikie’s infrastructure and construction litigation practice group.

For its part, the OGCA said in a bulletin to its members that key benefits include the fact that:

- No owner would be able to contract out of the payment requirements in the proposed legislation, which are more balanced than those that many owners utilize.
- Payment certifiers would be held to the time limits proposed and face penalties if they do not process payments.
- If the payment certifier fails to issue certification within the time period, the submission would automatically be deemed certified and due.
- Only the actual value of a disputed amount or amounts involved with a deficiency could be held back. The value held back would be limited, no more 200 per cent of the value of the issue.
- The legislation still allows for deferral of payment to a trade if a contractor is not paid, but provides an incentive for generals to expeditiously pursue their claims. If the notification procedure and other processes are followed by the general contractor, he has the right to defer payment downstream.
- A CCDC clause allowing access to owners’ financial information would no longer be allowed to be deleted.

In addition, no holdbacks other than those prescribed under the Construction Lien Act are permissible.

OGCA chair David Blake said concerns over prompt payment are not new to the industry. “Payment periods throughout the supply chain have been routinely getting longer, creating animosity and frustration on all sides,” he said. “This joint agreement will go a long way to address these concerns and ease tensions. It is a win for everyone involved.”

NTCCC Ontario caucus chair John Blair of the Canadian Masonry Contractors Association said research shows there is support from all three provincial parties for some sort of prompt payment legislation in the construction industry. “Now that OGCA and NTCCC have agreed to what the proposed legislation could look like, relative to the terms and conditions, the Ontario industry has a good shot at being the first jurisdiction in Canada to introduce such legislation.”

The task force hopes to present its recommendations to the provincial government in early March.

To view the complete report, please visit the www.ntccc.ca website.