Prompt Payment Ontario

Trade Contractor Survey Results

NOVEMBER 2015

Trade Contractor Survey Report

Prompt Payment Ontario

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Executive Summary

Trade Contractor Survey

The *Trade Contractor Survey* was conducted between August 17th and October 2nd, 2015. The survey results are based on 535 responses which were obtained through telephone interviews (272) and online (263) completion of the survey questionnaire. The survey was administered by Ipsos Reid. The margin of error for the survey is +/-5.9%, nineteen times out of twenty.

Widespread Practice of Late Payment

The survey data show that late payment is a serious and systemic problem in Ontario's construction industry. There is a high incidence of late payment in every sector of the construction industry. The *Trade Contractor Survey* results refute claims by some public sector spokespersons that late payment is not a common practice in the public sector. Late payment is pervasive. There are no exceptions.

The survey data show the extent and severity of the late payment problem:

- The *average* age of current receivables among the surveyed trade contractors is 61.3 days.
- Almost one contractor in every five (18.7%) is carrying current receivables which have an *average* age of 90 days or more. (Accounts that are outstanding for more than 90 days are not eligible for receivables financing through banks.)
- Setting aside holdback monies, on average over the past three years, two-thirds (67.6%) of trade contractors' invoices that were outstanding for more than 30 days were overdue for more than 45 days. This means that trade contractors' lien rights had expired for the overwhelming majority of their invoices. In fact, *fewer than 3% of accounts outstanding for more than 30 days were paid within 45 days allowed for preserving a lien*. For a large number of trade contractors, the pervasive practice of late payment has effectively nullified the security promised to them by the lien system.

Almost one invoice in every five (19.5%) that was outstanding for more than 30 days (excluding holdback monies) took 90 days or more to settle. This has serious implications in an industry that is crucially dependent on the continuance of cash-flow and on receivables financing. It is not surprising, therefore, that the survey also found that *almost a quarter of trade contractors (24.7%) reported that late payments had caused their company to face a threat of insolvency*.

The economic damage caused late payment is not limited to its effect on trade contractors. There is a cascading effect that arises from the interruption or delay or payments. The *Trade Contractor Survey* found that:

- 23.9% of trade contractors were forced to lay off workers because of delays in receiving payments;
- 39.1% of trade contractors declined to purse or take on additional work because delays in receiving payments had stretched their line of credit or their prudent use of reserves;
- 57.4% of trade contractors avoided or delayed investing in machinery and equipment because of delays in receiving payments; and
- 61.1% of trade contractors added a contingency factor to the bids because of owner, builder or general contractor's reputation for late payment.

For the economy, therefore, *the consequences of the construction industry's pervasive late payment practices are reduced employment, a smaller competition pool for new work, diminished productivity, and increased construction costs, as well as the damage caused by insolvencies that did not need to occur*.

Payment delays to trade contractors affect workers, other contractors, employee benefits, suppliers and governments. As a result of delays in receiving payments, the survey found that:

- 5.0% of trade contractors were forced to delay their hourly payroll;
- 11.6% of trade contractors were forced to delay their salaried payroll;
- 13.6% of trade contractors were forced to delay remittances to employee benefit funds,
- 17.8% of trade contractors were forced to delay their remittances for source deductions to the Canada Revenue Agency while 20.0% were forced to delay remittances for HST;
- 19.1% of trade contractors were forced to delay payments to their bank;
- 27.9% of trade contractors were forced to delay payments for leases on equipment;
- 52.1% of trade contractors were forced to delay payments to sub-contractors. and
- 60.9% of trade contactors were forced to delay payments to suppliers.

Systemic Weaknesses in the Lien System

The conclusion that emerges from the Trade Contractor Survey is that the lien and holdback system is clearly in need of change. A large majority of trade contractors (64.9%) indicated a negative view of the

lien system. Their dominant concerns pertained to:

- the length of time required to process a lien action,
- the expiry of lien rights before a contractor recognizes the need for a lien claim,
- the cost of the lien system, and
- fear of being blacklisted for using lien rights.

For all of these reasons, more than eighty percent (81.9%) of trade contractors reported that they use the lien system either 'never' or 'rarely' to pursue payment.

The capacity to use the lien system is strongly inverse to contractor size. *Small trade contractors are deterred by legal costs, the time to obtain satisfaction and the low rates of pay-out*. Survey results indicate that, *on average, trade contractors received only 61.5 cents on the dollar in respect of their lien claims*. Their median expenditure in legal costs for registering a lien was $15,000. Almost a quarter of trade contractors (24%) reported that their longest time to receive payment following a lien was three years or more.

Abuse of Holdbacks

Only 18% of trade contractors reported that, on average, they receive their holdback monies within 45 days. *The median waiting time for holdback monies was 90 days*

Almost half of contactors (47.5%) reported that they must wait 90 days or longer either 'very often' or 'always' to receive their holdback monies even when there is no deficiency claimed. In effect, holdback monies are being used to finance the construction project – a use that was never intended by the current *Act*.

Prevailing Contract Terms

*The prevailing contract terms in the construction industry reflect the imbalance of bargaining power. An owner or general contractor who is putting work out to competitive tender can demand contract terms that are unfavourable and unreasonabl*e.

Almost three-quarters (73.4%) of contactors reported that their contracts *never* include a right to stop work. *A large majority of contractors are therefore contractually obliged to continue working (and to continue incurring payroll and materials costs) even when payment to them is delayed*.

Trade contactors rarely have a right to reasonable financial disclosure so that they can make an informed decision on the risk that they will not be paid in a timely manner.

It is uncommon for contracts to provide for interest to be payable on overdue accounts. *Only 6.9% of trade contractors reported that interest payment was stipulated 80% of the time or more frequently and*

only a small minority of these trade contractors reported that they actually received interest on overdue accounts.

Disputes as Causes of Payment Delay

Forty-two percent (42.0%) of trade contractors reported that disputes over change order, extras or upgrades that led to payment delays occurred 'very often' or 'always'.

Disputes over alleged deficiencies or payment certifiers delays are seen as causing a high risk of payment delay by more than 40% of trade contractors. The *Trade Contractor Survey* therefore confirms that that an expeditious process for dispute resolution must be part of any strategy to address the problem of late payment in the construction industry.

Surety Bonding

Survey data indicate that it is predominantly large trade contractors that are required to post surety bonds, although smaller contractors are also sometimes required to post bonds.

Of those trade contractors that had pursued claims against bonds, the time required to satisfy a claim was somewhat less drawn out than a traditional lien claim. A majority of contractors that had experience in pursuing claims against bonds are supportive of surety bonding, although few support making such bonds compulsory.

Conclusion

The *Trade Contractor Survey* shows beyond doubt that Ontario's construction industry suffers from a systemic culture of late payment and that trade contractors bear the burden of these late payment practices. The survey also shows that the negative effects of late payment practices cascade through the industry and its stakeholders. For the economy, as a whole*, the tolerance of late payment practices means less employment in the construction industry, less productivity from investment in new machinery and equipment and higher construction costs.*

The *Trade Contractor Survey* also shows that Ontario's lien and holdback system function poorly. The security promised by lien rights is often thwarted by late payment practices. Holdback monies are routinely retained for longer than permitted, effectively forcing trade contactors to provide financing for construction projects. *The lien and holdback system is broken. However, it can only be fixed if the problem of systemic and pervasive late payment practices is also addressed*.

Finally, the *Trade Contractor Survey* also confirms that Ontario's construction industry needs a legislated model for expeditious resolution of disputes.

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1. Methodology

Prompt Payment Ontario (PPO) commissioned Ipsos Reid to administer a survey of trade contactors on payment security and late payment. The survey was designed by Prompt Payment Ontario, with advice from both Prism Economics and Analysis and Ipsos Reid. The survey was conducted through telephone interviews and an online completion of a survey questionnaire. The telephone interviews were conducted by Ipsos Reid. The online survey was hosted by Ipsos Reid.

The telephone interviewing took place between August 17th and October 2nd, 2015. The table below summarizes the breakdown of responses between telephone interviews and online participants in the survey.

Figure No. 1
Breakdown of Survey Respondents by Sampling Channel

	Number	Percent of Total
Telephone interviews	272	50.8%
Online respondents	263	49.2%
Total	535	100.0%

The sample for the telephone interviews was provided to Ipsos Reid by PPO. An additional sample was drawn from lists purchased by Ipsos Reid based on construction industry NAICS codes.[1] Sampling was restricted to trade contractors operating in Ontario. Respondents were randomly dialed from all telephone sample sources and interviewed by live interviewers. Respondents were screened in both the telephone and online surveys to ensure that the survey sample included only trade contractors.

For the online survey, an open-link was provided to prospective respondents by PPO and contractor associations.

A total of 535 valid responses were collected. Respondents were assured that their answers would be reported only in aggregated formats that did not disclose the likely identity of any respondent.

Ipsos Reid estimates that the margin of error for the survey is +/-5.9%, nineteen times out of twenty. All sample surveys and polls may be subject to other sources of error, including, but not limited to coverage error, and measurement error.

[1] NAICS: North American Industry Classification System. NAICS is the standard statistical classification system for assigning businesses to industries. NAICS is used by Statistics Canada and has generally been adopted by private survey firms.

Throughout this report when percentages are reported in frequency distribution tables, rounding to the first decimal point may sometimes cause totals to be marginally higher or lower than 100.0%.

Some respondents did not answer all questions. Consequently, the number of respondents (n) to a particular question or cross-tabulation is sometimes less than 535.

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2. Survey Sample Characteristics

Size of Trade Contractors in Survey Sample:

Figure No 2 shows that the survey sample included a statistically significant representation of trade contractors across a range of income categories.

Figure No. 2
Distribution of Sample by Average Annual Revenues of Respondents over the Past Three Years

	Number	Percent of Total
Less than $500,000	76	14.2%
More than $500,000 but less than $1.0 million	62	11.6%
More than $1.0 million but less than $2.0 million	89	16.6%
More than $2.0 million but less than $5.0 million	108	20.2%
More than $5.0 million but less than $10.0 million	71	13.3%
More than $10.0 million but less than $20.0 million	44	8.2%
More than $20.0 million	50	9.3%
Prefer not to answer	24	4.5%
Don't Know/Refused	11	2.1%
Total	535	100.0%

Trade contractor size can also be grouped by the number of persons employed. Figure No. 3 summarizes the survey respondents' estimates of their employment in their last fiscal year in terms of their peak month, low month and whole year employment. Relative to the overall construction industry, the survey sample under-represents contractors in the 1-10 size group. Statistics Canada data indicated that these small trade contractors account for approximately 80% of all construction employers.

Figure No. 3
Distribution of Sample by Number of Employees in the Past Fiscal Year

	Peak Month		Low Month		Whole Year	
	Number	Percent of Total	Number	Percent of Total	Number	Percent of Total
1 - 10 employees	185	34.6%	284	53.1%	217	40.6%
11 - 20 employees	110	20.6%	97	18.1%	109	20.4%
21 - 50 employees	113	21.1%	77	14.4%	106	19.8%
51 - 100 employees	66	12.3%	34	6.4%	56	10.5%
>100 employees	59	11.0%	41	7.7%	46	8.6%
Declined to Answer	2	0.4%	2	0.4%	1	0.2%
	535	100.0%	535	100.0%	535	100.1%
Total Employees of Respondents	35,821		21,279		28,334	

Sample Size in Relation to Industry

Over the period August 2014 to July 2015, Statistics Canada's Survey of Employment, Payroll and Hours indicates that paid employment in the construction industry ranged from 278,000 to 341,800. The trade contractors in the survey sample, therefore, accounted for 7.7% to 10.5% of paid employment in the construction industry. (This would not include 'independent operators', *i.e.*, self-employed persons who do not employ other persons.)

Sector Representation

Respondents were asked to indicate the construction sectors in which they undertook work. Figure No. 4 summarizes these responses. When interpreting these data, it is important to keep in mind that most respondents indicated that they worked in more than one sector. The data show that the sample achieved reasonable representation across all major construction sectors.

Figure No. 4
Distribution of Sample by Sector
(Multiple Sectors Permitted)
(n=535)

	Number	Percent of 535
Institutional	279	52.1%
Commercial	423	79.1%
Industrial	308	57.6%
EPSCA / Power Transmission and Distribution	66	12.3%
Utilities	62	11.6%
Engineering	66	12.3%
Transportation	57	10.7%
High-Rise Residential	179	33.5%
Low-Rise Residential	225	42.1%
Low-Rise Renovation and Additions	216	40.4%
None of these Sectors	0	0.0%

Project Initiators

Figure No. 5 shows that the survey sample also reflects a broad range of project initiators. This is an important consideration, since some of the opponents of reforming payment systems in the construction industry claim that late payment practices are not common among their type of project initiators. The survey sample shows that all major types of project initiators are well represented in the work undertaken by the survey's respondents.

Figure No. 5
Distribution of Sample by Project Initiator
(Multiple Sectors Permitted)
(n=535)

	Number	Percent of 535
Residential Builders or Developers	279	52.1%
Private Individuals (Residential)	263	49.2%
Commercial Owners	429	80.2%
Industrial Owners	339	63.4%
Public Private Partnerships (P3s)	161	30.1%
Federal Government	184	34.4%
Provincial Government	212	39.6%
Municipal Governments	289	54.0%
Boards of Education	257	48.0%
Colleges and Universities	252	47.1%
Hospitals	209	39.1%
Other Not-for-Profit Entities	138	25.8%
Agriculture	4	0.7%
Other	22	4.1%

Types of Payers

The survey also asked respondents to estimate the proportion of their gross revenues over the past three years that were attributable to a particular type of payer. Figure No. 6 summarizes these responses. The survey results show a broad representation of different types of payers.

Figure No. 6
Average Percent of Respondents' Gross Revenue in Past Three Years
Received from Different Types of Payers
(Multiple Answers Permitted. Percentages do not sum to 100.0%)
(n=535)
)

Payment received from:	Average Percent of Gross Revenue
Owners such as businesses, individuals, governments or government agencies	36.3%
Project Managers, Payment Certifiers or Cost Consultants acting as agents for the Owner	13.9%
General Contractors including third party payment issuers such as Textura	35.0%
Other Trade or Specialty Contractors	13.4%
Other Sources	5.4%

Conclusion

The survey sample provides a representative sample of trade contractors in Ontario. The sample covers all size ranges and all major construction sectors. The sample also covers all major project initiators and provides statistically relevant information based on types of payers.

The survey sample therefore provides a statistically valid profile of Ontario trade contractors' experience with the current payment and security systems in the construction industry.

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3. Experience with the Lien System and Holdbacks

Lien System

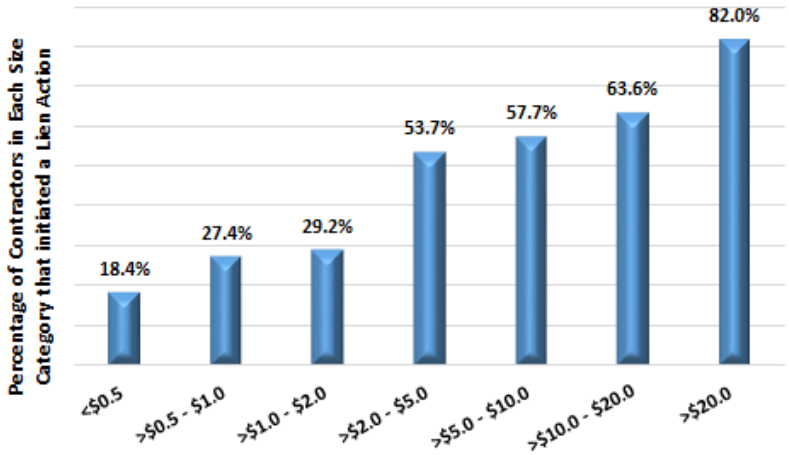
Utilization of the Lien System

A significant minority of the trade contractors who responded to the survey reported direct experience with the lien system. Over the past three years, 44.1% of respondents were involved in a lien action[2]:

- 31.8% registered a claim for lien *prior* to substantial performance being published,
- 25.8% registered a claim for lien *subsequent* to substantial performance being published, and
- 36.4% initiated legal proceedings in respect of a claim for lien they had registered.

Figure No. 7 shows the relationship between trade contractor size (measured in gross revenue) and utilization of the lien system. It is noteworthy that less than a third of small contractors (gross revenues less than $2.0 million) reported that they had initiated lien actions over the past three years. By contrast, among contractors with revenues of more than $10.0 million, more than two-thirds reported that they had initiated a lien action. Figure No. 7 shows that, **to a significant degree, utilization of the lien system is a function of a trade contractor's size**.

Figure No. 7
Percentage of Trade Contractors in Each Size Category (Based on Gross Revenues)
that initiated a Lien Action in the Past Three Years
(n=535)



[2] The survey data indicate that 64.5% of respondents had used the lien system at some time. However, only 44.1% reported using the system within the last three years. To minimize the risk of inaccurate memory, most survey questions were restricted to respondents' experience within the last three years.

Financial Resolution, Costs and Delays

Survey results indicate that, on average, contractors received only 61.5% of the amount claimed in their liens.

The median expenditure in legal costs for registering a lien was $15,000.[3]

Asked the shortest time period to receive payment after registering a lien, the median response was 5 months. Asked the longest time period to receive payment, the median response was 18 months. However, **24% of respondents reported that their longest time to receive payment was three years or more.**

Of those trade contractors that initiated a lien action, 39.8% reported that the owner or general contractor vacated the lien by posting security.

Propensity to Use the Lien System

Figure No. 8 summarizes how often trade contractors report using the lien system.

Figure No. 8
Frequency of Trade Contractors Using Lien System
(n=535)

	Percent
Never	35.5%
Rarely	46.4%
Sometimes	15.0%
Very Often	2.6%
Always	0.6%
Total	100.1%

Figure No. 9 shows the same size-related pattern in relation to usage of the lien system as was evident in Figure No. 7. It is particularly notable that **more than three-quarters of small contractors (less than $2.0 million in annual revenue) report that they use the lien system either 'never' or 'rarely'. Most of these indicated 'never'.**

[3] One of the objects of statistical analysis is to estimate the 'central tendency' within a sample. There are three measures of 'central tendency': the arithmetic average (or mean), the mode (which is the most frequent observation) and the median. The median is the half-way point in the sample, i.e., half of the sample is above the median and half is below. In samples which have extreme outliers, the median is a better indicator of 'central tendency' than the arithmetic average. In the survey, for example, one of the respondents reported legal expenses of $1.5 million. This would bias the calculation of the arithmetic average such that it unrepresentative of the sample and not indicative of the 'central tendency'.

Figure No. 9
Frequency of Using Lien System by Trade Contractor Size (Average Annual Gross Revenue)

	n=	Never	Rarely	Sometimes	Very	Always	Total
Less than $500,000	76	64.5%	28.9%	3.9%	1.3%	1.3%	99.9%
More than $500,000 but less than $1.0 million	62	62.9%	27.4%	8.1%	1.6%	0.0%	100.0%
More than $1.0 million but less than $2.0 million	89	44.9%	43.8%	10.1%	1.1%	0.0%	99.9%
More than $2.0 million but less than $5.0 million	108	27.8%	55.6%	14.8%	1.9%	0.0%	100.1%
More than $5.0 million but less than $10.0 million	71	18.3%	60.6%	15.5%	4.2%	1.4%	100.0%
More than $10.0 million but less than $20.0 million	44	4.5%	63.6%	27.3%	2.3%	2.3%	100.0%
More than $20.0 million	50	8.0%	46.0%	38.0%	8.0%	0.0%	100.0%

Reasons for Not Using Lien System

Trade contractors that reported using the lien system either 'never' or 'rarely' were also asked why they did not use the lien system. Figure No. 10 summarizes the reasons given. **The principal factors discouraging trade contractors from using the lien system are the length of time required, the expiry of lien rights, cost, and fear of being blacklisted by owners or general contractors.** It is notable that only somewhat more than a quarter of respondents indicated that they did not use the lien system because their business 'had no need for liens to secure payment'. The inference is that many trade contractors face payment security issues, but do not see the lien system as providing effective remedies.

Figure No. 10
Reasons for Not Using Lien System
(Asked of Respondents who Use the System 'Never' or 'Rarely')
(n=438)

	Percent
The lien process takes too long	30.6%
My lien rights usually expire before I realize the need to make a claim	30.4%
The lien process is too costly	30.1%
I fear that that some Owners/Builders will blacklist my company if I register a lien	27.6%
I fear that some General Contractors will blacklist my company if I register a lien	27.4%
My business had no need for liens to secure payment	26.9%
I believed I could obtain settlement without filing a lien claim	23.7%
The lien process is too complex	19.9%
Payout rates (i.e., cents on the dollar) are too low	16.2%
Liens do not work on government (crown) projects	10.5%
Liens do not work in low-rise residential construction	5.7%
Liens do not work in condominium construction	3.2%

Evaluation of the Lien System

Survey respondents were asked whether their view of the current lien system is positive, negative or neutral. **Almost two thirds (64.9%) indicated a negative view**.

Figure No. 11
Trade Contractors' View of the Current Lien System
(n=535)

	Percent
Positive	9.3%
Neutral	15.0%
Negative	64.9%
Did not answer question	10.8%
Total	100.0%

Holdbacks

Survey respondents were asked how long they waited on average to receive the 10% holdback**. The median waiting time reported was 90 days.** The mean waiting period (*i.e.*, the arithmetic average) was 110 days. The inference is that the **trade contractors typically wait substantially longer than 45 days to receive the holdback monies to which they are entitled.**

Contractors were asked how often they had to wait more than 90 days to receive holdback monies when no deficiencies were claimed. Figure No. 12 shows that **unreasonable waiting times are common**. Just under half (47.5%) of trade contractors in the survey reported that, even when no deficiencies are claimed. they must wait more than 90 days to receive holdback monies either 'very often' or 'always'.

Figure No. 12
In the last three years, when there were no deficiencies claimed by the Owner and/or General Contractor, how often did you have to wait more than 90 days to receive the 10% statutory holdback monies?
(n=535)

	Percent
Never	14.2%
Rarely	14.8%
Sometimes	22.8%
Very Often	30.3%
Always	17.2 %
Don't Know	0.7%
Total	100.0%

Figure No. 13 shows that **82.0% of respondents waited longer than 45 days to receive their holdback monies.** Moreover, this does not mean that trade contractors were paid on the 46th day. On the

contrary, the earliest payment day after the 45th day reported in the survey was the 55th day. Significantly **more than a third of trade contractors (36.5%) reported that they waited 91 days or longer for their holdback monies**. The 90-day period is important to trade contractors because banks will only provide receivables financing on accounts that are aged 90 days or less.

Figure No. 13
Length of Time Respondents Actually waited
for Holdback Monies on Average over the Past Three Years

	Number	Percent of Sample (n=535)	Percent of Those Answering (n=477)
0-15 days	44	8.2%	9.2%
16-30 days	16	3.0%	3.4%
31-45 days	26	4.9%	5.5%
Sub-total: 45 Days or Less	86	16.1%	18.1%
46-90 days[4]	217	40.6%	45.5%
91-180 days	121	22.6%	25.4%
181-365 days	44	8.2%	9.2%
More than one year	9	1.7%	1.9%
Sub-Total: 46 Days or More	391	73.1%	82.0%
Sub-Total	477		
Did not Answer	58	10.8%	n/a
Total	535	100.0%	100.1%

Conclusion

A large majority of trade contractors (64.9%) indicated a negative view of the lien system. The principle criticisms of the lien system and the reasons for either not utilizing the system or using it only rarely are:

- the length of time required to process a lien action,
- the expiry of lien rights before a contractor recognizes the need for a lien claim,
- the cost of the lien system, and
- fear of being blacklisted for using lien rights.

Consistent with trade contractors' negative views on the lien system, more than four fifths (81.9%) of them reported using the system either 'never' or 'rarely' to pursue payment.

[4] Although the time interval in this table is 46-90 days, the shortest waiting period of respondents in this time interval was 55 days. There were no respondents reporting 46 days.

The propensity to use the lien system is strongly inverse to trade contractor size.

Survey results indicate that, on average, trade contractors received only 61.5 cents on the dollar in respect of their lien claims. Their median expenditure in legal costs for registering a lien was $15,000. Almost a quarter (24%) of contractors reported that their longest time to receive payment was three years or more.

Survey data also show that the holdback system does not operate in the manner intended by the *Construction Lien Act*. More than four fifths of trade contractors (**82.0%) waited longer than 45 days to receive their holdback monies.** More than a third of trade contractors (36.5%) reported that they waited 91 days or longer for their holdback monies. **Almost half of trade contactors (47.5%) reported that they must wait 90 days or longer either 'very often' or 'always' to receive their holdback monies even <u>when there is no deficiency claimed</u>**.

The profile of the lien and holdback system that emerges from the *Trade Contractor Survey* shows that the system is clearly in need of change.

4. Prevailing Contract Terms

Standard CCDA or CCA Contracts

Survey participants were asked how often they sign *unaltered* CCDA or CCA standard contracts. Trade contractors reported that, on average, **only 37.5% of their contracts were unaltered CCDA or CCA contracts**. Half of the survey respondents reported that they signed *unaltered* CCDA or CCA contracts 20% of the time or less frequently. The survey data show, therefore, that while CCDA and CCA contracts may constitute useful benchmarks, they are utilized in *unaltered* form for only a minority of non-residential projects. In Ontario's residential sector, there do not appear to be any standard contracts comparable to the CCDA and CCA contracts. The low level of utilization of unaltered CCDA or CCA contracts demonstrates that voluntarist strategies for dealing with late payment have not succeeded.

Contingent Payment Provisions

Contingent payment provisions are common in construction contracts. A majority of trade contractors (56.5%) reported that some type of contingent payment clause is used in contracts that they sign.

- Somewhat fewer than a third of trade contractors (31.8%) reported that pay-when-paid clauses are in 50% or more of their contracts.
- Roughly one trade contractor in ten (10.8%) reported that pay-if-paid clauses appear in 50% or more of their contracts
- A further 13.4% reported that there is some contingency provision in their contracts at least 50% of the time.

Stipulated Payment Periods over Thirty Days

It is common practice in the construction industry for contracts to allow payment periods greater than thirty days. Survey data indicate that 43.9% of trade contractors sign contracts with payment periods over thirty days at least 50% of the time. One important consequence of such provisions is to frustrate the use of lien rights.

Interest on Overdue Invoices

Almost three-quarters (74.8%) of contractors reported that their contracts *never* provide for interest on overdue accounts. Only 6.9% of contractors reported that interest payment was stipulated at least

80% of the time.

Notwithstanding the obligation to pay interest on overdue accounts in some contracts, the actual payment of interest to trade contractors under such contracts is rare. More than two-thirds (67.2%) of trade contractors indicated that they never received interest payments even when their contract provided for interest on overdue accounts. **For all intents and purposes, therefore, the vast majority of trade contractors receive no compensation for delayed payments.**

Right to Stop Work

Almost three-quarters (73.4%) of trade contactors reported that their contracts never include a right to stop work. Only 5.6% of trade contractors reported that their contracts always include a right to stop work. The reality, therefore, is that **a large majority of trade contractors are obliged to continue working (and to continue incurring payroll and materials costs) even when payment to them is delayed.**

Retainage More than 10%

Roughly one trade contractor in ten (11.4%) reported that their contracts 'very often' or 'always' provided for retainage greater than 10%. In effect, this shifts a portion of the construction financing costs for a project onto the shoulders of the trade contractors who are performing the work.

Financial Disclosure

Nearly three-quarters (72.5%) of contracts do not entitle trade contractors to reasonable financial disclosure. Thus, **a large majority of trade contractors are unable to make an informed judgement of the risk that they will not be paid or that their payment will be delayed.** Only 7.5% of trade contractors reported that they always have financial disclosure in their contracts or on request.

Conclusion

The prevailing contract terms in the construction industry reflect the imbalance of bargaining power. An owner or general contractor who is putting work out to competitive tender can demand contract terms of trade contractors that are unfavourable and unreasonable. These include:

- no interest compensation for late payment,
- pay-if-paid provisions that shift the entire risk of non-payment onto a trade contractor,
- no rights to reasonable financial information on the capacity of the payer to meet obligations, and

- an obligation on the part of trade contractors to continue working and to continue incurring costs even when payment to them is delayed.

5. Late Payment

Late Payment is Common

The survey gauged the incidence of late payment through three questions.

The first survey question asked trade contractors to indicate the average age of their current receivables. The average age of current receivables includes recently issued invoices that may become overdue accounts, but which are not currently overdue. Consequently, this question provides the lowest and most conservative estimate of the incidence of late payment

The second question asked trade contractors about the proportion of their invoices over the past three years that had been outstanding for more than 30 days before payment was received. This question provides a better indication of the incidence and severity of late payment.

The third question asked about the frequency of late payment by sector.

Invoices which are outstanding for more than 90 days constitute a particularly serious problem for trade contractors. Banks will not extend receivables financing on accounts aged more than 90 days. To obtain receivables financing on these accounts, trade contractors must turn to non-bank sources of financing which charge substantially higher interest rates.

The trade contractors' answers to these three questions all point to the same conclusion: **late payment is a serious problem and it is widespread in Ontario's construction industry**.

(A) Average Age of Current Receivables:

The average age of *curren*t receivables among the surveyed trade contractors was 61.3 days. The median age is 60 days. For most trade contractors this implies that a significant number of their current receivables have been outstanding for more than the average of 61.3 days.

A large majority of trade contractors (84.7%) report that the average age of their current receivables is more than 30 days. **Almost one contractor in every five (18.7%) is carrying current receivables which have an *average* age of 90 days or more**. As noted above, these accounts are not eligible for receivables financing from banks.

Almost two-thirds of trade contractors (64.7%) report that the *average* age of their current receivables is more than 45 days, meaning that they have no lien rights applicable to these accounts.

(B) Invoices Outstanding for More than 30 Days:

Trade contractors reported that, on average over the past three years, 67.6% of their invoices that were outstanding for more than 30 days were overdue for more than 45 days. (These data exclude holdback monies). The implication of this finding is **two-thirds of overdue accounts are outside the 45-day time period for registering a lien claim**. One of the consequences of systemic late payment practices, therefore has been to effectively nullify lien rights on a large majority of overdue accounts.

(C) Frequency of Late Payment by Sector:

Figure No. 14 summarizes trade contractors' estimates of the frequency of timely and late payment by sector, based on their experience over the past three years. (Note that the number of responses varies by sector.) **The data show that late payment is common in *all* sectors of the construction industry**. In particular, it should be noted that the claims by some public sector authorities that they always or almost always pay in a timely fashion are not supported in any way by the survey results.

Figure No. 14
Excluding statutory holdbacks permitted by the *Construction Lien Act*, over the past three years,
how often was it for an approved or certified payment to be delayed beyond 30 days when monies were owed?

	n=	Never greater than 30 days	Occasionally greater than 30 days	Often greater than 30 days	Always greater than 30 days	Don't know	Total
Residential Builders or Developers	142	2.8%	13.4%	30.3%	48.6%	4.9%	100.0%
Private Individuals in Residential	102	19.6%	41.2%	16.7%	20.6%	2.0%	100.1%
Commercial Owners	210	1.4%	12.9%	33.8%	49.5%	2.4%	100.1%
Industrial Owners	177	3.4%	11.9%	30.5%	52.0%	2.3%	100.1%
P3s	68	1.5%	11.8%	29.4%	45.6%	11.8%	100.1%
Federal Government	107	8.4%	14.0%	25.2%	46.7%	5.6%	99.9%
Provincial Government	113	7.1%	18.6%	25.7%	46.0%	2.7%	100.1%
Municipal Government	133	8.3%	19.5%	30.8%	39.1%	2.3%	100.0%
Boards of Education	130	6.2%	20.0%	29.2%	43.1%	1.5%	100.0%
Colleges and Universities	133	4.5%	19.5%	27.8%	46.6%	1.5%	99.9%
Hospitals	116	6.0%	19.8%	26.7%	37.1%	10.3%	99.9%
Other Not-for Profits	80	11.3%	17.5%	15.0%	6.3%	50.0%	100.1%
Other Projects (Unclassified)	11	9.1%	36.4%	9.1%	45.5%	0.0%	100.1%
All Projects Irrespective of Sector	272	17.3%	21.0%	24.6%	19.9%	17.3%	100.1%

(D) `Tail Risk`

The average age of receivables is important because it increases the need for working capital or bank credit. This entails a financing cost. However, **the more serious issue is 'tail risk'**. **'Tail risk' refers to the minority of accounts that are in significant arrears and for which there is a high degree of uncertainty about when or if expected payment will be received**. 'Tail risk' is important because it is

difficult to anticipate and even more difficult to plan for. While 'tail risk' pertains to only a minority of overdue accounts, those accounts often loom large for the solvency of a trade contractor. It is 'tail risk' that discourages trade contractors from taking on additional payroll commitments. It is also 'tail risk' that leads trade contactors to defer or curtail investments in new machinery and equipment. And it is 'tail risk' that causes trade contractors to decline additional work when they are at the limit of their line of credit or prudent use of reserve funds.

Survey data indicate that for 18.7% of trade contractors (n=498) the *average* age of their current receivables was 90 days or more. As noted earlier, banks will not provide receivables financing on accounts that are more than 90 days outstanding. The incidence of accounts that are aged 90 days or longer is therefore a conservative indicator of the amount of 'tail risk' in Ontario's construction industry. For an industry, such as construction, that is wholly dependent on cash-flow, this is an unacceptably high level of tail risk. It means that **at least once every several years (and perhaps more often), most trade contractors will be severely strained financially and may face a solvency risk.**

Direct Consequences of Late Payment

The threat of insolvency is the most serious consequence of 'tail risk'. **Almost a quarter of trade contractors (24.7%) reported that late payments had caused their company to face a threat of insolvency.** Almost three-quarters of trade contractors (72.1%) were forced to extend their line of credit or draw down cash reserves as a result of unexpected late payments.

The serious, negative consequences of systemic late payment are indisputable. The survey found that:

- **23.9% of trade contractors were forced to lay off workers** because of delays in receiving payments that were owed to them;
- **39.1% of trade contractors declined to purse or take on additional work** because of delays in receiving payments that were owed to them;
- **57.4% of trade contractors avoided or delayed investing in machinery and equipment** because of delays in receiving payments that were owed to them; and
- **61.1% of trade contractors added a contingency factor to the bids because of owner, builder or general contractor's reputation for late payment.**

The survey confirms that the consequences of the construction industry's pervasive late payment practices are:

- reduced employment, including less investment in apprentices,
- a smaller competition pool for new work,
- diminished productivity arising from deferred investment sin machinery and equipment,
- increased construction costs, and

- the damage caused by insolvencies that did not need to occur.

Cascading Effect of Late Payment

Payment delays to trade contractors have a cascading impact on the construction industry. As a result of delays in receiving payments, the survey found that:

- 5.0% of trade contractors were forced to delay their hourly payroll;
- 11.6% of trade contractors were forced to delay their salaried payroll;
- 13.6% of trade contractors were forced to delay remittances to employee benefit funds;
- 17.8% of trade contractors were forced to delay their remittances for source deductions to the Canada Revenue Agency while 20.0% were forced to delay remittances for HST;
- 19.1% of trade contractors were forced to delay payments to their bank;
- 27.9% of trade contractors were forced to delay payments for leases on equipment;
- 52.1% of trade contractors were forced to delay payments to sub-contractors; and
- 60.9% of trade contractors were forced to delay payments to suppliers.

The nature of the construction pyramid is that an interruption in cash-flow at any level in the pyramid has a cascading impact on all stakeholders further down on the pyramid.

Trade Contractors' Perceptions of Late Payment Risk based on Experience

Trade contractors were asked to estimate their perception of late payment by various types of owners, based on their experience. It should be stressed that the focus of this question was on late payment, not default. Trade contractors indicated their perceived risk on a scale of 1-10 where 1 indicated payment was never late and 10 indicated that payment was always late. These answers were then re-grouped into a low risk category (1-3 on the scale), a moderate risk category (4-7 on the scale), and a high risk category (8-10 on the scale). Contractors only answered for those sectors in which they had experience. Figure No. 15 summarizes the data.

Figure No. 15
Trade Contractors' Perception of Late Payment Risk, based on Experience
(1-10 Scale where 1 = Always Paid on Time and 10 = Never Paid on Time)

	n=	Low Risk (1-3)	Moderate Risk (4-7)	High Risk (8-10)
Residential Builders or Developers	275	17.8%	41.8%	40.4%
Commercial Owners	424	36.8%	44.6%	18.6%
Private Individuals	260	20.0%	36.9%	43.1%
Industrial Owners	334	33.5%	42.2%	24.3%
P3s	152	29.6%	46.7%	23.7%
Federal Govt.	179	33.5%	30.7%	35.8%
Provincial Govt.	209	34.0%	35.4%	30.6%
Municipal Govt.	283	29.0%	31.8%	39.2%
Boards of Education	251	27.9%	34.7%	37.5%
Colleges & Universities	248	25.4%	37.1%	37.5%
Hospitals	197	23.4%	37.6%	39.1%
Other Not-for-Profits	133	17.3%	41.4%	41.4%
Other Owners	34	29.4%	26.5%	44.1%
Weighted Average		28.2%	38.5%	33.3%

Figure No. 15 shows contractors have different late payment risk perceptions, based on their experience. However, **among all types of owners, a significant proportion of trade contractors perceive a material risk of late payment based on their past experience.** The lowest perception of a high late payment risk (although still material) pertains to work undertaken for commercial owners. Only 18.6% of trade contractors perceive a high risk of late payment on these types of projects. Public sector work, it should be noted, is generally perceived as entailing moderate or high risk of late payment.

Trade Contractors' Perceptions of Causes of Late Payment based on Experience

Trade contractors were asked to indicate their perception of the causes of late payment, based on their experience. Contractors attributed a perceived risk to various causes of late payment on a scale of 1-10 where 1 indicated that a particular cause was 'not important at all' and 10 indicated that the cause was 'extremely important'. As in the previous table, these answers were then re-grouped into a low risk category (1-3 on the scale), a moderate risk category (4-7 on the scale), and a high risk category (8-10 on the scale). Respondents only answered for those late payment causes for which they had experience.

The survey results have been further grouped by public sector projects, other non-residential projects, and residential projects. Figure No. 16 summarizes the data for public sector projects.

Figure No. 16
Contractors' Perception of Causes of Late Payment Risk on Public Sector Projects, based on Experience
(1-10 Scale where 1 = Not Important at All and 10 = Extremely Important)

	n=	Low Risk (1-3)	Moderate Risk (4-7)	High Risk (8-10)
Insolvency of General Contractor	391	35.8%	22.5%	41.7%
Public Sector Owners' Financing Problems	380	32.4%	29.7%	37.9%
General Contractors' Unexplained Delays	404	19.3%	25.0%	55.7%
Disputes over Alleged Deficiencies	405	23.0%	27.7%	49.4%
Payment Certifier Delays	384	23.4%	27.9%	48.7%
Bureaucratic Delays in Approving Payment	398	14.3%	28.1%	57.5%
Delays caused by Banks and Other Lenders	366	39.1%	29.2%	31.7%

Figure No. 16 shows that, in the experience of trade contractors, **the greatest sources of late payment risk on public sector projects are bureaucratic delays and general contractors' unexplained delays**.

Figure No. 17 summarizes the data for private, non-residential projects.

Figure No. 17
Contractors' Perception of Causes of Late Payment Risk on Private, Non-Residential Projects, based on Experience
(1-10 Scale where 1 = Not Important at All and 10 = Extremely Important)

	n=	Low Risk (1-3)	Moderate Risk (4-7)	High Risk (8-10)
Insolvency of Owner	468	32.9%	19.0%	48.1%
Insolvency of General Contractor	318	46.5%	29.9%	23.6%
Owners' Financing Problems	471	24.4%	24.0%	51.6%
General Contractors' Unexplained Delays	489	18.6%	25.6%	55.8%
Disputes over Alleged Deficiencies	469	26.2%	29.4%	44.3%
Payment Certifier Delays	454	26.2%	29.4%	44.3%
Delays caused by Banks or Other Lenders	469	33.3%	28.9%	37.9%

Figure No. 17 shows that **the most important cause of payment delay in private, non-residential projects is unexplained delays on the part of general contractors. Owners' financing problems is the second most important factor, followed by insolvency of the owner (which is also a financing issue).** These factors point to the importance of reasonable financial disclosure.

Figure No. 18 summarises the data for residential projects.

Figure No. 18
Contractors' Perception of Causes of Late Payment Risk on Residential Projects, based on Experience
(1-10 Scale where 1 = Not Important at All and 10 = Extremely Important)

	n=	Low Risk (1-3)	Moderate Risk (4-7)	High Risk (8-10)
Insolvency of Owner or Builder	314	32.2%	21.3%	46.5%
Insolvency of General Contractor	314	32.8%	22.0%	45.2%
Owner or Builders' Unexplained Delays	324	20.7%	32.7%	46.6%
General Contractors' Unexplained Delays	325	22.8%	29.2%	48.0%
Disputes over Alleged Deficiencies	317	29.1%	28.5%	42.3%
Payment Certifiers' Delays	310	30.9%	27.8%	41.3%
Delays caused by Banks or Other Lenders	324	32.6%	28.4%	39.0%
Delays in Closing Project	326	25.6%	28.7%	45.7%

It is noteworthy that **in *all* sectors, unexplained delays on the part of the owner or the general contractor are among the highest causes of perceived payment delays**.

Conclusion

Survey data confirm that late payment is a systemic problem in Ontario's construction industry. Late payment is an issue in every sector of the construction industry. There are no exceptions.

Survey data indicated that, for trade contractors, the median age of their current receivables was 60 days. Survey data also show that **18.7% of trade contractors are carrying current receivables whose *average* age is 90 days or more**. This 'tail risk' has serious implications for the industry. At least once every several years (and perhaps more often), most trade contractors will be severely strained financially and may face a solvency risk. Accounts that are outstanding for more than 90 days are not eligible for receivables financing from banks.

Survey data indicate that almost a quarter of trade contractors (24.7%) reported that late payments had caused their company to face a threat of insolvency. Late payment also causes layoffs, deferral of investment in machinery and equipment and reductions in the bidding pool as trade contractors demur from taking on additional work when their cash reserves or credit lines are stretched. Two-thirds of accounts that are overdue for more than 30 days are actually overdue for more than 45 days, i.e., they are beyond the time limit for registering a lien claim. **Systemic late payment practices have effectively extinguished lien rights for the majority of overdue accounts**.

Payment interruption also has a cascading effect in the construction pyramid, causing interruptions in payments to suppliers and sub-contractors, as well as delays in paying remittances. In some cases, payroll is delayed.

Based on trade contractors' experience, they attribute significant late payment risk to all sectors, although the primary causes of this late payment risk may differ across sectors. In the case of the public sector, bureaucratic delay looms large. However, in all sectors, general contractors' *unexplained* delays is a prominent source of late payment risk.

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6. Change Orders, Disputes

Trade contractors reported that, on average, change orders accounted for 13.7% of their gross revenues. Half of trade contractors (the 'median') reported that change orders accounted for 8% to 10% of their gross revenues.

Disputes about 'extras', 'upgrades' and 'change orders' are common in the construction industry. Figure No. 19 shows the frequency of such disputes that *led to payment interruptions* over the past three years. As can be seen 42.0% of trade contractors reported that such disputes occurred 'very often' or 'always'. **These data show the need for expeditious dispute resolution in the construction industry. The data also show that dispute resolution is an important element in a remedial strategy to ensure cash-flow in the construction pyramid.**

Figure No. 19
Frequency of Disputes over Extras, Upgrades or Change
that led to Payment Delays in the Past Three Years

Frequency	Percent
Never	11.6%
Rarely	19.8%
Sometimes	26.4%
Very often	31.0%
Always	11.0%
Don't know	0.2%
Total	100.0%

The data presented in the previous chapter are also germane. Figure No. 20 summarizes data on trade contractors' perceptions of the risk of payment interruption attributable to disputes over alleged deficiencies. This table also includes payment certifiers' delays as these delays are often related to disputes over alleged deficiencies. These data confirm that **disputes over alleged deficiencies are viewed by trade contractors as a major cause of late payment risk**.

Figure No. 20
Trade Contractors' Perception of Disputes over Alleged Deficiencies or Payment Certifiers' Delays as Causes of Late Payment based on Experience
(Recapitulation of Data presented in Tables 16, 17 and 18)
(1-10 Scale where 1 = Not Important at All and 10 = Extremely Important)

	Low Risk (1-3)	Moderate Risk (4-7)	High Risk (8-10)
Public Sector Projects			
Disputes over Alleged Deficiencies	29.1%	28.5%	42.3%
Payment Certifiers' Delays	30.9%	27.8%	41.3%
Private, Non-Residential Projects			
Disputes over Alleged Deficiencies	26.2%	29.4%	44.3%
Payment Certifiers' Delays	26.2%	29.4%	44.3%
Residential Projects			
Disputes over Alleged Deficiencies	29.1%	28.5%	42.3%
Payment Certifiers' Delays	30.9%	27.8%	41.3%

Conclusion

Survey data confirm that disputes over alleged deficiencies are a major cause of payment interruption in Ontario's construction industry.

An expeditious system of impartial dispute resolution is an essential element in a remedial strategy to reduce the construction industry's problem of systemic late payment.

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7. Surety Bonds

Survey data show that only 9.9% to 11.0% of trade contractors are required to post surety bonds for labour and materials or performance either 'very often' or 'always'.

Figure No. 21
Frequency that Trades Contractors were required to Post Surety Bonds
in the Past Three Years

Frequency	Labour and Materials	Performance
Never	42.8%	45.4%
Rarely	20.7%	20.0%
Sometimes	22.1%	21.9%
Very often	10.3%	9.3%
Always	0.7%	0.6%
Don't know	3.4%	2.8%
Total	100.0%	100.0%

Not surprisingly, it is larger trade contractors that are more often required to post surety bonds.

Figure No. 22
Percent of Trade Contractors by Size Group that were required to Post Surety Bonds
in the Past Three Years either "Very Often' or 'Always'

Frequency	Labour and Materials	Performance
Less than $500,000	0.0%	0.0%
More than $500,000 but less than $1.0 million	3.2%	4.8%
More than $1.0 million but less than $2.0 million	3.4%	3.4%
More than $2.0 million but less than $5.0 million	11.1%	9.3%
More than $5.0 million but less than $10.0 million	19.7%	16.9%
More than $10.0 million but less than $20.0 million	20.5%	22.7%
More than $20.0 million	30.0%	26.0%

Only 36 trade contractors (6.7% of the sample) reported that they had made a claim against a surety bond in the past three years. On average their shortest period for securing satisfaction from a surety bond was 6.5 months. The median shortest period was between 3 and 4 months. On average the longest period was 21.0 months. The median longest period was 12 months.

Thirty contractors (of 36) provided information on the payment they received as a result of a claim against a surety bond. The average payment was 77 cents on the dollar. However, six of these 30 contractors (*i.e.*, 20%) reported that they received 50 cents or less on the dollar.

Of the 36 contractors that had registered a claim against a surety bond, two-thirds expressed a positive view of surety bonds. However, only 3 contractors expressed the view that surety bonds should be compulsory and used more often. This may reflect challenges that some trade contractors face in be able to provide owners or general contractors with performance bonds. Those trade contractors with a negative view of surety bonds cited the cost and the time involved.

Conclusion

Survey data indicate that it is predominantly large trade contractors that are required to post surety bonds, although the obligation is sometimes extended to smaller trade contractors. Of those trade contractors that have pursued claims against surety bonds, the time required to satisfy a claim was somewhat less drawn out than a traditional lien claim. A majority of trade contractors that have experience in pursuing claims against surety bonds are supportive of surety bonding, although only a handful agree with making such bonds compulsory.

Appendices

A: Survey Questionnaire

B: Ipsos Reid: Survey Methodology

Appendix A:

Survey Questionnaire

(Telephone Version)

[Survey on Payment Delays]

[Trade Contractors]

[FINAL]

[Introduction]

(Hello may I speak to **[INSERT NAME]**?)
Good morning/afternoon. My name is (_____) and I am calling from Ipsos Reid, a national public opinion and research company. We are conducting a study about late payment issues that contractors in Ontario are facing today. The purpose of this survey is to understand what, if any issues, that your organization has with late payments from your clients and how this impacts your company. May I please speak the person in your company who is a senior decision maker and who has knowledge about your contractual agreements with your clients, how your company receives payment, or someone who is responsible for company finances and has detailed information about your company?

IF PERSON ON THE PHONE – CONTINUE
IF YES – REINTRODUCE AND CONTINUE
IF NO – When is a better time for me to call back? (SCHEDULE CALL APPOINTMENT)
IF REFUSED – THANK AND TERMINATE

[FLYSHEET]
(IF UNSURE – We would like to speak to someone from your firm who is knowledgeable about contracts with clients, lien information, financial information, and so on. This typically includes an Owner, Vice President, Senior Financial Administrator, or CFO.)

(IF ASKED ABOUT THE STUDY/MORE INFORMATION: This survey is sponsored by Prompt Payment Ontario (PPO). PPO is an alliance of contractor associations, unions, suppliers, pension trust funds, and others who are interested in understand in late payment is an issue in the Construction Industry and develop policies to help the construction industry manage any of these issues.)

(PERSUADER: Your opinions are important. Your responses will be kept strictly confidential and used for statistical purposes only. Individual participants in the survey will not be identified in any way.)

(HOW LONG IS THE SURVEY? The survey will not take more than 20 minutes to complete, depending on your responses.)

[Screening Questions]

S1. Are you a general contractor or a trade contractor?

General contractor
Trade contractor

[IF S1= (1) 'General contractor'/DK/REF THANK AND TERMINATE; IF S1=(2) 'Trade contractor' CONTINUE]

[Questionnaire – Your Business]

1. Which sectors do you work in? Do you work in… (READ LIST, GET A Y/N AFTER EACH; ACCEPT ALL MENTIONS)?

   [RANDOMIZE; MULTIPUNCH]
   Institutional sector
   Commercial sector
   Industrial sector
   Power or EPSCA or Electrical transmission and distribution sectors
   Pipelines and utilities sectors
   Civil and engineering sectors
   Transportation sector
   Residential high-rise new construction
   Residential low-rise new construction
   Residential low-rise major renovations and addition
   (DO NOT READ) None of the above **[ANCHOR; MUTUALLY EXCLUSIVE]**

[If Q1=(11)'None of the above/DK/REF, THANK & TERMINATE; OTHERWISE CONTINUE]

2. In your last fiscal year, how many employees, including yourself, did you have during… **[INSERT ITEM]**?

   Your **peak** month period
   Your **low** month period
   The whole year?

   [1- 99999]

3. In the last three years, did you do work directly or indirectly as a prime or sub-contractor for any of the following types of owners? How about… (READ LIST, GET A Y/N AFTER EACH; ACCEPT ALL MENTIONS)?

   [RANDOMIZE; MULTIPUNCH]
   Residential Builders or Developers for low-rise and high-rise buildings
   Private Individuals in the residential sector
   Commercial owners
   Industrial owners
   Public Private Partnerships or PPP
   Federal Government or federal agencies
   Provincial Government or provincial agencies
   Municipal Government or municipal agencies
   Boards of education
   Colleges or universities
   Hospitals
   Other not-for-profit organizations or institutional owners
   Any others? (Specify) **[SPECIFY; ANCHOR]**

(DO NOT READ) None of the above **[ANCHOR LAST; MUTUALLY EXCLUSIVE]**

[If Q3= (14) 'None of the above'/DK/REF, THANK AND TERMINATE; OTHERWISE CONTINUE]

4. In the last three years, approximately what percentage of your gross revenues was directly received from the following? Your best estimate is fine. How about… **[INSERT ITEM]**?

   [RANDOMIZE]
   From Owners such as businesses, individuals, governments or government agencies
   From Project Managers, Payment Certifiers, Cost Consultants acting as agents for the Owner
   From General Contractors such as including third party payment issuers such as Textura
   From other Trade or Specialty Contractors
   Other source of revenue **[ANCHOR LAST**]

   [0-100]

[Change Orders, Upgrades or Extras]

5. In the last three years, approximately what percentage of your gross revenues was attributable to change orders, extras, or upgrades that were not included in the initial contract?

   [0- 100]

6. How often are disputes about 'extras', 'upgrades', or 'change orders' a reason cited for delaying payment to you, for work that has been done under the original contract? Would you say… (READ LIST)?

   Always
   Very often
   Sometimes
   Rarely
   Never

[Statutory Holdbacks]

7. The *Construction Lien Act* currently allows Owners and General Contractors to withhold 10% of monies owed for a period of 45 days. Based on your experience, in the last three years, on average, how long did you actually have to wait for these statutory holdback monies to be paid to you when there were no deficiencies claimed by the Owner and/or General Contractor? Please indicate the number of days on average. If you don't know please say so.

   [0-999]

8. In the last three years, when there were no deficiencies claimed by the Owner and/or General Contractor, how often did you have to wait *more than 90 days* to receive the 10% statutory holdback monies? Would you say… (READ LIST)?

   Always
   Very often
   Sometimes
   Rarely
   Never

9. In the last three years, how often did your contract provide for retainage that was *more* than the 10% permitted by the *Construction Lien Act*? Would you say… (READ LIST)?

   Always
   Very often
   Sometimes
   Rarely
   Never

[Contracts]

10. Over the last three years, approximately what percentage of your contracts were **unaltered,** standard CCA or CCDC contracts? If you don't know please say so.

    [0-100]

11. Over the past three years, approximately what percentage of your contracts contained… **[INSERT ITEM]**?

    A PAY-WHEN-PAID clause. This allows a General Contractor to delay payment to you if the owner delays payment to the General Contractor. However, if the Owner defaults, the General Contractor is still obliged to pay you.
    A PAY-IF-PAID clause. This is a contract provision that relieves the General Contractor from the obligation to pay you if the Owner defaults.
    A CONTINGENT PAYMENT clause that could have been either a PAY-WHEN-PAID or a PAY-IF-PAID clause.

    [0-100]

12. Over the last three years, approximately what percentage of your contracts provided for a standard payment time longer than 30 days from when an invoice was submitted?

    [0- 100]

13. Over the last three years, approximately what percentage of your contracts provided for payment of interest to you on late payments or overdue accounts?

    [0-100]

14. If you had contracts that provided for payment of interest to you on late payments, how often were these interest obligations actually paid if they were owed to you? Would you say… (READ LIST)?

    Always
    Very often
    Sometimes
    Rarely
    Never

15. Over the last three years, approximately what percentage of your contracts allowed you to stop work in the event of non-payment after a specified period of time?

    [0- 100]

16. Over the last three years, in what proportion of your contracts has a General Contractor refused a request for financial disclosure or refused or struck out a contract clause giving you a right to financial disclosure?

    [0- 100]

[Payment Periods and Payment Delays]

17. Excluding the statutory holdbacks permitted by the *Construction Lien Ac*t, over the last three years, on average how long did you wait to be paid, in number of days?

    [0-1095]

18. Excluding statutory holdbacks permitted by the *Construction Lien Ac*t, over the past three years, how often was it for an approved or certified payment to be delayed **beyond 30 days** when monies were owed to you by an Owner, Builder, General Contractor or Payment Agent? Would you say this is… (READ LIST)?

    Always
    Very often
    Sometimes
    Rarely
    Never

19. And how about **beyond 90 days**? Would you say … (READ LIST)? (AS NEEDED: Excluding statutory holdbacks permitted by the Construction Lien Act, over the past three years, how often was it for an

approved or certified payment to be delayed **beyond 90 days** when monies were owed to you by an Owner, Builder, General Contractor or Payment Agent

Always
Very often
Sometimes
Rarely
Never

20. What is the average age of your current account of receivables in number of days?

    [0-99]

21. Based on your experience, how would you judge the risk of payment ***delay*** from the following types of owners using a scale from 1 to 10 where 1 means never a risk of payment delay and 10 means always a risk of payment delay. How about… **[INSERT ITEM]**?

    [ITEM LIST=Q3 RESPONSES ONLY; MAINTAIN Q3 ORDER]
    Residential Builders or Developers for low-rise and high-rise buildings
    Private Individuals in the residential sector
    Commercial owners
    Industrial owners
    Public Private Partnerships or PPP
    Federal Government or federal agencies
    Provincial Government or provincial agencies
    Municipal Government or municipal agencies
    Boards of education
    Colleges or universities
    Hospitals
    Other not-for-profit organizations or institutional owners
    [Q3 'OTHER' RESPONSE]

    [1-10]

[ASK Q22 IF Q3=(5)'Public Private Partnerships or PPP' OR (6)'Federal Government or federal agencies' OR (7)'Provincial Government or provincial agencies' OR (8)'Municipal Government or municipal agencies' OR (9)'Boards of education' OR (10)'Colleges or universities' OR (11 'Hospitals' OR (12)'Other not-for-profit organizations or institutional owners'; OTHERWISE SKIP TO Q23]

22. Based on your experience doing **public sector projects**, how important do your rate the following causes of payment delay using a scale of 1 to 10 where 1 means not important at all and 10 means extremely important. How about… **[INSERT ITEM]**?

    [RANDOMIZE]
    Insolvency of General Contractor
    Public sector owner's financing problems
    General Contractor's financing problems

General Contractor having unexplained Delays
Disputes over alleged deficiencies
Payment certifier delays
Bureaucratic delays in approving payment
Delays caused by banks or other lenders

[1-10]

[ASK Q23 if Q3= (1)'Residential Builders or Developers for low-rise and high-rise buildings' OR (2)'Private Individuals in the residential sector' OR (3)'Commercial owners' OR (4)'Industrial owners' OR (5)'Public Private Partnerships or PPP'; OTHERWISE SKIP TO Q24]

23. Based on your experience doing **non-residential, private sector projects**, how important would you say that the following causes of payment delay are on a scale from 1 to 10 where 1 means not important at all and 10 means extremely important? How about… **[INSERT ITEM]**?

[RANDOMIZE]
Insolvency of Owner
Insolvency of General Contractor
Owner's financing problems
General Contractor's financing problems
General Contractor having unexplained Delays
Disputes over alleged deficiencies
Payment certifier delays
Delays caused by banks or other lenders

[1-10]

[ASK Q24 IF Q3 = (1)'Residential Builders or Developers for low-rise and high-rise buildings' OR (2)'Private Individuals in the residential sector'; OTHERWISE SKIP TO Q25]

24. Based on your experience doing **residential projects**, how important would you say the following causes of payment delay are on a scale from 1 to 10 where 1 means not important at all and 10 means extremely important? How about… **[INSERT ITEM]**?

[RANDOMIZE]
Insolvency of Owner or Builder
Insolvency of General Contractor
Owner or Builder's financing problems
Owner or Builder having unexplained delays
General Contractor's financing problems
General Contractor having unexplained delays
Disputes over alleged deficiencies
Payment certifier delays
Delays caused by bank or other lenders
Delays in project closing

[1-10]

25. Over the last three years, if you had a deficiency dispute with an Owner, Builder or General Contractor, how much money, if any, was withheld? Would you say that… (READ LIST)?

    No money was withheld in the past three years
    Payment was withheld only for the value of the disputed work
    Payment was withheld for more than the value of the disputed work, but less than the full amount due
    All payment due was withheld

[Impact of Payment Delays]

26. Over the past three years, has your business ever been forced to lay off workers as a result of payment delays?

    Yes
    No

27. Over the past three years, have you ever been unable to take on more work because of payment delays?

    Yes
    No

28. Over the past three years, have you avoided or delayed investing in new machinery or equipment because of payment delays?

    Yes
    No

29. Over the past three years, has your business ever declined to bid on any of the following types of projects because of the General Contractor, Owner, or Builder's reputation for late payment? How about… (READ LIST, GET A Y/N AFTER EACH; ACCEPT ALL MENTIONS)?

    [ITEM LIST=Q3 RESPONSES ONLY; MAINTAIN Q3 ORDER; MULTIPUNCH]
    Residential Builders or Developers for low-rise and high-rise buildings
    Private Individuals in the residential sector
    Commercial owners
    Industrial owners
    Public Private Partnerships or PPP
    Federal Government or federal agencies
    Provincial Government or provincial agencies

Municipal Government or municipal agencies
Boards of education
Colleges or universities
Hospitals
Other not-for-profit organizations or institutional owners
[Q3 'OTHER' RESPONSE]
(DO NOT READ) None **[ANCHOR; MUTUALLY EXCLUSIVE]**

30. Over the past three years, have you ever added an additional contingency to your bid because of an Owner, Builder or General Contractor's reputation for late payment?

    Yes
    No

31. Over the past three years, have payment delays by Owners, Builders or General Contractors ever forced you to extend your line of credit or draw on cash reserves?

    Yes
    No

32. Over the past three years, have payment delays by Owners, Builders or General Contractors ever forced you to delay any of the following types of payments or remittances? How about… (READ LIST, GET A Y/N AFTER EACH; ACCEPT ALL MENTIONS)?

    [RANDOMIZE; MULTIPUNCH]
    Hourly payroll
    Salary payroll
    CRA (Canadian Revenue Agency) Source Deductions
    HST to the CRA (Canadian Revenue Agency)
    Remittances to employee trust funds, pension plans or group insurers
    Equipment Lease or Rental Payments
    Banks
    Suppliers
    Sub-Trade Contractors
    (DO NOT READ) None of the above **[ANCHOR LAST; MUTUALLY EXCLUSIVE]**

33. Did your business ever face a threat of insolvency as a result of payment delays?

    Yes
    No

[Liens]

34. Over the past three years have you ever registered a claim for lien **prior** to substantial performance being published?

Yes
No

35. Over the past three years have you ever registered a claim for lien **subsequent** to substantial performance being published?

Yes
No

36. Over the past three years have you ever initiated legal proceedings in respect of a claim for lien you had registered?

Yes
No

[If Q34= (1)'Yes' OR Q35=(1)'Yes' OR Q36= (1)'Yes' ASK Q37; OTHERWISE SKIP TO Q42]

37. Approximately how much in legal costs did you incur to file and pursue lien claims in the past 3 years?

$**[0- 9999999]**

38. When you registered your lien claim or initiated a legal proceeding, did the Owner or General Contractor vacate your lien by posting security, often called 'bonding off' the lien?

Yes
No

39. In the number of month, what was the **shortest** time period you experienced for satisfaction of a lien claim?

[0- 99]

40. In the number of month, what was the **longest** time period you experienced for satisfaction of a lien claim? respond in number of months

[0-99]

41. What percentage of your lien claim(s) did you ultimately receive?

[0-100]

42. How often do you use a lien system?

Always
Very often

Sometimes
Rarely
Never

[IF Q42= (3)'Sometimes' OR (4)'Rarely' OR (5)' Never' ASK Q43; OTHERWISE SKIP TO Q44]

43. Why would you say that you **[INSERT RESPONSE FROM Q42]** use the lien system? (DO NOT READ LIST, ACCEPT FIRST MENTION) (Probe: Why would you say you don't use the lien system always or more often)

[SINGLE PUNCH]
My business had no need for liens to secure payment
The lien process is too costly
The lien process takes too long
The lien process is too complex
Payout rates (i.e., cents on the dollar) are too low
I fear that that some Owners/Builders will blacklist my company if I register a lien
I fear that some General Contractors will blacklist my company if I register a lien
I believed I could obtain settlement without filing a lien claim
Liens do not work in low-rise residential construction
Liens do not work in condominium construction
Liens do not work on government (crown) projects
My lien rights usually expire before I realize the need make a claim
Other (Specify) **[SPECIFY]**
Nothing

44. What would you say is your view of the current lien system? (PROBE ONCE, CLARIFY VAGUE RESPONSE; PROBE WITH: "Do you have a positive or negative view and why?")

[OPEN-END]

[Surety Bonding]

45. In the last three years, how often were you required to post a surety bond for **labour and materials**? Would you say… (READ LIST)?

Always
Very often
Sometimes
Rarely
Never

46. In the last three years, how often are you required to post a surety bond for **performance**? Would you say… (READ LIST)?

Always
Very often
Sometimes

Rarely
Never

47. In the last three years, have you ever made a claim against a labour and materials surety bond?

Yes
No

[IF Q47=NO/DK/REF SKIP TO Q52; OTHERWISE CONTINUE]

48. What was the **shortest** time period you experienced for satisfaction of a surety bond claim in months?

[0-99]

49. What was the **longest** time period you experienced for satisfaction of a surety bond claim in months?

[0-99]

50. What percentage of your surety bond claim(s) did you ultimately receive?

[0-99]

51. What is your view of surety bonding? (PROBE ONCE, CLARIFY VAGUE RESPONSE; PROBE WITH: "Do you have a positive or negative view and why?")

[OPEN-END]

52. Which construction associations are you a member of? (DO NOT READ LIST; ACCEPT ALL MENTIONS)

[MULTIPUNCH]
Acoustical Association Ontario
Architectural Glass and Metal Contractors Association
Association of Millwrighting Contractors of Ontario
Canadian Automatic Sprinkler Association
Canadian Concrete Masonry Producers Association
Canadian Institute of Steel Construction - Ontario Region
Concrete Forming Association of Ontario
Council of Ontario Construction Associations
Crane Rental Association of Ontario
Electrical Construction Association of Hamilton
Electrical Contractors Association of Ontario
Electrical Contractors Association – Quinte-St. Lawrence
Greater Toronto Electrical Contractors Association
Independent Plumbing & Heating Contractors Association

Independent Unionized Landscape Contractors Association
Interior Systems Contractors Association of Ontario
Masonry Contractors' Association of Toronto
Mechanical Contractors Association of Ontario
Ontario Association of Demolition Contractors
Ontario Concrete & Drain Contractors Association
Ontario Erectors Association
Ontario Glass & Metal Association
Ontario Masonry Contractors Association
Ontario Sheet Metal Contractors Association
Residential Siding Contractors Association of Greater Toronto
Residential Carpentry Contactors Association Of Greater Toronto
Residential Tile Contractors Association
Ontario Formwork Association
Ontario Painting Contractors Association
Residential Low Rise Forming Contractors Association of Metro Toronto and Vicinity
Toronto & District - Carpentry Contractors Association
Trim Association of Ontario
Other (Specify) **[SPECIFY]**
None of the Above **[MUTUALLY EXCLUSIVE]**

53. Finally, in the last three years, on average what was the annual value of your gross revenues in Ontario? Please stop me when I reach your category. (READ LIST AS NEEDED)

    Less than $500,000
    More than $500,000, but less than $1.0 million
    More than $1.0 million, but less than $2.0 million
    More than $2.0 million, but less than $5.0 million
    More than $5.0 million, but less than $10.0 million
    More than $10.0 million, but less than $20.0 million
    More than $20.0 million

Those are all of the questions I have. On behalf of Ipsos and myself, have a pleasant day/evening.

Appendix B:

Ipsos Reid: Survey Methodology

To:	Sandra Skivsky Director, Canada Masonry Centre
Cc:	John O'Grady, Partner, Prism Economics and Analysis
Date:	October 16, 2015
From:	Martin Hrobsky, Ipsos-Reid Public Affairs
Subject:	Prompt Payment Ontario Survey Methodology

Ipsos Reid was commissioned by Prompt Payment Ontario in conjunction with the work of Prism Economics and Analysis to conduct a survey of trade contractors in Ontario about issues associated with late payment.

The survey was conducted via both a telephone-based (CATI) methodology and an online methodology. Telephone interviews were conducted by Ipsos Reid and the online survey was hosted by Ipsos Reid.

Interviewing took place between August 17th and October 2nd, 2015.

The table below detailed the breakdown of interviews that were conducted by telephone and online.

Breakdown of Interviews

	Sample Size
Telephone interviews	n=272
Online interviews	n=263
TOTAL	n=535

Sample for the telephone survey was provided by Prompt Payment and additional sample was sourced by Ipsos Reid according to NASIC codes targeting contractors in Ontario. For the online survey an open-link was provided to respondents by Prompt Payment Ontario and other contractor associations.