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OASBO is an organization of professionals that works collaboratively to support learning by developing and promoting excellence in business practices

L'OASBO est un regroupement de professionnelles et professionnels oeuvrant collectivement au soutien de l'apprentissage par le développement et la promotion de l'excellence en affaires.

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May 13, 2015

Borden Ladner Gervais LLP
Scotia Plaza, 40 King St. W.
Toronto, ON
M5H 3Y4
Attention: Mr. R. Bruce Reynolds

Re: Expert Review of the Construction Lien Act

Dear Mr. Reynolds:

Thank you for inviting the Ontario Association of School Business Officials to participate in the Provincial review of the Construction Lien Act.

The topics of timely payments made under construction contracts, along with alternative dispute resolution methodologies are important in the business of school construction projects. As such, this matter has been researched and a report has been prepared that provides a number of recommendations. This document has been prepared by Glenn Clarke, who represented Ontario's school boards associations last year in raising concerns about the proposed Prompt Payment Act.

On behalf of the provincial school board associations, we hope that the Construction Lien Act expert review group will find the background information and recommendations in the report beneficial in making positive changes for the construction industry's processes.

Should you have any questions or comments on the enclosed document, please send them to my attention, or directly to Glenn Clarke at gclarke@smcdsb.on.ca

Sincerely,

Bill Blackie
Executive Director
Ontario Association of School Business Officials

Encl: 1

cc: Gabriel F. Sékaly, ADM –Ministry of Education

Ontario School Boards Associations
Review of the Construction Lien Act
as it relates to
Payment Issues within the Construction Sector

May 13, 2015

Prepared by
Glenn A. Clarke, P.Eng, PMP

representing:

Simcoe Muskoka Catholic District School Board
Ontario Association of School Business Officials
Ontario Catholic School Trustees' Association
Ontario Public School Boards' Association
Association des conseils scolaires des écoles publiques de l'Ontario
Association franco-ontarienne des conseils scolaires catholiques
(collectively, the Ontario School Boards Associations -OSBAs)

Executive Summary:

Payment problems within the provincial construction industry were brought to the forefront last year and are now being considered with an expert review of the Construction Lien Act (CLA). The challenges with these payment matters impacts Ontario's school boards with the major school construction programs, and this submission on behalf of the OSBAs provides an analysis and important recommendations for improvement within the construction industry.

Bill 69 -2013 –*An Act respecting payments made under contracts and subcontracts in the construction industry*, also referred to as the Prompt Payment Act (PPA), [1] was initiated by the National Trade Contractors Coalition of Canada (NTCCC) and the Ontario General Contractors Association (OGCA) to improve the prompt payment processes of contractors and subcontractors.

The core concern from construction contractors and subcontractors giving rise to the PPA was the timeliness of monthly progress draw and holdback release payments. The OSBAs feel that the structure of the PPA presents many potential problems for construction projects. Details of the concerns have been previously outlined in two articles in particular: an article published in the Fall/Winter 2013 issue of The Advocate on behalf of the Ontario Association of School Business Officials [2] and an OSBA report to Provincial MPPs entitled, "*Ontario's Bill 69*, *Prompt*

Payment Act, *2013 -A Failed Framework*" dated March 4, 2014.[3] The concerns were also presented by OSBA representatives at the Provincial Standing Committee on the PPA on March 19, 2014.

One of the key shortcomings with the PPA was that it did not have input or consultation with a significant party in the construction pyramid: the construction project owners. As a result, sections of the PPA were included without apparent regard for the significant problems that the PPA scheme would create for project owners, including added management and construction costs along with project delays.

Rather than again itemizing the concerns with and limitations of the PPA, the objective of this report is to examine the issue of how timely payments to contractors may reasonably be achieved without causing undue impact on project owners and project completion. Consideration is given in this report to the CLA review mandate of managing the financial risks fairly amongst the key parties, and finding ways to have companies pay for services and supplies on time.

This analysis of and commentary on the CLA is submitted on behalf of the OSBAs for consideration as part of the Ministry of the Attorney General's and Ministry of Economic Development, Employment and Infrastructure's 2015 expert review of the CLA.

Introduction:

Ontario's school board sector is a significant player in the province's construction industry. Over the past 10 years, more than $12.2 billion of school construction projects have been completed in Ontario. We agree that achieving project success in this area requires that invoices for properly completed and approved school construction work are paid in a timely manner. This good practice enables project funds to flow to the contractor, subcontractors and suppliers, and by doing so creates and maintains positive working relationships that are an essential component of good construction practices.

Timely payment is an instrumental method to achieving success on any construction project. Since, for various reasons, timely payment does not always occur, the PPA was initiated by stakeholders in the construction industry.

The necessary legislated terms for construction contract payments are certainly best integrated and framed within one piece of provincial legislation and it is encouraging that the Province recognized the importance of accomplishing this within the CLA. It is equally important to ensure that any proposed revisions to the CLA consider the implications to the entire industry sector and all relevant

stakeholders, and not solely focus on the challenges faced by construction contractors and subcontractors. The importance of understanding implications for the broad sector was emphasized by a review of the PPA by a prominent law firm, in which the following was stated, "In setting out to protect contractors and subcontractors, it is not clear that the full impact of the proposed law has been fully considered: some of the unintended consequences of the cure may be far worse for them than the disease." [4]

One key factor that needs to be assessed in the CLA review is a determination of the precise concerns regarding the timely payments for construction work. According to a position paper issued by the National Trade Contractors Coalition of Canada (NTCCC), "*Prompt Payment Legislation –A Position Paper*",[5] these concerns are primarily regarding payments by general contractors to their subcontractors and suppliers. According to the NTCCC, issues of delayed payment are "not primarily a problem associated with general contractors not being paid by owners". The paper comments further that the issues are "with payment not being passed on to trade contractors promptly", that being payment from the general contractors to their subcontractors.

Another prime concern with situations involving slow payment to subcontractors originates within the language of construction contracts between general contractors and subcontractors. This issue of non-payment to trades has been noted by MPP Del Duca (who was the proponent of the Private Member's Bill 69 - 2013) that, "There are often 'Pay when paid' or 'Pay if paid' clauses within construction industry contracts that allow contractors to delay or deny payment to subcontractors." [6] These contractual terms specifically involve two parties in the structure: the general contractor and its subcontractors. They do not pertain to the owner.

In the United States, a majority of states have differing variations of prompt payment legislation, which have been prepared for the protection of subcontractors in their relationship with general contractors, but not to redress issue with payments by owners.[7] The core non-payment problems in the industry are within the construction groups in the pyramid below project owners and general contractors. Comparisons between U.S. legislation and the PPA initiative in Ontario also need to bear in mind that, in many U.S. states legislation allows, or does not prevent, owners from requiring contractors and subcontractors to release or waive their builders and mechanics lien rights, which is not permissible under the CLA.

In this CLA review, our view is that the cause of the payment delays needs to be identified in consultation with industry sectors and stakeholders. Once identified, appropriate mechanisms to address the concerns may then be considered as part of the CLA redesign, or they could be considered in various ways outside of the CLA. An analysis of the current construction payment issues, together with recommendations for consideration have been developed from the perspective of the OSBAs, based on currently available information. This report, which

summarizes the OSBAs comments and considerations, has been prepared to assist in the Province's 2015 expert CLA Review.

Analysis:

Payment for construction work can be delayed, or perceived to be delayed, throughout the many phases of a construction project. These apparent delays occur for a myriad of reasons. Delays or misunderstanding in payment dates may occur as a result of contractually defined terms and language, or from the consultant's assessment of the state of completion being at odds with the views of the general contractor or its trades, or, in some cases, when parties are not treating others fairly. Any solution to address the sources of delay need to consider all parties' interests, and reflect a balanced approach that does not favour or burden one group over another. Analysis of some of the reasons for delayed payments and suggestions for improvement are outlined below.

Payment Terms. Payment terms in construction contracts are often a factor. Depending on the contract used and the owner, payment periods can range from the defined cumulative 30-day period in the Canadian Construction Documents Committee's (CCDC) -2 Stipulated Price Contract -2008 [8] to a 40-day period (refer to Supplementary Conditions supported by the Ontario Association of School Business Officials [9]), or longer. In the case of the OASB conditions, the 40-day time period is required due to the extensive reviews by the several architectural and engineering consultants, by the owner's project team followed by senior level approvals and then payment processing by accounting staffs. Industry payment periods do vary widely; however, a general review indicates an average 30-day payment period, including Canadian Treasury Board contracts, although "a trend toward longer payment periods is apparent." [10] Having shorter time periods for processing payments have resulted in late payments and subsequent contractual issues, such as added interest charges and disputes.

Deficient Work Improperly Categorized as Complete. Deficient work billed by the contractor as complete can be another reason for an owner not making full payment. Experience has shown that there is a need to retain sufficient funds for deficient work as a motivator to encourage the proper completion of work. Notably, the CLA currently recognizes the right of set-off in CLA s.12. Additionally, there is a premium cost associated with having a separate finishing contractor hired to complete work that the original contractor has failed to complete. Although performance bonds are supposed to respond to fund unfinished work or complete it through other means, bonds are often not a viable solution. In Canada, surety bonding companies often support and defend their Principal absent insolvency. It is typically more prudent for an owner to retain sufficient funds for the completion of deficiencies than to expect the surety to respond in a timely manner.

Incomplete Progress Draws. Contracts define the terms for submitting routine progress draws, which can include requiring certain deliverables as a prerequisite

to payment, such as proper Statutory Declarations, schedules and WSIB Clearance Certificates. An incomplete draw can result in a waiting period by the owner pending receipt of required and acceptable documentation supporting the payment request. There is, as a result, a resulting delay in payments from the contractor's perspective, which may not be a delay under the contract terms, but in any event is not caused by the owner. Downstream from the general contractor, trades will often be oblivious to the reason for the delay and may erroneously reach the conclusion that the owner is the party delaying payment. Applications for Substantial Performance often have a contractually prescribed list of deliverables to be provided by the contractor (i.e. inspection reports, as-built drawings, equipment manuals, etc.). The lack of a complete package of contractor deliverables can also result in "delays".

Unfair Payment Practices. The contract work breakdown structure can also be front ended whereby general contractors and subcontractors performing site works and the basic building structure are paid first, leaving finishing subcontractors holding the empty purse towards the end of the contract. Then there are situations where contractors and subcontractors are not treated fairly and payments are not made, either due to cash flow or other reasons. Schools teach and practice fair play. These lessons start in kindergarten; however, within the construction sector fair play cannot be completely enforced.

Solutions:

There are several methods that can be considered to help address the construction industry's problems with late or delayed payments. Detailed terms in legislation or construction contracts can be prepared to define and enforce requirements; however, it is likely better to enact positive up-front legislative methods rather than negative reactionary enforcement, or, in short, adopting 'the carrot versus the stick' strategy. Positive strategies should also be considered to assist with the timely payments for properly completed construction work.

Phillip King, Chief Executive of the UK Institute of Credit Management, stated that "Late payment is a complicated issue, and one that cannot be resolved by fines and arbitrary payment terms that fail to recognize that different business sectors operate in different ways." King further notes, "It is not 'fines' that we need, but rather a change in culture and attitude to payment. " [11]

1. Self- Policing. Contractors and subcontractors bid on projects on their volition. They are not obliged to take on work with parties that have poor reputations for delayed payment or non-payment for construction work. Taking on work with reputable owners is a better practice which allows for better payment timing. Contractors and subcontractors can self-regulate bad practices by not

bidding or by factoring in premiums in bids to offset the financial costs and risks of late payments.

The use of 'Pay when paid' or 'Pay if paid' clauses in construction contracts between general contractors and subcontractors is also a cause of delayed payments. To address this issue, contractors could voluntarily agree not to employ these terms in their contracts. Encouragement from construction associations to have these terms removed would also assist in dealing with late payments.

Construction associations could also play an active role with their membership. Payment problems could be brought to the attention of the association for review and possible resolution through non-binding measures such as mediation. Internal disciplinary measures could be taken by the association against the member that is not acting responsibly and in accordance with contract terms. This dispute resolution method could result in a faster payment turnaround and would be less expensive than proceeding with litigation.

A self-policing concept to support prompt payment may be somewhat idealistic but could result in at least a partial resolution of concerns within the industry.

Recommendation:
The construction industry should be encouraged to implement procedures on its own to allow for improved payment timelines.

2. Prompt Payment Code/Protocol. Another 'carrot' approach to support prompt payment is to set up a "Prompt Payment Code." A Prompt Payment Code would be a voluntary and/or non-binding code of conduct designed to develop improved ethics between organizations, their suppliers and contractors. It is not a punitive process, but rather a positive impetus to encourage the three primary participants in the construction process to work as a team in building a successful project. The endorsement of prompt payment practices fosters good sustainable business relationships, with the goal being to change the payment culture.

The United Kingdom put in place their Prompt Payment Code in 2008 with an objective of "encouraging and promoting best practice between organizations and their suppliers. Signatories to the Code commit to paying their suppliers within clearly defined terms, and commit also to ensuring there is a proper process for dealing with any issues that may arise. This means that suppliers can build stronger relationships with their customers," advised Matthew Hancock MP, UK Minister of State, Skills and Enterprise. [12]

An Australian review of prompt payment issues discussed the proposed implementation of a Prompt Payment Protocol. In their analysis they referenced the United Kingdom's Prompt Payment Code that was introduced to improve trade

payments stating "Reports from the UK suggest the Prompt Payment Code has had a positive effect on payment times in the four years since its launch, with signatories now paying on average 12 days quicker than in 2008." The author noted that there developed a "real shift in payment culture" through this process.[13]

Northern Ireland has similar procedures to encourage prompt payment. Their Ministry for Finance and Personnel has put in place a "Fair Payment Charter, which is a non-binding agreement included in all public construction contracts". [14] Their Charter is tied in with Key Performance Indicators for payment to subcontractors.

Recommendation:
Consideration should be given to legislating a voluntary and/or non-binding Prompt Payment Code or Protocol to improve the construction payment timelines.

3. Construction contracts. The terminology defining contractual payment obligations is often detailed in the contract itself, such as in the CCDC 2 -2008 Stipulated Price Construction Contract at Part 5 -Payment and more specifically at sections GC 5.2 Applications for Progress Payment and GC 5.3 Progress Payment. These are often amended by Supplementary Conditions to reflect owners' needs. As noted earlier in this report, the contractual timelines for payment vary significantly with a number of agreements using the 30-day period. For various reasons, owners may adjust this time period to reflect their processing and verification obligations. Different owners have different requirements and realistic processing timelines. For this reason, the payment timelines should continue to be defined within the construction contract, rather than being prescribed through legislation. Where financing costs arise from longer periods in retaining funds, then the contractors have the opportunity to reflect such costs and account for them in their bids.

Recommendation:
The defined timelines for payments should remain part of the construction contract language and not form part of defined terms in the CLA.

4. Construction Lien Act. There are a number of provisions that could be incorporated within the CLA to alleviate some of the payment concerns raised by the industry. As well, there are other areas of the CLA that could be revised to update the legislation. However, a legislated solution runs the risk of interfering with commercial freedom of contract by imposing a "one size fits most" approach, which may not actually align with party and project realities on all construction projects. Commentary on these points are noted in the following section.

4.1 CLA –'Pay when Paid' clauses. The problems associated with the 'Pay when Paid' or 'Pay if Paid' terms in the contractors' contracts, as well as a voluntary solution, have been discussed previously in this report. As this language limits the

flow of funds from contractor to subcontractors they should be eliminated, if not within the industry, then by legislation as has been done by other jurisdictions.

Australia's New South Wales Building and Construction Industry Security of Payment Act states: "A pay when paid provision of a construction contract has no effect in relation to any payment for construction work carried out or undertaken to be carried out (or for related goods and services supplied or undertaken to be supplied) under the contract." [15]

Similarly, New Zealand's Construction Contracts Act prohibits conditional payment provisions in construction contracts which includes a contract "that is commonly referred to in the construction industry as a 'pay when paid' or 'pay if paid' clause of a construction contract" [16]

Recommendation:
The problem with the 'pay when paid' or 'pay if paid' clauses could be solved effectively and positively with the elimination of these terms in the contracts. It could be done voluntarily by the industry, or if required it could be a legislated measure via the CLA Review.

4.2 CLA –Holdback Release/Payment Timelines. The timelines for the payment of holdback has been at issue with other CLA reviews in Ontario and other provinces. CLA S.26 and 27 reference the payment of basic holdback and finishing holdback, but do not set out when payment is to be made. The terminology used regarding payment of holdback is permissive, stating: "Payment of Basic Holdback. – Each payer upon the contract or subcontract may, without jeopardy, make payment of the holdback,…" Conditions relevant to the timing of payments are usually defined in the construction contract (e.g., CCDC 2 contract or Supplementary Conditions), and it is recommended that this same standard apply for holdback release. It will provide contractors with a defined time period for the owners to make the payment and, at the same time, allow the owner sufficient time to complete lien verifications, review holdback release requests, and effect payment.

Recommendation:
Define payment timelines in the CLA for holdback release as being the contractual terms for the regular contract progress draws following the expiry of the applicable lien period.

4.3 CLA -Flow of Project Funds from the general contractor to the subcontractors. Currently, the ability to ensure that construction funds flow properly from the owner through the contractor to the subcontractor is limited. There is no language in the CLA addressing the need for a contractor to make payments to subcontractors. CLA S.31 (5), Declaration of Last Supply, references a declaration regarding the last date on which services or materials were provided

and that no further services will be supplied. This section does not deal with the matter of the proper flow of payments.

Measures have been considered in this regard by the Canadian Construction Documents Committee (CCDC) with their Statutory Declaration of Progress Payment Distribution by Contractor form CCDC 9A -2001. Although well meaning in intent, there are problems with the CCDC 9A form, primarily with the ambiguity of the terms. In the CCDC Declaration, the contractor declares that payments are made in full "except for ,…, :

2) payments deferred by agreement, or
3) amounts withheld by reason of legitimate dispute..." [17]

General contractors rely upon the above listed CCDC 9A terms as rationale for not making payments to their subcontractors. The result is that the Statutory Declaration does not provide the necessary protection to subcontractors.

There are a number of measures that could be considered to assist in addressing these problems:

- The language in the Statutory Declaration could be made more precise to better define a required level of commitment to ensure that funds have been paid by the contractor to the subcontractors;
- The work breakdown and monthly payment progress draws could be shared between the general contractors and their subcontractors to show the actual contractual payment structure between the general contractor and the subcontractors, and sums being claimed and then paid by the owner. This would allow the subcontractors to note whether they are being paid by the general contractor as certified on the progress draws;
- The monthly payment progress draws could be linked in with the CCDC 9A Statutory Declaration showing all parties the status of the payments based on the payment structure;
- General contractors could be obliged to identify as an attachment to the CCDC 9A Statutory Declaration what funds are being retained from payment to the subcontractors with an explanation why the funds were being retained to support the CCDC 9A sections 2) and 3); and
- Alternatively, legislation could impose strict terms for non-payment. For example, New South Wales has penalties up to three months imprisonment by a head contractor for serving "a payment claim on the principal accompanied by a supporting statement knowing that the statement is false or misleading." [18]

Transparency between the owner, general contractor and subcontractors would go a long way in identifying the structure of payments and why, and by whom, payments are not being made.

Recommendation:
To better confirm the flow of funds from a contractor to its subcontractor, the certification language for subcontracts and documents should be better defined and made transparent. This could be coordinated in part through the CCDC organization, or the terms could be added as amendments to the CLA.

4.4 CLA -Preservation Period. The timelines for making payments from an owner to a contractor, and then from the contractor to a subcontractor extend well into the 45 lien period. The result is a negative impact on subcontractors time to preserve their lien rights where payment is not forthcoming. To address this issue, British Columbia has a longer lien period extending to 55 days after certification. Nova Scotia also changed their lien period from 45 days to 60 days in 2004 for this reason.

Recommendation:
To allow contractors more time to receive payments and subcontractors more time to determine if exercising the option to register a lien within the allowed time period is necessary. It is recommended that the period to preserve a lien be extended from the current defined 45 days to 60 days.

4.5 CLA -Imposition of Penalties. Switching from the 'carrot' to the 'stick' approach in problem solving, the question is raised: should stronger language be applied to further deter the inappropriate use of trust funds? Defined penalties are included in other provincial lien acts and vary from added interest charges to fines and imprisonment.

The Nova Scotia Builders' Lien Act states that

> "Anyone retaining a holdback who does not make payment within sixty-five days immediately following substantial performance as permitted by subsection (3) or subsection (7) is liable to the person entitled to such payment for interest on the amount which should have been paid at the prime rate of interest then commonly charged by chartered banks plus two per cent unless there has been agreement on some other rate of interest." [19]

British Columbia sets out a more onerous consequence. The B.C. Builders Lien Act states

> " (1) A contractor or subcontractor commits an offence if that person
> (a) appropriates or converts any part of a fund in contravention of section 10 [Contract money received constitutes trust fund], or ,…,
> (2) A person who commits an offence under subsection (1) (a) is liable to a fine of not more than $10,000 or to imprisonment for a term of not more than 2 years, or both.
> (3) If a contractor or subcontractor is a corporation, a director or officer of the corporation who knowingly assents to or acquiesces in an offence under

subsection (1) (a) by the corporation commits the offence in addition to the corporation. " [20]

Imposing strict punishment could be considered within a revised CLA, but may be redundant given other measures, such as under the CLA S.13 -Liability for breach of trust by corporation, and provisions in the Criminal Code that "establishes the conversion of trust funds, with an intent to defraud, as an indictable offence punishable by imprisonment for up to 14 years".[21]

Other jurisdictions have implemented softer measures for payment infractions. Northern Ireland has imposed other penalties on contractors with late payments. Their Central Procurement Directorate has introduced in their document, Prompt Payments: Developments and Best Practice, "the issuing of Certificates of Unsatisfactory Performance, which excludes contractors from public contracts for one year." [22]

There can be a downside and other costs and consequences associated with implementing strict payment terms within legislation. These costs and consequences can include negative impacts on relationships between the parties or additional financial costs of litigation. "The UK experience has shown that while these [payment term] provisions are mandated by legislation, small businesses remain very reluctant to make use of them for fear of damaging their relationship, coupled with the cost of taking a debtor to court. Most supplier relationships are long standing and resorting to legal action is often not a practical option except as a final alternative." [23]

Recommendation:
There is a full spectrum of penalties that could be imposed for late payments, and it is suggested that these strategies be evaluated with their outcomes being weighed and balanced as part of the CLA Review.

5. Other Proposals for Improvement with the CLA. In addition to prompt payment issues, which are a prime mandate for the CLA Review, there are other opportunities for effecting positive changes with the legislation. These considerations include the following:

5.1 Declaration of Substantial Performance. Public notification of Substantial Performance is defined in the CLA as "The contractor shall publish a copy of the certificate once in a construction trade newspaper." [24] This notification process should be revised. Over 15 years ago, an electronic registry process was put in place for registering liens on title. Other lien legislation allow for other notification processes. For example, Alberta's Builders' Lien Act provides for the posting of Substantial Performance on the job site with no other posting of notice being required. [25] BC's Builders Lien Act states that the certificate must be delivered

to various parties to the contract and posted in a prominent place on the improvement. [26]

Recommendation:
The CLA Review should consider an electronic notice board or similar method for the public notification of a project's Substantial Performance.

5.2 Delivery of Documents. The CLA references only certified or registered mail as a method of communicating all documents and notices under this Act. [27] To reflect current technologies, other communications including electronic document transfers should be considered.

Recommendation:
Consideration should be given to electronic document transfers for CLA communications.

Conclusions:

The timely payment for properly completed work, as defined within construction contract documentation, is an important part of a successful construction project; however, payment problems exist within the industry. A number of approaches can be considered to effect improvement in this regard, and these methodologies have been presented in this report from the viewpoint of Ontario School Board Associations, for consideration as part of the expert review of Ontario's Construction Lien Act.

Footnotes:

1. Ontario's Bill 69 -2013 –An Act respecting payments made under contracts and subcontracts in the construction industry, also referred to as the Prompt Payment Act [PPA]

2. Glenn Clarke, P.Eng, "Prompt Payment Act -2013: Addressing the Elephant in the Room". Ontario Assocation of School Business Officials. The Advocate. Fall/Winter 2013, p.11 http://t.co/hmcfHAiEFD

3. Glenn Clarke, P.Eng, Ontario's Bill 69, Prompt Payment Act, 2013 -A Failed Framework. March 4, 2014. http://www.opsba.org/index.php?q=system/files/OASBOReport_Bill69_Mar14.pdf

4. Edward G. Betts, Gowlings Construction Law Newsletter, "Bill 69, The *Prompt Payment Act* – The Good, The Bad and the Ugly", December 2013. www.gowlings.com /Knowledge Centre/article.asp?pubID=3146.

5 National Trade Contractors Coalition of Canada, "Prompt Payment Legislation –A position paper prepared by the National Trade Contractors Coalition of Canada". May 2009.

6 Antonella Artuso, "Wynne Attends Fundraiser Promoting Construction Industry Bill", Toronto Sun. On-line edition October 17, 2013.

7 Edward H. Tricker et al, "Survey of Prompt Pay Statutes", Journal of the American College of Construction Lawyers, April 2010.

8. Canadian Construction Documents Committee's [CCDC] -2 Stipulated Price Contract -2008

9. Ontario Association of School Business Officials –Operations and Maintenance Committee (OMC), CCDC-2 2008 Supplementary Conditions issued 2011

10. Journal of CCCL 2013, Ontario's Construction Lien Act S5.1 p. 163

11 Philip King, CEO, "Payment debate must not descend into political point scoring", Institute of Credit Management (ICM), United Kingdom. Press release, October 14, 2013. [The ICM oversees the Prompt Payment Code in the UK].

12. M. Hancock MP, UK Minister of State, Skills and Enterprise, Prompt Payment Code website www.promptpaymentcode.org.uk January 20, 2014

13. Australian Government. Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education. Australian Prompt Payment Protocol Discussion Paper, July 2013 p.17

14. Northern Ireland Assembly, Prompt Payments: Developments and Best Practice, Gareth Brown. May 22, 2013 S. 2.2

15. New South Wales Consolidated Acts –Building and Construction Industry Security of Payment Act 1999 –Section 12 (1)

16. New Zealand's Construction Contracts Act 2002, Part 2 Payments, S. 13

17. Canadian Construction Documents Committee's [CCDC] Statutory Declaration of Progress Payment Distribution by Contractor CCDC 9A -2001

18. New South Wales Building and Construction Industry Security of Payment Amendment Bill 2013, Section 13

19. Nova Scotia Builders' Lien Act S. (8)

20. British Columbia Builders Lien Act [SBC 1997] Chapter 45

21. Harvey J. Kirsh, Matthew R. Alter, Kirsh and Alter – A Guide to Construction Liens in Ontario [third edition], September 2011. Liability for breach of trust, P136.

22. Northern Ireland Assembly, Prompt Payments: Developments and Best Practice, Gareth Brown. May 22, 2013 S. 2.2

23. Australian Government. Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education. Australian Prompt Payment Protocol Discussion Paper, July 2013 p.26

24. CLA Part V. S.32.(1) 5.

25. Alberta's Builders' Lien Act S.20 (1)

26. BC Builders Lien Act S.7 (4)

27. CLA Part XII Miscellaneous Rules S.87 -How documents may be given.