December 9, 2015

R. Bruce Reynolds
Construction Lien Act Review
Borden Ladner Gervais
Scotia Plaza, 40 King St W
Toronto ON M5H 3Y4
Sent via email: cla-review@blg.com

Dear Mr. Reynolds;

On behalf of the Board of Trustees of the IBEW Local 353 Pension and Benefits plans, we are writing in support of the position advanced by Prompt Payment Ontario ("PPO"). We oversee the pension and benefits plans for approximately 11,500 members and retirees of the International Brotherhood of Electrical Workers (IBEW) Local 353. Our pension and benefits plans provide critical retirement income for electricians and day-to-day health care coverage for these members and their families. Remittances are made on behalf of these electricians by almost 500 electrical contractors, members of the Greater Toronto Electrical Contractors Association.

While we appreciate the intent to review the *Construction Lien Act,* the critical issue for our pension and benefit plans is prompt payment. The *Construction Lien Act* is costly, cumbersome and inaccessible to 80% of the construction industry (i.e. small and medium-sized companies consisting of 20 or fewer employees). It addresses non-payment rather than delinquent payment and the lien rights of many in the construction industry will expire long before they realize they will not get paid. Accordingly, we support PPO's recommendations for a new '*Construction Act*' to govern payments in the construction industry, comprised of four key features: security for payment; obligations for prompt payment and fair dealing; expeditious dispute resolution; and special provisions for P3 projects.

As you know, construction is a primary driver of the economy, providing for the employment of more than 436,000 Ontarians (6.4% of Ontario's workforce). In general, payment in the construction industry flows from owner/developers to general contractors to trades and sub-contractors in the form of a pyramid. These owner/developers have the most to gain financially from a development yet transfer most of the financial risks to those who can least afford it, the trade contractors. Often, trade contractors are made to wait periods of three to four months for payment after work has been completed. In fact, 90 days is typical and more the norm than the exception. On a construction site with 300 workers, typically more than 290 would be employed by various trade contractors; very few would be direct employees of the general contractor. Our members are rarely employed directly by general contractors and as such, payments to our pension and benefit plans are frequently delayed, potentially jeopardising benefits coverage for our members and their families.

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Delinquent payment in the construction industry is rampant and prompt payment legislation is therefore necessary to curb this practice. The detrimental effects of delinquent payment are many and include driving up the cost of construction as contractors factor the risk of delinquent payment into their bids; strains on cash flow, especially for small businesses that have to meet payroll, pay bills, taxes, WSIB premiums and other costs, forcing some into insolvency; lower employment figures as contractors must limit their payroll commitments to meet cash flow expectations; less investment in apprenticeships; less investment in new machinery, equipment and technology; and construction costs are driven up by a shrinking pool of qualified, reputable contractors who are able to bid on projects. On an industry wide basis, delinquent payment practices erode the level playing field as those who maintain honourable practices are put at a disadvantage.

Prompt payment legislation would mean that payment for work certified as being complete within 30 days. It would allow for progress payment so larger projects according to the achievement of milestones subject to certification that these milestones have been achieved; it would allow for interest and penalties to accumulate where payment within 30 days is not forthcoming; and it would allow for contractors to suspend work where payment is not forthcoming for unreasonable periods of time without the contractor being in breach of contract.

For pension and benefits plans like ours, delinquent payments cause increased costs for collections in addition to investment losses to the plans. Lost investment income is extremely difficult to recoup and as a result, the funded status of pension plans like ours continues to be fragile. Without timely remittance of contributions, our pension plan members risk a very real loss in terms of their pension entitlements and their RRSP entitlements as well. If the contributions are not in their accounts, they are not receiving credit nor earning interest on those amounts.

As fiduciaries, we make use of the limited avenues available to us: grievances, lien claims, etc. However, the cost of pursuing these avenues is a financial drain on our plans that limits the funds available for benefits. The impact of delinquent remittance of contributions ought not to be borne by plan members themselves when there is an opportunity for a legislated regime to ensure prompt payment.

On behalf of the Board of Trustees for the IBEW Local 353 Pension and Benefits plans, we respectfully request that your review recommend a new *Construction Act* that is premised on the prompt payment concept as submitted by PPO. Such legislation would go a long way towards correcting the current imbalance in the construction industry as it is allowed to operate at present.

Sincerely,

Steven Martin
Business Manager/Financial Secretary
IBEW Local 353

Robert O'Donnell
Executive Vice-President
Greater Toronto Electrical Contractors Association