



Office of the Legislative Counsel
Nova Scotia House of Assembly
1726 Hollis Street
Halifax, Nova Scotia B3J 2Y3

Attn: The Honourable Mark Furey
Attorney General and Minister of Justice

Re: Bill 119 - An Act to Amend Chapter 277 of the Revised Statutes, 1989, the Builders' Lien Act

We are writing on behalf of the Atlantic Chapter of the General Contractors Alliance of Canada (GCAC). The GCAC is a national organization made up of over 400 general contractors across Canada. As an organization, we promote and support open and fair payment and procurement practises in the construction industry including prompt payment and the modernization of provincial lien acts.

The GCAC is a strong supporter of initiatives to improve payment and dispute resolution regimes. We have first-hand experience with the modernization of Ontario's Construction Lien Act, now the Construction Act, as several of our members worked closely with the Attorney General's office, as well as the Lien Reform Act Committee chaired by Bruce Reynolds and Sharon Vogel to produce the new Act and the resulting Regulations. In addition, we are currently working with Minister Qualtrough's office on the review and creation of prompt payment legislation at the federal level.

We look forward to and welcome the opportunity to work with the Province of Nova Scotia to support its efforts in implementing Prompt Payment and Adjudication.

Our specific comments on Bill 119 are as follows:

1. **Timeframes:** We would encourage the Province to consider setting out in the Act itself, as opposed to the subsequent Regulations, the specific timelines for Prompt Payment, including invoices and notices. The Prompt Payment provisions are complex, and we are concerned that, by requiring the Act to be read in conjunction with the Regulations, readers and those subject to the legislation will struggle to understand their rights and obligations. Further, we note that the corresponding language from Section 6.5(7) of Ontario's *Construction Act* has been omitted from Bill 119, presumably on the basis that the same will be included in the Regulations. This provision clarifies the different timing for notices when a notice of non-payment is received from an owner or when the

contractor is providing an independent notice. We believe that this provision should be included in the Act for clarity whether or not the actual timeframes are included in the Act or prescribed.

2. **“Undertakings” to Refer a Matter to Adjudication:** The GCAC strongly opposes the approach taken under Section 4D(5)(a)(ii) of Bill 119 which requires a contractor to undertake to refer a matter to adjudication as part of a notice of non-payment. This approach was not recommended in the federal prompt payment process and is already under review to “fix” the new Ontario legislation. If a subcontractor disputes a notice of non-payment, a subcontractor may, at its complete discretion, commence an adjudication against a contractor. It is not appropriate, for example, to mandate adjudication where a payment reduction is agreed between the parties (for example, on account of deficient work) or the parties wish to resolve the matter amicably (for example, without incurring adjudication costs). In addition, if Prompt Payment comes in force under the Act prior to Adjudication or the establishment of an adjudication panel, a contractor would technically be unable to provide a valid notice of non-payment, not being able to refer to adjudication.
3. **Interest:** Interest under Section 4H of Bill 119 is *“the prime rate of interest then commonly charged by chartered banks plus two per cent.”* We would encourage the Province to consider aligning this provision with Nova Scotia’s Civil Procedure Rules to reduce confusion regarding what pre-judgement rate of interest applies in the event a matter under the Act is decided in Court. In the alternative, we are concerned that chartered banks have differing prime rates, making this provision unclear, and would suggest delegating the setting of interest to the Regulations.
4. **Regulations:** The GCAC supports Prompt Payment and a measured approach to the development and implementation of adjudication rules and procedures through the Regulations, provided that this process is transparent and is designed to support a broad array of industry. In this regard, we encourage the Province to establish a steering committee comprised of representatives from various stakeholder groups, including government and institutional owners, private developers, homeowners, general contractors and trade contractors. We also encourage a deferred approach to ensure that adequate time is provided for stakeholder review and comment and to explore a harmonized approach in the Atlantic provinces.
5. **Transition:** The GCAC supports the transition approach outlined in Section 4K of Bill 119 which ties the implementation of Prompt Payment to the date the contract was executed. However, the Province must clarify that Prompt Payment comes in effect on a project-by-project basis, as a contractor must have the ability to enforce prompt payment obligations under the prime contract for those rights to flow down to a subcontractor – i.e. it needs to be clarified that subcontracts will not be subject to the legislation where a contract is not. We would propose language along the following lines, consistent with the transition provisions under Ontario’s *Construction Act*:

4K (1) Sections 4B to 4J apply with respect to contracts (and subcontracts of any tier for performing work or service or placing or furnishing materials under such contract) made on or after the date on which Sections 4B to 4J come into effect. For greater certainty, this clause applies regardless of when any subcontract under the contract was entered into.

(Marked changes are relative to the proposed language)

Our members are available to the Office of the Legislative Counsel to discuss the above comments or be of assistance on any other matter in its review of the Act.

Yours Truly,

A handwritten signature in black ink, appearing to read 'Durck deWinter', with a stylized flourish at the end.

Durck deWinter, P.Eng., GSC
GCAC - Atlantic Chapter Chair

Cc: Matt Ainley - Chair
Éric Côté - Vice Chair