



**CANADIAN FEDERATION  
OF INDEPENDENT BUSINESS**

*In business for your business.*

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**Presentation to Law Amendments Committee**

Monday, April 8<sup>th</sup>, 2019

Bill No. 119,

*Builders' Lien and Prompt Payment Act*

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-Check against delivery-

Good morning/afternoon Mr. Chair,

Thank you for the opportunity to present on Bill 119, the Builders' Lien and Prompt Payment Act.

As many of you on the Committee know, the Canadian Federation of Independent Business represents 5,200 small- and medium-sized businesses in Nova Scotia.

What you may not know is over 11 per cent of our membership is made up of businesses in the construction sector.

Over the past 4 years, in consultation with the Construction Association of Nova Scotia (CANS), CFIB determined delinquent payment is a festering problem in the construction industry which must be addressed.

I do want to take a moment to recognize the efforts made by Duncan Williams and CANS who have been persistent and persuasive in their efforts to move this file forward. Frankly, Duncan and his team have done much of the heavy lifting. It's what construction folks do.

I also want to express my thanks to the other members of the coalition who have been important partners in helping us understand the scope of the problem and providing their unique perspective.

CFIB believes, as does the coalition of business organizations supporting these measures, that legislation is needed to ensure money flows as it is intended down through the contractor supply chain.

Construction is a primary driver of our economy.

It provides quality employment for thousands of Nova Scotians, yet delinquent payment threatens many entrepreneurs' livelihoods.

Trade contractors are commonly made to wait for periods of four months or longer to get paid for work that has been certified as being complete.

This is completely unacceptable.

This practice represents an unfair transfer of financial risk from owners and developers, those who stand to profit the most from a construction projects, to the trade contractors who can least afford it.

We have heard horror stories of smaller firms not being paid deliberately to drive them to the point to settle for pennies on the dollar or face litigation.

Instances where funds are held back so large contractors can reap the benefits of investment returns of funds while smaller contractors are forced to carry interest payments on goods and services they have supplied under goodwill.

Sub-contractors buy equipment, hire personnel and expand their operational capacity to complete jobs only to be left over-extended because those who contracted them won't pay their bills on time.

In some cases, larger firms will do this to avoid paying these costs altogether because they know the current system is tilted in their favour.

It's not "just business", it's predatory...and in some cases it could be viewed as immoral.

I want to add this is not a universal practice. Most of the players in the industry are responsible members of the business community. However, there are a few bad actors, and unfortunately this is why this legislation is required.

Canadian provinces have been lagging behind many other jurisdictions that have prompt payment legislation in place.

49 US states have measures in place for public sector projects and 31 US states have adopted prompt payment for the private sector.

The US federal government has had prompt payment legislation in effect since 1982. The European Union, United Kingdom, Ireland, New Zealand, and Australia all have prompt payment legislation.

This is an opportunity for Nova Scotia to be a Canadian leader.

Our existing law, the Builder's Lien Act, is costly, cumbersome, and inaccessible.

It addresses non-payment as opposed to delinquent payment and the lien rights of many in the industry expire long before they realize they are not getting paid.

The construction industry is already inherently financially risk-laden.

Therefore the ability for funds to flow through the construction chain is essential for small business to successfully deliver their work as part of any project.

CFIB has been studying the phenomenon of delayed payment since 1996. Here we are more than 20 years later and we are finally beginning to see action.

I should also note this is not only a business-to-business issue. Governments have long been guilty of the same practices, although generally the reason for delayed payment has been more of a bureaucratic problem.

Non-the-less, moving ahead with this legislation also provides the opportunity to fix these problems inside government.

While there has been some improvement over the years at both federal and provincial levels, we saw evidence following our 2009 survey that small businesses were often reluctant to engage with public sector projects because of an inability to get paid in a timely fashion.

Our survey at the time noted that only 16% of small firms had invoices paid by government bodies within 30 days. Almost 80% said it took government between 30 to 90 days to square up.

When asked in 2015, should governments in Nova Scotia (municipal and provincial) be required to pay small- and medium-sized business suppliers within 30 days - 87% of our members said yes.

This new legislation provides an excellent opportunity to go further and socialize the need for departments to pay their bills in a timely fashion,

This is why CFIB is supporting the efforts of the construction industry to pass prompt payment legislation to address these serious problems faced by contractors related to cash flow.

Mr. Chair, we also recommend this government engage with other Atlantic Provinces to encourage similar measures are adopted throughout the region through the Joint Office or the Council of Atlantic Premiers.

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Additionally, because the Premier's Governing Principles indicate such, we expect the regulations attached to this legislation be created with red tape reduction as a key driver.

Mr. Chair, the Canadian Federation of Independent Business is pleased to add its voice to the Construction Association of Nova Scotia and other members of our coalition.

I look forward to answering any questions you may have.