

## ***Policy Statement***

### ***Prompt Payment***

The SCA believes a legislative solution is required at a provincial level to ensure all construction businesses are paid within a reasonable period of time for completed work.

### ***Policy Recommendations***

The SCA is a member of Prompt Payment Saskatchewan — an industry working group with representation from seven other sector-specific trade and professional associations. This committee agrees, in principle, that a legislative solution must include specific articles outlining:

- A payment cycle;
- The right to suspend work;
- A dispute mechanism;
- Interest on overdue payments; as well as
- Transparency and disclosure.

Whether in a single, new legislative Act or through amendments to existing Acts, the Government of Saskatchewan should — as a matter of fairness and standardization — provide these rights to all parties involved in construction projects.

### ***Rationale***

Although some of these rights are enshrined or partially available under other legislation, in each case, there is either a requirement or process issue that makes them inadequate to address *prompt payment* concerns.

Specifically, although courts may provide a dispute mechanism, they are inherently slow and costly, making formal litigation impractical for Saskatchewan businesses — many of which rely heavily on the fair and prompt collection of revenue to satisfy other operational requirements, such as the remittance of wages and payment of materials.

At the same time, while the *Builders' Lien Act* provides certain protections, including disclosure, a lien must be filed before those rights are accessible. This creates a situation whereby contractors must risk damaging relationships and their reputations — vital to their long-term success — before they can exercise their rights.

## ***Background***

Prompt Payment is a unique issue within the construction industry, tied to a complex supply pyramid (as opposed to a normal supply chain) and long project delivery times. In short, payment for construction services flows much slower than in others industries, as the product or service being provided involves multiple-gate processes, which must be completed in specific sequences.

Over the course of generations — and compounded by shifts to financing norms and requirements — it has become acceptable within the construction industry to pay unreasonably late for completed and satisfactory work. The average in Canada (as of late 2016) is 71.5 days past payment due date — 10 days longer than the average from only a decade earlier.

This means construction businesses are carrying the financing costs of building at no benefit to them. The Canadian Construction Association (CCA) estimates that a 30-day delinquency eats away roughly 10 per cent of profit, and 60-day delinquencies reduce profit an additional 10 per cent. At the 71.5 day average, much construction work is one-fifth less profitable than it should be due to late payments.

It should be noted that this is a different issue than *non-payment* — which is the refusal or inability of a debtor to pay. Instead, *late payment* is the act of deferring payment; and, in construction, absent of governing legislation, it occurs as a normal part of business practice. Currently, power in the contractual relationship rests with those who have the most money. And, often, they have the least incentive to pay.

The issue is not new or unique to Canada. All of the other former British Commonwealth states — the United States, Britain, Australia, and New Zealand — and most of the European Union have prompt payment legislation dating back to the late 1970s and early 1980s. None of these solutions are perfect or a cure-all. But they do at least serve to acknowledge builders deserve to be paid for their work in a fair and timely fashion. They also signal a government and public expectation about business practices.

Ultimately, delayed payment hurts the entire economy by inflating the cost of construction to compensate for profits lost in carrying invoices. This reduces the purchasing power of investors and reduces the available cash to businesses for reinvestment, training, equipment purchase, and sometimes even their ability to bid on future work (bonding costs, sureties, etc.), consequently reducing competition. This threat is particularly acute for small and medium-sized businesses, which can least afford to carry the financing costs of their employers.

In recent months, both federal and provincial governments have been working towards prompt payment legislation. In 2016, the *Canada Prompt Payment Act, Bill S-22* passed a second reading in the Senate. The bill is expected to make it to the House of Commons for consideration. Quebec is also considering prompt payment legislation as an unsolicited recommendation of the Charbonneau Commission, and the Ontario government has promised action in 2017 after release of the Reynolds Report — a government-commissioned review of both prompt payment and the lien system.

Prompt Payment Saskatchewan includes the Mechanical Contractors Association of Saskatchewan Inc., Saskatchewan Masonry Institute Inc., Saskatchewan Roofing Contractors Association, Saskatchewan Association of Architects, General Contractors Association of Saskatchewan, Electrical Contractors Association of Saskatchewan, Canadian Institute of Steel Construction – Alberta & Saskatchewan, and the SCA. It is also supported by several other construction trade and professional associations.

When any other purchase is made in our economy, payment is made at the time of purchase or clear terms are laid out as to when payment is due, how it will be made, and what penalties will be subjected for late payment. Just as average individuals can't sustain continuous delays of their paycheques, the average construction business cannot sustain ongoing, systemic delays in payment for work they have satisfactorily completed.

A made-in-Saskatchewan solution to this issue is both possible and achievable given the close-knit construction industry in the province.