

The Honourable Doug Ford, M.P.P
Premier - Government of Ontario
Premier's Office
Room 281
Legislative Building, Queen's Park
Toronto, ON M7A 1A1

VIA E-MAIL ONLY

April 29, 2020

Dear Premier Ford,

RE: Ensuring the Health of Ontario's Electrical Subcontractors.

Thank you for taking the time to read this letter. This is our third letter to you during the pandemic, each regarding issues of the utmost importance for our members, your constituents, electrical contractors in the Province of Ontario. We have been very pleased with your government's response to these issues to date most notably, in terms of substance and speed with which you dealt with these concerns. We appreciate your recognition of the role the construction industry will continue to play in the economic recovery of our Province and, accordingly, of the requirement to meet the basic needs of contractors and subcontractors in the industry.

As you know, the construction industry forms a critical component of Ontario's overall economy. In turn, the stability of contractors and subcontractors in the construction industry has always been premised almost exclusively on cash flow. Accordingly, and particularly in these times, we believe it is critical that the Province take steps to ensure the survival of contractors and subcontractors, by confirming that the unanticipated economic impacts of COVID-19 do not cripple them. Their role in our economy is, we suggest, simply too important.

Prior to outlining the issues the Electrical Contractors Association of Ontario (ECAO) feels are important to ensure the continued vitality of Ontario's electrical subcontractors, and the entirety of the Province's construction industry, it is important that we acknowledge positions previously put to you by our colleagues. However, rather than repeat the "needs" expressed by many other stakeholders in Ontario's construction industry, we endorse and support the positions put forth by these stakeholders as provided to you in Appendix 1 to this correspondence. Now, we draw your attention to our following additional concerns.

1. We feel it is critical to legislate fair extensions of time and fair compensation for reasonable costs incurred due to COVID-19. Compensation for reasonable costs may include, but are not limited to, any unanticipated expenses incurred relating to:
 - Demobilization, remobilization, and site safety;
 - Interruptions of the supply chain and increased costs of certain materials;
 - Extended rentals, site security; and
 - Unanticipated and extended overheads during the pandemic.
2. In our view the Province, municipalities and their various agencies and ministries have a critical role to play in "leading the way" on providing recourse to contractors who have been severely impacted by the pandemic.

An excellent start to this is to ensure that any current and future tender documents, for government and government-funded projects, not allocate the risks of the pandemic to contractors and subcontractors. It is our further view that having the Province “lead the way” may negate the need to legislate private owner/clients if they follow the Government’s lead. Nonetheless, such legislation with respect to “private” owners may prove to be necessary. The upside to such a step by the Province and its municipalities would be ensuring that each continues to receive competitive pricing from the industry, without the necessity of contractors including for these contingencies and immeasurable risks in their bid prices.

3. As written by the Council of Ontario Construction Associations (COCA): *“Financing costs, insurance costs, bonding costs, and equipment rental costs are just a few of the expenses that will continue to accrue even as projects sit idle or are delayed. None of these costs were anticipated when the projects were bid and there will have to be a further discussion on how they will be addressed so that bankruptcies do not sky rocket. The first part of the solution is legislation or a regulation that exempts contractors and subcontractors from liability for delays caused by the pandemic.”* Such legislative exemption should include, at the very least, schedule and change orders to the extent that they are/were caused by the pandemic. *“The second part of the solution is giving relief to construction owners. Owners are our customers. We will need construction owners to be in good economic health so construction can bounce back after the crisis has passed. Therefore, we encourage the Province to work with the federal government to grant construction owners relief from financing and other costs resulting from the pandemic.”*
4. In the legal arena, we should quickly move to electronic bond acceptance and the virtual commissioning of Affidavits and Declarations. A simple amendment to the *Electronic Commerce Act, 2000* would address this issue.

We also believe that a time-limited hiatus on claims for COVID-19 related construction delays in Ontario (including the enforcement of liquidated damages) should be legislatively imposed, as our contractors and subcontractors remain exposed to such contractual claims. It seems to us quite unanticipated and unduly harmful for these contractors and subcontractors to be exposed to delay claims and damages because of the pandemic. Without such legislative intervention they may have no recourse against such penalties in their respective contracts.

As above, we do appreciate that this would have the Government intervening in contractual provisions in private contracts and we believe this is a necessary step that will be critical to ensuring the stability of the construction industry and our economy. Yet, our federal and provincial governments are already engaging various strategies to both contain the spread of COVID-19 and manage the economic impacts of the virus; including the legislative imposition of contractual terms and conditions. These have altered the way parties had previously allocated risks between them, in an effort to curb the spread of the virus. Legislatively allocating risks in an effort to manage the economic impacts of the virus would be the next welcomed step.

5. As partners, the construction industry and the Province must address the challenges ahead in a comprehensive and coordinated manner. There is certainly an important role we should be playing collectively to work with other levels of government and owners on a variety of fronts, including: how to mitigate/control supply chain issues; restart costs not contemplated in contracts; loss of key individuals; and during the recovery phase, the industry will need time to return to full productivity as supply chains ramp up and some of the workforce may still be under quarantine or healing. We suggest forming a small, and active, committee between legislative members and representatives from the industry as a first step for communicating industry-wide concerns to you, your cabinet and the Ontario Government as a whole.

Finally, and in the context of your recent announcement of “Reopening Ontario after COVID-19”, we urge you to consider allowing the construction industry to maximize the opportunities to perform construction safely in circumstances which might be superior to the “pre-pandemic” norm, due to the lack of congestion; and with a minimum of risk to workers. Examples of this include public schools, colleges, universities, and government buildings currently vacant or nearly so. We have found this to be beneficial in road or utility construction, street lighting, traffic lighting, and electrical transmission/distribution. There are, no doubt, other examples that provide the opportunity to perform work without compromise to the safety of workers and with fewer members of the public to/from whom COVID-19 might be spread. Out of all industries in Ontario, construction has the heaviest safety burdens and meets those burdens daily. Allowing expansion of Industrial/Commercial/Institutional projects will trigger a return of cash flow to an industry that is premised almost exclusively on cash flow.

Yours Truly,



Graeme Aitken,
Executive Director
Electrical Contractors Association of Ontario

CC. The Honourable, Monte McNaughton, Minister of Labour, Training and Skills Development
The Honourable Laurie Scott, Minister of Infrastructure
Rocco Rossi, Ontario Chamber of Commerce

APPENDIX 1

- **The Construction & Design Alliance of Ontario (CDAO) letter of April 22, 2020.** Specifically, we echo the CDAO calls for; (i) The development of a comprehensive project investment pipeline document, (ii) The need for your Government to work with industry to establish proper sequencing, scheduling and preparation of market resources, (iii) A legislated provision for accommodation (time and compensation) should be inserted into all construction and professional services contracts where the effects of COVID-19 might result in failure to perform or delay, including workforce and supply chain considerations, and (iv) Invest in predesign and design activities. If the government invests in predesign and design activities now, then Ontario can hit the ground running once it is safe to do so- Recommendation 6.
- **ONTARIO STONE, SAND & GRAVEL ASSOCIATION letter of April 20, 2020.**
- **Ontario Masonry Contractors' Association (OMCA) letter of April 20, 2020.**
- **Construction Labour Relations Association of Ontario (CLRAO) letter of April 22, 2020.** We also “urge the Government to allow the process of reopening to begin, with the assurance of the contractors that they will maintain the highest of safety standards, taking into account the additional requirements of this extremely invasive pathogen.”
- **Council of Ontario Construction Associations (COCA) letter sent by various members electronically.** ECAO fully supports the two (2) solutions suggested by COCA: Solution One- Exempt contractors and subcontractors from liability for delays caused by the COVID-19 pandemic. Solution Two- Work with the federal government to grant construction owners relief from financing and other costs resulting from the pandemic.
- **Ontario Chamber of Commerce (OCC) letter of April 22, 2020.** Work with the construction industry to develop a framework to determine the projects, sectors, and types of work that are added to the list of essential workplaces; and Designate knowledgeable staff within a particular ministry/department to act as a central point of contact, with decision-making authority.
- **Ontario General Contractors Association letter of April 15, 2020.**