



ELECTRICAL  
CONTRACTORS  
ASSOCIATION OF  
ONTARIO

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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

Sent by E-mail: [doug.fordco@pc.ola.org](mailto:doug.fordco@pc.ola.org)

April 9, 2020

Dear Premier Ford,

**RE: Concern for the Potential Collapse of Electrical Subcontractors in Ontario by Operation of the  
Emergency Management and Civil Protection Act Regulation 73/20.**

I write to you in my capacity as the Executive Director of the Electrical Contractors Association of Ontario (ECAO) and on behalf of our 550+ members who serve the electrical needs of Ontarians.

On March 20, the Ontario Government issued Ontario Regulation 73/20 as part of the *Emergency Management and Civil Protection Act*. The regulation suspended any limitation period arising under any statute, rule, bylaw or order of the government. The resultant effect was to freeze all time periods arising under any statute—including the *Construction Act*. It is the *Construction Act* that provides the statutory mechanism by which payments are made from a mortgagee, to an owner, to the general contractor on a project and, then, to our members in a typical construction project setting. As a general rule a mortgagee and/or an owner will not advance funds to the contractor and the subcontractor's liens or potential liens are subsisting. In other words, funds for construction are not to be advanced in the face of a lien or a **potential lien**.

Further, the Ontario Government has deemed certain provincial industries and workplaces as "essential", and in that regard has adopted a definition of which many of our members are required to continue work on an "essential workplace" permitting these workplaces / projects to remain open (for now) through the COVID-19 pandemic.

The announcement clarifying which services are to be considered "essential workplaces" contained sections dealing specifically with construction. In the view of ECAO, the definition is inclusive enough that almost every one of our members continue to work and serve Ontarians.

Unfortunately, and no doubt, unintentionally the combination of:

- a. Freezing time periods, including those under *the Construction Act*, has meant that the ability of contractors to secure payment through lien rights pursuant to the *Construction Act* has been frozen in time effective as at March 17, 2020. As a result, mortgagees and owners are refusing to advance funds for payments on construction projects in light of the potential for liens; and,
- b. Deeming almost all construction as an essential workplace means that our members must continue work on their ongoing projects and contracts even when they have workers who have taken time off associated with the pandemic. This has left our members with reduced productivity and labour pool; so that our members are required to continue working at this reduced productivity, carrying and paying for the same overhead and other costs including labour and material, without the prospect of payment.

This is a stifling scenario, especially when one considers that the construction industry in Ontario is premised on cash flow. The above combined effect has stopped the cash flow in but continues the cash flow out for our members. Our members continue to pay for labour and material in the supply of their services without the prospect of payment.

It is our respectful view that possible solutions might include:

1. Amending the current Ontario Regulation 73/20 to exclude those limitation periods in respect of the *Construction Act* to permit those timelines to expire which will, in turn, permit Owners to advance construction funds including those characterized as holdbacks. Such a provision should be made effective two (2) weeks from its pronouncement to provide time to educate the industry on the forthcoming change in permit repair accordingly;
2. Declaring a temporary provision in the *Construction Act* whereby contractors and subcontractors could waive their lien rights in writing in exchange for payments made on their contracts.

We think these solutions could permit cash flow to start again for an industry that is completely premised on cash flow.



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Although the above mentioned are only examples of suitable solutions, we believe taking action immediately is of utmost importance right now.

Furthermore, there are a few other contractual/relief issues that we believe will be extremely important to discuss and resolve moving forward. However, this "lien/cash flow" problem is the most immediate issue, and one we feel must be addressed immediately to ensure the continued health of our industry.

We welcome the opportunity to discuss these proposed solutions and/or alternatives that your office might believe are more efficient.

Could you please have your office, or the office of the most relevant ministry, contact me to initiate discussions on how we might correct this situation?

Yours Truly,

A handwritten signature in black ink that reads 'R.G. Aitken' followed by a period.

Graeme Aitken,  
Executive Director  
Electrical Contractors Association of Ontario