

## Need to Know: Prompt Payment Legislation

### Introduction

Saskatchewan's construction industry is currently advocating for the development of prompt payment legislation to remedy increasingly long wait times for payment on completed projects. Currently, payment terms can extend beyond 90 days, which places significant pressure on small and medium sized firms that are cash flow sensitive.

### Background

Given tightening construction market conditions, many builders are faced with oppressive payment conditions that can result in the financing of projects through supply chains. It is estimated that, on average, Canadian construction businesses wait 72 days to receive payment for completed work.

On the provincial level, Ontario is addressing the situation by passing legislation to amend the *Construction Lien Act* to codify the timing of payments on construction projects. Quebec and British Columbia are also considering prompt payment regimes related to public sectors projects and the construction industry generally. On the federal level, the Senate is proceeding with a bill for prompt payment on construction contracts (including P3s) made with the federal government or government institutions.

### Details

The timing of payments on construction projects in Saskatchewan could be codified by an amendment to the *Builders' Lien Act*, similar to what Ontario is accomplishing with their revisions to the *Construction Lien Act*. Saskatchewan might look to Ontario's prompt payment mechanism, which has the following basic structure:

- The Act sets out the owner's payment obligation to a contractor, the contractor's obligation to its subcontractors, and the subcontractors' obligation to their sub-subcontractors.
- Timelines are started with the delivery of a "proper invoice" from a contractor to an owner, with the owner then having 28 days to fulfil their payment obligation to the contractor.
- The owner can only defer payment if a notice of dispute is delivered to the contractor within 14 days of the receipt of invoice.
- After a contractor receives funds from an owner, the contractor then has 7 days to pay the subcontractors that supplied services/materials included in the invoice sent to the owner.
- The legislation does not affect the obligation of the contractor or subcontractor to pay wages as provided for in other legislation and agreements.

### Impact

Prompt payment legislation would help to close the gap that exists between payment terms in the construction business and other industries. Such legislation could also establish a more level playing field for small and medium sized firms in the Saskatchewan construction market. The Canadian Construction Association has stated that the first 30 days without payment cost the typical construction business about 10% of its margin, with 60 day delays costing an additional 10%. Prompt payment legislation would address reduced profit margins from delinquent payments, while also making Saskatchewan a more attractive location for construction companies to conduct business.

If your business has been affected by this issue, please contact Emmett Ruff at [eruff@sreda.com](mailto:eruff@sreda.com) and/or complete the following [survey](#).

(Please click or copy and paste the following link into your web browser <https://www.surveymonkey.com/r/C6KS3RP> to complete the survey).