

Fifth Session – Forty-Second Legislature
of the
Legislative Assembly of Manitoba
Standing Committee
on
Social and Economic Development

Chairperson
Mr. Reg Helwer
Constituency of Brandon West

Vol. LXXVII No. 6 - 6 p.m., Monday, May 8, 2023

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MANITOBA LEGISLATIVE ASSEMBLY
Forty-Second Legislature

Member	Constituency	Political Affiliation
ALTomARE, Nello	Transcona	NDP
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BRAR, Diljeet	Burrows	NDP
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COX, Cathy	Kildonan-River East	PC
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LAMONT, Dougald	St. Boniface	Lib.
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LATHLIN, Amanda	The Pas-Kameesak	NDP
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REYES, Jon, Hon.	Waverley	PC
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SANDHU, Mintu	The Maples	NDP
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SMITH, Andrew, Hon.	Lagimodière	PC
SMITH, Bernadette	Point Douglas	NDP
SMOOK, Dennis	La Vérendrye	PC
SQUIRES, Rochelle, Hon.	Riel	PC
STEFANSON, Heather, Hon.	Tuxedo	PC
TEITSMA, James, Hon.	Radisson	PC
WASYLIW, Mark	Fort Garry	NDP
WHARTON, Jeff, Hon.	Red River North	PC
WIEBE, Matt	Concordia	NDP
WISHART, Ian	Portage la Prairie	PC
WOWCHUK, Rick	Swan River	PC
<i>Vacant</i>	Morden-Winkler	

LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON SOCIAL AND ECONOMIC DEVELOPMENT

Monday, May 8, 2023

TIME – 6 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Reg Helwer (Brandon West)

VICE-CHAIRPERSON – Mr. Ron Schuler (Springfield-Ritchot)

ATTENDANCE – 6 QUORUM – 4

Members of the committee present:

Hon. Messrs. Johnston, Teitsma

Messrs. Helwer, Sandhu, Schuler, Wasyliv

PUBLIC PRESENTERS:

Bill 38–The Builders' Liens Amendment Act (Prompt Payment)

Roy McPhail, private citizen

Chris Lorenc, Manitoba Heavy Construction Association

Teri Urban, General Contractors Alliance of Canada - Manitoba Chapter

Steven Ness, Surety Association of Canada

Gail Little, Manitoba Association of Architects

Andrew Zimmermann, Intact Insurance

Kasia Kieloch, Alternative Dispute Resolution Institute of Manitoba

Michael Jack, City of Winnipeg

Ron Hambley, Winnipeg Construction Association

Shawn Wood, Construction Association of Rural Manitoba

Ramona Coey, Manitoba Prompt Payment coalition

Terry Henry, Electrical Contractors Association of Manitoba

Julien Lafleche, Mechanical Contractors Association of Manitoba

WRITTEN SUBMISSIONS:

Bill 38–The Builders' Liens Amendment Act (Prompt Payment)

Denys Volkov, Association of Manitoba Municipalities

MATTERS UNDER CONSIDERATION:

Bill 29–The Life Leases Amendment Act

Bill 38–The Builders' Liens Amendment Act (Prompt Payment)

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Clerk Assistant (Ms. Katerina Tefft): Good evening. Will the Standing Committee on Social and Economic Development please come to order.

Before the committee can proceed with the business before it, it must elect a Chairperson.

Are there any nominations?

Hon. Scott Johnston (Minister of Seniors and Long-Term Care): I nominate Mr. Helwer.

Clerk Assistant: Mr. Helwer has been nominated.

Are there any other nominations?

Hearing no other nominations, Mr. Helwer, will you please take the Chair.

Mr. Chairperson: All right, our next item of business is the election of a Vice-Chairman—or Vice-Chairperson.

Are there any nominations?

Mr. Johnston: I nominate Mr. Schuler.

Mr. Chairperson: Mr. Schuler has been nominated.

Are there any other nominations?

Hearing no other nominations, Mr. Schuler is elected Vice-Chairperson.

This meeting has been called to consider the following bills: Bill 29, The Life Leases Amendment Act; Bill 38, the buildings liens–Builders' Liens Amendment Act.

I would like to inform all in attendance of the provisions in our rules regarding the hour of adjournment. A standing committee meeting to consider a bill must not sit past midnight to hear public presentations or to consider clause by clause of a bill, except by unanimous consent of the committee.

Written submissions from the following persons have been received and distributed to committee members: Denys Volkov, Association of Manitoba Municipalities, on Bill 38.

Does the committee agree to have these documents appear in the Hansard transcript of this meeting? *[Agreed]*

Prior to proceeding with public presentations, I would like to advise members of the public regarding the process for speaking at a committee.

In accordance with our rules, a time limit of 10 minutes has been allotted for presentations, with another five minutes allowed for questions from the committee. Questions shall not exceed 30 seconds in length, with no time limit for answers. Questions may be addressed to presenters in the following rotation: first, the minister sponsoring the bill; second, a member of the official opposition; and third, an independent member.

If a presenter is not in attendance when their name is called, they will be dropped to the bottom of the list. If a presenter is not in attendance when their name is called a second time, they will be removed from the presenters' list.

The proceedings of our meetings are recorded in order to provide a verbatim transcript. Each time someone wishes to speak, whether it be an MLA or a presenter, I first have to say the person's name. This is the signal for the Hansard recorder to turn the microphones on and off.

On the topic of determining the order of public presentations, I wish to note that we do have out-of-town presenters in attendance, marked with an asterisk on the list.

With these considerations in mind, then, in what order does the committee wish to hear the presentations?

An Honourable Member: Global.

Mr. Chairperson: Global? *[interjection]*

So, we'll proceed in numerical order, then.

Thank you for your patience, we will now proceed with public presentations.

**Bill 38—The Builders' Liens Amendment Act
(Prompt Payment)**

Mr. Chairperson: I will now call on Mr. Roy McPhail. Okay.

Thank you, Mr. McPhail. Do you have any written material?

Roy McPhail (Private Citizen): No.

Mr. Chairperson: No, all right. Thank you, you may proceed with your presentation, Mr. McPhail.

R. McPhail: Thank you to the committee for the opportunity to speak, and especially for the work that's been done on this bill. I fully support the bill.

Been in the construction industry for 49 years, 40 in a capacity as an engineer and a builder, and the last nine in dispute settlement. And that includes doing the first adjudication in Ontario and several subsequent to that.

Adjudication is provided for in this bill, and it's going to make an extremely positive difference to Manitoba industry and the people who are served by the industry. I don't think I should say any more than that at this point. I'll invite questions.

Mr. Chairperson: Thank you, Mr. McPhail.

Any questions for Mr. McPhail?

Hon. James Teitsma (Minister of Consumer Protection and Government Services): Thank you, Mr. McPhail, for coming to committee tonight and giving your brief presentation. I'm grateful for your support for the legislation, and I expect that we may be looking to your advice on some of the development of the regulations as we begin to hopefully roll this out in Manitoba. So thank you very much for being here.

R. McPhail: Well, I would greatly appreciate contributing to the regulations. I'm looking forward to how we can make those work. I've taken training, not just in Ontario but through the RICS training. In Hong Kong I took binders full of training, as they would say. I've also done training in San Francisco and Stockholm. So I think Manitoba can benefit from all of that. And RICS in particular, with over 20 years of experience in adjudications, is extremely successful there, and we have access to the top people in that organization. They'd say they do 70 per cent of the adjudications that take place there, in the order of 2,000 adjudications a year, so.

Mr. Mark Wasyliv (Fort Garry): Thank you very much for coming and presenting tonight. I'm wondering if you could advise the committee. In the current landscape, without an adjudication system, what are the problems that you're seeing in the sector? And how this is going to help.

R. McPhail: Thank you for the question.

The problems are manifold. I watched the erosion of trust in the industry over my career, and what I'd describe as the current status is subject to bullying and capitulation, because the time and money required to resolve disputes through any neutral system is beyond

the capacity of many, many of us in the industry and in the public.

I could go on at length, and I think I should resist that; but thank goodness we're going to bring something in. And bear in mind that, if we do it properly, which I think we can do, it is an interim binding solution to adjudicate, but the vast majority of those decisions don't get challenged past the point of adjudicating.

Mr. Chairperson: Other questions from the committee? Seeing none, thank you for your time, Mr. McPhail.

I now call on Mr. Chris Lorenc. Welcome, Mr. Lorenc. You have written material? All right, we will have that distributed.

All right, Mr. Lorenc, you can proceed.

Chris Lorenc (Manitoba Heavy Construction Association): Thank you very much. Good evening, Mr. Chair and members of the standing committee. I am pleased this evening to appear to repeat a direct appeal for all-party support for Bill 38, an amendment to The Builders' Liens Act introducing prompt payment provisions.

Bill 38 amends the BLA to include prompt payment and outlines an adjudication process. We support the bill because it enables a reasonable expectation in the economy that payment for completed work should be made promptly. This should be the practice for services provided in the construction industry.

* (18:10)

Bill 38 reflects this expectation and brings Manitoba in line with other Canadian and international jurisdictions. To ensure that objective, we do respectfully suggest that you add one additional provision to Bill 38, which would call for a full review of the BLA within the next two year period. This will help ensure that the legislation as written is realized in practice as intended.

We ask you to recognize the importance of Bill 38, support its passage and allow its benefits to accrue not just to the providers of construction services but the tens of thousands of Manitobans employed in the broad scope of the construction and its supply side industries.

We are part of a broad coalition of business and labour organizations who wrote to each member of the Manitoba Legislative Assembly asking for an

all-party support in an April 6 letter, which is in the materials that I've circulated.

It was signed by eight organizations. And those were the Construction Association of Rural Manitoba; general Contractors Association of Canada, Manitoba division; Electrical Contractors Association of Manitoba; Manitoba Building Trades; Manitoba Heavy Construction Association; Mechanical Contractors Association of Manitoba; Merit Contractors Association of Manitoba and the Winnipeg Construction Association.

We thank the government, Minister Teitsma, formerly minister Helwer, and all government officials who have worked to ensure Bill 38 was tabled for consideration. We are also grateful to and thank Wab Kinew, Leader of the Official Opposition, who in reply to the noted April 6 letter, responded in—on his own on April 14th—also attached—and indicated, quote, that the NDP caucus continues to support prompt payment legislation as we have in previous debates and look forward to voting in support of this bill, end quote.

I conclude by very respectfully requesting that Bill 38 receive all-party support.

Thank you, Mr. Chair.

Mr. Chairperson: Thank you, Mr. Lorenc, for your presentation.

Do members of the committee have questions for the presenter?

Mr. Teitsma: Thank you, Mr. Lorenc, for being here and thank you for your constant reminder that this bill has the unequivocal support of the entire construction industry. And also, thank you for taking those words and putting them into action by ensuring that, you know, to the best of my knowledge, all parties do support this legislation.

I think I've expressed to you that I think this is, you know, not government legislation or partisan legislation in any way. Really, it's the construction industry's own legislation.

What I can tell you is that certainly there is a committee on—or sorry, there is a commitment from government to have that review of The Builders' Liens Act, a more comprehensive review that'll take a couple of years to do, underway. And I'll also be introducing an amendment—*[interjection]*

Yes?

Mr. Chairperson: Mr. Teitsma, question, please.

Mr. Teitsma: Oh, I'll get there.

I'll also be introducing an amendment later this evening that would require it to be reviewed every five years. So just wanted to see if that met with your good—if those are welcome words to you at least, both the two-year review and the amendment to require a five-year periodic review in perpetuity.

Mr. Chairperson: Mr. Lorenc?

C. Lorenc: Each of your comments are welcome and happily received. Thank you.

Mr. Wasyliw: Thank you very much for attending tonight. I'm just wondering if you could expand on your request that the building lien act was reviewed. If you could sort of go a little further as to why you think that's necessary right now.

C. Lorenc: This legislation is a major piece of legislation in the sense that it introduces a legislative framework that obliges prompt payment and provides remedies in the event of failure. And the best wordsmithing in the world can sometimes miss things that occur in the market place. And so it's always prudent, particularly given the significant import of Bill 38 to review it as currently as possible.

And we think that the two-year window would give a true and living opportunity to make adjustments or contemplate adjustments to the legislation based on real-time market experience. And for those reasons, we encourage its review within the two-year period.

Mr. Chairperson: Thank you, Mr. Lorenc.

Other questions? Seeing none, thank you for your presentation.

I now call Mrs. Teri Urban.

Welcome, Mrs. Urban. Do you have material to distribute?

Teri Urban (General Contractors Alliance of Canada—Manitoba Chapter): No, I don't. If my words on record are sufficient, that should be fine.

Mr. Chairperson: That's good. You may proceed, Mrs. Urban.

T. Urban: So good evening, Mr. Chair and committee members. I am very honoured to be here this evening on behalf of the General Contractors Alliance of Canada, the Manitoba chapter.

We would like to thank the government for moving ahead with prompt payment and adjudication in Bill 38. We support Bill 38 following the prompt

payment and adjudication recommendations and the Manitoba Law Reform Commission, and applaud the government for aligning with our neighbours in Ontario and Saskatchewan by removing red tape and including prompt payment legislation within The Builders' Liens Act.

Our organization fully supports the principles of this legislation and the benefits it will bring our province and the entire construction industry.

It is important to note that a contractor, as defined in the legislation, includes not only general contractors, but paving, landscaping, masons, roofing, mechanical, electrical contractors and more, when they sign a contract directly with an owner.

The GCAC Manitoba's focus has always been to ensure prompt payment legislation is fair to all parties in the construction supply chain.

Although the introduction of prompt payment and adjudication through an amendment to the BLA is a good first step, we call for one additional provision to be added to Bill 38: a full review of The Builders' Liens Act within the next 24 months.

So, thank you for mentioning that just a couple moments ago, too, Minister Teitsma. We understand the complexity of introducing prompt payment and adjudication into an existing act, and continue to offer to share lessons learned from the experience of helping five provinces and the federal government with the same journey Manitoba is undertaking.

GCAC would like to thank the government, Minister Teitsma, all government officials who worked hard to incorporate prompt payment within The Builders' Liens Act. And a special thank you to the former minister Helwer for your dedication over the past five years.

We would also like to extend a thank you to the NDP and Liberal parties for supporting prompt payment and standing behind legislation that will positively impact the entire construction industry.

So we look forward to all parties' support and Bill 38 receiving royal assent.

Thank you.

Mr. Chairperson: Thank you, Mrs. Urban, for your presentation.

Do members of the committee have questions for the presenter?

Mr. Teitsma: Thank you very much, Mrs. Urban. It's good to see you here, and thanks also for the special shout-out to our esteemed chairman, and perhaps a special note, that he has been the advocate and the engine behind getting prompt payment legislation moved as far along as it has, and I'm just taking it from the one-yard line, you know, into the end zone, perhaps.

But he's done all the heavy lifting, and so I will echo your appreciation for him and thank you for coming to the committee tonight.

T. Urban: Thank you for that, and no comment in response.

Mr. Chairperson: Any other questions, comments? Seeing none, thank you for your presentation.

I now call Mr. Steven Ness. Welcome, Mr. Ness. Do you have written documents to distribute or?

Steven Ness (Surety Association of Canada): I don't.

Mr. Chairperson: Verbal. All right, you may proceed, Mr. Ness.

S. Ness: Thank you to the committee for the opportunity to address you today on this very important piece of legislation. And I, too, am going to start out with a big thank-you to this government for making good on its promise to the construction industry for introducing a legislative requirement that will allow money to flow down that construction payment chain in a timely manner.

Very much needed, long overdue and kudos to the government for making it happen. And I, too, would like to send a big shout-out to our friends on the opposition benches for making this an all-party support endeavour.

This is truly a non-partisan issue, and bringing timeliness and certainty to the construction payments chain, it will be good not just for the construction industry and the people employed in it, but I think, ultimately, for the economy in general, and it will benefit all Manitobans.

By the way-by way of introduction, we're the Surety Association of Canada. We're the national organization that represents surety bonding companies here in Manitoba and across the country.

And in simpler terms, we're the people that put up these beasts called surety bonds, that guarantee that a construction contractor will meet their obligations that include, of course, paying trades and suppliers on a timely basis.

*(18:20)

I'll mention, and some of you may know, we've been very loud, very prominent supporters of the prompt payment movement from coast to coast. We work with governments both federal and provincial in other jurisdictions to make it happen.

Our interest may be obvious, but we have two main points of interest. First of all, we're the people that have to go in and clean up the mess. When you have a contractor fail because they're—they can't manage their cash flow or maybe they haven't been paid at all. We have to pay the bills, and believe me, those bills are enormous. Our industry has paid out billions of dollars in recent decades as a result of interrupted cash flow.

Secondly, bonds themselves are an integral part of any workable prompt payment regime. Prompt payment laws, I always say, require it to happen. But surety bonds, particularly in the form of labour and material payment bonds, they make it happen. They're—we're the people that's step up with that payment bond. We pay the bills with real money, in real time. And with the new payment bonds that we've—excuse me—that we've created over the last few years, these have built-in payment times that tie in with the legislation.

As to the bill itself, not much to say except we believe it's a giant step forward toward bringing Manitoba's construction payment regime in line with those other provinces. It does incorporate many of the features that we find in Ontario's bill 142. And also many of the recommendations that were brought forward by the Manitoba Law Reform Commission in its report in 2018.

I'm not going to go into them all. I think some of my colleagues have touched on that, but the introduction of proper invoices and the requirement for timely payment as a result of those invoices; a robust adjudication system to support it and so on, and so on.

And I'll simply say that we urge this government to pass and proclaim Bill 38 prior to the upcoming election without any changes but with one important addition. And minister, you stole my thunder, as did my—as did the previous speakers; we do recommend that an amendment be included to call for a review within 24 months.

And we ask this not because we think the ball—the bill is flawed because we don't. These changes—and I think Mr. Lorenc mentioned that they are fundamental and they will profoundly affect the business

operations of construction payors. And we've seen in it in other jurisdictions.

And, you know, those lessons that we learned there, they'll give us a little bit of insight, but every jurisdiction—I've seen this first-hand—is different. Manitoba is not Ontario and not just for the obvious reasons, not because Ontario may be bigger. It's a different business culture.

Bill 38 itself is different. So we need that time to step back and see what the impact is going to be because we're going to find problems, issues happening that right now we probably can't even contemplate, let alone prepare for. So I think that's important.

And, finally, I'll just point out that that full review will allow us to look at that, assess it and see where we need to fix it because, I promise you, those issues will occur.

With that, I'm going to conclude my presentation.

Happy to entertain any questions, Mr. Chair.

Mr. Chairperson: Thank you, Mr. Ness, for your presentation.

Do members of the committee have questions for the presenter?

Mr. Teitsma: Thank you, Mr. Ness, for presenting. And what I will say is we should not forget, as eager as we are to get Bill 38 proclaimed, that there will necessarily be a consultation process and a time to develop the regulations. So, you know, my commitment as minister to ensure that that process proceeds as—in a prompt way, but also I don't want it to be rushed. I want to make sure that we get our regulations well written to minimize the, you know, the volume that—of issues that might have to be dealt with in the review.

S. Ness: Couldn't agree more, Minister. You know, I—we've always been a big proponent not of getting it done fast, but getting it right. And so, no issues there, certainly.

Mr. Chairperson: Other questions from the committee?

Seeing none, Mr. Ness, thank you for your presentation.

I now call on Ms. Gail Little. Welcome, Ms. Little. Do you have material for distribution?

Gail Little (Manitoba Association of Architects): I do not.

Mr. Chairperson: All right, you may proceed then, Ms. Little.

G. Little: I am an architect licensed to practice in the province of Manitoba. I am also the principal of pico ARCHITECTURE inc. and am currently involved with the Manitoba Association of Architects as both its first vice-president and recently appointed chair of the practice committee.

It's my pleasure to be here today to speak in support of Bill 38 on the Manitoba Association of Architects' behalf. And we would like to thank government for looking at recommendations contained in the Manitoba Law Reform Commission report from 2018 and in taking this important first step towards the modernization of The Builders' Liens Act in Manitoba.

From the architectural profession's perspective, our interaction with this particular piece of legislation falls to the professional obligations and responsibilities involved in both certification of payments and processing holdback. Given our administrative role, it is important to the profession that the legislation and regulations governing those aspects are clear.

And we would also, therefore, request that government include one further provision as a part of this bill that would call for the full review of The Builders' Liens Act within the next two years to ensure that the legislative mandate governing these construction matters are being realized in the manner that government intended.

The architectural profession has enjoyed a high level of mobility, being readily facilitated since 1990, developed through a national 'reprocity' agreement achieved at that time.

Our province has both a long history and growing number of architects who practise in multiple jurisdictions, and we thank government for the efforts that have been made towards a greater level of harmonization with legislation and regulations governing the construction industry elsewhere in Canada to the extent that might be possible. And we would also like to thank the NDP for uniting behind a piece of legislation as important as Bill 38.

Thank you for your time.

Mr. Chairperson: Thank you, Ms. Little, for your presentation.

Do the members of the committee have questions for the presenter?

Mr. Teitsma: No questions but just a thank you very much for your support and for coming to committee to present in person. I appreciate you taking the time.

Mr. Chairperson: Ms. Little?

Any other questions from the committee? Seeing none, thank you for your presentation, Ms. Little.

I now call on Mr. Andrew Zimmermann. Welcome, Mr. Zimmermann. Do you have material to distribute?

Andrew Zimmermann (Intact Insurance): I'll read it into the record.

Mr. Chairperson: Okay, you may then proceed then, Mr. Zimmermann.

A. Zimmermann: Thank you, committee—standing committee on the social and economic development on this—meeting on this important piece of legislation.

By way of introduction, Intact Insurance is the largest provider of construction surety bonds in Canada and the only surety with an office in Manitoba and underwriters based here as well. We are surety for some of Manitoba's biggest contractors right down to some of our most specialized subcontractors. Intact Insurance, through our contract surety bonds, guarantees that construction contractors, subcontractors, sub-subcontractors and suppliers are paid in a timely manner.

We support prompt payment—the prompt-payment movement in Manitoba and across the country. As a provider of contract surety bonds, we have a very specific interest in prompt payment. As a surety, when people are not getting paid and there are claims on our labour and material payments bonds, we're obliged to make payments on those and make people whole.

Labour and material payment bonds are a very integral part of any effective prompt-payment regime. Prompt-payment laws make it required to happen, but it's the labour and material payment bonds that can come in and make those payments happen. When there are no funds left to make payments and—which is usually the case when a labour and material payment bond comes into play, surety companies will bring in new money and make timely payments.

I would like to thank this government for introducing a legislated requirement that will ensure money flows down the construction payment pyramid in an effective and timely manner. Likewise, I'd also like to thank the opposition for their support of

Bill 38. Prompt payment is a non-partisan issue. Building confidence and bringing timeliness to the construction payment chain is good for Manitoba's construction industry, which ultimately makes it good for Manitoba's economy.

* (18:30)

Regarding Bill 38, we believe it is a big step forward to bringing much-needed fairness to Manitoba's construction payment regime. Bill 38 incorporates several of the prompt payment recommendations made by the Manitoba Law Reform Commission in its seminal 2018 report on The Builders' Lien Act, and many of the provisions found in our neighbour Ontario's recently adopted Construction Act specifically: payment of proper invoices within a set time frame; provisions for adjudication of payment disputes, requirements for notice to be provided in the event of non-payment of a proper invoice.

We urge the government to pass and proclaim Bill 38 prior to the upcoming fall election without any changes but with one very important addition, and sorry for sounding like a broken record at this point. We ask that Bill 38 be amended to include a requirement for a mandatory review no later than 24 months following implementation.

We ask this for the following reasons: as other presenters have mentioned, there will be impacts that will be unforeseen at this point and has happened in other provinces who've brought in prompt payment regimes. While experience in these other jurisdictions have been different, we know in Manitoba we have our own business culture and we have our own construction industry culture, and those things will come out in the next 24-month period once the legislation goes into effect.

We understand the purpose of Bill 38 focuses primarily on the prompt payment and adjudication. However, the Manitoba Law Reform Commission has said in their, I guess, five-year-old report, now, that there is a need to update and modernize The Builders' Lien Act, which has remained in force largely unchanged for the last four decades.

Even though Bill 38 introduces some moderate changes and updates, which are appreciated, it does fall short of a full comprehensive review. And we thank the minister for mentioning that there will be review. A full review will allow us to focus our efforts on the amendments needed to modernize these key pieces of legislation.

I'll conclude by thanking the members and the Chair, and welcome any questions you may have.

Mr. Chairperson: Thank you, Mr. Zimmermann for your presentation.

Do members of the committee have any questions for the presenter?

Mr. Teitsma: No question, but just wanted to say thank you very much, Mr. Zimmermann, for being here and thank you also for your support of the construction industry through the work that you do at Intact Insurance.

A. Zimmermann: Thank you, I appreciate that, and I thank you for—the committee for bringing this forward. Thank you.

Mr. Chairperson: Do other members of the committee have questions for the presenter?

Seeing none, thank you for your president—presentation, Mr. Zimmermann.

I now call on Ms. Kasia Kieloch. Welcome Ms. Kieloch, welcome back. Do you have any material to distribute?

Kasia Kieloch (Alternative Dispute Resolution Institute of Manitoba): No, I do not.

Mr. Chairperson: You may proceed then, Ms. Kieloch.

K. Kieloch: Thank you, Mr. Chair.

Good evening. I'd like to thank all of the MLAs, staff and members of the public who have taken their time to attend tonight's committee meeting.

My name is Kasia Kieloch and it is a pleasure to be here tonight to speak to Bill 38. I'd like to first start by introducing myself and the organization that I am representing before providing my comments on Bill 38.

So, I'm a lifelong Winnipegger and I have a bachelor of arts degree and juris doctor degree from the University of Manitoba. I'm currently a practising lawyer in the health-care field with prior experience in construction and insurance litigation.

So, I have training in mediation and I'm one of seven Manitobans with a qualified arbitrator designation in the province, meaning that I have both the educational and practical experience in the fields of construction law and dispute resolution.

So, tonight I'm presenting in my capacity as the president of the Alternative Dispute Resolution Institute of Manitoba, which we lovingly call ADRIM. ADRIM is a non-profit affiliate of the ADR Institute of Canada, which is known as ADRIIC. So, anyone who is a member of ADRIM is also a member of ADRIIC.

ADRIIC is a national, non-profit organization that provides leadership in the development and promotion of dispute resolution services in Canada. ADRIIC has over 2,000 members across the country and provides national accreditation for mediators, arbitrators and adjudicators.

ADRIIM currently has 81 members, many of whom have qualified mediator, chartered mediator, qualified arbitrator and chartered arbitrator designations. We also have members who are currently seeking new designations in family mediation and construction adjudication.

I'm proud to represent an organization with such diverse and talented members from various industries in the province.

ADRIIM's role in training and 'certifying'—certifying mediators, arbitrators and adjudicators is important in the context of construction adjudication. Currently, mediators, arbitrators and adjudicators are not regulated under legislation. This means that anyone can practice in the field of dispute resolution, regardless of whether they have formal training and education.

In an industry such as the construction industry, having qualified individuals who understand prompt payment, project management and other related issues is integral to the timely resolution of disputes.

ADRIIC is proud to offer adjudication training to allow members to work towards obtaining a construction adjudicator designation. Individuals who obtain professional designations with ADRIIC have to meet certain requirements and adhere to certain standards. In order to obtain a designation, an individual's application has to be reviewed and assessed by a committee of experienced dispute resolution practitioners.

ADRIIC has unified standards of practice, including a code of ethics and a code of conduct for mediators, meaning that its members are held to the highest of professional standards. Our members are required to take ongoing continuing education courses and hold liability insurance in order to maintain their professional designations. All of these measures help

to ensure that ADRIc members provide high-quality services with professionalism and expertise.

ADRIc's professional designations are recognized both nationally and internationally.

ADRIc is proud of its relationship with other organizations that do work in the field of dispute resolution. One relationship that we are particularly proud of is our partnership with ADRIc and the Royal Institution of Chartered Surveyors, which is also known as RICS. RICS is a global leader in the provision of adjudication services in the construction industry that trains and accredits dispute resolution practitioners.

ADRIc and RICS have developed the construction adjudication program that is currently being provided to ADRIc members. So this can help provide assurance that the construction adjudication training that is being provided to Canadians has been reviewed by a reputable organization that is a global leader in construction adjudication.

So, now to turn to Bill 38. So, I'm pleased to say that ADRIc fully supports Bill 38, and we're happy with the provisions relating to the adjudication process and authority within the bill. We appreciate that there is a dispute resolution mechanism worked into legislation that will impact the entire construction industry.

Dispute resolution is an effective tool for resolving disputes in a way that is faster, more cost efficient, procedurally flexible and creative than the traditional court process. The timelines within the bill help to ensure that disputes related to construction projects are handled quickly so that the projects can continue without significant delay.

We're also pleased to see recognition within the bill that construction adjudicators should have training and qualifications to be able to hear disputes. The process to refer a matter to adjudication is clear and detailed.

While we appreciate that further details relating to the construction adjudication process and authority will be determined within a regulation, ADRIc enthusiastically supports Bill 38.

ADRIc would also be pleased to provide information and input to government on construction adjudication and dispute resolution generally as the regulation is developed.

So, overall, I hope that this introduction to our organization has helped to provide an overview of our role in training and credentialing of dispute resolution

practitioners, including construction adjudicators in Canada.

ADRIc is excited by the changes that Bill 38 will bring to Manitoba. The provisions within the bill that relate to construction adjudication will help to ensure that construction disputes are handled quickly and outside of the courtroom by trained dispute resolution practitioners with expertise in the field.

While there is still work ahead to determine details related to an adjudication authority, this legislation is certainly a step in the right direction. ADRIc looks forward to hopefully being—sorry, hopefully seeing this legislation get passed soon, so that we can share our expertise and knowledge at the regulation drafting stage.

Thank you very much for your time. I'm happy to answer any questions that you may have.

Mr. Chairperson: Thank you for your presentation, Ms. Kieloch.

Does the—do members of the committee have any questions for the presenter?

Mr. Teitsma: Thank you, Ms. Kieloch for being here, and it's good to see you again.

I guess I'd want to say thank you for presenting and also for offering your services and your organization's services in helping develop the regulations. As I indicated, I want to get onto that soon.

So, thanks again for coming, and I look forward to working with you.

K. Kieloch: Thank you very much.

Mr. Chairperson: Do other members of the committee have any questions for the presenter?

Seeing none, thank you for your presentation, Ms. Kieloch.

I now call Mr. Michael Jack. All right, we have Mr. Jack joining us online.

* (18:40)

Michael Jack (City of Winnipeg): Thank you, Mr. Chairman, are you able to hear me?

Mr. Chairperson: We can, Mr. Jack. You may proceed.

Sorry, Mr. Jack, we do need you to turn your camera on.

M. Jack: Okay, thank you. One moment. My apologies, Mr. Chair. The prompt only allowed me to

unmute. It didn't speak to video. I don't know whether those who may be operating the portal on your end might—oh, here we go. That just happened.

Mr. Chairperson: There, we can see you now, Mr. Jack, so you may proceed. Welcome.

M. Jack: Thank you. Thank you very much, Mr. Chair and committee members.

I was just about to say, normally, I'm on the functional end of this when a delegate or a speaker is having all sorts of fumbling trouble with connecting. So I really do appreciate not only the opportunity to speak, but I do, also, appreciate the opportunity to connect remotely. It did facilitate my own child-care needs on my end, so, thank you. It's particularly appreciated.

I am Michael Jack. I am the chief administrative officer for the City of Winnipeg. I am here in that capacity. I'm not speaking on behalf of my council. We have not canvassed the City of Winnipeg Council as to any formal position on this. We, as a public service, have reviewed the bill as best we could, and so I'm simply wanting to offer the feedback on behalf of the public service.

As I think everyone in the room will know, the City already engages many local, national and international contractors who do work for the City of Winnipeg in a whole variety of respects. Last year, the City's annual capital expenditure, that being for the year 2022, was in excess of \$400 million.

And as a public organization, we are aligned with what we believe to be the intent of the legislation. We're committed to fairness, transparency, and we do, within the City of Winnipeg public service, strive to ensure that all of our obligations and payments are made on time and are accurate when we do so.

You'll also be aware that many of the City's construction projects are large, ranging up into the hundreds of millions of dollars, and, as such, these contracts demand a certain measure of flexibility with respect to inspection, quality assurance and payment times. Therefore, any legislation which provides no ability for the City and its contractors to negotiate such terms is going to inevitably negatively impact the City's ability to administer and negotiate these contracts as needed.

I should note that as a matter of routine, the City also works co-operatively with the construction industry—the WCA, the MHCA and others, as needed—to amend the terms and conditions of our contracts. In

the interest of fairness, from time to time, we will continue to do so.

If Mr. Lorenc is still in the room, he would undoubtedly acknowledge that, for instance, last year, in discussion with Manitoba Heavy Construction, we negotiated fuel price escalation recovery clauses as the industry was experiencing particularly volatile fuel prices. It involved construction with Manitoba Heavy; it involved consultation with Winnipeg Construction Association as well. We are currently reviewing the terms and conditions once more to alleviate any areas of perceived excessive risk to the contractors.

But I'll get to what is probably the primary point I'd like to leave you all with in terms of planting the seed for further discussion, perhaps. And that's with respect to who is exempt from the application of this bill and—should it become law—and who would not be exempt.

You're likely aware that the act and the bill, if passed, Manitoba Transportation, in fact, would be exempt from the application of these new rules and likewise would Manitoba Hydro. It's our understanding Manitoba Transportation would be exempt with respect to contracts for transportation, infrastructure under section 3(2) of The Builders' Liens Act, and Hydro would also be exempt from those requirements for contracts for the construction, repair or maintenance of hydroelectric generating stations and associated equipment based on section 3(3) of the The Builders' Liens Act.

So our call and my call for you today isn't just about whether it's being applied evenly or not. It's related, but it's slightly different. I've got to assume that there is a sound policy rationale for why Manitoba transportation and Hydro would be exempt from the application of these rules. I would presume and suggest it's likely due to the complexity of the large projects in which both entities are involved, large infrastructure projects, large utility projects.

It would seem reasonable, I'm going to suggest, to allow the same type of exemptions for municipalities, particularly when building specific types of construction such as roads and bridges, utility infrastructure such as water and waste-water projects and large vertical construction projects that are set out by a dollar threshold.

What we experience—and then what I think, even at the provincial level with those two entities, anyone involved would say quite clearly—is that at that level

of megaproject, if you will, the parties involved are remarkably sophisticated in terms of their ability to review and enter into detailed contracts. And so that may be—just like MT and Manitoba Hydro are exempt, it would make sense for the City of Winnipeg to enjoy that same exemption.

I don't speak for all municipalities. I'm sure AMM and others will have some position or have already taken some position with respect to that. I'm only here speaking on behalf of the City, and it would seem that the projects, the infrastructure projects, to which this would apply are quite analogous to those that Manitoba transportation and Manitoba Hydro undertake on behalf of Manitobans.

One potential solution to the challenge could be to amend section 5 of the proposed bill to allow owners and contractors the ability to agree to terms which may differ from the legislation, particularly where they mutually agree that alternate terms are going to be more desirable for each unique contract and more desirable for both parties. If the owner needed additional time to ensure the proper inspection and sign-off work, requests for, you know, 45 days for instance, as an example, for payment, then the legislation we would submit and suggest shouldn't be handcuffing or interfering with these open negotiations between sophisticated contracting parties.

The construction industry here in Winnipeg is aware that from time to time payments may be delayed on the more complex projects. One would assume that knowledge is factored into the competitive bids that are received by the City. The industry has plenty of experience dealing with the City of Winnipeg, knowing that legitimate invoices do get paid and albeit occasionally in a time frame that might be longer than 28 days.

Leaving that point aside, also want to speak to terminology within the bill. We would ask or suggest that additional terminology with respect to how the invoice is received would be useful, based upon our review. We—it appears to be a bit of a gap with a larger organization like the City of Winnipeg. If the invoice isn't provided to the specifically prescribed employee in the specifically prescribed manner, that can cause delays. It can cause understandable delays.

We would suggest the legislation needs to consider the invoice being received by complying with the stated owners' process, as specified in the contract. We think that would be a reasonable addition for you to include. That way the owners will be able to better track all outstanding invoices to ensure

prompt payment, which is obviously the key priority of this bill.

Further want to note that the 14-day period provided for objections to the invoicing might unintentionally force an owner to pay an incorrect invoice because the 14-day period wasn't sufficient time to perform all of the necessary investigations or other quality assurance procedures in order to claim that there is a dispute. Again, one would assume this is one of the factors that was used as a justification for allowing both Manitoba Hydro and Manitoba transportation to be exempt.

Additionally, I just wanted it noted that the City of Winnipeg is one of a number of large entities that has its own dispute resolution process embedded in its general terms and conditions, as well as negotiating specific dispute resolution mechanisms for the very large projects such as our North End Sewage Treatment Plant.

* (18:50)

This new legislation would force parties to use a new provincial adjudication system, which is yet to be established. City respectfully requests that additional consultation with key components of the construction sector, including the owners, be conducted to ensure the adjudication process would still allow for owner and contractor processes where it makes sense.

One final thought, just with respect to grandfathering—and this was raised to me by our legal counsel that keep their finger on the pulse of what is happening in other provinces—we do note that, particularly in Ontario, when this type of legislation—

Mr. Chairperson: Thirty seconds, Mr. Jack.

M. Jack: Thank you, Mr. Chair.

I'll simply say, in Ontario when this was introduced, one key to its success was that existing contracts appeared to have been grandfathered, based upon the information I've received. I'm also advised that in Alberta it was introduced without grandfathering, and by all accounts that appears to have led to undue confusion.

So, thank you so much for the time. I didn't expect to take the full 10 minutes, and I will stop there. Thank you.

Mr. Chairperson: Thank you for your presentation, Mr. Jack.

Do members of the committee have questions for the presenter?

Mr. Teitsma: I do.

Mr. Jack, I wish you were in the room so you could see the reaction on some of the—the other folks in the room shaking their heads when you said certain things, and occasionally nodding, but more often shaking their heads.

I'm only allowed 30 seconds per question, so we might have to go back and forth a few times. I'll just briefly indicate that Hydro and MTI were excluded from The Builders' Liens Act for years immemorial; we don't really know why. I don't know why. And so, the fact that they were excluded from prompt payment wasn't by design, but more by unintended consequence.

That's why we've written a letter of assurance and comfort from the ministers responsible for those—for Hydro and for MTI—to indicate that they will abide by the spirit of the prompt payment legislation.

What—any thoughts on that?

M. Jack: Thank you, Minister Teitsma. And yes, I should've been clear that, you know, our assessment of whether it would apply or not was rooted in the legislation itself. So thank you for that.

I stand by what I think is a fair justification. We weren't being critical that it wouldn't apply to those two entities, but rather that in megaprojects—essentially what we're asking for, if I were to paraphrase it, would be a megaproject exemption. We think at that level, with the—with hundreds of millions of dollars flowing, that there's sufficient transparency and sufficient sophistication among the bargaining parties to at least allow for some alternative process specified in the legislation.

Mr. Chairperson: Thank you, Mr. Jack.

Other questions from the committee?

Mr. Wasyliw: Thank you, Mr. Jack, for presenting tonight. I have a couple questions for you.

You talked about a dollar threshold for the exemption. I'm wondering, if you could suggest amount, what would be a proper amount where an exemption would kick in?

And the other, sort of, question I have for you is that I suspect in these megaprojects, the City of Winnipeg deals with one large general contractor, then who deals with many subcontractors. And so are you thinking that the exemption would also apply to all the small subcontractors that the general contractor

employs, or just applies between the contract between the City and the general contractor?

M. Jack: Yes, thank you for both questions.

I will advise, I don't have a specific dollar figure. If I were to toss them out, when I think of the large projects that we had in mind, you know, anything north of \$100 million, I think, would constitute a megaproject. My own procurement folks might suggest some lower amount of—some lower threshold would make more sense, such as \$50 million. But I think we'd be talking somewhere in that range.

With respect to the second question about whether or not the points I've raised—we don't intend them to apply equally to the GC-versus-sub relationship, primarily because I'm really only here speaking on behalf of the City of Winnipeg public service.

And likewise, as you get down the pyramid of subs and then sub-subs, I think some of the arguments that I've made or tried to advance here would likely not hold as much water. So, I think first and foremost, the points I've made would be respecting the City and its immediate contracting party.

Mr. Chairperson: Thank you, Mr. Jack.

Other questions?

Mr. Teitsma: I guess, just continuing, I can tell you, I'm the minister responsible for building schools. Not necessarily megaprojects, although when you build nine of them at a time that might be a megaproject. And certainly I expect my department—and my department knows—they'll need to abide by prompt payment legislation, as does every other Crown, except for Hydro, that was carved out.

You know, putting it back on you the other way, like, do you think it's reasonable for you to expect a general contractor to finance a \$100-million-plus project?

Is that, kind of, the implication of what you're saying?

M. Jack: Yes, thank you for the question.

No, I don't think—let me reiterate that the City always strives for payment as quickly and efficiently as possible, so I don't think it's about a fairness of who should bear the delay.

Our point really is much more directed to the reality that when we're talking in the hundreds of millions of dollars, the types of quality assurance, the

types of inspections, the types of discussions that may take place within the margins are just of a different nature and different magnitude.

So no, we wouldn't think it's any more fair for a GC to be subsidizing a slow process on the part of the City of Winnipeg.

But, you know, a 33-day payment versus a 28-day payment, over the course of a \$400-million capital budget, of course, could result in a significant—and likely unnecessary—cost to the taxpayer.

Mr. Chairperson: Thank you, Mr. Jack, that is the end of our time here. Thank you for joining us this evening.

I now call Mr. Ron Hambley. Welcome Mr. Hambley, do you have material to distribute? All right, you may then continue, Mr. Hambley.

Ron Hambley (Winnipeg Construction Association): Good evening, Mr. Chairman and ladies and gentlemen, MLAs.

My name is Ron Hambley. I'm the president of the Winnipeg Construction Association. Our association was formed in 1904, consists of almost 800 contractors, subcontractors, manufacturers and suppliers that build commercial and industrial structures all over our province. I'm thrilled to be here tonight to offer our support for Bill 38, which offers greater assurance of timely payment through construction chain.

As many of you know, this has been a hot topic for our industry. We started discussing this, I think, in 2011, so it's been quite a while. I have not seen another piece of legislation that is more studied in Canada, and we're very pleased to see this moving forward within The Builders' Liens Act, as the recommendations have been suggested.

We're grateful to the government for prioritizing this issue, particularly among some very, very challenging times over the past couple of years. I'd like to thank Minister Teitsma, Minister Goertzen and of course, Reg Helwer, MLA for Brandon, for their—and their respective staff—for their incredible support over the last few years.

We're thankful to the opposition members and the Liberal caucus who have voiced their support for this legislation as well. We encourage the committee to support the legislation tonight and assist it in moving to its adoption.

As many have said here, we would certainly request that members consider adding a provision requiring a two-year review; I think that would be very helpful. And finally, we commit to you—working with you on the completion of the regulations as needed. We'll commit to assist in the development of an adjudication authority, and to oversee dispute resolution.

So, thank you very much, and good luck tonight with your deliberations.

Mr. Chairperson: Thank you for your presentation, Mr. Hambley.

Do members of committee have questions for the presenter?

Mr. Teitsma: Thank you, Mr. Hambley, for coming this evening; it's always good to hear from you and I enjoy—I've enjoyed developing our relationship through this process. And so I just, again, wanted to say thank you for coming and for your support.

Mr. Chairperson: Mr. Hambley?

Other questions from the committee?

Seeing none, thank you, Mr. Hambley, for your time.

I now call on Mr. Shawn Wood. Welcome, Mr. Wood. Do you have material to distribute?

Shawn Wood (Construction Association of Rural Manitoba): I do not.

Mr. Chairperson: All right, you may then continue.

S. Wood: Thank you very much Mr. Chairman, committee members, for the opportunity to be here and speak tonight.

I'm here representing the Construction Association of Rural Manitoba, and my first thing I'd like to say is a special thank you to MLA of Brandon West, Reg Helwer, and to Minister Teitsma, for sort of carrying this and getting this to the point where we are now.

We'd also like to thank all of those that were involved in the legislative process, as well as the opposition for supporting this and getting us to where we are.

* (19:00)

So, our association is in full support of Bill 38. Not only to get payments to our general contractors and our subcontractors, but to get payment to their employees. That, in turn, allows money to flow into

our communities and into our province, which helps our economy.

So, this bill speaks more than just to the construction industry, but to our economy as a whole within this great province.

As was said, the only portion that we'd like to mention is that amendment of this bill be reviewed in a 24-month period.

The construction association would also welcome any opportunity to assist with the development of regulations and look forward to being a part of that.

So, that's all I have to present to you tonight. Gladly take any questions.

Mr. Chairperson: Thank you, Mr. Wood, for your presentation.

Do members of the committee have questions for the presenter?

Mr. Teitsma: No question, Mr. Wood, but just to thank you very much for coming tonight and for taking time to present in person. It's much appreciated.

S. Wood: Thanks very much.

Mr. Chairperson: Any other committee members have questions?

Thank you for your presentation, Mr. Wood, and for coming this evening.

Mrs. Ramona Coey? Mrs. Coey is joining us online.

Ramona Coey (Manitoba Prompt Payment Coalition): There we go. Good evening.

Mr. Chairperson: Welcome, Mrs. Coey. We can see and hear you. You may continue and you may present.

R. Coey: I'm so pleased to be here this evening. Thank you, Mr. Chairman.

My name is Ramona Coey and I'm the co-chair of the Manitoba Prompt Payment coalition. The Manitoba Prompt Payment coalition is a coalition of 31 trade associations and unions from the province of Manitoba.

I am so pleased, on behalf of the coalition, to thank Mr. Helwer for you championing prompt payment legislation for the construction industry since 2017. Thank you, Honourable James Teitsma, for picking up where Mr. Helwer left off. And thank you to the House leaders and all political parties in your

co-operation efforts and with each other to see us to this point today.

I would like to support the amendments that are—that were made today by our industry partners from Manitoba Heavy Construction Association, the General Contractors Alliance, the WCA as well as the Construction Association of Rural Manitoba to have The Builders' Liens Act reviewed within the next year, and we will certainly participate in that review process.

The coalition have two requests of the committee: First, in preparation of regulations, we request that specifics of what is allowable on use of the term otherwise in clause 86 to be identified in detail.

And the industry needs prompt payment regime for protection. The coalition requests that the standing committee find a clear path forward with your colleagues to seeing Bill 38 become law prior to the fall election.

Thank you for your time this evening, and are there any questions?

Mr. Chairperson: Thank you, Ms. Ramona, for your—Ms. Ramona—sorry—*[interjection]*

R. Coey: I can't hear you.

Mr. Chairperson: Mrs. Coey—oh, thank you, Mrs. Coey—good thing my mic was off, I was mispronouncing—for your joining us this evening, and did members of the committee have questions for the presenter?

Mr. Teitsma: Thank you much—thank you very much, Ramona, for being here and for taking the time to encourage me and certainly, to bring this legislation forward and to a lot of advocacy throughout, you know, with the House leaders and with all political parties to ensure that this bill could get to this stage.

I definitely expect to be leaning on you and looking for your assistance as we develop regulations. And you've heard my commitment to ensure that that gets done promptly.

So, thank you very much for coming tonight.

R. Coey: Thank you, and you have our complete commitment to this process, for sure.

Mr. Chairperson: Thank you. Other questions from the committee?

Seeing none, thank you for joining us this evening, Mrs. Coey.

I now call on Mr. Terry Henry. Mr. Henry is joining us online as well.

Mr. Henry, can you hear us? There you are. All right. We can see can you and we can hear you. Mr. Henry, you can proceed with your presentation.

Terry Henry (Electrical Contractors Association of Manitoba): Good evening, thank you, Mr. Chairman. My name is Terry Henry and I want to thank you for giving me the opportunity to speak to you tonight about prompt payment and Bill 38.

I started my construction business 45 years ago. Its name is Wescan Construction Services and we've been involved in the construction industry, as I said, for 45 years. I'm also the president of the Electrical Contractors Association of Manitoba, which represents a large cross-section of electrical contractors throughout Manitoba.

Chronic delayed payments create a large financial burgeon—burden for trade contractors. Trade contractors often work 60, 90, 120 days and sometimes even longer without payments for services we have provided. Meanwhile, we have to pay all our employees and suppliers.

I've experienced this very thing many times and it's quite common throughout our industry. It's not a lot of fun when you have to go to your financial institution with your hat in hand looking to extend your line of credit. And if they are willing to do so, it's only after you have signed everything over to them.

On behalf of my electrical colleagues, thank you to Mr. Helwer for your championing prompt payment legislation for six years. Thank you, Honourable James Teitman [*phonetic*], advancing Bill 38 forward and thank you all to—all political parties and your co-operation efforts in presenting Bill 38 for the second reading and making it a priority for committee consideration.

If legislated, Bill 38 will provide cash flow for the most vulnerable tiers of the construction chain, reduce construction costs, project jobs and attract investment in Manitoba.

Critical to achieving these goals, the Electrical Contractors Association of Manitoba requests, in the preparation of regulations, the specifics of what is allowed in the term—in the use of the term otherwise in clause 86 must be identified in detail.

The Electrical Contractors Association of Manitoba supports Bill 38. The electrical industry requests the standing committee find a clear path

forward with your colleagues in seeing Bill 38 becomes law prior to the fall election.

Thank you very much for your time tonight. Any questions?

Mr. Chairperson: Thank you, Mr. Henry, for your presentation.

Do members of the committee have questions for the presenter?

Mr. Teitsma: Thank you, Mr. Henry, for coming and for lending your experiences and your history to the committee. I think your concern regarding the word otherwise is likely something that would be tackled as part of regulations. We look forward to getting that done.

So, thanks once again for your time.

Mr. Chairperson: Thank you. Mr. Henry, any response?

T. Henry: No. Thank you very much for your time as well.

Mr. Chairperson: Any questions for Mr. Henry from the committee? Seeing none, thank you for joining us and for your presentation, Mr. Henry.

I now call on Mr. Julien Lafleche. Mr. Lafleche is joining us online.

Julien Lafleche (Mechanical Contractors Association of Manitoba): Good evening.

Mr. Chairperson: All right, we can hear you and now we can see you. Welcome. Thank you for joining us this evening, Mr. Lafleche. Mr. Lafleche, you can proceed.

J. Lafleche: Thank you very much for your time, Mr. Chairman.

Good evening, everyone. I'm on behalf of the MCAM, which captures a cross sector of union and non-union, both rural, Winnipeg-based and northern contractors that perform work in the plumbing industry, mechanical industry and also work such as Mr. Jack referenced earlier, projects for Manitoba Hydro and the like.

I'm currently the president of MCAM and I also—I have a normal job, I guess. I have a day job where I'm the president of a local company here in Manitoba that's based out of Winnipeg, where we, at times and at peak, during a project that most of you have probably heard of—there was a project taking place out in Portage for Roquette where, on that project site

alone, we were up to 450 workers. And at that time across the province, we were north of 700 workers.

* (19:10)

And I can assure you that Bill 38 is critical for us to be able to operate properly, to build pricing that we can be assured that we will get paid promptly because we need to pay our workforce every week at times; sometimes it's every two weeks, depending on what sort of labour terms that you have. But our workers are paid. And we have sub-trades and different suppliers that we need to pay.

And if we don't have the assurance that we will see funding from owners within a certain time frame, it raises our risk, which ultimately raises up our price. So if there's a concern of Bill 38 raising costs or having an impact in any way, shape or form to a taxpayer or to the taxpayers, I can assure you a bill such as this, if it's put forward properly, will have the opposite impact. It will actually drive costs down because a contractor such as myself and a contractor, such as my colleague, Terry Henry, mentioned, we would actually be able to, and we would have the ability to, be more aggressive with our pricing, knowing that we will get paid properly and, you know, and on time.

And we're certainly not asking to be compensated or paid for services that we have not rendered. We're only asking to be paid promptly for work that we've done. And that's really all that we're after.

Mr. Chairman, I need to thank you. I know how much time and effort that you've put into this. My business partner, Brad Mason, has worked with you closely. We both appreciate all of your efforts. Thank you for that. And, obviously, having a new minister jump in, Mr. Teitsma, to jump in and be willing to take this on and help us through this is also noticed, and we appreciate it.

And hearing earlier that both parties—the opposition party and our current government—finding a way to have alignment on an issue such as this that is so critical to us is also something that—it sort of provides me a bit of hope, I guess, that there is a way that our government can work together on issues that are certainly critical and pressing. And that's certainly welcome.

So that's all I have. If anybody has any questions, I would certainly welcome them.

Mr. Chairperson: Thank you for your presentation, Mr. Lafleche.

Do members of the committee have questions for the presenter?

Mr. Teitsma: Thank you very much, Mr. Lafleche, for presenting, and thank you for the incredible work you and your organization are doing. I think it's significant driver of economic growth in our province. Very much appreciate it, and please say hi to Brad Mason for me. Thanks.

Mr. Chairperson: Mr. Lafleche?

J. Lafleche: Nothing. Thank you for that, yes.

Mr. Chairperson: Are there questions for Mr. Lafleche?

Mr. Mintu Sandhu (The Maples): Actually, no question.

Again, I want to thank each and every member coming in here today and speaking to this very important bill. And, as most of the—you know that the Manitoba NDP is in support of this bill. Thank you.

Mr. Chairperson: Thank you.

Mr. Lafleche?

J. Lafleche: Nothing further on my end.

Mr. Chairperson: All right. Thank you for your presentation.

This concludes the list of the presenters I have before me.

* * *

Mr. Chairperson: In what order does the committee wish to proceed with clause-by-clause consideration of these bills?

Mr. Teitsma: Well, given who's in the crowd, I suggest we start with the prompt payment bill, 38, first before moving on to the other bill.

Mr. Chairperson: So Bill 38, then Bill 29. Is that agreeable for the committee? *[Agreed]*

Thank you.

**Bill 38—The Builders' Liens Amendment Act
(Prompt Payment)
(Continued)**

Mr. Chairperson: We will now proceed with clause by clause of Bill 38.

Does the minister responsible for Bill 38 have an opening statement?

Hon. James Teitsma (Minister of Consumer Protection and Government Services): I do.

Mr. Chairperson: Minister Teitsma.

Mr. Teitsma: All right, thank you very much, Mr. Chair and members of the committee, and also my support staff I want to thank for being here, and to all those who presented to committee tonight, thank you very, very much.

I have notes in front of me that are quite extensive, but I think all of us here know how important Bill 38 is and how important it is to establish a prompt payment system in Manitoba and how positively impactful it could be and will be on the Manitoba construction industry in terms of addressing some of the significant problems and financial hardships that we have seen happen in its absence.

Certainly, I think I mentioned earlier that we are taking a—undertaking a review of the act, and that's not just going to have prompt payment in scope, but we will be looking at that.

And certainly with regards to prompt payment legislation, our intent here is to have something that's familiar, that looks and acts much the same way it does in adjacent jurisdictions. And so, as we work through the coming months on developing the regulatory framework and consultations on that, I think it's important to keep that in mind.

Certainly we've received quite of lot of very meaningful and positive input from the Manitoba construction association, Winnipeg Construction Association and a whole bunch of others, many of whom were represented by presenters here tonight. That broad support has been helpful in articulating and crafting the bill. I think it'll be helpful in moving forward regulations and also in just reminding, you know, future governments of any stripe that this legislation is important for the health and well-being of our construction industry.

So, yes, as I did indicate, I do plan on introducing an amendment to this act. And just to prove that we can shift on the fly, my original draft has the words five years in it, and I'm going to be changing that to two years, based on the very consistent feedback that I received from presenter after presenter this evening. So thank you for that. And that review, I think, will really ensure that the economic outcomes that we are hoping for from Bill 38 are becoming a reality here in Manitoba.

So, I thank you all once again for this and for this opportunity to move this legislation along, and I look forward to seeing it pass third reading and then move into the development of regulations.

Mr. Chairperson: We thank the minister.

Does the critic from the official opposition have an opening statement?

Mr. Mintu Sandhu (The Maples): The construction industry accounts for approximately 8 per cent of Manitoba employment and a significant contributor to the economy—economic stability of Manitoba. Construction workers provide essential services to our province that allow us to have safe roads and buildings, help us create a productive and prosperous province for all.

With the start of construction season as the weather gets warmer, it is important that we ensure that those working in the industry are getting paid for their long hours of work. Bill 38 amends The Builders' Liens Act to establish a prompt payment scheme, making sure the contractors and subcontractors are paid on time. It is all of our best interest. It is good for business. It means that workers can bring home rightful earned money on time to their families.

Most Manitoba construction contractors are small- and medium-sized companies with a limited cash flow and limited access to credit. Delayed payment limits the ability of those contractors to invest in their business. Because of this, getting paid on time is essential for those small businesses.

I want to thank all the presenters for contributing their voice and perspective by speaking to this important issue and contributing to this democratic process.

Thank you very much.

Mr. Chairperson: We thank the member.

During consideration of a bill, the enacting clause and the title are postponed until all other clauses have been considered in their proper order.

Also, if there is agreement from the committee, the Chair will call clauses in blocks that conform to pages, with the understanding that we will stop at any particular clause or clauses where members may have comments, questions or amendments to propose.

Is that agreed? [*Agreed*]

Clause 1 and 2—pass; clauses 3 through 6—pass; clauses 7 through 9—pass; clauses 10 and 11—pass; clauses 12 and 13—pass.

Shall clauses 14 through 17 pass?

An Honourable Member: No.

Mr. Chairperson: I hear a no.

Clause 14—pass; clause 15—pass; clause 16—pass.

Shall clause 17 pass?

An Honourable Member: No. I have an amendment.

Mr. Chairperson: No, we have an amendment. [interjection] I hear a no.

* (19:20)

The floor is open for questions.

Mr. Teitsma: I'd like to move an amendment at this point. I'll just give a moment for it to be distributed.

Mr. Chairperson: I see all members have the amendment.

Mr. Teitsma: All right. I move

THAT the following be added after Clause 16 of the Bill:

Review

16.1(1) Within two years after the coming into force of this section, the minister appointed by the Lieutenant Governor in Council to administer the amendments enacted by section 13 of this Act must undertake a comprehensive review of this Act, which must include public representations.

Tabling report in Assembly

16.1(2) Within one year after the review is undertaken or with any—within any longer period that the Legislative Assembly allows, the minister referred to in subsection (1) must table a report on the review in the Assembly.

Mr. Chairperson: Thank you, Mr. Teitsma.

It has been moved by Minister Teitsma

THAT the following be added after Clause 16 of the Bill:

Review

16.1(1) Within two years after the coming into force of this section, the minister appointed—

An Honourable Member: Dispense.

Mr. Chairperson: I hear a dispense.

The amendment is in order. The floor is now open for questions.

Seeing no questions, is the committee ready for the question?

Some Honourable Members: Question.

Mr. Chairperson: The question before the committee is as follows. All right.

THAT the following be added after Clause 16 of the Bill:

Review

16.—

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

Amendment—pass; clause 17 as amended—pass; enacting clause—pass; title—pass. Bill as amended be reported.

Bill 29—The Life Leases Amendment Act

Mr. Chairperson: Does the minister responsible for Bill 29 have an opening statement?

Hon. James Teitsma (Minister of Consumer Protection and Government Services): I do.

Mr. Chairperson: All right.

Mr. Teitsma: Yes, so this bill is about The Life Leases Amendment Act. It really proposes a series of small changes, one amendment that says that if there's a mortgage sale, tax sale or foreclosure that the new buyer is responsible for refunding entrance fees to life-lease tenants if existing tenancies are terminated.

It also mandates that landlords, while currently required to have reserve funds, also are now required to ensure that there's a reserve-fund study. And then thirdly, that the annual financial statements—so, there we go—that the annual financial statements are prepared in accordance with generally accepted accounting principles.

These amendments should improve consumer protection, address stakeholder feedback and promote greater understanding and transparency. I'm pleased to present this bill.

Mr. Chairperson: We thank the minister.

Does the critic from the official opposition have an opening statement?

Mr. Mintu Sandhu (The Maples): Housing is a right, and all Manitobans had—should have access to affordable, safe, quality housing where their rights are protected and respected.

Bill 29 amends The Life Leases Act to strengthen the rights of tenants under life leases. While this is an important change, protecting the rights of tenants must go beyond life leases. Tenants also need to be protected from out-of-control rent hikes and other pieces.

Unfortunately, affordable housing is becoming less and less available in our province, in part thanks to the actions of this government. The PCs sold off hundreds of social-housing units, despite long wait-lists for housing. The PC government has failed to build a single unit of social or affordable housing, and this—instead cut the maintenance budget while allowing massive above-guideline rent increases to go through.

Manitobans need a government that will support renters and ensure there is affordable housing available for all.

Thank you.

Mr. Chairperson: We thank the member.

During the consideration of a bill, the enacting clause and the title are postponed until all other clauses have been considered in their proper order.

Clause 1—pass; clause 2—pass; clause 3—pass; clause 4—pass; clause 5—pass; clause 6—pass; clause 7—pass; clause 8—pass; enacting clause—pass; title—pass. Bill be reported.

The hour being 7:26, what is the will of committee?

An Honourable Member: Committee rise.

Mr. Chairperson: Committee rise.

COMMITTEE ROSE AT: 7:26 p.m.

WRITTEN SUBMISSIONS

Re: Bill 38

To Whom It May Concern,

On behalf of the Association of Manitoba Municipalities (AMM), I am writing to provide some comments regarding Bill 38: The Builders' Liens Amendment Act (Prompt Payment).

Firstly, the AMM wishes to thank the Hon. James Teitsma, Minister of Consumer Protection and Government Services, for meeting with our

organization to discuss this proposed legislation in greater detail. Moreover, we would also like to express our appreciation to the Department, along with the Department of Municipal Relations, for agreeing to meet with our organization on May 3, 2023 to further discuss our concerns.

The AMM is aware that Alberta, Ontario, and Saskatchewan have enacted similar legislation, with the latter two jurisdictions seeing calls for amendments or exemptions for municipalities by their respective municipal associations. For example, the Association of Municipalities of Ontario (AMO) was successful in advocating for a freedom of contract amendment, which allows contract parties to voluntarily extend timelines to better suit their needs. Meanwhile, the Saskatchewan Urban Municipal Association (SUMA) has considered advocating for both freedom of contract and the ability to require a certification of work prior to payment for municipalities.

In regard to Bill 38 specifically, Section 78 imposes payment deadlines on each payor in the construction contract chain. We understand that this section will now require invoices to be paid in 28 days and subcontractors to be paid in a further 7 days. This proposed legislation currently applies to municipalities when they are 'owners' of construction projects. However, we strongly believe that municipalities are unlikely to be a significant cause of payment issues, and therefore, should be fully exempt from this proposed legislation and/or at the very least the proposed legislation should include a freedom of contract option for municipalities to allow parties to voluntarily extend timelines. Sections 86 and 125 may provide for some aspects of freedom of contract, however we believe the wording could be revised to make it clearer that freedom of contract in relation to both the frequency of invoices and overall timelines is included in this proposed legislation.

Additionally, the AMM understands that existing exemptions for Manitoba Hydro and Manitoba Transportation and Infrastructure have remained intact for certain types of projects, although they have only been encouraged to follow the spirit and intent of this proposed legislation. Since municipalities are not a significant cause of payment issues, we believe they should be provided the same courtesy and leeway. Municipalities are constructing multi-million dollar—and in some instances multi-billion dollar—complex infrastructure projects, and thus we encourage the

department to consider timelines to be based on the scope and complexity of infrastructure contracts.

Bill 38 also proposes to create a new adjudication process that may increase further provincial bureaucracy, red tape, and time delays. Therefore, we encourage the department to consider, where possible, the use of alternate dispute resolution processes that already exist. For example, the City of Winnipeg recently revamped its dispute resolution process and the industry is familiar with its framework. Potentially creating a new stand-alone provincial tribunal may result in the creation of scheduling delays and backlogs, which have plagued other provincial boards.

Lastly, the AMM would encourage the Department of Consumer Protection and Government Services in collaboration with the Department of Municipal Relations, to develop informational materials that would provide municipalities greater guidance and clarity on these proposed amendments.

Thank you for the opportunity to provide these brief comments.

Sincerely,

Denys Volkov
Executive Director
Association of Manitoba Municipalities

The Legislative Assembly of Manitoba Debates and Proceedings
are also available on the Internet at the following address:

<http://www.manitoba.ca/legislature/hansard/hansard.html>