



February 14, 2017

VIA EMAIL

The Standing Senate Committee on Banking, Trade and Commerce |  
Le Comité sénatorial permanent des banques et du commerce  
Committees Directorate | Direction des comités  
Senate of Canada | Sénat du Canada  
Room 1053, 40 Elgin Street, Chambers Bldg. |  
pièce 1053, 40 rue Elgin, édifice Chambers

**Attention: Lynn Gordon, Committee Clerk**

[lynn.gordon@sen.parl.gc.ca](mailto:lynn.gordon@sen.parl.gc.ca)

Honourable Members of the Committee:

**Re: Bill S-224**

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### **Introduction**

I am General Counsel to the Graham Group of Companies, an employee-owned general contractor. Graham operates in the infrastructure, buildings and industrial sectors and employs over 1300 office personnel. With over 90 years of history in Canada, Graham has grown from a small family operation in Moose Jaw, Saskatchewan, to a proud participant in helping develop the country's social and civil infrastructure.

### **When Construction Industry Laws Don't Hit the Mark**

As the Members of the Committee are no doubt aware, construction is a challenging industry, with multiple parties, multiple interests and the competing pressures such as schedule, cost, quality and above all else, safety. The laws governing the industry are myriad, and many strike a careful balancing of interests. However, this is not always the case. Simply put, laws which do not achieve this balance make matters worse. Unfortunately, Bill S-224 appears to fall into this category.

### **Bill S-224 and Prompt Payment**

Bill S-224 (the "Canada Prompt Payment Act") addresses an area where a great number of participants in the industry seek clarification and leadership. While it has some general features which are laudable, it does not "hit the mark". Central among our concerns are the following features:

1. *Bill S-224 does not balance the interests of the parties in the contractual chain.* As drafted, the Bill appears to permit a situation where payment is due to a subcontractor, even if the Owner is



late in its payment to the general contractor. Short of an extremely disruptive remedy, discussed below, this forces the general contractor to finance these payments off its balance sheet. A solution that foists the problem from the unpaid subcontractor to the unpaid general contractor is not a solution at all.

2. *Bill S-224 relies on a blunt instrument to attack a more nuanced challenge.* For the scenario above, Bill S-224 provides the unpaid party with an immediate suspension right. While this might have the effect of getting funds flowing again to that party, this particular cure may be worse than the disease. The effects of one or more suspensions will cause delay and disruption, having an impact on all parties in the contract chain, including government owners and, ultimately, Canadian taxpayers. Excess reliance on an extreme (and very often counterproductive) contractual remedy will simply put construction projects in distress. This will ultimately lead to more expensive projects and more fractious relationships between parties to a construction project.
3. *Bill S-224 takes a piecemeal approach.* Bill S-224 shares a number of the features of Bill 69, an Ontario precursor that, among other things, was fairly critiqued for not taking a holistic approach to payment challenges in the construction industry. By contrast, the Ontario government-commissioned report "Striking the Balance: Expert Review of Ontario's *Construction Lien Act*", authored by Bruce Reynolds and Sharon Vogel, represents a thoughtful, thorough and comprehensive analysis of liens and holdback, prompt payment and dispute resolution. The report's breadth speaks to the fact that these issues are intertwined, and that an overly simplistic fix will invariably create more problems than it solves. The Reynolds Vogel report benefits from a comprehensive and broad based consultation with numerous stakeholders, and as such the resulting recommendations are balanced and pragmatic.

While doubtless well-intended, we respectfully submit that Bill S-224, if enacted, would simply replace one industry challenge with another. Given the vital role played by the construction sector in the Canadian economy, we encourage a broader based approach to payment issues that carefully examines the needs of all stakeholders.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Tony Clark", written over a light blue horizontal line.

Tony Clark  
General Counsel