ICI Construction in Ontario: A Review of Competitive Disadvantage and its Measurement

Final Report

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Disclaimer

This report, which is to be viewed in its entirety, should be regarded as a work in progress. The competitive environment will remain fierce in coming years, particularly as interest rates start rising again. The pressures facing the unionized construction sector will not vanish even if both sides arrive at a useful consensus with respect to interpreting, measuring and responding to local ICI competitive concerns. These pressures will also mean that even-handed enforcement of government statutes and regulations will remain of primary importance to labour and management.

If the recommendations in this report attract the active support of labour, management and government, we believe the OCS, a representative tripartite body, can play a constructive role in the further fulfilment of its mandate, namely "the advancement of the unionized construction industry in Ontario" (O. Reg. 187/93).

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Executive Summary

Overview

"Unlike other businesses, construction requires little fixed capital, with necessary equipment usually being leased rather than purchased. As a result, it is fairly easy to go into business as a contractor and construction firms are constantly being formed and dissolved . . . The easy entry and exit of these contracting firms makes workers vulnerable to disreputable operators who can readily form and dissolve construction companies to suit their own purposes. This high turnover in construction firms is matched by a high turnover in construction employment. Generally, workers are hired only for the duration of a particular job and move on to a new employer when the work is finished. The construction industry is also plagued by persistently high unemployment, with work being extremely seasonal and transient. In short, construction is characterized by high labour turnover among firms, instability in employment relationships and high rates of unemployment. All this makes it very easy for a fly-by-night operator to go into the construction business, pick up some semi-skilled or unskilled workers at rock-bottom wages and make a quick profit. The government is particularly vulnerable to this kind of operation because it is required by law to award a contract to the lowest bidder, with a few exceptions. Thus contractors can easily cut costs by slashing wages. The reputable contractors committed to paying wage rates sufficient to attract and hold skilled, experienced construction workers cannot hope to compete with these tactics."

Ray Marshall
Secretary of Labour in the Carter Administration

Chapter 1: Introduction

This report was produced in response to a request by the Ontario Construction Secretariat (OCS), a tripartite statutory body composed of unionized contractors, union and government representatives and established by regulation under the Ontario *Labour Relations Act*.

As is well known, collective bargaining in the Industrial, Commercial and Institutional (ICI) sector of Ontario's construction industry is conducted on a single-trade, province-wide basis under the *Labour Relations Act*. In 2000, Bill 69 amended the *Labour Relations Act* to enable employer groups to seek mid-contract modifications to their provincial agreements where it can be shown they are at a "competitive disadvantage". Failing agreement through negotiations, the request for modifications may be referred to an arbitrator for determination by final offer selection.

The mandate of the report is two-fold. First, to offer an opinion on the meaning of "competitive disadvantage", which is undefined in Bill 69. Second, to identify key indicators for measuring competitiveness and set out methodology for collecting and interpreting the required data, identify and assess the strengths, weaknesses and limitations of existing data, indicate additional data collection requirements, including the costs of developing them and comment on potential for their acceptance as measurement tools by both labour and management.

In pursuing this mandate, the consultants met with key management and union stakeholders individually and in groups in Chatham, Hamilton, Kingston, Sudbury, Toronto and Thunder Bay. In addition, they met with industry-wide organizations, several Ontario government ministries and the Workplace Safety & Insurance Board (WSIB). Research included collective agreement and law libraries and a number of experienced individuals who shared insights on matters ranging from questions of law to special, so-called 'market recovery' arrangements that are permitted by most ICI collective agreements. As for measurement issues, the consultants met with Statistics Canada (StatsCan), Human Resources Development Canada (HRDC) and Industry Canada (IC). They also conferred with a knowledgeable Quebec construction union leader and government, industry and union officials in Washington and Maryland to discuss construction competitiveness in the U.S. and its measurement (see Appendices section.)

Chapter II: History and Current Status of ICI Bargaining

Chapter II deals with the historical development and current content of ICI collective agreements. The evolution of collective agreements is traced through three landmark reports, each of which resulted in legislative change: (i) Goldenberg, 1962; (ii) Franks, 1977; and (iii) Adams, 1991. This report deals specifically with the background leading to Bill 69, namely the concern of construction employers – led by a group known as *The Ontario Coalition for Fair Labour Laws* – about the growth of competition from non-union firms and the underground economy. The government's response to the representations of *The Coalition* was the enactment of Bill 69, which increases opportunities for mobility of construction workers between regions, enhances the rights of employers to "name hire" (as opposed to receiving referrals from the union hiring hall) and, among other important changes, adds Sections 163.2 and 163.3, the sections which permit authorized contractor entities to seek mid-contract modifications to provincial agreements. It has been observed that so far, no such applications have been made.

As to the current situation, there are now 25 single-trade province-wide ICI agreements, all triennial and all expiring on a common date. The agreements negotiated in 2001 will expire April 30, 2004. Save for two trades – Boilermakers and Millwrights – provincial agreements contain provisions that vary from local area to local area. With respect to the 23 multi-area agreements, the number of local areas varies from fewer than five to more than 15. Depending on the trade, the spread between the highest and lowest wage package and wage rate can be as high as 30% and as low as 5%. In 2001, Toronto had the highest wage packages in 21 trades. There is a highly variegated incidence of lowest wage packages and rates, which appear in some 20 different areas. High wage areas for certain trades can be the low to lowest areas for others. Kingston, Ottawa, Sarnia and Thunder Bay all provide examples.

These provincial agreements thus display at least some degree of sensitivity to particular local markets for particular trades. Their potential sensitivity is enhanced by the extent to which, under generically described 'market recovery' provisions, the agreements permit mid-term contract amendments, triggered by non-union competition in local markets. Bill 69 augments the local sensitivity of provincial agreements by creating a final offer mechanism to resolve mid-contract negotiating deadlocks. An analysis was conducted of the mixed reception it received as evidenced by 2001-2004 market recovery clauses that range from arrangements purporting to exclude arbitration, to agreements on alternative arbitration mechanisms which, in the case of the Painter's Agreement, requires the arbitrator to provide reasons for his/her final choice.

Chapter III: What the Consultants Heard

In light of the high quality of representations made by the parties consulted and, in acknowledgement of the value of their input, this portion of the report is extensive.

There were several recurrent themes worth emphasizing. The most prominent was the assertion, by unions and unionized employers alike, that certain provincial statutes and/or regulations – principally the *Trades Qualification and Apprenticeship Act*, the *Workplace Safety and Insurance Act* and the *Ontario Fair Wage Schedule* – are not being adequately enforced against non-union firms, to the significant, competitive disadvantage of the unionized sector. This was such a prevalent and common complaint that it is worth repeating the comments made in Chapter IV of the Final Report:

> The unionized employers and employees consulted, as recorded in Chapter III, expressed deep concern their non-union competitors were, in significant ways, delinquent in complying with regulatory employment-related statutes, such that they had achieved, precisely because of their delinquency, significant competitive advantages. This, as has been mentioned, is the essence of the argument about the absence of a 'level playing field'. Most of those consulted – management and labour alike – attributed this imbalance to inadequate or disparate enforcement practices by those government ministries or agencies responsible for ensuring compliance with the Acts they administer.

> While the report's mandate makes no explicit reference to statutory compliance, there can be little argument that if – and that caveat is emphasized – if inadequate enforcement against or disparate treatment or favouritism towards non-union ICI construction firms were to be established by persuasive evidence, that should be relevant to any assessment of competitive disadvantage that an arbitrator under Section 163.3 might be called upon to make. To take an extreme example, if an arbitrator were to be persuaded that the "cost" gap between a unionized and non-unionized contractor was attributable solely or even substantially to the costs of statutory compliance borne by the unionized firm – costs unlawfully avoided by the non-union firm – it would be difficult to justify modifying the provincial agreement at the expense of the employees of the complying unionized firm (Final Report, Chapter III)

A second, prominent issue was the concern of unions that mid-term agreement modification applications under Bill 69 could accelerate a "race to the bottom", undermining the skills, quality and productivity that are now hallmarks of Ontario's ICI unionized sector. Both sides also expressed their concern about the underground economy and the extent to which it was being utilized by non-union firms.

Although unions and unionized firms emphasized their commitment to a common objective – namely, retaining and expanding project activity and jobs – there was not total unanimity on either the causes of the growth of non-union activity or the appropriate methods to regain and expand market share. Some unions contended that the competitive problems of today derive from unjustifiably high profit margins which contractors demanded and received when construction work was plentiful. On the other hand, some contractors said rigid work rules and overtime costs, in addition to high compensation, were a significant source of competitive disadvantage for unionized firms. The consultants were told that frequently the adjustments sought under enabling clauses included not only wage reductions, but also requests for changes in the negotiated hours of work and/or overtime provisions. Another noteworthy contractor complaint was the lack of a pre-apprentice/materials handler/helper or equivalent classification in collective agreements, which is said to result in the inefficient use of high-paid journeypeople for unskilled work.

Some contractors said labour and management should work to reduce the pressures of competitive disadvantage by taking a more effective, cost-conscious approach to triennial negotiations and, also, should improve their mid-contract communications, rather than looking solely to external factors, such as inadequate government enforcement, as a cure-all remedy.

As to the meaning of "competitive disadvantage", the majority view appeared to be that it should be construed expansively and that in any arbitration under Bill 69, parties should be free to call evidence and make submissions on any matter material to assessing relative competitiveness. A minority view, held by general contractors and some lawyers, was that the evidence in arbitration should be limited to those remedial matters set out in Section 163.2(4), namely wages, hiring restrictions, individual employee selection, accommodation and travel allowances, apprentice/journeyperson ratios and hours of work.

The reader's attention is drawn to these and other thoughtful and, in some cases provocative, submissions made – the details of which appear in Chapter III of the Final Report.

Chapter IV: The Impact of Statutory and Regulatory Requirements on Competitiveness

Chapter IV focuses on five statutes and one regulation. First, the subject of collective bargaining, as governed by the *Labour Relations Act* and its role as a long-established and accepted technique for setting wages, benefits and working conditions in most advanced industrial societies, including Canada. These comments are made in response to apprehensions expressed by some in the employer community about the alleged excesses that are said to characterize the current operation of collective bargaining in Ontario's construction industry.

The next subject deals with the *Trades Qualification and Apprenticeship Act* and the *Apprenticeship and Certification Act of 1998* and the allegations that the former statute, in particular, is not being adequately enforced by the government inspectorate. While acknowledging the observations made by representatives of the industry, it is concluded that without hearing fully from the government as well as the non-union sector – which is claimed to be the principal beneficiary of inadequate enforcement – it can only be concluded that if these assertions are correct, they are directly relevant as evidence in any arbitration under Section 163.3 in which modifications to a provincial agreement are sought. Referring to one specific case, pointed out by one union involving a complaint to the Ombudsman in 1989 concerning the failure of the Ministry of Skills and Development, as it was then known, to enforce apprentice/journeyperson ratios and other statutory requirements against non-union firms. This matter has been raised with the successor ministry – the Ministry of Training, Colleges and Universities (MTCU) – and any further comments by the consultants will be forwarded to the OCS.

The next subject comments on the *Workplace Safety and Insurance Act,* noting a number of points, including the fact only 50% of the industry, primarily unionized contractors, are making payments to the WSIB. It is also noted that although the WSIB has recently doubled the number of its payroll auditors from 30 to 60, its capacity to monitor the approximately 180,000 establishments covered by the Act is still inadequate. The consultants also referred to the work done by the National

Construction Industry Skills Data Card Project, co-chaired by Steve Coleman of the Mechanical Contractors Association of Ontario. The consultants observed that if smart card technology can be introduced across the province, it could yield much valuable information to enhance statutory compliance with all employment-related statutes and regulations.

The consultants comment briefly on the incursion into Ontario of construction firms and workers from Quebec and Manitoba, focussing on Bill 17, *An Act Respecting Labour Mobility in the Construction Industry Aimed at Restricting Access to Those Taking Advantage of Ontario's Policy of Free Mobility*. While Ontario has announced its intention to take aggressive action to attempt to ensure there are reciprocal rights of passage for construction workers and firms between Ontario and Quebec, similar efforts to secure reciprocity do not appear to have been taken in Northwestern Ontario with respect to Manitoba construction firms and construction workers.

Finally, this Chapter describes the contents and operation of the *Ontario Fair Wage Schedule*, the assertions made by unions and unionized firms that it is not being adequately enforced and allegations that the government, in some instances, is sponsoring projects on which its own schedule is being contravened, to the benefit of non-union contractors.

Chapter V: Analysis of Competitive Disadvantage

Chapter V contains a legal analysis of the words "competitive disadvantage" as used in Bill 69 and provides an economic perspective on competition. It is concluded the scope of the Bill's applicability to "kind of work", "market" and "location of the work" is highly flexible. "Kind of work" embraces either all the work performed by a particular trade or only the task of a sub-trade, "market" means the market for all ICI products or only a single such product, e.g., schools and "location of work" means any area from the subdivision of a local area to Ontario as a whole. As to the words "competitive disadvantage", the report favours a broad interpretation, permitting applicants and respondents to introduce evidence and make submissions to an arbitrator on such quantifiable factors as cost of materials, contractor's profits, interest and taxes, as well as such less easily measured elements as management or union inefficiencies, size and reputation of competing firms, recourse to market recovery provisions of a collective agreement, contractor's need and capacity to "design/build" and deliver a product with life-cycle cost commitments, etc.

An expansive legal interpretation is sustained by generally accepted economic principles. These define competitiveness as the ability to produce a good or service under free and/or fair market conditions which, at the same time, results in normal or fair returns to a firm's key stakeholders – labour, management and investors. This definition of competitiveness focuses on the perception of *normal* returns whose absence indicates non-competitive deviations.

Both union and non-union firms are part of the construction industry in Ontario and, in that sense, save for law-violating 'underground' contractors, constitute a significant part of normal industry practice. Since unionized firms routinely pay more than their non-union rivals in wages, benefits, training costs, etc., they have sought means of overcoming these apparently uncompetitive compensation gaps. They are often larger than their non-union counterparts in order to generate greater economies of scale and scope. They also tend to increase real investment so a better-trained workforce can increase company productivity, reduce unit labour costs and enable them to bid successfully on large and sophisticated construction projects in which on-time completion and lifecycle costs are major considerations. To this, the report observes that virtually everything else affects competition in construction, including taxation, interprovincial mobility and the effective enforcement of government regulations. Thus the expansive interpretation of the meaning of "competitive disadvantage" is consistent with economic principles.

The report also expresses concern about the provision of the Bill that prevents an arbitrator from giving reasons for his/her finding that "competitive disadvantage" does or does not exist in a particular case. This prohibition, believed to be of arguable legal validity, will almost certainly operate to prevent development of jurisprudential precedents to aid parties in their negotiations and analysis of the scope and significance of Sections 163.2 and 163.3. It is therefore recommended the prohibition of written reasons be brought to the Ministry's attention for possible repeal.

Chapter VI: Measuring Competitive Disadvantage

Based on the above, Chapter VI sets out a checklist of 20 issues, which are believed relevant to "competitive disadvantage." They are grouped under six broad headings and are intended as a working template for applicants, respondents and arbitrators under Section 163.3. The six broad headings include:

- ***How Strong is the Local ICI Market?***
  The overall tightness[1] of the construction labour market plays a role in the particular local ICI sector and could affect the competitive balance between unionized and non-union construction firms.

- ***Unionized Firms' Market Share***
  The market share approach to measuring competitiveness of unionized firms in ICI construction is clearly one of the best measures of competitiveness. The seven issues in this grouping focus on how unionized construction firms have fared in the particular market, whether they have been losing or gaining local ICI market share and the basic causes for losing.

[1] "Tightness" in this case refers to the relative availability and/or cost of construction workers in the specific local area or market.

- ***Overall Cost as a Measure of End Product Value***
  This series of issues focuses on cost gaps between unionized and non-union ICI construction firms. For example, how do local unionized wages in the collective agreement compare to estimates of what non-union firms pay? Have the net costs imposed on both kinds of firms departed from the existing norm?

- ***Potential Remedies under Bill 69***
  Comment is made on the remedies available under Section 163.2(4) of Bill 69, namely, (i) wages, including overtime pay and shift differentials; (ii) hiring hall restrictions (restrictions on employers with respect to hiring employees who are not members of the local affiliated bargaining agent); (iii) name hiring restrictions; (iv) accommodation and travel allowances; (v) requirements respecting the ratio of apprentices to journeypeople employed; and (vi) hours of work and work schedules. This set of questions focuses on how unionized firms fare relative to non-union competitors in each of these six possible remedy areas.

- ***Enabling Clauses, Stabilization Funds, Less Formal Arrangements for Relief***
  The three issues in this group focus on the ways in which changes in collective agreement provisions are already taking place in the local ICI market, namely, through enabling clauses, stabilization funds and other, less formal, ad hoc arrangements for receiving some relief from the relevant collective agreements. For example, how effective has negotiated relief through enabling clauses been in permitting construction firms to remain competitive?

- ***Other Competitiveness Assessment Indicators***
  This final group of issues explores "balancing" factors bearing on competitiveness. For example, do unionized firms bear a higher cost of training than non-union firms? Do government fair wage schedules (federal, provincial or municipal, where applicable) play a role in determining specific local cost issues, etc.?

Chapter VII: Overview of Data Sources

Most of the 13 data sources reviewed originated with Statistics Canada (StatsCan): *The 1999 Survey of the Construction Industry*; the *Labour Force Survey* (LFS); the *Survey of Employment Payrolls and Hours (SEPH)*; the *Workplace and Employment Survey* (WES) and the related *Labour Cost Survey*; the *2000 Special Survey of the Construction Industry* prepared for HRDC and *Union Wage Rates Data in the Construction Price Statistics*. Other material includes public and private investment surveys, the Construction Sector Council as a source of future data, WSIB data, building permits, CMD's private listings of projects and StatsCan's *Financial Performance Reports*.

Two major conclusions are drawn from the analysis of this material:

- ***Statistics Canada data will not be very useful in local Section 163.3 applications***
  StatsCan data is helpful in spotlighting broad trends in construction and, in some instances, some of the broader developments that can be *linked* to ICI construction in Ontario. While StatsCan data could be improved upon and customized for analyzing local ICI competitiveness, the costs of doing so appear prohibitive.

- ***The best and most cost effective data sources will be based on local market intelligence***
  The preferred approach is to concentrate on local market intelligence available to key stakeholders rather than on aggregated and often inapplicable StatsCan information. StatsCan data can provide useful supporting background information to local ICI developments, but the locally originating data are more directly relevant, persuasive and less costly to assemble (see Chapter VIII).

Chapter VIII: Estimated Costs of Creating and Maintaining a Database to Assist Bill 69 Applicant's and Respondents

It is concluded the most promising approach is to create a centralized database of bidding experiences.

- ***A centralized database of bidding experiences in local ICI construction markets***

  Employers and unions should have access to a comprehensive list of bidding outcomes for local ICI markets. A comprehensive, centralized bidding list will provide valuable insights into shifts in the competitive balance between unionized and non-unionized construction firms. The publicly available data from CMD are a basis for creating this data set. The bidding experience information should cover the span of several business cycles.

  It is recommended the OCS use its own funds to assemble and monitor local ICI bid (win, lose, etc.) data. OCS should then be prepared to provide data customized to particular users for which it would charge an appropriate recovery cost. This new role for OCS would involve some expansion in its infrastructure with cost implications, i.e., additional professional researcher and support staff and additional back-office costs (including computers, rent, etc.).

- ***Improving the monthly Labour Force Survey (LFS) with respect to local union and non-union wages and employment***

  An approach that holds some promise for both applicants and respondents is utilizing the monthly LFS data for union and non-union wage and employment information. StatsCan has suggested it might be possible to create an ICI union/non-union wage series for sub-geographical sectors in Ontario. Assuming construction firms could be classified as union or non-union, a wage and employment series could be created at the ICI level. Potentially, a union/non-union wage series could be created for a number of sub-regions in Ontario. The process would cost about $3,000-$4,000 per year for twelve months of data. StatsCan officials do not recommend going back any further in time with their data than 1999. Thus, to derive ICI (non-residential) construction wage and employment data for 1999 to 2001, in sub-regions of Ontario on a union/non-union basis, would cost about $9,000-$12,000.

- ***Consideration of two other StatsCan sources/approaches that appear potentially useful***

  (i) Expanding the *Triennial Construction Survey* to cover ICI Ontario at a regional level; and (ii) replicating an ICI version of the special 2000 HRDC-sponsored *Survey of Construction in Ontario*.

  Even with these improvements, the surveys are of problematic use with respect to local ICI modification applications. Moreover, the costs for customizing the data will be prohibitive unless StatsCan can find other substantial partners to share the costs. For example, for the *Triennial Construction Survey*, an annual additional cost exceeding $1 million was quoted. Replicating the HRDC-sponsored survey at a regionalized ICI Ontario level would cost approximately $600,000 annually.

Chapter IX: Conclusions and Recommendations

Defining "Competitive Disadvantage"

- "Competitive disadvantage" should be broadly defined to permit evidence to be introduced in arbitration on any issue that can be shown to be material and relevant to determining relative competitiveness. A checklist of 20 issues has been developed to assist in defining "competitive disadvantage" under this expansive interpretation.

- The provision of Bill 69 that purports to prevent an arbitrator from giving reasons for his/her decision on whether or not there is a "competitive disadvantage", the threshold condition upon which jurisdiction depends, is arguably contrary to law and, in any event, should be removed from the Act since it prevents the development of a useful body of jurisprudential precedents.

Measuring "Competitive Disadvantage"

- The most appropriate and accessible information for measuring local ICI market competitiveness is local market intelligence. To the extent feasible, OCS could play a useful role in collecting, analyzing and disseminating local ICI bidding information, on request, to the parties of interest.

- Most of the StatsCan data are too generalized and aggregated to be of much practical use in Bill 69 applications. With one exception, customized data from StatsCan are an option, but costs would be prohibitive.

- The exception is the StatsCan Labour Force Survey (LFS), which could be customized to provide data on ICI employment and wages for union and non-union construction at sub-regional levels. It is recommended the OCS undertake a pilot project with StatsCan to generate this new LFS data.

- Some new technological developments, such as employee/employer "smart cards" are promising potential aids to measuring competitive disadvantage and enforcing existing laws. It is recommend and supported that the ongoing work on this subject under the National Industry Skills Data Card Project.

- There are useful labour market measurement techniques to be learned from the U.S., especially those responsible for administering the "prevailing wage" provisions of the Davis-Bacon Act. It is recommended the OCS work with those administrators, together with the appropriate officials of the U.S. Labour Department's Bureau of Labour Statistics (BLS).

Reducing Competitive Disadvantage through Enhanced Enforcement of Statutes and Regulations

- In light of allegations of inadequate enforcement of existing laws against non-union firms, it is recommended a detailed examination of the Quebec approach to enforcement be undertaken. There, the Commission de la Construction du Québec (CCQ), a tripartite agency like the OCS (with much expanded authority), plays an active role in enforcing the full range of statutory requirements imposed on the industry, including detecting and reporting on illegal activities in the underground economy. To carry out this role, it receives significant government funding.

- The possibility of introducing a system of compulsory registration of all contractors should be evaluated by the OCS. This is required under Quebec law and is being actively pursued by some Ontario trade associations, notably the Electrical Contractors Association of Ontario (ECAO). It is recommended the OCS liaise directly with ECAO and CCQ to assess the desirability and feasibility of recommending a system of compulsory registration in Ontario.

- The OCS should consider a survey of existing enforcement practices and procedures, focussing on the *Trades Qualifications and Apprenticeship Act*, the *Workplace Safety and Insurance Act*, the *Occupational Health & Safety Act*, and the *Fair Wage Schedule*. The survey should examine both published and unpublished government data with respect to such indicators as the number of inspectors, frequency of site inspections (union and non-union), number of complaints, number of infractions, penalties involved, compliance with objectives and other measured outcomes. The survey will need to be carefully designed, with appropriate regard given to privacy and freedom of information laws.

Final Report

Chapter 1: Introduction

1. This report is submitted in response to a request by the Ontario Construction Secretariat (OCS), a statutory corporation established by regulation pursuant to Section 168 of the *Labour Relations Act*, Statutes of Ontario, 1995, as amended. The OCS facilitates collective bargaining in and otherwise assists the Industrial, Commercial and Institutional (ICI) sector of Ontario's construction industry. Its members consist of equal numbers of representatives of labour, management and the government of Ontario.

2. The consultant's mandate is described in the OCS project overview, contained in its request of December 14, 2001:

> *Bill 69 "Labour Relations Amendment Act (Construction Industry) 2000" introduced significant and extensive changes to the collective bargaining process. Section 7 of Bill 69 provides employers with the opportunity to apply for local modifications to province-wide agreements based on 'competitive disadvantage'. Section 163.2(5) sets out the form and content of an application as follows:*
>
> *163.2(5) The application shall be in writing and shall,*
>
> *(a) state the kind of work, the specified market and the location with respect to which the amendment would apply,*
>
> *(b) set out any submissions the applicant believes to be relevant to determine the question of whether the provisions of the provincial agreement render employers who are bound to it at a competitive disadvantage with respect to any of the matters referred to in clause (a); and*
>
> *(c) set out the text of the amendments which are applied for.*
>
> *Bill 69 does not define 'competitive disadvantage' nor provide guidance as to how one would measure competitiveness.*
>
> *The OCS recognizes the need to develop appropriate tools for measuring competitiveness within the construction industry that can be agreed to by both labour and management. As a neutral third party for much of the local area competitiveness data, the OCS can enhance our member services. This Request for Proposals (RFP) seeks to identify key indicators of competitiveness in the ICI construction sector and to assess the methodology, strengths, weaknesses and potential application of each indicator.*

3. In pursuing their mandate, the consultants actively consulted representatives of the important parties known in the ICI construction industry as the Employee and Employer Bargaining Agencies (EBAs). These EBAs negotiate the collective agreements that govern terms and conditions of employment in the 25 ICI trades. As well, the consultants met with representatives of such industry-wide organizations as the Construction Employers Co-ordinating Council of Ontario (CECCO), the Construction Labour Relations Association of Ontario (CLRAO), the Toronto Construction Association (TCA), the Construction Safety Association of Ontario (CSAO), the Ontario General Contractors Association (OGCA), the Provincial Building & Construction Trades Council of Ontario and officials from such government agencies as the Workplace Safety and Insurance Board (WSIB), the Ministry of Labour (MOL), the Ministry of Training, Colleges and Universities (MTCU) and the Ministry of Economic Development and Trade (MEDT). The consultants sought and received guidance from Statistics Canada (StatsCan) and Human Resources Development Canada (HRDC) and from a number of experienced individuals who generously shared their insights on matters ranging from questions of law through data availability to special, so-called "market relief" arrangements that are locally developed and applied. The consultants conferred with management, labour and government officials in Maryland and Washington on ways in which relevant employment and labour relations data are collected and assessed by the Bureau of Labour Statistics (BLS), the administrators of the *Davis-Bacon Act* and other departments and agencies in the U.S. government. The list of meetings appears in Appendix 1.

4. In the latter stages of the inquiry, equipped with the information and submissions already received, the consultants undertook to gain first-hand exposure to Eastern, Central, Western and Northern Ontario perspectives in visits to Chatham, Hamilton, Kingston, Sudbury, Toronto and Thunder Bay. The consultants acknowledge, with gratitude, the assistance received from all organizations, agencies and individuals listed in Appendix 1, which excludes only the names of individuals who requested anonymity. The consultants are particularly indebted to the members of the OCS Steering Committee – Steve Coleman, Patrick Dillon, Eryl Roberts and Gary White whose assistance proved invaluable from the first day of the assignment until the last. Emphatically worth highlighting as well is the support of Katherine Jacobs, OCS Research Co-ordinator, who participated in the travels and interviews, organized the larger meetings and assisted the consultants in their pursuit of data.

Chapter II: History and Current Status of ICI Bargaining in Ontario

History

5. To understand the context of Bill 69 and the specific questions to be addressed in response to the mandate set out above, it will be helpful to describe the key elements in the evolution of collective bargaining in the ICI sector in Ontario since the early 1960s.

6. Prior to 1962, collective bargaining in the entire construction industry was treated, under the *Labour Relations Act*, in the same manner as other sectors of the economy. Construction unions, the vast majority of which were, as they still are, affiliated internationally with the AFL-CIO Building Trades Department, were certified as trade bargaining units with employers on a project basis. Following certification (or voluntary recognition), bargaining took place on a fragmented and largely uncoordinated trade-by-trade basis.

7. This patchwork quilt process and the results that emerged in the Toronto area and beyond, gave rise to growing industry unrest and, in 1962, led to the appointment of the Goldenberg Royal Commission[2], with a mandate "to enquire into and report on the relations between labour and management in the construction industry in Ontario . . ."

8. As a result of the Goldenberg Commission's recommendations, a new construction industry division of the *Labour Relations Act* was introduced – a principal structural feature of which was the establishment of a number of "board areas" covering all of Ontario.[3] Thereafter, a construction union applying for

[2] *Report of the Royal Commission on Labour-Management Relations in the Construction Industry*, H. Carl Goldenberg, OBE, Q.C., Commissioner, Queen's Printer, March, 1962. The Goldenberg Commission, acknowledging the unique features of the construction industry, including the absence of durable, single-employer relationships, as well as the diverse regional economic characteristics of various areas of the province, concluded the *Labour Relations Act* should be amended to provide for a special set of conditions for the construction industry. Although the appointment of the Commission was prompted by "serious disturbances in the house and apartment building sector of the Toronto construction industry in 1961", the Commissioner observed that these disturbances "affected all the branches of construction" across the province and they "had been preceded by work stoppages of various kinds in 1957, 1958 and 1960." Consequently, Goldenberg's examination, analysis and recommendations covered the entire industry, including the industrial, commercial and institutional sector, which, at that time, was estimated to account for 25.6% of the value of all construction in Ontario (compared to 58.3% in the residential sector). Goldenberg's threshold recommendation was that the *Labour Relations Act* should be amended to provide for a special set of conditions for the construction industry:

> *"I recommend that special provisions governing the construction industry should be embedded in the Labour Relations Act as a separate part thereof entitled 'Construction Industry: Special Provisions'."*

This general recommendation for separate treatment was followed by a series of specific recommendations for reform, covering negotiations, arbitration of grievances, successor rights, jurisdictional disputes, penalties for violations, the application of fair wages under *The Industrial Standards Act*, minimum wages and maximum hours and other proposals, including multi-employer and multi-trade bargaining. Some recommendations were adopted by the Legislature, others were not. The most important recommendation relating to our mandate concerns the acquisition by construction trade unions of bargaining rights:

> *"For reasons arising from the nature of construction operations, I find that project certification, on anything but a long-term project, may lead only to frustration and be an open invitation to unlawful action by the union. Area certification, recognizing that employees of an employer move from project to project in the area, overcomes some of the problems posed by certification for a particular project. I recommend that area certification should be the general rule, and that the Board (i.e., the Ontario Labour Relations Board) should restrict project certification to long-range projects of a special nature, and that this policy should be set out in the legislative provisions relating to the construction industry."*

[3] See Section 128(1) of the Act: Where a trade union applies for certification as bargaining agent of the employees of an employer, the Board shall determine the unit of employees which is appropriate for collective bargaining by reference to a geographic area and it shall not confine the unit to a particular project.

certification was required to exhibit the requisite majority support from **all** the respondent contractor's employees within the appropriate Board area on the date of the application for certification. Thus, bargaining units granted by the Board became, in effect, multi-project in their scope in those cases where an employer had more than one job or project.[4]

9. The statutory changes implemented as a result of the adoption of some of the Goldenberg recommendations solved some problems, but not others. For example, the imbalance and the lack of congruence in employer and trade union roles and bargaining powers remained. This imbalance in organizational sophistication and bargaining power has been gradually redressed since Goldenberg – see report of the *Industrial Inquiry Commission into Bargaining Patterns in the Construction Industry in Ontario*, Ministry of Labour, May 1976 ("The Franks Report") page 17.[5] Since the Franks Report, the organization and co-ordinating function of the various associations has evolved even further.

10. Although there were changes in the organizations responsible for collective bargaining on both sides, the essential structure of the industry remained the same during the 1960s and 1970s. Contractors did not usually have an ongoing complement of employees, except for some "key persons" who were permitted to move from project to project.[6] In most instances, the majority of employees continued to be supplied on a project-by-project basis through the hiring hall of the local union within whose jurisdiction the project was located. Thus, the recruitment and assignment of employees, invariably a management prerogative in other industries, remained in significant measure a function performed by the unions.

[4] The practice of acquiring bargaining rights by voluntary recognition, as opposed to formal certification by the Board, preceded the Goldenberg Report. Voluntary recognition has remained a common practice in the intervening period. It was not dealt with by Goldenberg nor, so far as we have been able to determine, has it been the subject of examination or recommendation in subsequent studies or reports. Voluntary recognition is, however, specifically permitted by Section 158(3).

[5] "*Contractors have, in turn, formed various associations. Although the origins of many of these associations were for general purposes, over the years these associations have become involved in labour relations. The reasons for this development are important and will be dealt with later in this report .The employer associations, by and large, reflect the differences in the various types of contractors. Thus general contractors have associations of general contractors and trade contractors have trade contractor associations, and there are also specialty associations of specialty contractors. Some associations are local in scope; others are provincial or national. Recently there has been a tendency for all associations dealing with labour relations to form an overall association. Thus for a time the Ontario Federation of Construction Associations (OFCA) was a confederation of various construction associations. In recent years the Construction Labour Relations Association of Ontario (CLRAO) has been an association of direct contractor members dealing with labour relations on their behalf.*"

[6] This varies from trade to trade. The ironworker contractors, for example, a particularly mobile group, have much larger permanent workforces than some other trade contractors.

11. While the Goldenberg recommendations reduced some of the pre-1960s fragmentation, the new bargaining structure did not solve what came to be known as "whip sawing" and "leap frog bargaining", where settlements in one trade or area tended to lead to pyramiding higher settlements in other trades and areas.[7] The problem was compounded by the inability of the voluntary employer bargaining associations to prevent "pick up" agreements. These pick-up agreements occurred when individual employers entered into agreements or arrangements with unions for the supply of tradespersons during a legal strike or lock-out, on the understanding that the employer would "pick up" the agreement eventually negotiated by those employers who continued to bargain and bear the economic burden of work stoppages.

12. As a result, the *Labour Relations Act* was again amended in 1971 to provide for "accreditation" of employer associations, giving each accredited association sole and exclusive power to act for and bind its members in collective bargaining on a board area basis. This amendment was designed primarily to prevent pick up agreements, but was ineffective in addressing either "whip sawing" or "leap frogging" between trades and across geographic areas of the province. These continuing problems were evident from the frequency of sequential work stoppages, the lack of commonality of expiry dates and by growing concern about the mounting costs of construction and unpredictability of project completion dates.

13. It was in response to these problems that the Franks Industrial Inquiry Commission (see paragraph 9, supra) was appointed in December 1974 with broad terms of reference.[8] The Franks Commission's major recommendation,

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[7] "Leap frogging" refers to area-to-area pyramiding and "whip sawing" to trade-to-trade pyramiding.

[8] (i) to enquire into the existing bargaining areas and bargaining patterns in the construction industry, (ii) to define the problems resulting from the present bargaining patterns in the construction industry, (iii) to propose methods for reducing and rationalizing the number of bargaining patterns in the construction industry.

In making the recommendation on single-trade province-wide bargaining, the Commissioner outlined many of the unique features of the construction industry which, in his view, justified statutorily-mandated structures quite different from those applicable to most other industries. Among the factors cited, two are of particular relevance to our report: namely, "mobility" – the movement of contractors and their employees from project to project and "specialization" – the unique type of work done by specialty contractors and sub-contractors and their skilled tradespeople. Concerns were expressed during the Franks inquiry that province-wide, single-trade bargaining would lead to a single wage rate across the province. Franks' comment on this was as follows:

> *"Another concern that is often expressed is that province-wide bargaining will lead to a single wage rate across the province. This is not necessarily the case. Those trades which experience a great deal of mobility across the province have already tended in this direction to protect and encourage such mobility. However, where there is a low level of mobility, responsible bargaining would create the opposite pressure, reflecting local conditions rather than province-wide rates."*

It is to be noted the Franks' recommendations were restricted to the ICI sector of the construction industry. He states:

> *"The recommendations made by this Inquiry Commission deal only with a very specific and well-defined segment of the overall construction industry. This segment, however, is perhaps the most important segment of collective bargaining in the construction industry and, indeed, the results of collective bargaining in this segment of the industry indirectly affect all of the construction industry. Let me again emphasize that the subject matter we are concerned with is the making of collective agreements and not the day-to-day administration of such collective agreements. The scope of these recommendations covers the building trades unions in what was at one time referred to as building construction. Presently, that term is seldom used and has been replaced by terms such as the industrial, commercial and institutional sector of the construction industry, and the electrical power systems sector. These recommendations do not relate to non-union construction, nor do they relate to the various independent unions that operate in the construction industry, and they do not relate to other sectors or bargaining patterns outside the expanded industrial, commercial and institutional sector of the industry."*

subsequently enacted by way of amendment to the *Labour Relations Act*, was that single-trade, province-wide bargaining in the ICI sector of the construction industry should be made mandatory.

14. Under the amended legislation, collective agreements within the ICI sector could only be negotiated between designated or certified employee bargaining agents, on the one hand and designated or accredited employer bargaining agents on the other. The bargaining parties becoming known as the "EBAs". Moreover, only the province-wide, single-trade agreements negotiated by the appropriately authorized or designated EBAs could be treated as valid. Any other form of agreement or arrangement was declared by Section 162(2) of the Act to be void. Finally, all agreements were required by the Act to run for two years, with common expiry dates. The result was that the number of bargaining relationships across Ontario was reduced from a range of 200-300 to what are now 25.

15. In 1991, at the request of the Minister of Labour, the efficacy of province-wide bargaining in the ICI sector was analyzed by George Adams, later to become a Judge of what is now the Ontario Superior Court of Justice.[9]

Franks accurately foresaw that there existed scope for ambiguity as to how "maintenance work" would be characterized under the new province-wide regime. He says:

> *"A number of the building trades have collective agreements which cover maintenance work. Under these collective agreements members of building trades unions work for employers engaged in general maintenance and repair work, usually on industrial sites. Such operations are really service operations rather than construction operations. As service operations they are outside the construction industry and thus outside of the recommendations made by this Commission. There is, however, a concern by those in the construction industry that construction work might be done under the guise of such a maintenance collective agreement. This is a valid concern, and where the work done under a maintenance agreement involves new construction or substantial reconstruction of premises, then that work is clearly within the construction industry and thus covered by the recommendations made in this report."*

[9] *Review of The Province-Wide Single-Trade Bargaining Process in the Industrial, Commercial, and Institutional Sector of Ontario's Construction Industry*, Professor George W. Adams, Q.C., University of Ottawa, Faculty of Law, July, 1991. In concluding that the province-wide single-trade system had worked reasonably well, Adams noted for the most part, the ICI construction settlements under the province-wide system had produced wage increases at or below the inflation rate over the decade since the system had been introduced. He concluded that what had been characterized by some as unaffordably high settlements in the 1970's had been brought under control. As part of his study, Adams circulated an industry survey, which included the question "Has province-wide bargaining responded sufficiently to geographic considerations?" The responses were equally divided, but those who answered in the affirmative referred to the following factors:

> *(i)"parties can create economic zones if they wish; (ii) local 'hardship' clauses which allow areas to fashion needed relief on consent of the central agencies are becoming prevalent; (iii) no one area should dominate;(iv)stabilization funds which subsidize approved bids by unionized contractors where necessary have been developed in some areas; (iv) current system recognizes mobility of many construction trades; (v) inherent flexibility is available in the system to those interested as evidenced by two tier trend to rates and travel."*

Later in his report, Adams comments extensively on the subject of regional variations. He wrote:

> "*Has the province-wide bargaining responded sufficiently to geographic considerations? There is no denying the recent advent of two-tier settlements, hardship clauses, and stabilization funds. However, a majority of the employer briefs do not accept that these developments have been adequate to meet regional or local needs. Generally, inter-regional differences continue to reflect only those differences that were in place in 1977 with some ensuing compression because of cents-per-hour across-the-board increases. Whether the more recent provincial concern for northern communities and other regional interests will continue and appreciate is difficult to judge. The very need to establish stabilization funds and hardship clauses suggests that the politics of wage determination has impeded trade unions in tailoring wage rates to the competitive realities of Ontario's regions. I am also disturbed by reports of informal side deals between local unions and local contractors not approved by bargaining agencies and unknown to out-of-area unionized contractors. However, given the nature of the study, it has also been difficult to assess the severity of the impact of regional insensitivity, other than to accept at face value the assertions that non-union competition is more intense. Data showing wage insensitivity to drops in regional construction activity for union firms was not available in the time allotted and requires further study, possibly through field surveys. Nevertheless, the settlement data seem to point to substantial difficulties for employee bargaining agencies to negotiate other than across-the-board settlements. Adjusting to local crises during the life of an agreement is also difficult, given problems for unions associated with adequate financial disclosure, concerns of contractors over the timeliness of any such adjustments, and the possibility that existing informal and "illegal" local adjustments are not being extended to all unionized contractors. On the basis of the briefs, previous studies, and the data appended to this review, I cannot find that province-wide bargaining has responded sufficiently to geographic considerations. Unfortunately, however, I have not been able to document the*

16. Adams' principal reservations about the efficacy of single-trade, province-wide bargaining in the ICI sector related to his inability to analyze fully the responsiveness of the province-wide agreements to regional cost variations. He noted that some collective agreements had attempted to address these variations through hardship or enabling clauses and stabilization funds. These mechanisms, we were advised during our inquiry, were introduced by the parties in negotiations in the 1980s in light of deteriorating economic conditions, increasing competition from the non-union sector, the impact of the underground economy and the more frequent use of independent contractors paid on a piece-work basis, whose remuneration undercut the wage package of the province-wide agreements. Thus, while Adams observed that "I cannot find that province-wide bargaining has responded sufficiently to geographic considerations", he stated he was unable to document the extent or severity of the problem and accordingly recommended that it receive further study and analysis. He also recommended the duration of provincial agreements be extended from two to three, which was subsequently done by a further amendment to the *Labour Relations Act*.[10]

17. In the 1990s, employer concerns about competition from non-union firms and the underground economy continued to grow. In the late 1990s, opposition to the status quo crystallized on the employer side through the creation of an employer lobby known as the *Ontario Coalition for Fair Labour Laws* (Coalition). A principal thrust of its representations to the government was the proposed repeal of Section 1(4) of the *Labour Relations Act*, a section which prohibits the practice known as "double-breasting", whereby companies bound by union contracts set up non-union affiliates or subsidiaries to evade negotiated union wage rates and working conditions. In December 1999, at the request of the Minister of Labour, one of the authors of this report, Tim Armstrong, prepared a report on the origins, policy objectives and application of Section 1(4), together with a comparative analysis with other Canadian jurisdictions and with the situation in the U.S. His conclusion was as follows:

> *All North American jurisdictions, except New Brunswick, have related employer (or double-breasting) provisions covering the construction industry. Most cover all industries. Canadian jurisdictions rely on specific statutory language. In the U.S., double-breasting is dealt with under the Unfair Labour Practice provisions of the National Labour Relations Act.*[11]

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extent or severity of this problem, a situation which every centralized system of bargaining is afflicted with to a greater or lesser extent. Thus, it is difficult to balance this finding against the obvious benefits produced by single trade province-wide bargaining and it is equally difficult for me to suggest a meaningful solution."

[10] s.162(3).

[11] Report to The Honourable Chris Stockwell, Minister of Labour, Section 1(4) of the *Labour Relations Act, 1995*, as amended, T.E. Armstrong, Q.C., December 1, 1999.

18. The Coalition had two further objectives relating to ICI bargaining. First, it sought to eliminate obligations of general contractors purportedly created by a 1960s "working agreement" that had been held by the Ontario Labour Relations Board (OLRB) to extend voluntary recognition by general contractors to non-civil trades[12] beyond Board Area 8, essentially the "Golden Horseshoe" area and obliging them to sub-contract the work of these non-civil trades **only** to union sub-contractors. Secondly, contractors asked for relief from limitations on bringing personnel from outside the area of a particular project (increased mobility), as well as greater flexibility in choosing qualified tradesmen by name rather than accepting random referrals from the union hiring hall (name hiring).

19. In its response in Bill 69, the government provided relief of some sort in all areas. Section 1(4) was modified in its application, but was not repealed. Increased flexibility for mobility of the workforce and for "name hiring" was introduced. The working agreements giving rise to union employment and sub-contracting obligations beyond Board Area 8 for general contractors were deemed to be abandoned by regulations enacted under Bill 69. In Sections 163.2 and 163.3 of the Bill, detailed provisions were enacted permitting employers' authorized representatives to seek modifications to provincial agreements through negotiations in the first instance and, failing agreement, through expedited and binding final offer selection arbitration.

20. To understand the context of the two specific issues put to us in this inquiry – namely the meaning of "competitive disadvantage" in Section 163 and commentary on the tools and indicators appropriate for its measurement, a brief review of the structure of Sections 163.2 and 163.3 of the Bill will be useful.

- Applications for modifications to provincial agreements may be made by the Employer BA or by a ministerially designated regional employer's organization (DREO) within the appropriate jurisdiction of the authorized affiliated Employee bargaining agent.

- The application may be related to any or all of the kind of ICI work performed (i.e., the trade, electrician, carpenter, etc.); the market in which it is performed (i.e., the ICI sector or some division thereof, e.g., schools in the institutional sector); and the locality (i.e., province-wide, regional, municipal or site specific).

- Modifications may be sought in one or more of six specified provisions of the provincial agreement: (i) wages, including overtime and shift differentials; (ii) restrictions on the use of employees beyond the local union's jurisdiction (mobility); (iii) restrictions on referrals from the local hiring hall to permit "name hiring"; (iv) accommodation and travel allowances; (v) apprentice/journeyperson ratios; and (vi) hours of work and work schedules.

[12] As a rule, general contractors, to the extent that they directly employ tradespersons, limit their employment to the "civil trades".

- The application, having specified the modifications sought and the text thereof, is required to provide submissions relevant to the claim the provincial agreement renders the applicant employer group bound by it at a competitive disadvantage with respect to the matters sought to be modified.

- Negotiations with the respondent affiliated bargaining agent may then ensue and if, after 14 days from the time the application is served on the appropriate parties, no agreement has been reached, the applicant may refer the matter to arbitration.

- The application to arbitration shall propose the name of an arbitrator, set out the applicant's final offer and be accompanied by the "statements and submissions" that accompanied the original application.

- The affiliated Employee Bargaining Agent must respond to the referral to application within seven (7) days, setting out its final offer and any submissions it believes are relevant to the alleged competitive disadvantage raised by the applicant with respect to the kind of work, market and location indicated in the original application. The parties may attempt to agree on a mutually acceptable arbitrator, but if no agreement is reached, the Minister will appoint an arbitrator.

- The arbitrator, by means of a written, oral or electronic hearing, must first determine whether the applicant has met the threshold test of showing competitive disadvantage as described above. If, on this threshold question, the arbitrator finds in favour of the applicant – namely that a competitive disadvantage exists – then the arbitrator must proceed to make one of four decisions.

    - (i) If it is determined the provisions of the provincial agreement sought to be modified do not create a competitive disadvantage, the agreement cannot be amended; (ii) if the arbitrator determines that a competitive disadvantage is established and one of the final offers removes it, that offer must be selected and the agreement will be modified accordingly; (iii) if the arbitrator determines that neither of the final offers removes the competitive disadvantage, the final offer which most reduces the disadvantage shall be selected; and finally, (iv) if the arbitrator determines that either of the final offers would remove the competitive disadvantage, then the offer that would least deviate from the provincial agreement shall be selected.

- The arbitrator's decision may not include reasons and, in the absence of an agreement to extend time limits, the decision must be given within 12 days of the arbitrator's appointment. The arbitrator's decision is subject to judicial review only if the decision is "patently unreasonable".

We comment further on this process and some of its legal and operational ramifications later in our report.

Current Status of Province-Wide, Single-Trade ICI Bargaining

21. The triennial Provincial Agreements of 1998-2001 and 2001-2004 cover 25 different trades represented by 14 different Unions acting in each instance as Employee Bargaining Agencies (see Appendix 2 for a list of Employee and Employer Bargaining Agencies). Two Unions each bargain for three trades – the Labourers' Union for the Demolition, Labourer and Precast Concrete trades and the Plasterers' Union for Cement Masons, Plasterers and Steeplejacks. Five Unions each bargain for two trades – the Bricklayers' Union for Bricklayers and Tile/Terrazzo, the Carpenters' Union for Carpenters and Millwrights, the Ironworkers' Union for Erectors and Rodworkers, the Painters' Union for Glaziers and Painters and the Sheet Metal Workers' Union for Roofers and Sheet Metal Workers. The remaining nine Unions each bargain for a single trade – Boilermakers, Electricians, Elevator Constructors, Insulators, Operating Engineers, Plumbers/Fitters, Refrigeration Mechanics, Sprinkler Fitters and Teamsters.

22. Except for two trades, Boilermakers and Millwrights, Provincial Agreements contain provisions that vary by local area. With respect to the 23 multi-area agreements, their breakdown by number of areas is as follows:

Under 5 – five agreements – Insulators, Steeplejacks (three each); Elevator Constructors, Refrigeration Mechanics, Sprinkler Fitters (four each).

6 to 9: five agreements – Erectors (six), Plasterers, Rodworkers (eight each); Cement Masons, Operating Engineers, (nine each).

10 to 14: seven agreements – Tile/Terrazzo (ten); Glaziers (12); Demolition Labourers, Electricians, Painters, Roofers (13 each); Bricklayers (14).

15 to 21: six agreements – Teamsters (15), Sheet Metal Workers (16), Precast Concrete Labourers, Plumbers (18 each); Labourers (19); Carpenters (21).

The above breakdown is as reported by the Ministry of Labour for the agreements that ended April 30, 2001.

The number of local areas in each trade's Provincial Agreement has been basically unchanged since province-wide bargaining was introduced. We were told that the Carpenters' Union has recently reduced the number of its local areas from 21 to 15.

23. The monetary provisions of each Provincial Agreement involve bargaining the trade's **wage package**. For any given trade, the amount of the wage package settlement can vary from area to area. All 23 multi-area trades currently feature wage packages which vary by local area. These variations are the product of successive rounds of provincial bargaining. From the historical records, Table I reconstructs the approximate number of provincial agreements that have featured local area-specific wage packages since the 1978-80 bargaining round. Depending on the round, the number of local area-specific wage package increases has varied from over a dozen to zero. They have been somewhat less common since triennial bargaining began with the 1992-95 rounds. The bargaining rounds for agreements ending in 2004 featured varied levels of package increases in seven of the 23 multi-area trades.

24.

Table I
Approximate Number of Provincial Agreements Providing Wage Package Increases that Varied by Local Area: 1980-2004*

Biennial			Triennial	
1978-80	14		1992-95	5
1980-82	2		1995-98	2
1982-84	3		1998-01	1
1984-86	0		2001-04	7
1986-88	5			
1988-90	12			
1990-92	17			

** Source: Construction Employers Co-ordinating Council of Ontario (CECCO), Ontario ICI Bargaining Total Package Increases, "Draft," 4 pp., 2002*

Table II Package Differentials 2001 and 2004 Dollar Difference Between Highest and Lowest Package as % of Interest Agreements ending April 30, 2001 and April 30, 2004*				
Trade	**$ High**	**$ Low**	**$ Difference Hi-Lo**	**$ Difference as % of Low**
Carpenters				
2001	$37.51	$32.43	$5.08	15.7%
2004	41.08	35.30	5.78	16.4%
Labourers				
2001	32.71	27.65	5.06	18.3%
2004	35.61	29.61	6.00	20.3%
Glaziers				
2001	33.89	26.27	7.62	29.0%
2004	36.49	28.97	7.52	26.0%
Sheet Metal				
2001	38.10	35.98	2.12	5.9%
2004	40.95	38.83	2.12	5.5%
Electricians				
2001	39.87	37.91	1.96	5.2%
2004	43.27	41.31	1.96	4.7%
Plumbers/Fitters				
2001	39.64	36.18	3.46	9.6%
2004	43.04	39.58	3.46	8.7%

** Calculated from Office of Collective Bargaining Information, Ontario Ministry of Labour, Wages and Other Provisions in the ICI Collective Agreements of the Ontario Construction Industry, March 2001; Construction Employers Co-ordinating Council of Ontario (CECCO), 2001-2004 Memorandum of Agreement, 08/24/01.*

25. What is the extent of package variation among local areas by trade? Table II (above) displays, for each of 2001 and 2004, the percentage difference between the lowest and highest package for a sample of six trades. Comparing the 2001 and 2004 agreements, package differentials for Carpenters and Labourers rose because of area-specific package variations in their respective agreements. They fell for Sheet Metal Workers, Electricians and Plumbers because their agreements featured uniform package increases. Of all the construction trades, Glaziers exhibit the highest wage package differentials. This trade's differential was somewhat narrowed by a uniform 2004 package increase save for Ottawa, whose increase was 30 cents higher than the increase elsewhere (Ottawa, however, did not have the lowest Glazier package in 2001; the lowest packages in both 2001 and 2004 are in Kingston-Belleville-Peterborough, Sault Ste. Marie and Sudbury). It is a fair observation that local wage package differentials within trades have indeed evolved over the successive rounds of bargaining tracked in Table I.

26. At the area level, the allocation of wage packages among wage rates and other items is driven by local union preferences. Vacation/holiday allowances are invariably costed as a percentage of wage rates. The remaining items involve dollar amounts, of which the largest is almost invariably for pensions. Pension benefits can vary substantially within a given trade (e.g., in the 2001 Agreement for Carpenters from $3.25 in Cambridge to $5.00 in Sarnia) and dramatically among trades (e.g., from $1.30 to $1.50 for Glaziers in all areas to $5.89 for Operating Engineers in Hamilton).

27. Local area wage packages in five trades contain separate items called stabilization funds. Financed by cents or dollars per hour, stabilization funds protect wage rates from downward adjustments due to market competition in the local area and are available at the discretion of the local union.[13] All but two of the 16 Sheet Metal areas feature stabilization funds, which also appear in 14 of the 18 Plumber areas, seven of the 13 Electrician areas, three of the 21 Carpenter areas and one of the 13 Painter areas. Stabilization funds are not to be confused with so-called "market recovery/hardship/enabling clauses" which are found in each Provincial Agreement and open the door to negotiated targeted relief from the terms of the Agreement in the face of non-union competition. What stabilization funds can do is ease whatever downward impact on wages may be generated by requests from contractors under competitive pressure from non-union contractors. Depending on the local area among the five trades that utilize them, worker contributions to stabilization funds range from 20 cents to $2.00 per hour.

28. When wage packages are compared to wage rates, benefits tend to reduce the spread between the highest and lowest area. For the six trades shown in Table II, the 2001 differential between the highest and lowest area in wage packages was invariably lower than the rate differential, e.g., for Glaziers the listed package differential was 29% versus the rate differential of 33.4%.

29. Where are the highest and lowest levels of wage packages and rates located? Appendices 3 and 4 respectively tabulate the highest and lowest wage packages and rates by location as of April 30, 2001. At that time, Toronto was home to the highest wage packages for all trades except Rodworkers and Demolition Labourers, whose highest wage packages were in Ottawa and Windsor, respectively. Toronto was also home to the highest wage rates for 15 trades. Hamilton exhibited the highest wage rates for two trades (Tile/Terrazzo and Plumbers), as did Thunder Bay (Electricians and Rodworkers). Four local areas were home to the highest wage rates for a single trade – Ottawa (Bricklayers), Kingston (Carpenters), Peterborough (Sheet Metal Workers) and Windsor (Demolition Workers).

[13] See paras. 45 and 46 below.

30. Of particular interest is the highly variegated incidence of the lowest wage packages and rates. These appear in some 20 different areas. What are concisely named are only the four local areas in which they do not appear, namely Oshawa, Toronto, Hamilton and Niagara. For the purpose of this narrative, we choose to highlight only two observations. First, very high wage areas for certain trades can be the low to lowest areas for others. Kingston, Ottawa, Sarnia and Thunder Bay all provide examples. Second, the incidence of lowest-wage local areas is relatively evenly distributed among Eastern, Northern, Western and Central (Golden Horseshoe excepted) Ontario.

31. We consider the above sketch of local differentials in wage packages and rates permits us to observe that Provincial Agreements display some degree of sensitivity to particular local markets for particular trades. It should be noted our survey of variations has been limited to monetary provisions. In the realm of hours of work and overtime, such variations as exist are predominantly among trades rather than locally-based. Thirty-six hour work weeks predominate only among Electricians, Insulators, Plumbers, Sprinkler Fitters and Sheet Metal Workers; otherwise 40 hours is the norm. The longest work week, 44 hours, is shared by Demolition Labourers in all areas and Roofers in five. Overtime is predominantly double-time, with one-and-a-half on the first two week-day hours relatively common. We have been told that hours of work and overtime provisions are the features of Provincial Agreements concerning which mid-term concessions are most frequently negotiated and now turn to this subject.

Amending the Provisions of Triennial Agreements

32. Under different headings, whether entitled "amending", "enabling clause", "market recovery" or words to this effect, triennial agreements permit formal amendments to their terms by the parties who negotiated them. The parties are the province-wide Employer Bargaining Associations of unionized contractors and their counterpart union Employee Bargaining Associations. But, while the parties to the agreements are province-wide in make-up and representation, the originating parties, as the commonly used words "market recovery" suggest, are almost invariably local contractors and local unions whose quest for amendments is triggered by non-union competition in local construction markets. One criticism we heard is that the language of Bill 69 overlooks the local origins of market recovery initiatives but this is perhaps unfair because, as a provincial statute, the Bill is simply respecting the legal fact that the triennial agreements it addresses are truly province-wide. That no province-wide agreement precludes local sensitivity is brought home by the fact that the Boilermaker and Millwright agreements, whose provisions otherwise apply uniformly throughout Ontario, permit locally sensitive amendments to their terms.

33. As previously noted, Bill 69 in fact augments the local sensitivity of province-wide agreements by creating a final offer arbitration mechanism to resolve deadlocks. The mixed reception it nonetheless received from the ICI industry is evident from the market recovery clauses that appear in the 2001-2004 agreements concluded after the Bill's passage. The enabling clauses written into the agreements governing certain trades, e.g., Boilermakers, Millwrights, Rodworkers, purport to explicitly rule out recourse to arbitration in the event of deadlock over market recovery remedies.[14]

34. On the other hand, collective agreements governing some other trades clearly accept final offer arbitration, but with their own mechanisms. Thus, for example, the Carpenters' agreement stipulates that an arbitrator may initially attempt to mediate a dispute at the request of either party. The Electricians' agreement modifies the term "competitive disadvantage" with the word "significant" and stipulates a two-stage arbitration, first over whether a significant disadvantage exists and second, if the first question is answered affirmatively, over the applicable remedy. The Painters' agreement provides for single-stage arbitration but offers a significant variation from all other arbitration provisions, including those of Bill 69, by requiring the arbitrator to provide reasons for his/her final-offer choice. An advantage of this requirement is that reasons for arbitration awards can generate an evolving jurisprudence over the meaning of "competitive disadvantage".

35. What remains from our consultations is that the pursuit of employment through agreed-upon remedies at the local level is deemed superior to their imposition through arbitration mechanisms of any kind. Indeed, we have been told that informal local accommodations are sometimes made between the local union and a contractor which, strictly speaking, are not in accordance with the provisions of the *Labour Relations Act*. Some contend this is indicative of the need to address non-union competition concerns in the triennial rounds of bargaining through provisions that remain valid for the lifetime of the agreements. The 2001-2004 Carpenters' agreement is instructive in this regard. A special schedule establishes, in the Oshawa zone, a rate of pay that is 85% of the standard hourly rate for projects worth $8M and under. In London, projects with a contract value of under $20M can involve a 44 rather than the standard 40-hour work week if faced by non-union competition. There are also overtime concessions. The dollar amounts cited offer an important clue, to which we return in a later chapter, that size of project is a factor in measuring the incidence of union/non-union competition. More generally, what is clearly evident is the local adaptability of province-wide agreements.

[14] Contention may well arise concerning the agreement of EBAs to contract out of a statutorily mandated procedure. The issue could arise if a dissident contractor insists that a DREO or EBA invoke s.163.3 on its behalf.

Chapter III: What We Heard

36. Consultations with the unionized sector of the industry constituted a critical element of our undertaking. Appendix 1 sets out the groups and individuals with whom we met. As will be seen, all management and labour EBAs were invited to group meetings. In addition, we met with various associations and individuals. The following is a distillation of what we heard.

37. In general, there was not an excessive amount of attribution of fault or finger-pointing by either labour or management towards each other. Instead, there seemed to be a genuine pragmatic recognition that work in many areas was, in fact, being lost to non-union firms. This recognition was accompanied by an expressed desire to seek solutions that would retain and expand work opportunities. No individual or group to whom we spoke argued there was not a problem, actual or potential, that arose from non-union competition. It is here that some were less concerned than others. These tended to be trades or trade contractors where the more highly-complex nature of their operations and work requires the use of experienced, highly-trained workers and sophisticated, experienced employers – attributes which, at least in the mid- to short term – non-union firms would, according to those that addressed the issue, have difficulty replicating.

38. Much was heard about the negative consequences of a "race to the bottom" should a full-fledged competitive price war develop between the unionized and non-unionized sectors. This was a major theme with the unions, although unionized contractors did not seriously dispute the demoralizing and exploitative potential should such a development occur. Unions argued, with some vigour and conviction, that on any fair comparison, their wages, benefits and working conditions were fully justified, given their productivity, performance and workmanship, which it was claimed was not matched by any comparable construction workforce in North America.

39. Both labour and management expressed deep frustrations as to what was referred to as the absence of a level playing field between the unionized and non-unionized sectors relative to enforcement of compliance with the requirements of public statutes and regulations, principally the *Trades Qualification and Apprenticeship Act*, the *Occupational Health & Safety Act*, the *Workplace Safety and Insurance Act* and the regulation entitled "The Ontario Fair Wage Policy". Their assertions were, in essence, two-fold. First, there are insufficient government inspectors to even begin to ensure compliance. Second, inspectors direct a disproportionate amount of their time to monitoring the union sites, largely ignoring non-union projects.

Both sides agreed the resulting pressure on their time and resources imposed an unfair and undue financial burden on their ability to compete. This, it should be said, was not a plea for non-enforcement but, to the contrary, for a more balanced, even-handed, unambiguous enforcement across the entire industry. Both made the point it was anomalous – even hypocritical – for the government to be imposing new measures for achieving competitive equality in Bill 69 when the government itself was contributing to a real but indeterminate extent to the existing lack of competitiveness through lax enforcement of its own laws.

40. As to the meaning to be attributed to the phrase "competitive disadvantage", we received limited guidance from those with whom we consulted. One prominent employer association representative contended that in any application for modification of a provincial agreement under Section 163.3, his members would contend that evidence and submissions must relate only to those matters enumerated in Section 163.2(5) of the Act – e.g., wages, including overtime pay and shift differentials, mobility, name hiring, accommodation and travel allowances, apprentice/journeyperson ratios and hours of work and work schedules. Union spokespersons contended that in assessing "competitive disadvantage", all elements that directly or indirectly touch on the cost of doing work and the quality of output should be taken into account.

41. One person representing labour put before us an interesting measurement formula for determining "competitive disadvantage." It was based on the differential between unionized and non-unionized wages, calculated on what was referred to as the "provincial norm". Under this suggested formula, no competitive disadvantage should be found to exist unless in the locality of the application, the differential or gap between unionized and non-unionized wages exceeds the "provincial norm" gap. In addition, the proponent of that formula argued that only matters covered in provincial agreements should be considered in determining competitive disadvantage.

42. As to the tools or mechanisms for measuring "competitive disadvantage", we received little by way of specific advice or proposals from those with whom we consulted. In fact, many with whom we spoke expressed scepticism about whether it was possible to measure "competitive disadvantage" in any meaningful way. There was a generally shared opinion that existing data from such sources as Statistics Canada and CanaData, while revealing some interesting macro data, were likely to be of limited (if any) use in particular applications in specific localities. Instead, to the extent that opinions were expressed, the shared view was that each case would almost surely elicit from the applicant employer group and the respondent union bargaining agent their own measurement evidence and submissions, based on local experience and conditions.

43. Some labour representatives were reluctant to talk about "competitive disadvantage" or the tools for its measurement on the grounds any comments could be construed, implicitly, as endorsing Bill 69. These individuals believed Bill 69 represented a retro-grade, unwarranted and punitive intrusion by government into free collective bargaining in the ICI sector of the industry. They further considered this intrusion might well be the first step in a deliberate policy to attempt to create a union-free environment in the Ontario construction industry.

44. The view expressed in the preceding paragraph was a distinctly minority view among those labour representatives with whom we consulted. Most, as we have said, recognized that action was and is required to combat the competitive threat from non-union firms. While union leaders felt this competitive problem could best be addressed voluntarily by the bargaining parties, they were resigned to those provisions of the Act allowing employers to require final offer selection arbitration, where a "competitive disadvantage" genuinely existed and where modifications to the provincial agreement could not be arrived at consensually.

45. Much was heard about the various voluntary techniques designed by the parties prior to Bill 69 and continued and expanded in the 2001 round of bargaining, aimed at introducing flexibility and permitting the parties to react, on an ad hoc, as-needed basis, to competitive threats from the non-union sector. We were referred to many such provisions in collective agreements, variously referred to as "enabling clauses", "hardship clauses" and "market recovery programs", all short-form designations or euphemisms for techniques by which unions could agree to grant targeted concessions to preserve employment and enhance competitiveness. Some of these mechanisms have arbitration as the settlement device of last resort and others, the majority, are dependent on the successful outcome of voluntary, mid-term bargaining.

46. We were also told about the somewhat less common use of "stabilization funds" – funds established under some collective agreements, administered by the local union involved and paid to the employer, at its request, to permit the employer to reduce its project bid to meet non-union competition, at the same time preserving the wage and benefit levels and other working conditions as set out in the collective agreement.

47. Some employers, while acknowledging the existence and usefulness of these competitive enhancing, market retention arrangements, voiced concerns about their efficacy. With "enabling clauses", except for those cases where a binding arbitration procedure was available, their viability depends on voluntary concessions by the union. When the union is prepared to permit a stabilization fund to be drawn upon, the fund is frequently insufficient to overcome the advantages enjoyed by the non-union competitor. As well, stabilization funds, according to contractors, are not sufficiently prevalent, nor are they large enough to provide an effective solution in all or even a significant portion of cases of need.

48. Some union representatives raised questions about the bidding or, more precisely, the pricing practices of some union contractors. Doubts were expressed about whether contractors were – in all cases – submitting bids that reflected their true costs. Were the estimates for union labour costs, equipment rentals, purchased materials, borrowing costs, taxes, etc. accurate? Had full advantage been taken of quantity discounts on materials? Did the profit margin built into the bid represent a justifiable return to the contractor? Those contractors who responded to these questions supported their pricing practices on all counts and denied any implicit assertion that bids were padded, inaccurate or in any way distorted.

49. Reference was made by both sides to the "underground economy" in construction, i.e., those contractors or individuals who fail to surface and meet the legal obligations of doing business, e.g., the payment of income taxes, Employer Health Tax, WSIB premiums, Employment Insurance premiums and other applicable levies or taxes. It was suggested the non-union sector, while not in itself "underground", benefited from the underground players by sub-contracting work to them in return for cut-rate prices. Some independent analysts to whom we spoke suggested unionized firms might, in some instances, engage in similar practices. But we received no specific evidence as to the nature and extent, if any, of the dealings between either unionized or non-unionized contractors and those in the underground economy.

50. Relative market share was advanced by contractors as one of the principal and most reliable indicia of whether or not they were competitive with non-union firms in the same market. While conceding some limited value to this measurement, labour contended there were important caveats that must be taken into account in weighing the relevance of market share. For example, had the unionized contractor determined the market was too small and unprofitable to enter? In the institutional sector, with public sector owner/clients, was the almost inevitable tendency to accept the low bid – thus avoiding political criticism, regardless of the quality of the product – the true determinant in reducing the unionized contractors' share in that sector?

51. Union representatives referred to the practice of some contractors – union and non-union alike – of having some work done under a piece-work payment arrangement using so-called independent contractors. In the unionized sector, if the independent contractor was – on the proper tests – an employee, this technique could properly be characterized as a deliberate subversion of the collective agreement and could be grieved. While not condoning the practice, its relevance to our mandate, which is to define "competitive disadvantage", was not entirely clear.

To the extent the practice is employed in the unionized sector, it would operate to improve the unionized contractors' competitive position vis-à-vis non-union contractors. On the other hand, its occurrence in the non-union sector should hardly be surprising, since compensation is not subject to pre-existing contractual obligations, so *any* payment arrangement is possible, piece-work or otherwise. What is improper, of course, is the failure of **any** worker – unionized or otherwise – to pay the taxes and levies applicable in light of his/her legal status.

52. Unions and contractors with whom we consulted appeared to agree certain labour market forces operated, however imperfectly or unpredictably, to inhibit non-union contractors from moving to unacceptably low wage rates or other unfavourable terms and conditions of employment. During periods of intense activity in the industry, with full utilization of capable workers, the threat from the non-union sector is much diminished. The real impact of the competitive problem arises during slack periods. According to labour, this is when the negotiated market recovery programs come into play – programs which, as we have said, the contractors contend are inadequate to address the chronic and continuing competitive imbalance between union and non-union firms.

53. In some trades, typically those that are highly mobile and whose agreements are much less restrictive on mobility and name hiring, we were told there is a significant segment of the workforce that is more or less permanently attached and committed to a single contractor – a phenomenon that makes it difficult for non-unionized contractors to obtain competent workmen within that trade. A related advantage for the unionized contractor in retaining the bulk of qualified tradespersons in a particular area is the attractive benefit package, pensions, extended health benefits, etc.

54. Representatives of both unions and contractors raised the issue of the use of pre-apprentice/material handler/helper or equivalent classifications. Union contracts in the ICI sector do not currently have a job category below the journeymen and journeymen/apprentice classifications. The result is there are tasks required to be performed – clean-up work was an example cited – but there are others where it is necessary to assign skilled workers to simpler jobs, adding a cost burden that is difficult to justify. Non-union contractors were said to routinely use unskilled employees for this work and many jurisdictions in North America have some kind of lower paid, unskilled classification in their collective agreements. Ontario unionized contractors have attempted, for the most part unsuccessfully, to obtain relief in this area.

55. One contractor provided details of what was referred to as an "ICI labour-burden calculation" comprised of three elements – (i) wages (basic rates, vacation pay and statutory holidays); (ii) payroll burden (essentially payroll taxes plus miscellaneous employer expenses, expendable small tools, insurance, labour financing costs, occupational safety programs); and (iii) union and association funds (benefit packages, union dues, association operating costs). This was then compared to the average per/person cost for working crews with the non-union contractor, with variables shown for straight time and overtime hours and apprentice/journeyperson ratios. In the example given – and on the assumption the non-union workweek is 44 hours at straight time and the apprentice/journeyperson ratio in the unionized sector is 1 to 10 versus 1 to 3 in the non-union sector, the average hourly cost per person is at least $10 (or roughly 25%) higher in the unionized sector. Despite this dramatic disparity in costs, however, the particular contractor providing these comparison figures is highly successful in the largely commercial sector in which it has established its reputation for competence, efficiency and quality. Whatever else this example illustrates, it adumbrates the problem of limiting the test of "competitive disadvantage" to price comparisons alone.

56. One unionized employer, in an articulate presentation, expressed concern that worker motivation and pride in work had declined over the last two to three decades. He described a malaise that he attributed in part to the absence of a sense of shared commitment to the success of the enterprise and a reluctance on the part of some unionized workers and their unions to enter into an open and candid dialogue concerning ways in which productivity performance could be enhanced by various collaborative measures, including the relaxation of restrictive work practices. This critique, it should be said, was not an anti-union diatribe, but an appeal for a less polarized and confrontational approach to workplace issues and greater innovation and flexibility in tailoring collective bargaining to the new realities of the current competitive environment.

57. The representative of one contractor's association said that the non-union competition was so intense, their group would have no alternative but to resort to arbitration under Section 163 of Bill 69 to seek modifications to the wage rates set out in the provincial agreement. The alternative, it was asserted, was the destruction of the unionized sector in that particular trade. Another individual contractor from the London area made similar representations, saying stabilization funds and enabling clauses, in their present form and in the way in which they are being administered, were "band-aid" solutions and the costs of doing business as a union contractor were approximately 20-30% higher than the non-union competition. This individual stated that ad hoc solutions, by way of targeting special relief to individual projects, at the whim of the local union, would not – in the long run – overcome the problem which his particular company was encountering. He was not critical of the nature and quality of the work performed by the unionized trades with which he dealt, but simply said the competitive situation, with the growth of the non-union sector, was about to put his members out of business.

58. Both sides noted that although the Bill has been in effect for some time, no employer group has yet invoked it. Some felt this indicated more collaboration between unions and employers in their determination to combat non-union competition through the use of targeted market recovery techniques. Some unions felt contractors were reluctant to go to arbitration under Section 163.3 since they were unsure of the onus facing them to satisfy the arbitrator they were at a "competitive disadvantage" and uncertain, as well, as to the nature of the evidence necessary to support the modifications being sought. Others felt both sides shared these uncertainties and were reluctant to put their fate in the hands of a third party, especially given the prospect of "win all/lose all" under final offer selection.

59. Some contractors said in addition to high compensation, rigid work rules and overtime costs were a significant source of competitive disadvantage for unionized firms. We were told that frequently the adjustments sought under enabling clauses included not only wage reductions, but also requests for changes in the negotiated hours of work and/or overtime provisions. The contractors said labour and management should work to reduce the pressures of competitive disadvantage by taking a more effective, cost-conscious approach to triennial negotiations and also should improve their mid-contract communications, rather than looking solely to external factors, like inadequate government enforcement, as a cure-all remedy.

60. Although the government inspectorate was criticized for its lax enforcement of various statutes and regulations – which, on balance, was said to favour the non-union sector – there was some reluctant recognition that the enforcement task is beyond the competence and capacity of even a substantially enlarged group of inspectors. Several labour representatives were supportive of the Quebec model, where funding has been given to the Commission de la Construction du Québec, a tripartite statutory labour/management/government agency, to enable it to root out the underground economy and report statutory violations to the Quebec enforcement agencies. While it was acknowledged there are substantial differences in the Quebec situation, where all construction work is unionized and all trades certified, it was still felt both unions and unionized contractors in Ontario might have a role to play in enforcing existing statutes and regulations against those not detected by the numerically-limited inspectorate in Ontario.

61. There was considerable discussion about the significance of firm and project size in relation to the competition between union and non-union contractors. The consensus appears to be that in the industrial sector, only the small non-union firms are a real problem and they are mainly working on small industrial projects of little interest to unionized entities. In the institutional sector, there are small- to medium-sized non-union firms doing small- to medium-sized projects and their work in this area is growing. In the commercial sector, non-union firms are doing virtually all of the small and medium-sized jobs. Moreover, larger non-union firms have now captured a substantial share of large commercial projects, estimated by one union representative to be as high as 30% of that segment of the market.

62. Even amongst the more moderate labour spokespersons, there is a feeling the government has a schizophrenic attitude towards labour relations in the construction industry. On the one hand, the government has made it more difficult for unions to organize by its amendments to the *Labour Relations Act*, principally the requirement for a vote in every case, especially troublesome in the construction industry where employment is volatile and projects difficult to identify and isolate. On the other hand, in Bill 69, the government purports to attempt to make unionized firms more competitive vis-à-vis non-union firms. It was asked, rhetorically, "which of these two contradictory directions accurately reflects the government's policy?"

63. Some participants, principally from labour, suggested the situation could be improved if bid depositories were made compulsory. The practicality of this proposal was questioned by others. Contractors were concerned about having their prices shopped around, which apparently occurs even where bid depositories operate, with stipulated times within which the bid must be deposited, opened and evaluated. Reference was made to the situation in Europe where in some countries the bid depository is compulsory. There, when bids are opened, prices are apparently "averaged out" and the winning bid is usually the one closest to "the lowest side of average". Whatever may be said about systems in other jurisdictions, labour representatives are of the view the existing bid/tender process is not transparent, an argument they appear to be prepared to advance in any Section 163 arbitration in response to a contractor's claim that the bid was lost because of a "competitive disadvantage".

64. Those attending our meetings were asked about the availability of data on the use of different market recovery tools, including stabilization clauses. There was reluctance on the part of both labour and management to have this information freely available, for the reason that it would be advantageous to non-union contractors to know when and under what circumstances concessions were being granted, so they could be underbid. On the other hand, it was recognized that an arbitrator under Section 163 should have access to this information, i.e., whether market recovery tools existed, whether they were used, whether they were ever refused and the effect particular mechanisms or tools had had on bidding success or failure.

65. One labour representative expressed some frustration with the "unintended consequences" of concessions given by unions under enabling clauses. Two examples were given. In order to enable a general contractor to make a viable bid, one or two of the contractors' civil trades give a discount on wages. While the general contractor may win the bid, much of the non-civil work (electrical, plumbing, pipefitting, etc.) may be sub-contracted to non-union firms. The other situations arise where one of the mechanical trades, i.e., the plumbers, give relief to one of their unionized sub-contractors who, in turn, submits its bid to both union and non-union generals. If a non-union general contractor wins, the "enabling" concession has unintentionally assisted the non-union sector.

66. In Thunder Bay, we were told there is substantial incursion by non-union contractors and non-union trades on many jobs in Northwestern Ontario, including jobs on native reserves. It was said the government is taking no action to attempt to preserve this work for Ontario contractors and workers and in some cases, it is actually encouraging Manitoba firms and workers to bid on government jobs in that region and frequently, the Fair Wage schedule is not complied with on those jobs.

67. Some participants, especially contractors and unions in northern communities, expressed the view the competitive gap between unionized and non-unionized firms was largely attributable to the fact unionized firms pay benefit packages. It was contended that as a matter of public policy, contractors – whether unionized or non-unionized – should have some minimal responsibilities at law to pay at least something towards pension and health and welfare benefits. To permit arbitrators under Section 163 to cut back contractual provisions where the competitive gap resulted from a failure to pay benefits, it was argued, was tantamount to endorsing exploitation.

68. Some said the best source of intelligence and information on whether non-union firms were bidding particular jobs and, if so, at what "competitive" rates and conditions, could be obtained by or through the local contractors' association and the local building & construction trades council. Unions said they focused on the "bidding" information available from local sources and also from "dispatch sheets".

69. One labour representative observed many owners do not appear to be aware of or concerned about the inferior workmanship and poor quality structure produced by non-union work crews. These structures frequently have to be redone, but owners, including those in the public sector, do not seem to care about this or about the maintenance costs associated with inferior structures. It was suggested unionized firms might not be sufficiently pro-active in emphasizing the importance of quality workmanship and the significance of "lifecycle costs" (in terms of maintenance and repair) associated with substandard work.

70. As mentioned in paragraph 54, the contractors' plea for the establishment of a pre-apprentice/material handler/helper category in the unionized sector causes concern for some unions. For example, the Labourers contend they do the less-skilled work, like carrying, cleaning, cutting, etc. and it would undermine the fair and equitable rates in the Labourers' agreement if such a classification were to be established for the higher-skilled trades. It was also said such workers tend not to be properly trained and have many more workplace accidents.

Representatives of the mechanical trades, where apprenticeship programs exist, claimed the less-skilled work should be done by apprentices and the creation of a new, lower-paid classification would be detrimental to the apprenticeship system. Despite this opposition, there was some cautious union acknowledgement of the need to consider the contractors' proposal concerning the use of pre-apprentices/material handlers/helpers especially with single-trade contractors who, without helpers, have to use skilled tradespersons to perform routine functions.

71. Contractors argued the bargaining parties should not attribute all of the blame for competitive disadvantage to external factors such as the lack of government enforcement of statutory and regulatory workplace requirements. They contended this "off-loading" of responsibility gave insufficient attention to the fact the parties have a substantial degree of control over their own costs and these controllable matters should be more directly addressed in triennial collective bargaining rounds.

72. Another labour representative referred to the practice of non-union contractors, who will take advantage of various programs under the *Employment Insurance Act* that subsidize wages to enable them to engage young people on employment insurance at rates well below the Fair Wage schedule and work them at straight time for work weeks of up to 60 hours. It was contended the *Employment Insurance Act* administrators should be alerted to this distorting consequence of their programs, which was resulting in unemployment for skilled tradespersons.

73. It was contended by both unions and unionized contractors that complaints of violations against non-union contractors would not be accepted by the government unless the complainant worker or contractor was prepared to disclose his identity. Complaints would not be received by unions or associations on behalf of the complainant, thus preventing anonymity and exposing the complainant to retaliation – in the case of a worker, jeopardizing his employment, in the case of a contractor being blackballed in the owner/client community, where there is said to be an interest in maintaining the lower prices offered by the offending non-union firm.

74. We heard two examples of alleged misuse by non-union contractors of travel, meal and accommodation allowances. In some situations, non-union contractors will reduce these expenditures by overcrowded accommodation, inadequate transportation and token meal allowances, reducing their fringe labour costs well below those paid by union contractors who accept their obligation to provide adequate travel, accommodation and meal provisions. On the other hand, we were told of a different practice, where non-union contractors inflate room, travel and meal allowances and pay them as non-taxable benefits, along with much lower wages, so the net wage cost is below that of the union contractor. It was suggested the propriety of this "tax dodge" should be brought to the attention of the tax authorities.

75. Another union representative was blunt in saying the current competitive problem, with the increasing incursion of non-union firms, had its origins 15 to 20 years ago, when there was plentiful work and contractors were building unconscionably large profit margins into their bids. It was during this period non-union competition was given the opportunity to enter the market on the basis of lower profit margins. As a result, the situation is now increasingly difficult to contain or control and, it was contended, it was unfair to ask the workers to solve a problem initially created by the contractors.

76. There was general consensus that, regardless of the sector, the competitive problem is greater on smaller, less-complex jobs. On larger jobs, where more sophisticated skills are required, non-union competition tends to be less severe. On such jobs, unionized generals and subcontractors are able to ensure the required skilled workers are provided on time and that the project is completed on target – an essential requirement for the large owner/clients, especially in the industrial sector (steel, auto, etc.) and in large commercial projects (casinos, etc.).

77. One contractor complained that even when he obtained concessions under an enabling clause during a slack period, he was habitually faced with problems when the economy picked up and tradespersons who had been supplied to him through the hiring hall and who had become familiar with his requirements, left his employment for higher-paying jobs on other projects. He also suggested that even when workers were not leaving his employ voluntarily, they would sometimes be bumped off his jobs by more senior employees referred from the hiring hall, with the result that it was difficult to maintain a permanent workforce familiar with his requirements. The union's response was that it did not support the movement of employees who had committed themselves to a project that had been given the benefits of an enabling concession.

78. Several employers asserted unions had bargained contracts that were too rich to compete with the non-union sector and the failure to recognize the consequence of overpriced labour was at the heart of the competitive problem. Labour representatives responded that in a free collective bargaining system, it was open for contractors to make that argument during triennial negotiations. This gave rise to some contention of "what is a decent wage?" Labour contended it was hard for them to accept that a total wage package of $35 to $40 per hour, in a cyclical and seasonal industry, with limited work opportunities and unpredictable job security, amounted to unjustified remuneration for a skilled labourer, especially having regard to pay equity comparisons with other occupations.

79. There was some contention as to whether a shortage of skilled tradespersons exists in the current environment. If there is a shortage, does that account for the ability of the non-union firm to employ and "train" persons off the street and pay them at much lower wages? Most labour representatives contended that the conventional wisdom there is a skilled shortage of tradespersons is a myth and that many of them are out of work. The implicit suggestion that some unions are limiting entry into their trades in order to ensure work for existing union members was flatly denied by the unions, who said that they are encouraging new entrants through their apprenticeship training programs.

80. There was some discussion of the criteria for determining when the concessions under enabling clauses should be given to unionized contractors under pressure from non-union competition. It was pointed out the Carpenters' agreement establishes certain project cost figures for specific areas of the province, below which stipulated concessions will be granted to contractors. One union representative contended a more meaningful measurement would be to make concessions dependent upon the type of work being performed, i.e., renovations, strip malls, etc., smaller projects, where the non-union firms tended to have a greater chance of outbidding unionized contractors.

81. One contractor said he had stopped even asking for market recovery relief since the union's response was habitually too rigid and too little by way of concessions was routinely offered. According to this contractor, the union's response was in effect its final offer and there was no readiness on behalf of the union to enter into further discussions. Labour representatives countered with the assertion the situation was not as rigid as described and that much more typically there would be a detailed discussion as to the contractor's legitimate requirements, to which the unions were in most instances responsive if the requirements could be shown to be justified and genuine. Labour also asserted both sides had a common objective and the union interest was usually congruent with that of the contractor under pressure from the non-union competitor.

82. One contractor said the source of unfairness was that while unions objected to contractors "double-breasting" (i.e., using associated or affiliated companies to avoid collective agreement obligations), the unions in fact were double-breasting when they allowed their members to work on non-union projects in slack times. The unions responded that attempts were made to police this practice and to penalize members who worked non-union.

83. Repeated complaints were heard to the effect that when contraventions of the *Trades Qualification and Apprenticeship Act* were brought to the government's attention, the inspectorate frequently permitted the worker who was contravening the Act to achieve compliance within 60 or 90 days, with the result that the contravention often continued until the project was completed. In the case of one union, the frustration with the government's failure to enforce its own legislation has led to the necessity for the union to undertake private prosecutions, at considerable expense.

It was vigorously argued this prosecutorial function should not have to be undertaken by a private party, but the complaint had nonetheless fallen on deaf ears within the government.

84. Some discussion occurred about the assertion, particularly by general contractors, that proof of overpriced union rates was to be found in the dramatic reduction in the number of general contractors over the past two decades. The unions claim this argument is simplistic and misleading. The role of general contractors, according to the unions, has changed dramatically over that period. Previously, general contractors used to perform most of the civil trades' work themselves, employing carpenters, labourers and others directly. Now they operate as brokers or project managers, employing few, if any, of their own employees and instead sub-contracting most of the work. Moreover, many have gone out of business because they were family-owned and a new generation has not been prepared to carry on or because of business failures caused by a variety of factors, some self-inflicted. Moreover, while some well-known general contractors are no longer in business, there are a significant number of new contractors who have replaced them. Finally, the unions argued it was difficult to get a precise idea of the numbers, partly because the mix of contractors' work is confusing and hard to categorize and partly because there is no accurate central source of data.

85. Mention has already been made of one union's assertion that the present problems arise from unjustifiable profit margins built into contractors' bids when work was plentiful. An alternative explanation was that up to the early 1990s, when there was an abundance of work available, the unions had stopped organizing, permitting the non-union sector to gain a foothold and begin to grow. At the same time, due to the availability of work, contractors stopped bidding on what today would be regarded as worthwhile projects which were picked up by non-union firms.

86. One union representative raised a procedural issue with respect to applications for modification of a single-trade, province-wide agreement under Section 163.3 of Bill 69. How, he asked, could an applicant employer bargaining agent or a DREO representing contractors employing **several** trades meet the onus of establishing that the alleged competitive disadvantage related to the particular respondent union named in the application? Would it not be a valid defence to contend that the competitive disadvantage, if any was established, was attributable, in whole or in part, to the impact of the terms and conditions of collective agreements with **other** trades? If such was the case, this individual contended, the arbitrator would be unable to make a valid modification order against the respondent trade union.[15]

[15] This argument raises an interesting issue of statutory interpretation. Can an applicant employer group bring an application against more than one trade union? If concurrent separate applications are lodged against single unions and, in the absence of the agreement of the parties, the Minister appoints the same arbitrator to hear all of the applications, can the various applications be consolidated and heard by the single arbitrator? It appears to us that the Bill contemplates the naming of only one union in each application. Moreover it does not appear, explicitly or by implication, that an arbitrator has the power to consolidate applications and hear them together. But if these matters arise, they will be for the arbitrator to determine on the basis of the submissions made to him concerning the proper construction of the statute.

87. There was also some uncertainty expressed as to the scope or ambit of any modifications to a provincial agreement that might be ordered under Section 163.3. Would such orders operate only in favour of the applicant EBA or DREO or would the orders cover all parties bound by the provincial agreement? One union representative was concerned if the modification order purported to extend to all employers bound by the provincial agreement, it would be possible that a particularly difficult competitiveness problem in one market or locality could unfairly result in a "wall to wall" modification order that would unfairly impact on the terms and conditions of all employees covered by the provincial agreement.[16]

88. One union brought our attention to a complaint that it lodged with the Ombudsman in 1989 against the Ministry of Skills Development (as it was then known) concerning the administration of the *Apprenticeship and Tradesmen Qualification Act* and Regulations. The essence of the complaint was (i) the Ministry was not applying a uniform interpretation of the ratio of journeymen to apprentices as stipulated by the then current Regulation; (ii) the Ministry unreasonably failed to consider the ratio requirements during the initial registration of new apprentices; (iii) the Ministry unreasonably failed to ensure continuous monitoring of apprenticeship ratios; and (iv) the Ministry failed to promptly and effectively enforce ratios when problems had been identified and confirmed. The union provided us with a copy of the Ombudsman's report on this complaint. We have read it with interest and some concern. While it may be true that some of the provisions of the Act and Regulations have now been changed and that enforcement procedures are now somewhat different than they were in 1987, the Ombudsman's criticism of the Ministry, especially its lack of enforcement, reflects many of the adverse comments received during our meetings with Employer and Employee Bargaining Agencies. We have communicated our concerns to the appropriate officials in government and are awaiting a response. Any further comment based on the responses we may receive on this matter will be forwarded to the OCS by way of supplementary letter.

89. There were a number of other miscellaneous points made during our consultations which deserve to be recorded: (i) alleged misuse by the non-union sector of the apprenticeship system, including violations of the apprentice/journeyperson ratio requirements; (ii) failure in the non-union sector to permit apprentices to complete their courses and go to full journeyperson rates; (iii) "poaching" by non-union employers of apprentices who are nearing the completion of their training programs in the unionized sector; (iv) alleged tendency of non-union contractors to produce inferior work, with substandard materials, using ill-trained employees whose work frequently has to be redone, whose attendance tends to be erratic and whose productivity does not match that of unionized tradesmen; (v) the superior training programs mounted in the

[16] It seems to us this apprehension is unfounded. An arbitrator's order under Section 163.3 seems clearly to be limited by the scope of the particular application before him, i.e., the market, locality and type of work said to be disadvantaged by competition. Of course it is conceivable that an application could be made with respect to the entire ICI sector covered by the whole province-wide agreement. If an application of that scope were to be made, no issue of disparate treatment would arise, although the evidentiary burden on the applicant might well be formidable.

union sector, accompanied by fewer lost-time injuries; (vi) incidence of WSIB surcharges for inferior safety records (in the non-union sector) and rebates for superior performance (in the union sector). As will be seen, the impact of these factors varies, some favouring the competitive position of unionized firms, others favouring the non-union sector.

Comments

90. Some procedural features relating to an application under Section 163.3 also arose during our deliberations that may well determine the nature and quality of the evidence placed before an arbitrator called upon to make a final offer selection determination under that section. Section 163.3(27) of Bill 69 gives the arbitrator the powers of a rights arbitrator under a collective agreement "subject to necessary modifications", i.e., those powers enumerated in Section 48(12) of the *Labour Relations Act*, the most important of which are the power to require any party to furnish particulars and to produce documents or things that may be relevant and to do so before or during any hearing that may be called.

91. A question thus arises as to when and, in what circumstances, "necessary modifications" would apply. We assume, for example, it would be open for an applicant or respondent to request an arbitrator to order the opposing party to furnish particulars before an "oral" hearing. We believe the arbitrator has that power and that it is exercisable, in the arbitrator's discretion, acting "reasonably" in accordance with the jurisprudence relating to pre-hearing production.[17]

92. An applicant or respondent might well seek to obtain production under Section 48(12) to fill an evidentiary gap relating to material which bears on an aspect of competitiveness. Examples might include particulars of bids lost by contractors represented by the applicant in the particular market referred to in the application. The content of such bids, e.g., estimated cost of materials to be installed or erected, cost of rental equipment, contractor's profit margin used in the bid, cost of architectural and/or engineering work undertaken by the contractor, overhead and office costs chargeable to the project, interest and taxes to be paid during construction and, of course, estimates of labour costs on which the bid was based. Other factors that may be more difficult to measure include productivity performance and the nature and quality of the product, i.e., the building structure or modifications thereof that the contractor(s) represented by the applicant are known to be able to deliver.

[17] Whether an arbitrator can, or should, act on her or his own initiative to order production is open to argument. As a general rule, "interest" arbitrators rely only on material placed before them. Query, however, whether in the interests of ensuring that a fully informed decision is made, an arbitrator appointed under s.163.3 should take a more activist, interventionist role, especially in light of the fact that no reasons for decision are permitted.

93. These are also competitive components related to relative efficiencies or inefficiencies in labour and management practices: firm size, firm longevity and proven experience, firm's safety record (especially in light of an owner's liability for contractor practices under the provisions of the *Occupational Health & Safety Act),* incidence of jurisdictional disputes between competing unionized trades and the extent to which a potential cost may be factored into the bid process, prospects of work stoppages during the life of the project and extent to which that might affect commitments on firm completion dates, extent and nature of training programs and whether or not those programs can be converted into a cost/benefit assessment in formulating a particular bid, journeyperson / apprenticeship ratios and, more generally, extent to which firms are subject to monitoring for compliance with provincial laws and regulations.

94. These matters may appear to constitute a daunting catalogue of indicia of potential or actual competitiveness, but it seems to us that, under the expansive connotation of "competitive disadvantage" to which we subscribe, none can be said to be irrelevant and all should be received in evidence if they are tendered, or if there is a timely request for production of available material made by either the applicant or the respondent. It will, of course, be for the arbitrator to determine the weight to be given to the evidence offered, which will depend, in part, on the specificity of the material supplied. And its measurable nature will, to an indeterminate extent, affect its probative value. We would be concerned if an arbitrator, in the interest of expedition or because of perceived difficulties in assessing the weight and significance to factors that may not be easily quantified, rejected or disregarded these "softer" factors out of hand.

Chapter IV: The Impact of Statutory and Regulatory Requirements on Competitiveness

The Labour Relations Act

95. We do not intend to embark on an analysis of the perceived advantages or disadvantages of unionization and collective bargaining. This broad topic has been the subject to exhaustive academic and institutional examination. Suffice it to say, the freedom to organize and bargain collectively is one of the basic principles adopted by the International Labour Organization (ILO) and one to which Canada wholeheartedly subscribes. Moreover, the Ontario *Labour Relations Act* affirms Ontario's support for the right of employees to choose to bargain collectively.

96. Thus, collective bargaining is a well-recognized and firmly entrenched mechanism for establishing wages and working conditions for a large segment of the Canadian workforce and for protecting workers against abuse and exploitation of various kinds. We would add that, except in the case of workers who are deemed to be "essential" to the functioning of vital aspects of community life, it is very much the exception to restrict the operation of free collective bargaining by the statutory imposition of third party arbitration. In this sense, Section 163.3 is somewhat unique, although we note some construction unions and contractors had agreed, prior to Bill 69, to submit unresolved bargaining issues to binding arbitration.

97. The unionized employee and employers from whom we heard, as recorded in the preceding chapter, expressed deep concern that their non-union competitors were, in significant ways, delinquent in complying with regulatory employment-related statutes, such that they had achieved, precisely because of their delinquency, significant competitive advantages. This, as has been mentioned, is the essence of the argument about the absence of a "level playing field". Most of those from whom we heard – labour and management alike – attributed this imbalance to inadequate or disparate enforcement practices by those government ministries or agencies responsible for ensuring compliance with the Acts they administer.

98. While our mandate makes no explicit reference to statutory compliance, there can be little argument that if – and we emphasize that caveat – if inadequate enforcement against or disparate treatment or favouritism towards non-union ICI construction firms were to be established by persuasive evidence, then that should be relevant to any assessment of competitive disadvantage that an arbitrator under Section 163.3 might be called upon to make.

To take an extreme example, if an arbitrator were to be persuaded that the "cost" gap between a unionized and non-unionized contractor was attributable solely or even substantially to the costs of statutory compliance borne by the unionized firm – costs unlawfully avoided by the non-union firm – it would be difficult to justify modifying the provincial agreement at the expense of the employees of the complying unionized firm.

99. It seems clear the 5,000 or so inspectors that are in the field from over a dozen government ministries charged with the responsibility of enforcing their various Acts and Regulations are unable under the best of circumstances – even when they integrate their various inspection activities – to ensure the hundreds of thousands of worksites in Ontario are in full compliance with all of the existing legal obligations. This, in our experience, is not a new phenomenon. In most large and complex industrial jurisdictions like Ontario, inspections are carried out on an unannounced spotcheck basis, based on risk/non-compliance assessment. This essentially is what the government ministries and agencies with whom we spoke said they are doing, coupled with the advocacy of what is known as the "internal responsibility system", by which employees and management are encouraged to police their own workplaces. Whether sufficient resources are being devoted to the inspection functions of various ministries is an issue of political priority, a matter well beyond our terms of reference.

100. It was repeatedly alleged there is greater focus and attention being given by government inspectors to union, as opposed to non-union sites. Our exposure to the enforcement issue was necessarily superficial and involved no empirical study, by way of survey or otherwise, of what actually happens in the field. Nonetheless, the issue is clearly one that is vitally important to the parties and **is** relevant to the meaning and application of "competitive disadvantage" under Bill 69. Hence, in any specific application, it is our view that all material evidence that may be tendered on this topic should be received in any arbitration under Section 163.3, recognizing it is the arbitrator's function to determine its reliability and probative value.

The Trades Qualification and Apprenticeship Act (TQAA)

101. There are a number of statutes and regulations governing various aspects of the construction industry and construction projects and worksites. Several are of particular significance to our mandate. In Chapter III, we recorded that repeated references were made to the statutes governing apprenticeship and workers compensation as examples of the areas where the enforcement problem was alleged to be the most troublesome. Apprentice/journeyperson ratios are regulated pursuant to the *Trades Qualification and Apprenticeship Act*. The TQAA governs apprenticeship in so-called "compulsory regulated trades", nine of which are in construction. It also extends to construction trades in which certification is

"voluntary"[18] Regulations made pursuant to the TQAA stipulate both a ratio – the most common of which is one apprentice for every three journeypersons – and a scale of wages (normally expressed as a percentage of the journeyperson's wage) that rises with each year of apprenticeship experience. In the unionized sector, the collective agreement governing each trade must at least meet the ratio and wage scale stipulated by government regulation. The enforcement of the stipulated ratios and wage scales draws strength from the collective agreement's grievance procedures. These, it was argued, are immeasurably more efficient than a Ministry of Labour inspectorate whose small numbers and multiple responsibilities can amount at best to intermittent oversight. To cite an isolated example mentioned to us – proper safety equipment, which workers wear visibly, is far more easily verified than their identity as apprentices or journeypeople as they move about the worksite.

102. It was contended the non-union contractor has an incentive to ignore the government-stipulated apprentice/journeyperson ratio and reap the savings that result from employing more apprentices and fewer journeypeople. The savings to be gained from firing apprentices at the mid-point of their apprenticeship before their wage reaches a relatively high percentage of the journeyperson's wage, it was said, is commonly practiced by non-union contractors, although no specific instances were cited.

The Apprenticeship and Certification Act

103. In 1998, the Legislature enacted the *Apprenticeship and Certification Act*. It does not apply to construction industry trades unless they "opt in". Some have done so – the Labourers' Union, Welders, etc. This statute applies to workplace-based programs approved by the Ministry of Training, Colleges and Universities (MTCU). MTCU approves the programs and certifies that they have been completed, but neither apprentice/journeyperson ratios nor wage rates are subject to regulation. The *Apprenticeship and Certification Act* has both supporters and critics. Its supporters point to the flexibility whereby occupations such as Labourers can acquire so-called "skill sets" that are usefully applicable on construction sites. Its critics contend what they consider incomplete "skill sets" add to the occupational complexity of construction sites and dilute the status of the trades covered by the TQAA.

The Workplace Safety and Insurance Act

104. As for the Workplace Safety and Insurance Board, enforcement challenges were highlighted in the January 15, 2002 report by Ted Chudleigh, Parliamentary Assistant to the Honourable Robert Runciman, Minister of Economic Development and Trade. This report estimated "that only 50% of the industry (primarily unionized contractors) make payments to the WSIB." (*Keeping Ontario Industries Competitive in the Global Marketplace, page 13*). WSIB revenues are

[18] The nine "compulsory" trades are 2 categories of Electrician, 2 categories of Mobile Crane Operator, Plumber, Refrigeration and Air Conditioning Mechanic, Sheet Metal Worker, Steamfitter and Tower Crane Operator. Examples of trades in which certification is "voluntary" are Carpenter, Painter and Tile/Terrazzo Worker.

raised through premiums levied on the payrolls of employers classified according to the accident risks associated with their operations. Electrical contractors, for example, are assigned to a rating group whose premium is 3.14% of payroll. What is accordingly central to the enforcement of WSIB premiums is a payroll audit. The WSIB has recently doubled the number of its payroll auditors from 30 to 60. Nonetheless, this audit force must be stretched over what we were told are 180,000 establishments. Because the WSIB covers **all** workers who are the victims of workplace accidents, such events naturally draw attention to an employer's premium-paying record. If delinquent, premiums will be retroactively levied for the previous two years. It remains and, notwithstanding the existence, in addition to auditors, of a fraud unit, that WSIB premium evasion is a continuing practice. The Chudleigh Report recommends expediting electronic permitting and so-called "smart card technology" to lighten the enforcement burden of auditors and inspectors. Much excellent work has been done on smart card technology by the National Construction Industry Skills Data Card Project, co-chaired by Steve Coleman of the Mechanical Contractors' Association Ontario and a member of the OCS Board of Directors. Some pilot testing and auditing have already been done. If the appropriate equipment were in place on all construction sites to permit the use of the card, it could yield much valuable information relevant, among other things, to simplifying the task of ensuring statutory compliance and other matters touching on the issue of competitiveness and the establishment of a level playing field.

Bill 17, An Act Respecting Mobility in the Construction Industry

105. As also mentioned in the preceding chapter, complaints were voiced at our meetings in Kingston and Thunder Bay about the incursion of Quebec and Manitoba firms and workers into eastern and northwestern Ontario construction sites. The Ontario government, historically, has pursued a policy of free inter-provincial mobility on the understanding that its laws and regulations will be respected and the other Canadian provinces will reciprocate. Reciprocity has been anything but automatic and evasion of Ontario rules by out-of-province parties doing business in Ontario has allegedly been common. In 1999, the Legislative Assembly of Ontario responded to this state of affairs by passing Bill 17, the full title of which is *An Act Respecting Labour Mobility in the Construction Industry aimed at Restricting Access to Those Taking Advantage of Ontario's Policy of Free Mobility.* In a nutshell, this Act established a Jobs Protection Office under the Ministry of Labour with which contractors and workers from any province designated by Cabinet as discriminating against their Ontario counterparts must seek to register. To be registered, contractors must fulfil a list of stipulated conditions which include compliance with the apprenticeship conditions of the TQAA. Unregistered contractors are shut out from bidding on provincial public sector projects. Workers must likewise seek registration, providing evidence of their trade certification. Upon the passage of Bill 17, Quebec was designated for its discriminatory practices but this designation was lifted after six months on a trial basis. Quebec contractors and workers thereupon took advantage of the enforcement hiatus while inter-provincial negotiations continued, but these were declared a failure by the Minister of

Labour on February 7, 2002 because Quebec refused to lift its discriminatory practices. Vigorous enforcement of Bill 17 is henceforth intended to buttress Ontario's negotiating position and shield Ontario contractors and workers from unfair competition at home while their access to the Quebec market is denied. As the entire Quebec construction industry is unionized, the competitive threat in eastern Ontario is not between unionized and non-unionized workforces, but is based on lack of cross border reciprocal access. In northwestern Ontario, the concern is principally with the allegedly unfair competition from Manitoba firms, many of whom are non-union. We are not aware of any action being taken by the government of Ontario to counter this, nor are we able to comment on the validity of the assertion that the Ontario government may be encouraging Manitoba firms to participate in Ontario projects in that region of the Province.

Fair Wage Schedules

106. There is then the subject of fair wage laws, which have a history that encompasses all three levels of government. Enacted both federally and provincially,[19] they apply to public or publicly-funded projects under both federal and provincial jurisdiction. As well, some municipalities have fair wage programs intended to prevent labour exploitation. These programs set standards, based on wage surveys that, generally speaking, seek to conform to existing wage patterns – as distinct from wages plus benefits. We have already recorded the allegations that in many instances, the applicable Fair Wage Schedule is not enforced and in some cases, the enacting government fails to ensure its own Fair Wage Schedules are adhered to on its own jobs. We were also told fair wages are sometimes undermined by the procurement practices that governments themselves pursue, which would favour the contractors who submit the lowest bids with no inquiry into whether these contractors are meeting fair wage standards. If these allegations are valid, which we have been unable to verify, the practices complained of would bear directly on the question of competitive disadvantage and should therefore be properly weighed and assessed in any arbitration under Section 163.

[19] The Ontario fair wage policy, which includes, as a separate category, the ICI sector of the construction industry, is based on an Order-In-Council enacted by Cabinet under its General Executive Council authority. It directs the Ministry of Labour to enact Fair Wage Schedules. Insofar as we can determine, the last such schedule was enacted effective April 1, 1995. The schedule is compiled on the basis of a survey, by means of which the Ministry derives the rate that is "current" in various urban and non-urban areas of the province. Where a "current" rate is not recognized, the Ministry is empowered to establish rates which it believes to be "fair and reasonable". The Order-In-Council also enables the Ministry to place limits on hours of work, where the hours for the particular category (here ICI workers) are not governed by the *Employment Standards Act*. The existing Order-In-Council which was provided to us does not refer to hours of work. The obligation of ministries entering into construction contracts includes the duty to ensure the hourly rates paid by the contractor and all its sub-contractors to each employee are at least equal to the fair wage rate and to ensure the Fair Wage Schedule is posted on the job site. With some exceptions, the Fair Wage Schedule applies to contracts let by the Ontario Realty Corporation, the Ontario Transportation Capital Corporation, the Ontario Clean Water Agency and the Ontario Housing Corporation. We note the requirement to publish a new Fair Wage Schedule annually was repealed by the Executive Council on August 30, 1995. Federally, fair wages are established pursuant to the *Fair Wages and Hours of Labour Act*, R.S.C. 1985 c.L.4 as amended and by the Fair Wages and Hours Regulation enacted under that Act.

Chapter V: Our Analysis of Competitive Disadvantage

General Principles of Statutory Construction

107. As will be clear to all, our definition is one opinion only. The statutory jurisdiction to frame an authoritative definition is specifically vested in arbitrators selected or appointed under Section 163.3 of Bill 69. Different arbitrators may well take different views of both the meaning and the appropriate measurement of "competitive disadvantage". However, as a result of our extensive discussions with interested parties and our own analysis and deliberations, we have concluded that there are, at the extremes, two possible interpretations.

108. One, which we refer to in this report as the restrictive interpretation, holds that "competitive disadvantage" cannot be dealt with as a concept in isolation, but should be construed as part of the full sentence in which it appears in the two sections of the Bill, Sections 163.2(5)(b) and 163.3(29)(a). Both contextual settings of the phrase infer that employers who are bound by the provincial agreement may be at a competitive disadvantage with respect to certain matters. In Section 163.3(29)(a), these matters are spelled out: namely the **kind of work**, **market** and **location** indicated in the particular application.

109. Under the restrictive interpretation, it would be argued that the Act, read as a whole, should be construed so as to limit the arbitrator's examination only to the alleged competitive disadvantage raised in the particular application. Under Section 163.2(4), an applicant may seek modifications to the provincial agreement in one or more of six specific areas: (i) wages, including overtime pay and shift differentials, (ii) mobility restrictions, (iii) hiring hall restrictions, (iv) accommodation and travel allowances, (v) apprentice/journeyperson ratios and (vi) hours of work and work schedules.

110. This restrictive interpretation may be argued to be supported by the language of Section 163.2(4) and (5), read together and by Section 163.3(29)(a). Under Section 163.2(5)(b), where the term "competitive disadvantage" first appears, there is a reference back to Section 163.2(5)(a) which limits the scope of the inquiry to the kind of work, specified market and location referred to in the application. By extension, it could be argued the scope of the inquiry must be further restricted to one or more of the six "matters" in the provincial agreement which the particular application seeks to have amended, e.g., wages, hours of work, etc. The same restrictions, under this construction, are arguably implicit in Section 163.3(29)(a), where the modifying words "in the application" appear.

111. If this restrictive interpretation were to be accepted, it would mean the arbitrator should receive and consider only evidence and submissions relating to the specific amendment(s) sought in the application in determining whether a competitive disadvantage exists. Thus, if only wages for plumbers doing commercial work in London are sought to be modified, the evidence and submissions would be limited by those parameters.

112. At the other extreme of the spectrum is the notion that "competitive disadvantage" should properly receive an expansive interpretation. If the Legislature had intended these two words to restrict the broad import of their ordinary meaning, they should have been defined and any restrictions set out with precision. Any interpretation requiring a departure from the ordinary and natural meaning of the words ought to be avoided. Moreover, the *Labour Relations Act* should be read and construed in its entirety. Section 2 of the Act, "Purposes and Application" includes, as one of the Act's stipulated purposes "to facilitate collective bargaining between employers and trade unions that are the freely-designated representatives of the employees." The regime of province-wide bargaining is not repudiated by Bill 69. To the contrary, it is reinforced by Section 163.3(29)(c), which provides that when **either** of the final offers before an arbitrator would remove the competitive disadvantage, the one which shall be selected is the one "that would be less of a deviation from the provincial agreement".

113. Central to the expansive interpretation is the proposition that no inferences should be drawn that would impede or restrict either party from elaborating, by way of evidence and/or submissions, as to why a competitive disadvantage does or does not exist. Thus an arbitrator should receive and consider submissions on a broad range of topics, so long as they can be shown to be relevant and material to the relative competitiveness of the contractor in the work, market and locality covered by the application.

114. Thus, for example, the expansive approach to the statutory language would permit both parties to submit relevant evidence and make submissions on all of the cost components of construction, including cost of materials installed or erected, cost of construction rental equipment, contractor's profits, cost of any architectural and engineering work borne by the contractor, interest and taxes paid during construction, miscellaneous overhead and office costs chargeable to the project, etc.

115. In addition, to the extent that they bear on relative competitive positions, evidence and submissions ought to be received on other factors, some of which may be less easily measured, for example, labour or management inefficiencies, the relative experience, size and reputation of competing firms, safety performance, incidence of jurisdictional disputes, presence, use and effectiveness of market recovery/hardship/enabling/stabilization provisions, a contractor's ability to deliver a product with lifecycle cost commitments, a contractor's capacity to "design/build" and enter into public/private partnerships to the benefit of the client, the quality of the product, etc.

116. As we have said, these two positions, the restrictive and the expansive, are at the extremes and there are variations of each which move the interpretative conclusion towards the centre of the spectrum. However, before giving our conclusion, we wish to deal with the principles which the law has established as appropriate in construing public statutes.

117. If the phrase were being construed by a court of law, certain well-developed canons of statutory construction would be applied. These principles, in our view, should also be applied by arbitrators appointed under Section 163.3, since they are performing quasi-judicial functions. Some of these well-established canons or principles include the following. If the words are deemed to be precise and unambiguous, they should be construed in their grammatical and ordinary sense. To the extent that ambiguity and imprecision exists, the tests of "reasonableness", in light of the object and scheme of the Act and the desirability of preserving "internal harmony within the statute", are appropriately applied. Another cardinal principle is that the Act must be read as a whole.

118. As a general rule, courts or adjudicators should not add words or fill in gaps, even if they are convinced that words or phrases were inadvertently omitted by the enacting legislature or parliament – see *Navy League of Canada* [1927] 2 D.L.R. 84, quoting from Lord Brougham in *Crawford v Spooner* [1846] 13 E.R. 582:

> *The construction of the Act must be taken from the words of the Act. We cannot fish out what possibly may have been the intention of the Legislature; we cannot aid the Legislature's defective phrasing of the Act; we cannot add and mend, and, by construction, make up deficiencies which are left there.*

119. The traditional approach of the courts, until recently, has been that legislative history, particularly parliamentary debates and the content of committee hearings, are inadmissible to show parliamentary intent. This is known as the exclusionary rule – see, for example *Craies*[20] at page 129, quoting Lord Wright in *Assam Railways & Trading Co. Ltd. v. IRC* [1935] A.C. 458:

> *It is clear that the language of a Minister of the Crown proposing in Parliament a measure which eventually becomes law is inadmissible and the report of commissioners is even more removed from value as evidence of intention, because it does not follow that their recommendations were accepted.*

However, more recently, the exclusionary rule has been relaxed, especially in the Canadian courts. This development is dealt with exhaustively in *Driedger*. This is especially so in constitutional and charter cases. For example, in *R. v. Morgentaler* [1993] 3 S.C.R. 463, Sopinka J. wrote:

[20] Authoritative texts on statutory construction include *Driedger on The Construction Statutes*, Third Ed., Ruth Sullivan, 1994, Toronto and Vancouver, Butterworths; *Craies on Statute Law*, Seventh Ed., S.G.G. Edgar, London, Sweet & Maxwell; *Maxwell on The Interpretation of Statutes*, Eleventh Ed., Wilson and Galpin, London, Sweet & Maxwell, 1962.

The former exclusionary rule regarding evidence of legislative history has gradually been relaxed…, but until recently the courts have balked at admitting evidence of legislative debates and speeches… The main criticism of such evidence has been that it cannot represent the "intent" of the legislature, an incorporeal body, but that is equally true of other forms of legislative history. Provided that the court remains mindful of the limited reliability and weight of Hansard evidence, it should be admitted as relevant to both the background and the purpose of legislation.[21]

120. Assuming the legislative history is to be examined, including the legislative debate in the Legislature and before the Legislative Committee to which Bill 69 was referred on Second Reading, were there remarks or comments made that aid in the interpretation of the meaning of the phrase "competitive disadvantage?" The Bill, in its original form at first and second reading, contained the phrase "significant competitive disadvantage". The government removed "significant" at second reading and the Minister of Labour, in the Legislature, explained the change as follows:

Why we didn't put "significant" in is because we would have to define "significant". We couldn't define "significant" because it is a term that means different things to different people. So we just said "competitive disadvantage". It's fundamentally the same as "significant", except we would have to define "significant". We couldn't legally find the words that would define "significant" that would be approved by everybody, so we said "competitive disadvantage".[22]

A more general comment on the purpose of Bill 69 was made during second reading by the Minister's Parliamentary Assistant, Raminder Gill:

The biggest issue facing the industry is the competitive disadvantage currently plaguing unionized contractors and sub-contractors. The problem stems from the province-wide bargaining that results in province-wide agreements that are not responsive to local circumstances. It's a one-size-fits-all system that doesn't work today. Unionized employers and workers are locked into wage rates and contract provisions that have priced them out of local markets or sectors.

[21] The author of the third edition of Driedger has this to say about the evolution of judicial authorities on the exclusionary rule: *"Given the judgment of the House of Lords in Pepper (Inspector of Taxes) v. Hart, it is only a matter of time before Canadian courts repudiate the strict exclusionary rule. Nowadays that rule is more honoured in the breach than the observance. Since the courts in fact look at legislative history, they should adopt a rule that permits them to do so. Ideally, this rule should pay attention to the need for a meaningful relation between legislative history materials and the court's interpretative task. If the task is to identify the legislature's intention, the court should explain what it means by this concept and how legislative history materials help reveal it. If the task is to identify the most appropriate interpretation, the court should suggest how legislative history materials contribute to that goal. The basis on which the admissibility of these materials is established should affect how they are used and weighed."*

[22] Legislative Assembly of Ontario, Debates, *Hansard,* 37-1, May 9, 2000 at 1740.

To the same effect was the statement contained in a background paper released by the Labour Minister at the time of the Bill's introduction:

> *Everyone in the construction industry agrees that something needs to be done to make the industry more competitive, flexible and responsive to local needs."*

Said Stockwell: *"The solution developed by the industry is reasonable and realistic, and is in the interest of both unionized workers and unionized employers. I am very pleased that we have been able to come up with a consensus that is reflected in today's legislation. Unionized ICI contractors and sub-contractors are subject to common, province-wide agreements with trade unions, which, in some areas of the province, puts them at a competitive disadvantage. The legislation would, if passed, improved their ability to compete with non-union firms, thus creating a more level playing field and increasing competition."*

121. It has been argued by some that these statements, especially the one by Raminder Gill, support the inference that the "competitive disadvantage" referred to in the Bill must arise out of wage rates or other cost-related provisions in the provincial agreement and other competitive factors ought not to be considered. We have difficulty with that proposition, which illustrates the danger in relaxing the exclusionary rule. As Muldoon, J. wrote in *Ruparel v. The Canada (Minister of Employment & Immigration)* [1990] 3 F.C. 615, at p. 625:

> *Other good reasons for rejecting speeches in Parliamentary debates is that they are not law, they sometimes misstate the law, and are frequently made for partisan advantage or public effect. In the instant example, whereas the Minister proudly mentioned [a particular point] (Hansard, at page 3075) . . ., the Opposition spokesman . . . in welcoming the proposed reforms (Hansard, at page 3078) chose to ignore that [point] . . . Whose version, in one chamber of the bicameral Parliament, can be said to unlock any secrets of interpretation? Neither speaker "speaks" law: it is Parliament (composed of Sovereign, Senate and Commons) which "enacts" law.*

122. What is to be made of the Minister of Labour's suggestion in the Legislature that the removal of the qualifying adjective "significant" did not affect the meaning of the phrase "competitive disadvantage" in Bill 69? A somewhat analogous issue arose in *Peel v. Great Atlantic & Pacific Co. of Canada Ltd.* (1991) 2 O.R. (3d) 65 (C.A.). A central issue in that case was whether the Ontario *Retail Business Holidays Act* violated the religious freedom provisions of the Canadian Charter of Rights and Freedoms by, among other things, imposing a burden on the religion of some store employees. In upholding the constitutionality of the Act, Dubin C.J.O., relied on the following passage from the Supreme Court of Canada's judgment in *R v. Edwards Books & Art Ltd.,* [1986] 2 S.C.R. 713, at p. 759:

> *The Constitution shelters individuals and groups only to the extent that religious beliefs or conduct might reasonably or actually be threatened. For a state-imposed cost or burden to be proscribed by s.2(a), it must be capable of interfering with religious beliefs or practice. In short, legislative or administrative action which increases the cost of practising or otherwise manifesting religious beliefs is not prohibited* ***if the burden is trivial or insubstantial*** *. . ."* (emphasis added)

Chief Justice Dubin continues:

> *There was no evidence that the Act imposes a significant burden, if any, on the freedom of religion of employees or one which could pressure religious employees to forgo their Sabbath observance.*
>
> *I agree with the conclusion of Finlayson J.A. that, because the evidence falls far short of proving on a balance of probabilities that the impact of the Act on the guaranteed freedom of religion of retailers, consumers and employees, if any, is more than trivial or insubstantial, the Act, as amended, is not proscribed by s.2 of the Charter.*

123. This decision, in our view, supports the proposition that a tribunal of competent jurisdiction has some leeway in construing statutory language, which, on its face, is not qualified. In *Peel,* the question was whether the *Retail Business Holidays Act* imposed a burden on the freedom of religion of employees, contrary to the *Charter*. Both the Supreme Court of Canada in *Edwards Books* and the Ontario Court of Appeal in *Peel*, determined it was justifiable to ignore the burden if it was "insubstantial", "trivial" or, as Chief Justice Dubin put it, not "significant". On these authorities and, by analogy, it would be proper for an arbitrator appointed under Section 163.3 of Bill 69 to disregard competitive disadvantages that were found to be "trivial", "insubstantial" or "insignificant". Thus, the statement made in the Legislature by Minister Stockwell seems to be supported by a persuasive judicial authority.

124. One of the parties with whom we met advanced a formula for determining "competitive disadvantage" which is both interesting and ingenious and deserves description and analysis. This approach may be summarized as follows:

> *The principal object of Bill 69 is to provide for a "corrective mechanism" in those situations where the local conditions sought to be modified differ from the provincial conditions.*

The modifications sought should be analyzed only in relation to the competitive issues caused by or arising from the provincial agreement and not in relation to other collateral issues, even though they may bear on competitiveness.

The differential between union and non-union wages across the province – "the provincial norm" – can be gleaned from Statistics Canada (i.e., the National Construction Industry Wage Rates, 2000).

The local area wage rates are capable of determination, the union rates from the provincial agreement and the non-union rates from local municipal or regional data.

It should not be open for an employer applicant under Section 163.2 to argue that a competitive disadvantage exists unless the wage differential between union and non-union workers in the local area exceeds the provincial norm.

125. Aside from the measurement problems inherent in this formula, there appear to us to be two fundamental conceptual flaws in this superficially attractive formulation. First, we have considerable difficulty in attributing much, if any, significance to "provincial norms" calculated from single-trade, province-wide agreements. When province-wide bargaining began in the late 1970's, the first agreements were essentially amalgams of various local agreements. The regional differentials that existed from the outset have, in varying degrees, continued, although the regional gaps have narrowed or compressed in most cases due to the fact that across-the-board increases have characterized most trade settlements since the beginning of province-wide bargaining. Hence the "provincial norm", even if it can be accurately computed, is not a meaningful indicator of competitiveness as between union and non-union firms in particular local areas. It is essentially an artificial construct, interesting in theory, but of little if any practical significance.

126. Second, we disagree with the assumption that "competitive disadvantage" must necessarily arise out of the contract provisions of the province-wide agreements. We have already dealt with this point in detail earlier. It seems to us the proponents of the single "wage differential" formula related to "provincial norms" are simply **asserting** that other collateral factors relating to competitiveness ought not to be given weight. But no convincing reasons are advanced as to why that should be so.

To eliminate other factors certainly makes a ready-made, mechanistic formula easier to apply, but that is hardly a persuasive substantive rationale for eliminating factors like profit margins, cost of materials, supervisory ratios and practices, inefficiencies (management as well as union), health and safety costs, training, apprentice/journeyperson ratios, skill levels, quality of product, special expertise, proven capacity to deliver on time and within budget – all items which, whatever their measurement problems, we believe should be permitted to be factored into the competitiveness calculus if either side wishes to introduce them before an arbitrator.

127. Before turning to the measurement issues, we wish to comment briefly on the existence of enabling or hardship clauses, which appear in many of the province-wide trade agreements. A question was raised before us during our deliberations concerning the validity of those provisions where they varied from the provisions statutorily prescribed by Sections 163.2 and 163.3 of Bill 69. In some cases, the enabling clauses are more restrictive than those in the Bill. For example, some preclude arbitration and others provide for arbitration provisions different than those set out in the Bill. At least one provides that an arbitrator shall give reasons for his/her decision. In our view, these contractual enabling clauses are valid and may be invoked, so long as they are not challenged by members of either the employee or employer bargaining agents. For example, a dissident employer represented by an Employer Bargaining Agent might insist on the modification being sought under the provisions of Bill 69, rather than under the negotiated provisions of the provincial agreement. This the employer would have the right to do and the EBA's refusal to comply with this demand could give rise to an allegation by the dissident employer that the EBA was failing in its duty of fair representation. Aside from this, we see no impropriety in having a collateral contractual provision, so long as it does not purport to oust resort to the statutory provision.

Arbitral and Court Jurisprudence under Bill 69

128. Normally, in dealing with the construction of a labour relations statute, a body of arbitral jurisprudence emerges, over time, that governs and guides the parties as to the meaning of a key phrase like "competitive disadvantage". Here, however, the Legislature has seen fit to circumscribe the arbitrator's powers by proscribing the usual right to give a reasoned decision. That is why arbitration decisions under Section 163.3 (29) are likely to be of limited assistance in construing the meaning of "competitive disadvantage". So, while the prohibition against giving reasons may contribute to expedition and limit the scope or judicial review, the parties will be deprived of the usually helpful guidance of thoughtful and reasoned jurisprudence on a critical element of the Bill (see paragraphs 132 and 133.)

129. It may be useful to expand upon the nature and scope of judicial review of decisions by labour tribunals. Section 163.3 (39) provides:

> *On an application for judicial review of an arbitrator's decision, no determination or selection that the arbitrator was required to make under subsection (29) shall be overturned unless the determination or selection was patently unreasonable.*

130. At first blush, this would seem to prevent the courts from interfering with an arbitrator's decision under Bill 69. However, the restriction may not be as absolute as it first appears. In fact, the "patently unreasonable" test is the one that generally applies to a review of other types of labour arbitration and labour board decisions under the *Labour Relations Act.* Over the years, for a variety of reasons, the courts have shown an increasing disinclination ("curial deference") to review and overturn labour decisions by arbitrators and labour boards, acting within the bounds of their jurisdiction and competence. [23]

131. Most labour relations statutes have provisions which purport to limit or restrict review of board and labour arbitration decisions by the courts, either by the use of so-called "privative clauses" or by providing that the tribunal's decision is "final and binding". Much has been written on this issue, but the current state of the law in Ontario is well described in *U.S.W.A. Local 14097 v Franks* [1994] 110 D.L.R. (4th) 702 (Ont.C.A.), leave to appeal to Supreme Court of Canada refused 114 D.L.R. (4th) vii. There the Court held that the adjudicator was subject to review only on the standard of "patent unreasonableness, not mere incorrectness". Accordingly, in our view Section 163.3 (39) simply restates the common law test of reviewability for specialist administrative tribunals.

132. Hence the limits of jurisdiction may always be questioned on judicial review, assuming an excess of jurisdiction is evident from the record – a problematic assumption when no reasoned decision is permitted under the statute. So too, we believe, could court review be sustained on the basis of bias or bad faith on the part of the arbitrator, something that goes to the root of the arbitrator's jurisdiction, again subject to the applicant being able to adduce the requisite supporting evidence.

133. Under Section 163.3 (27), the arbitrator is given the powers of a grievance arbitrator, as set out in Section 48 (12) of the *Labour Relations Act*, "with necessary modifications". These powers are very broad and include the power to require parties to furnish particulars, produce documents, summon and enforce the attendance of witnesses, (where there is an oral hearing), enter and inspect premises, make interim orders concerning procedural matters, etc.

[23] For a complete review of this topic, see *Judicial Review and Labour Law*, Richard J. Charney and Thomas E.F. Brady, Canada Law Book (loose-leaf, current).

To take one example, what if an arbitrator, acting under Bill 69, improperly receives and relies upon irrelevant evidence or refuses to receive and give weight to relevant and material evidence or submissions? The case law seems to establish that refusing to hear evidence relevant to the issue in dispute is a denial of natural justice – see *Fanshawe College v O.P.S.E.U.* [1999], O.A.C. 14 (Ont. Div. Ct.). Does that fundamental failure in natural justice make the ensuing decision "patently unreasonable"? And is denial of natural justice a ground upon which the courts have an inherent right to intervene, on the grounds that the improper act deprives the arbitrator of jurisdiction? If so, what are the evidentiary problems in persuading a court that the arbitrator either refused relevant evidence or relied upon irrelevant evidence, given the arbitrator is prohibited from giving reasons?

134. Concerns were expressed to us about Bill 69's stipulation that arbitrators shall not give reasons for their decision. We share this concern. It may be the provision was designed to ensure expedition and finality in the arbitration process, given the exigencies of the construction industry and the perceived need of contractors to react quickly to requests for tenders. However, we are not aware of any other statute – labour relations or otherwise – that prohibits the giving of reasons by an administrative tribunal. It is true that there are privative clauses in many statutes that operate to restrict the scope of judicial review, but none that direct adjudicators to issue awards without giving reasons. The enactment of this provision in Bill 69 is at odds with the contemporary trend in the courts to require reasoned judgments in administrative law cases. In *Baker v. Canada* (*Minister of Citizenship and Immigration*, [1999] 2 S.C.R. 817, the court, in considering the appeal of a deportation order under the *Immigration Act*, stated:

> *. . . it is now appropriate to recognize that, in certain circumstances, the duty of procedural fairness will require the provision of a written explanation for a decision. The strong arguments demonstrating the advantages of written reasons suggest that* ***in cases such as this where the decision has important significance to the individual****, when there is a statutory right of appeal, or in other circumstances,* ***some form of reasons should be required****.* (emphasis added)

The same conclusion was reached in *R. v. Sheppard* ([2002] S.C.C. 26, File No. 27439), where the Supreme Court of Canada was considering the propriety of the trial judge's failure to provide reasons for a conviction on a theft charge sufficiently intelligible to permit appellate review of the correctness of the decision. Following an exhaustive review of the judicial authorities and academic commentary, the Supreme Court concluded the judge erred in failing to set out intelligibly the reasons for the conviction recorded. The Supreme Court observed that "the delivery of reasoned decisions is inherent" in the judge's role:

> *It is part of his or her accountability for the discharge of the responsibilities of office. In its most general sense, the obligation to provide reasons for a decision is owed to the public at large.*

135. Both cases cited above arose in circumstances that affected the rights of an individual. In arbitrations under Bill 69, the contractual rights of individual employees and the terms and conditions under which they work, are vitally at stake. Hence, in our view, the principles enunciated by the Supreme Court should apply with equal force. However, there may well be a more fundamental problem with the provision of Bill 69 which prohibits the giving of reasons. Whatever restrictions on judicial review the Legislature may purport to impose, courts have, under the Canadian Constitution, an inalienable right to determine certain matters. Given the constitution of the Superior Courts under Section 96 of the *British North America Act, 1867 (Constitution Act, 1867),* a provincial legislature cannot completely oust the jurisdiction of the courts, whose existence is ensured by the Constitution and whose judges are federally appointed – see Laskin, C.J.C. in *Creview v Quebec (Attorney General)* [1981], 127 D.L.R. (3rd) 1, at pp.13-14:

> *It is now beyond question that privative clauses may, when properly framed, effectively oust judicial review on questions of law and, indeed, on other issues not touching jurisdiction. However, given that s.96 is in the British North America Act, 1867 and that it would make a mockery of it to treat it in non-functional formal terms as a mere appointing power, I can think of nothing that is more the hallmark of the Superior Court than the vesting of power in a provincial statutory tribunal to determine the limits of its jurisdiction without appeal or other review.*

136. It is well established that privative clauses cannot prevent the courts from determining the limits of jurisdiction of an inferior tribunal. But this appears to be precisely the effect of Section 163.3(31). By prohibiting the giving of reasons, the provision empowers the arbitrator to make an unreviewable determination on a condition pursuant to which a provincial agreement can be modified, namely, whether or not a "competitive disadvantage" exists. In other words, the provision in its present form is arguably more offensive in relation to Section 96 of the *Constitution Act* than a normal privative clause. If there are no reasons given on threshold issue upon which jurisdiction depends, how can a reviewing court

determine whether the decision is either "patently unreasonable" or whether the arbitrator exceeded his/her jurisdiction?

For clarity, it should be noted that we have no similar problem with the prohibition against the giving of reasons for the selection of one or other of the final offers put before an arbitrator.

137. We have been unable to locate the precise phrase "competitive disadvantage" in another statute, in this jurisdiction or elsewhere. As to case law, one of the most comprehensive search retrieval systems, *Carswell's law.pro*, yields 106 case references where the phrase was used in the course of an adjudication. Beyond that, there are cases dealing with the meaning of "competition" and "advantage" which are of some limited assistance and to which we now turn.

138. *Regina v B.C. Professional Pharmacists' Society and B.C. Pharmaceutical Association [1970],* 17 D.L.R. (3d) 285 is a decision of the British Columbia Supreme Court in a restrictive trade practices case. The offending practice by the provincial Society of Pharmacists involved a surcharge to welfare recipients of prescription drugs, designed to force the provincial government to pay a greater share of the prescription costs. The Society was successful in having the bulk of pharmacists in the province participate in the surcharge arrangement. It was charged as a party to a conspiracy "to prevent or lessen unduly competition in sale or supply of articles or commodities", contrary to Section 32 (1)(c) of the *Combines Investigation Act.* The Society argued there was no competition in respect of welfare drugs and that the purpose of the surcharge was not to prevent or lessen competition. The Court held:

> *While there was no general price competition prior to the imposition of the surcharge, I do not think that it could be said that there was no competition.* ***Price is the usual source of competition, but there are others, including those referred to in s.32 (3). To restrict the word "competition" to price competition seems to me to be unjustified****. (emphasis added)*

Section 32(3) of the Act referred not only to prices, but quantity or quality of production, markets or customers or channels or methods of distribution. The fact the case arose in a quasi-criminal context (where the standard of proof is "beyond a reasonable doubt"), does not detract from the significance of the broad and expansive definition given to the word "competition" and tends to support the proposition that an expansive reading should be given to the words in the *Labour Relations Act*.

139. *Regina v Marsh* [1975] 31 C.R.N.S. 232, a decision of the Ontario County Court, dealt with a charge under the *Criminal Code* for fraudulent impersonation with intent to gain **advantage**, namely escaping detection as an unlicensed truck driver. In the accused's defense, it was argued, among other things, the "advantage" under the relevant section of the *Code*, must have a monetary or economic identity. In rejecting the defense, the Court observed:

> *Accordingly, I am of the view that s.361 (a), when referring to an "advantage", is not confined to an economic, proprietary, or monetary advantage but that the word must be interpreted in a much broader dictionary sense. "Advantage" is defined in the Concise Oxford Dictionary as meaning amongst other things "better-positioned, precedence, superiority or favourable circumstance*

Again, assuming no material difference in the signification of "advantage" and "disadvantage," this interpretive approach supports the expansive definition.

140. *Captain Development Ltd. v McDonald's Restaurant of Canada Ltd.* [1988] 64 O.R. (2d) 137, a decision of the Ontario High Court, dealt with a restrictive covenant forbidding the establishment of a competitor in the same shopping plaza as McDonald's. The defendant, in resisting the claim, stated its food was not similar to that offered by McDonald's and there were other factors distinguishing the two establishments. The Court concluded Captain Developments had in fact breached the restrictive covenant and was in competition with McDonald's. It was observed:

> *The Shorter Oxford Dictionary, 3rd ed., defines "compete" as follows: "to enter into or to be put in rivalry with, to strive with another for or in doing something" – and a "competitor" as: "one who competes, one who seeks an object which others also seek; a "rival" – and "competition" as: "the action of endeavoring to gain what another endeavors to gain at the same time, the striving of two or more for the same object, rivalry in commerce, rivalry in the market".*

"Black's Law Dictionary, 4th ed., describes "competition" as follows:

> *The play of contending forces ordinarily engendered by an honest desire for gain, or the effort of two or more parties acting independently* ***to secure the custom of a third party by the offer of the most favourable terms****. It is the struggle between rivals for the same trade at the same time. The act of seeking or endeavoring to gain what another is endeavoring to gain at the same time.* (emphasis added).

Essentially the same conclusion was reached in *Woodward v Stelco Inc.* [1996] O.J. no.1273 (Ontario Divisional Court).

141. As to the precise phrase "competitive disadvantage", we have not found it used in statutory language per se, but it does appear in judgments dealing with such diverse matters as Sunday observance and public holidays, taxation, patent infringement, insurance, freedom of association, public disclosure, trademarks, torts, railway regulations, etc. There is one labour case of some limited relevance. *Brink's Canada Ltd. v Independent Canadian Transit Union, Local 1* [1994] CarswellNat 1736, concerned an application for review pursuant to Section 18 of the *Canada Labour Code* relating to a decision of the Board requiring Brinks to bargain on a province-wide basis. The basis for Brinks' request for review was that it had three different branch locations and wished to be free to maintain those fragmented units for bargaining purposes, in part because of the *competitive disadvantage* of the company in the security industry that would arise if it was required to combine the three units for bargaining purposes. In rejecting the company's request, the Board stated:

> *The remaining argument concerns Brink's competitive disadvantage in the armoured car industry. The applicant considers its main competitor, Loomis, to be at a distinct advantage in the marketplace. According to this argument, because Loomis is unionized on a location-by-location basis with collective agreements having different expiry dates, it is less likely to be subject to service disruptions. Brink's wishes to be on the same competitive footing as its competitors by obtaining separate branch certifications.*
>
> *The fact that Loomis has separate branch certifications does not justify the fragmentation sought by Brink's. Equally, the fact that branch units were considered to be appropriate at Loomis does not render the province-wide unit at Brink's inappropriate. While consideration is given to bargaining unit patterns in a particular industry, this factor alone is not sufficient to split a bargaining unit; other elements must be present for the Board to conclude that such a modification is warranted.*
>
> *As for the alleged competitive disadvantage, this ground is, at best, speculative. This is borne out by the following passage contained in the applicant's submission:*

> *. . . the business is extremely competitive and customers can and do switch on very short notice. – the majority of customers weigh the prospect of interruptions in service due to labour disputes as a significant factor in choosing an armoured car service. A location-by-location certification which permits different expiry dates for collective agreements is obviously far less likely to result in service disruptions.*
>
> *Needless to say, the Board will not base its decisions on considerations of a hypothetical nature.*

142. The Brink's case speaks to the nature of the evidence that at least one tribunal is required in order to accept assertions of competitive disadvantage. By implication, the Board was saying it would need concrete, persuasive evidence in order to make a finding of competitive disadvantage.

143. This may suggest an applicant under Section 163 of Bill 69 will have to show something more than hypothetical, speculative evidence of competitive disadvantage in order to succeed on the threshold question, on the other hand, we do not believe an applicant should necessarily be required to show, for example, that bids were actually lost to a non-union contractor, despite the good faith efforts of the applicant to obtain the contract. As we interpret the statute it is intended to put the applicant contractor in a position to competitively bid for projects regardless of past experience.

An Economic Perspective on Competition and Competitive Disadvantage

144. Despite the fact the concept of competitiveness or the ability to compete is at the core of economic principles and practice, there is no simple or *a priori* definition of competitiveness. Well-established and generally accepted economic principles define competitiveness as the ability to produce a good or service under free and/or fair market conditions which, at the same time, result in normal or fair returns to a firm's key stakeholders – labour, management and investors. We note this definition of competitiveness – or the lack thereof – centres heavily on the perception of "normal" returns. Economists usually regard normal returns as a measure of a healthy and competitive marketplace.

145. At the macro, total economy level, one usually considers competitiveness in terms of market shares for domestic producers, i.e., are domestic producers able to compete fairly in local and external markets? Macro competitiveness is also reflected in ability to attract investment capital to the economy or to a particular sector. At the micro, or firm level, financial analysts would focus on profitability and/or the rate of return on invested capital. Since competitive norms are important, one would have to determine whether real returns to invested capital have fallen below some acceptable norm or, alternatively, whether they may have become negative. A firm that fails is clearly not competitive. There is also a firm specific counterpart to the economy-wide market share test as well.

146. Unionized firms are part of the construction industry in Ontario and, in that sense, reflect part of the normal practise in the construction industry. In a similar way, non-union construction firms are also part of the Ontario marketplace. Why have unions had such a significant presence for so long among the ICI construction trades in Ontario? The simple answer is that conditions for the employees would be quite difficult in the absence of unions. A U.S. study by Dale Belman and Paula B. Voos indicates the nature of the construction industry easily lends itself to exploitation of the workforce (see their report, *Prevailing Wage Laws in Construction: The Cost of Repeal to Wisconsin*, The Institute for Wisconsin's Future, October, 1995, Web Site, at p. 5.)

> *"The construction industry differs from other industries in terms of the brevity of most building projects, the short-lived attachment between employers and employees, and the methods used by government to contract for work. These factors combine to create fierce downward pressures on wages and benefits in public construction projects, which go to the lowest bidder. As material costs are fairly standard for all contractors, wages are one of the few areas in which contractors can gain a competitive advantage. Unlike employees in most industries, employees in construction are seldom employed for long by a single firm. Instead they work for one firm on one project and when that is completed, seek work on another project, often with another firm. Weather and industry cycles may cause long delays between jobs. Except in periods when construction is booming, employees are not in a position to refuse a job because pay and benefits are substandard. Prevailing wage laws were developed to protect wage levels under this competitive bid system."*

147. It is well documented that across most sectors, unionized firms provide superior wages, benefits and working conditions relative to their non-union counterparts. In other words, one could argue it is part of the normal competitive environment for unionized firms to pay higher wages and benefits compared to their non-union competitors. One would expect this to be the case in good times and bad, though the relative union / non-union compensation gap might change over the business cycle, i.e., one would expect the gap to widen in good times (full employment) and narrow in poorer economic conditions when construction industry unemployment is higher. So, higher wages and non-wage costs for unionized employers than for their non-unionized counterparts are part of the competitive picture in the ICI construction sector in Ontario. Unions argue they improve the economic well being of their members by increasing their wages and benefits above those paid by non-unionized firms. Indeed, Statistics Canada survey data for the construction industry indicates the wages and benefits earned working for unionized firms are substantially higher than those paid by non-unionized firms.

148. Since unionized firms often pay more than non-unionized firms in terms of wages, benefits and training costs, etc., they have sought some means of overcoming their apparently uncompetitive compensation gaps. This partly explains why unionized firms are often larger than their non-union counterparts. In some contexts, unionized firms have to be relatively large in order to generate greater economies of scale and scope. Unionized firms have also tended to increase real investments so a better-trained workforce can increase company productivity and, at the margin, help reduce unit labour costs. Size of the construction project does matter, as the larger the project, the more likely larger construction firms (often large, unionized firms) will be acceptable bidders for the work. Indeed, higher union wages can have positive offset effects on the operations of a construction firm. The seminal research by Akerlof and Yellen (1987) identifies "four benefits of higher wage payments: reduced shirking of work by employees due to a higher cost of job loss, lower turnover, improvement in the average quality of job applicants and improved morale" – see Jared Bernstein, *Higher Wages Lead to More Efficient Service Provision*, August 2000, The Economic Policy Institute.

Conclusions as to Meaning of Competitive Disadvantage

149. Having pondered the various considerations set out above, the appropriate principles of statutory construction, relevant jurisprudence, context in which the phrase appears in the Act and appropriate economic perspective, we are of the view that the interpretation of "competitive disadvantage" to be preferred, subject to the qualifications set out below, is the expansive one. Accordingly, we believe evidence and submissions relating to competitive disadvantage at large should be received and considered by an arbitrator, so long as they relate, directly or indirectly, to the type of work, market and location indicated in the application.

150. We are also of the view that on a proper reading of the Bill, the evidence and submissions on competitive disadvantage need not be restricted to the particular modification or modifications sought in the application before the arbitrator. To so hold would mean in virtually every instance, the applicant would automatically succeed, since in each of the areas where modification can be sought, the non-union contractor, not being bound by a pre-existing agreement, will be in a position to offer lower wage costs and/or less restrictive conditions. If the restrictive approach were to be accepted, limiting the parties to adducing evidence only with respect to the specific modification or modifications sought, the outcome of arbitration would always be in favour of the applicant, especially since the respondent would be precluded from citing any offsetting advantages not related to the modification requested.

151. Subject to the evidence and submissions relating to the type of work, market and location set out in the application, we have concluded that both "hard" and "soft" factors are relevant and admissible in the determination by an arbitrator as to whether or not a competitive disadvantage exists, the threshold determination that must be made before proceeding to examine the relative merits of the competing final offers. In so finding, we are mindful of the measurement difficulties that may affect the probative value of some of those factors, both "hard" and "soft". Detailed reference to and analysis of those measurement factors are dealt with in the following chapters.

Chapter VI: Measuring Competitive Disadvantage

152. Since circumstances vary, it is often difficult to generalize about how and when unionized construction firms choose to compete. Indeed, in some instances they may be responding to pressures completely unrelated to collective agreement issues. Nonetheless, there are some generally accepted symptoms of declining competitiveness of unionized construction firms, e.g., (i) when unionized construction firms in a specific locale either close down, leave the region or change the kind of work for which they bid; (ii) when the unionized companies' market share in a particular region for certain kinds of projects starts to decline, or slips to close to zero; (iii) when the training and investment in the union labour force slips as a result of growing competitive problems; (iv) when unionized firms stop bidding on projects because their costs are higher than competing non-unionized firms; (v) when, because of slipping market share (the sense they are unable to compete) unionized firms and their respective unions have to rely on enabling clauses or stabilization funds to win project bids from non-unionized firms with a lower cost base; and (vi) when unit labour costs for unionized firms exceed comparable non-unionized unit labour costs. All these are symptoms that a competitive problem might exist.

153. We note that virtually everything affects how a company and its workforce compete – including taxation policies, regulatory policies, enforcement of health and safety and employment standards, the existence of an underground economy of firms, etc. The issue is further complicated in this study since competitiveness has to be viewed in a practical and operational way and within the context of Bill 69. Our approach recognizes that ICI construction is a large and differentiated market in Ontario with many non-standard practices and final products.

154. With these considerations in mind, at the end of this Chapter, we set out 21 key issues in the form of a checklist, under six broad headings. The checklist approach is intended to serve as a working template for consideration by applicants and respondents under Section 163.3 of Bill 69. The key headings under which we group the 21 issues are (i) how strong is the local ICI market?; (ii) unionized firms' market share; (iii) overall cost as a measure of end product value; (iv) potential remedies under Bill 69; (v) enabling clauses, stabilization funds and less formal arrangements for relief; and (vi) other competitiveness assessment indicators. We shall elaborate on each in turn.

155. ***How Strong is the Local ICI Market?***

Does the overall tightness of the construction labour market play a role in the particular local ICI sector? Is there any evidence of a labour shortage in the particular local ICI construction sector that may have a disproportionate impact on the competitiveness of unionized firms? If shortages of (skilled?) labour exist, can one assume that the same problem exists for non-union labour?

Comment

- The economic and financial strength of the construction industry in Ontario and economic developments within the local ICI market are important background factors that applicants and respondents should address in terms of understanding changes in the competitive balance between union and non-union construction firms. In particular, such information may help explain how some unionized construction firms have adjusted to being squeezed out of some segments of the ICI market in the local region. Fortunately, employment / unemployment figures for the construction industry are published monthly by the Labour Force Survey (LFS). Local unemployment rates for the construction industry may also yield indirect evidence of competitiveness or lack thereof, of unionized construction firms. That is, the higher the local unemployment rate, the greater the probability that union contractors are being squeezed out by non-union contractors. This is because an excess supply of experienced construction workers tends to generate lower wages and benefits.

Suggested Data Sources

- An applicant and/or respondent may want to assemble some economic and construction indicators and forecasts for the Ontario economy and the construction sector in the local market. They may also want to check with the construction forecasts issued by CanaData, the OCS, the economic surveys of some of the chartered banks and the reports issued by the Ontario Ministry of Finance (budget documents, economic updates and other government economic reports). As well, building permit data, the federal government's Public and Private Investment Survey data and Informetrica publications will provide some sense to the strength of the local market.

156. ***The Unionized Firms' Market Share***

The measurement factors will include the following: (i) based on experience and other evidence, are unionized construction firms a major presence in the specific local ICI market? (ii) is it possible to determine the unionized contractors' share of the specific local ICI market? (iii) roughly speaking, how long have unionized construction firms been out of this market? (iv) what steps, if any, have unionized construction firms been taking to offset their perceived competitive disadvantage in this specific market situation? (v) have unionized firms chosen not to bid in the local market because they are uncompetitive? (vi) are "underground contractors" a major force in the local ICI market and do they play

an important role in explaining the lack of competitiveness of unionized contractors? Does the presence of underground contractors equally affect both the unionized and non-unionized contractors in their bidding for ICI work? (vii) has the number of working members in the local construction union(s) been growing or declining? Is the growth of lack of growth of employed union members a reliable indicator of the competitiveness of unionized contractors?

Comment

- It is accepted that when unionized contractors see their particular, local ICI market share shrink, this is probably indicative of a competitive disadvantage relative to non-unionized firms. The questions posed above focus on how unionized construction firms have fared in the particular market, whether they have they been losing or gaining local ICI market share and the basic causes for losing. If a loss has occurred, have unionized construction firms been able to offset the lost market with other kinds of work in the local market (e.g., bidding for different kinds of ICI work or other kinds of jobs, e.g., non-ICI residential, smaller jobs, etc instead of institutional for schools?) Have unionized contractors in the local ICI market been forced into other, less profitable kinds of work? How unionized firms respond to a loss of markets also provides some useful insights to applicants or respondents with respect to competitive disadvantage. For example, where they had the flexibility to do so, unionized construction firms may have been forced to let sub-contracts to more sub-trade firms that are non-unionized.

- The construction unions will have data on the number of members in various locals and how the membership has changed over time. We understand unionized construction workers tend to retain their membership whether they are employed or unemployed. If the construction work flowing to local union membership has been declining, it may be a sign of a lack of competitiveness of the unionized firms that employ the members.

Suggested Data Sources

- As far as we can determine, there will be no single adequate source of information with respect to unionized construction firms' share of the particular local ICI market. Consequently applicants and respondents should try to develop a composite set of proxy indicators that are sensitive to shifts in market share and the competitive balance. By proxy indicators, we mean a set of "second-best" indicators that are correlated (or move together) with the true or preferred measure. For example, the measured unemployment rate and the job vacancy rate are both indicators of the tightness of the labour market. They tend to move inversely, i.e, the unemployment rate would likely fall when the vacancy rate rises.

- The most useful proxy indicators are those gathered frequently and are easily accessed, such as the local region unemployment rate in construction, total construction expenditures, etc. Most of the proxy indicators referred to provide only incomplete snapshots of construction activity at a particular point in time. As will become evident below, our view is that the main participants – the employer applicants and the union respondents – can provide the most reliable sources of information with respect to the unionized firms' share of the specific local ICI market.

157. *The Success or Failure of Unionized Construction Firms in Local ICI Tendering*

- Unions and employers would both be well served if they created a list of bidding outcomes in the particular marketplace in as much detail as possible and for a time span that encompasses several business cycles. Local contractors know their own success or failure in gaining ICI work for which they have tendered. Local unions also have their own sources of market intelligence with respect to tendered work. A bidding list would provide valuable insights into shifts in the competitive balance between unionized and non-unionized construction firms. Obviously, the length of time and completeness of coverage of the bidding list will determine its validity and use. In our consultations we have become aware that some firms, associations and unions have already tabulated some of this information.

- The ideal bidding list of information would include a list of general and/or trade contractors that have been winning the bids, a determination of the trade and union affiliation of the winning contractors and how the total mix of work has actually been split among union and non-union sub-contractors. As much information as possible about the losers in the bidding process is also helpful, i.e., the number of unionized firms which were not successful on the bidding list is an important piece of information in determining true market share. Some of this information can be compiled from trade publications and, in particular, from CanaData and the *Daily Commercial News*. The local unions will know which of their members are still employed in ICI work and should be in a position to estimate the number of them working elsewhere or who are unemployed. They probably are also in a position to estimate the number of their members who are employed in non-union work. Other data sources that at times may provide specific insights and/or market share measures include, in order of priority:
    - the Labour Force Survey (LFS);
    - the 2000 Special Survey of the Construction Industry prepared for HRDC;
    - the Workplace and Employment Survey (WES); and
    - WSIB data.

- In some specific cases, WSIB data can be combined with information provided by the local unions and firms to calculate roughly (i) the unionized construction company market share of assessable payroll and (ii) the unionized company market share of total estimated man-hours of work. However, as discussed elsewhere in this report, this approach has many problems associated with it. In a related way, WSIB data on rebates and surcharges by union/non-union status could also be helpful with respect to assessing the cost issues related to health and safety. Over the longer term, WSIB data could prove promising, especially if the WSIB could be convinced to collect a bit more information.

158. ***Assessing the Balance of Competitive Advantages and Disadvantages***

This assessment will be based on the following questions: (i) how do wage and benefit rates compare in the local ICI region, unionized versus non-unionized firms? Has the gap widened or narrowed? (ii) overall cost as a measure of end-product value; (iii) how do health and safety records compare – unionized versus non-unionized firms? (iv) how does the quality of the finished project compare – unionized versus non-unionized firms? Does the nature of the construction project play a role in determining local ICI competitive disadvantage? Has the size of the project been a major factor? Is the complexity of a project an issue as well? If unionized firms hold an advantage, has that advantage been widening or narrowing? (v) are there additional overhead differences between unionized and non-unionized firms to consider in the cost comparisons? (Differences might arise due to size of HR offices, jurisdictional disputes, WSIB costs and benefits, etc.)

Comments

- Both applicants and respondents have an interest in identifying what the normal competitive gaps are between unionized and non-union construction firms. The checklist of these six issues focuses on this gap approach. For example, issue (i) suggests applicants and respondents try to isolate what the historical norms are/were for a range of compensation and cost indicators gaps between unionized and non-union firms in the local ICI. How do local unionized wages in the collective agreement compare to estimates of what non-union firms pay? Have the net costs imposed on both kinds of firms departed from the existing norm?

- Benefit costs are a part of the total compensation package and, at the margin, may place unionized construction firms at a competitive disadvantage relative to non-unionized firms. With respect to productivity gaps, issue (ii) subject to data availability, a standard approach in this sector is to compare total wage bill to total value of the project, though there are other measures. In a similar way, the cost impact on firms of health and safety concerns, issue (iii), could affect the competitive balance.

- In terms of quality of finished product, issue (iv) we have heard the lifecycle costs are an important variable that might favourably distinguish the practices and products of unionized from non-unionized construction firms. How do unionized firms perform relative to their competitors in terms of the final delivery of a quality construction project, i.e., timeliness, on budget, future maintenance costs, etc.? Is there a cost competitive advantage in this area that should be factored into the issue? Is there greater supervisory need on the non-union firm side? A related component of issue (iv) is the nature of the specific projects on which bids have been tendered. For example, the construction of a university or health science complex lab calls for multiple kinds of specialized expertise. In other words, to what degree do the requirements set by owners tilt the competitive balance one way or the other?

- Among other factors, issue (v) points out the usefulness of estimating the "extra" cost to unionized employers relative to their non-unionized competitors of participating and complying with WSIB requirements. Enforcement of WSIB costs onto the non-unionized and underground firms may also be a factor that affects the competitive balance. Can it be demonstrated that unionized firms bear a higher cost of WSIB payments compared to non-union firms? Do WSIB rebates and surcharges play a competitive balance role? Are they a major cost factor in particular bids? Finally, is it possible to standardize or express the above competitive disadvantage gaps in terms of labour costs per hour in unionized versus non-unionized firms? At the end of the process it will be up to the arbitrator of the Bill 69 application for relief to balance in a net sense whether unionized construction firms in the specific local ICI case face competitive disadvantages that exceed their competitive advantages.

Suggested Data Sources

- We have no illusions that data relating to the above competitive gaps are easily available. As in the case of market share information, we suggest the applicants and respondents attempt to develop a series of proxy or second-best indicators that may be appropriate to the local ICI market. In most cases, the narrower the defined market, the more difficult it will be to find or create the requisite data. A number of StatsCan publications and sources provide background information on how unionized firms and non-union firms perform relative to costs, productivity, overhead and management styles. Most of the data sources, with the exception of the Survey of Employment Payrolls and Hours (SEPH) data which are published monthly, provide one-time, somewhat limited snapshots of industry developments. Depending upon the particular timing of the snapshot, it may be that some of the data may be more useful to participants in triennial bargaining rounds than in mid-term adjustments specific to local markets.

- Applicants and respondents might want to consider the following sources which are set out in a rough order of priority:
    - the Workplace and Employment Survey (WES);
    - the 2000 Special Survey of the Construction Industry Prepared for HRDC;
    - Workplace Safety and Insurance Board data (WSIB);
    - the 1999 Survey of the Construction Industry; and
    - the Survey of Employment Payrolls and Hours (SEPH).

The details of each of these surveys appear in the Appendix section.

159. ***Potential Remedies Under Bill 69***

- Under Section 163.2 (4), an applicant for relief from the collective agreement may seek amendments in six specific cost areas: (i) wages, including overtime pay and shift differentials; (ii) hiring hall restrictions (restrictions for employers with respect to hiring employees who are not members of the affiliated bargaining agent); (iii) name hiring restrictions (restrictions on an employer's ability to name hire from within the affiliated bargaining agent); (iv) accommodation and travel allowances; (v) requirements respecting the ratio of apprentices to journeymen employed; and (vi) hours of work and work schedules. How do unionized firms fare relative to non-union competitors in each of these six possible remedy areas? Are the differences enough to result in a major competitive disadvantage?

Comment

- It is clear that each of the six possible remedies should be addressed both by applicants and respondents in any application under Section 163. For example, what is the potential relevance of fair wage schedules? Does access of unionized firms to hiring halls provide them with a competitive advantage that affects the specific ICI local issue at stake? Does the limited ability to name hire by unionized firms affect their competitiveness against non-unionized firms? Are the apprentice/journeyperson ratios set out in the collective agreement(s) that apply in the local area under review a major factor in cost competitiveness? Can it be demonstrated the unionized firm ratios are more costly than those of their non-unionized competitors? If this is the case, how significantly does this factor contribute to cost disadvantage?

Suggested Data Sources

- Once again, we are under no illusion that the data relating to remedy issues, training costs and fair wage schedules are easily accessible. Applicants and respondents will have the pertinent collective agreement information for the unionized sector which may be compared to either some specific survey information, if available, or some of the data available in government sources and publications. As a rule, we believe the key stakeholders are the best possible sources of specific information relating to the specific applications for modifications to the province-wide agreement. The data they can provide will likely be more pertinent to market conditions, kind of work and locality than anything available in the public domain.

- As for what is available in the public domain, applicants and respondents might want to consider the following sources which are set out in the rough order of priority which we believe reflects their potential to yield useful data:
    - WSIB data to create market share estimates;
    - Statistics Canada's financial performance reports;
    - the Workplace and Employment Survey (WES);
    - the 2000 Special Survey of the Construction Industry prepared for HRDC;
    - Workplace Safety and Insurance Board data (WSIB);
    - the 1999 Survey of the Construction Industry; and
    - the Survey of Employment Payrolls and Hours (SEPH).

160. *Enabling Clauses, Stabilization Funds and Less Formal Arrangements for Relief*

The parties will wish to consider the following questions: (i) are there enabling clauses (sometimes described as market recovery programs) in the relevant collective agreements? If so, have firms/unions accessed enabling clauses in the specific local area in some recent bids?; (ii) are there stabilization funds available to the relevant local union? Has the union local been accessing stabilization clauses in the specific local area?; (iii) have unionized firms resorted to other, less formal arrangements (other than enabling clauses and/or stabilization funds) to reduce their bid costs below those that would be determined by the appropriate collective agreement?

Comment

- The checklist of these three issues deals with some of the ways in which changes from the collective agreement are already taking place in the local ICI market, mainly through enabling clauses, stabilization funds and other less formal, ad hoc arrangements for developing some relief from the relevant collective agreements. For example, how important was negotiated relief via enabling clauses to construction firms remaining competitive and/or actually winning bids? What percentage of total hours worked on newly won projects can be linked, directly or indirectly, to accessing adjustments under the enabling clauses? Has there been an accurate tracking of, when and with what results enabling clauses have been utilized in the face of non-union competition? How often have stabilization clauses been resorted to and with what success in enabling unionized construction firms to win bids? Finally, what miscellaneous, less traditional measures are used to enhance the possibly of unionized construction firms winning bids?

Suggested Data Sources

- With respect to enabling clauses, the collective agreements will indicate the degree to which they are available. However, we are not aware of any central group that has been systematically tabulating information on the degree to which enabling clauses are actually used in winning competitive bids. Similarly, the wage packages of five trades, as we have pointed out elsewhere, indicate the availability of stabilization funds in a number of union locals. Once again, however, we are unaware of any central collection of the data with respect to actual use of stabilization funds in competitive bids.

- Finally, we have been told that there are instances of some relief measures being granted to unionized contractors that are completely outside the collective agreements and which do not relate to enabling clauses or stabilization funds. These changes that are arranged outside of normal channels are obviously not transparent. In closing, it should be possible, though it could be politically and operationally difficult, for one or both major stakeholders to a Bill 69 application for relief to pull together the relevant data on the utilization of enabling clauses and stabilization funds.

161. *Other Competitiveness Assessment Indicators*

- Four additional sets of relevant questions are: (i) Is there evidence that the competitiveness of unionized contractors relative to non-union contractors in the local ICI region affected by inadequate enforcement of employment-related statutes and regulations. If so, to what degree? (ii) Does a governmental fair wage schedule, e.g., federal, provincial or municipal, where applicable, play a role in the specific local cost issue? Can any of the government surveys used to create the fair wage schedule be used as an information base? (iii) Do unionized firms bear a higher cost of training than non-union firms? Is this a major cost factor in the particular bid? (iv) Do the

work rules that are in collective agreements affect the competitiveness of unionized contractors relative to non-union contractors in the local ICI region? Are the potential extra costs of supervision required for non-union workers an offsetting factor in terms of competitive balance?

Comment

- These four questions address possible union/non-union differentials that may arise from the role of government in enforcing standards and promulgating fair wages, from training measures or from the work rules stipulated by collective agreements. Although all pose measurement challenges, they provide a guide to evidence that should be viewed as admissible in the Bill 69 arbitration process.

Suggested Data Sources

- The fair wage and training questions can be probed on the basis of publicly available data. Pertinent fair wage schedules are available from a variety of sources. In some cases, the fair wage data are published on the Internet, in fact the Toronto and federal schedules are easily accessed this way. How these schedules sit with local ICI conditions will have to be demonstrated by the applicants and respondents. With respect to training, the wage package contributions of union members to the training fund of their locals are tabulated by the Office of Collective Bargaining Information in the Ministry of Labour. As for the questions involving the role of government enforcement in collective agreements, quantified evidence could be derived from such sources as apprentice/journeyperson ratios and the estimated costs that arise from their observance.

The Checklist of 21 Issues for Applicants and Respondents

How Strong Is The Local ICI Market?

1. Does the overall tightness (i.e., relative availability of skilled trades) in the construction labour market play a role in the particular local ICI sector? Is there any evidence of a labour shortage in the particular local ICI construction sector that may have a disproportionate impact on the competitiveness of unionized firms? If shortages of (skilled?) labour exist, can one assume that the same problem exists for non-union labour?

The Unionized Firms' Market Share

2. Based on experience and other evidence, are unionized construction firms a major presence in the specific market covered by the application?

3. Is it possible to determine the unionized contractors' share of this market?

4. Roughly speaking, how long have unionized construction firms been out of this market?

5. What steps, if any, have unionized construction firms been taking to offset their perceived competitive disadvantage in this specific market situation?

6. Have unionized firms chosen not to bid in the local market because they are uncompetitive?

7. Are "underground contractors" a major force in the local ICI market and do they play an important role in explaining the lack of competitiveness of unionized contractors? Does the presence of underground contractors equally affect both the unionized and non-unionized contractors in their bidding for ICI work?

8. Has the number of working members in the local construction union(s) been growing or declining? Is the growth or lack of growth of employed union members a reliable indicator of the competitiveness of unionized contractors?

Overall Cost as a Measure of End Product Value

9. How do wage and benefit rates compare in the local ICI region, unionized versus non-unionized firms? Have the gaps widened or narrowed?

10. How does the productivity of the workers compare – unionized versus non-unionized firms? Has the productivity gap widened or narrowed?

11. How do health and safety records compare – unionized versus non-unionized firms?

12. How does the quality of the finished project compare – unionized versus non-unionized firms? Does the nature of the construction project play a role in determining local ICI competitive disadvantage? Has the size of the project been a major factor? Is the complexity of a project an issue? If unionized firms hold an advantage, has that advantage been widening or narrowing?

13. Are there additional overhead differences between unionized and non-union firms to consider in the cost comparisons? Differences might arise due to size of HR offices, jurisdictional disputes, WSIB costs and benefits, etc.

Potential Remedies Under Bill 69

14. As already noted in the Executive Summary, an applicant for relief from the collective agreement may seek amendments in six specific cost areas under Section 163.2(4). How do unionized firms fare relative to non-union competitors in each of these six possible remedy areas?

Enabling Clauses, Stabilization Funds and Less Formal Arrangements for Relief

15. Are there enabling clauses (sometimes described as market recovery programs) in the relevant collective agreements? If so, have firms/unions accessed enabling clauses in the specific local area in some recent bids?

16. Are there stabilization funds available to the relevant local union? Has the union local been accessing stabilization clauses in the specific local area?

17. Have unionized firms resorted to other, less formal arrangements (other than enabling clauses and/or stabilization funds) to reduce their bid costs below those that would be determined by the appropriate collective agreement?

Other Competitiveness Assessment Indicators

18. Is there evidence that the competitiveness of unionized contractors – relative to non-union contractors in the local ICI region – is affected by inadequate enforcement of employment-related statutes and regulations. If so, to what degree?

19. Does a governmental fair wage schedule, e.g., federal, provincial or municipal, where applicable) play a role in the specific local cost issue? Can any of the government surveys used to create the fair wage schedule be used as an information base?

20. Do unionized firms bear a higher cost of training than non-union firms? Is this a major cost factor in the particular bid?

21. Do the work rules that are in collective agreements affect the competitiveness of unionized contractors relative to non-union firms in the local ICI region? Are the potential extra costs of supervision required for non-union workers an offsetting factor in terms of competitive balance?

Chapter VII: Overview of Data Sources

162. This Chapter will focus on the potentially useful information available in the public domain to undertake either a compensation/productivity type of gap analysis, a market share review or both. The primary sources of information are Statistics Canada (StatsCan) data and a number of private trade publications. Thirteen potential sources of information are explored in this chapter:

- the 1999 Survey of the Construction Industry;
- the Labour Force Survey (LFS);
- the Survey of Employment Payrolls and Hours (SEPH);
- the Workplace and Employment Survey (WES) and the related Labour Cost Survey;
- the 2000 Special Survey of the Construction Industry prepared for HRDC;
- Union Wage Rates Data in the Construction Price Statistics;
- Public And Private Investment Surveys;
- the Construction Sector Council as a source of future data;
- Workplace Safety and Insurance Board data (WSIB);
- building permits;
- CMD, private listings of projects – some information on winners and losers; and
- Statistics Canada's Financial Performance Reports.

163. *The 1999 Survey of the Construction Industry*

- Statistics Canada recently released a comprehensive survey of employers for the construction industry in Canada. The survey, which had not been conducted since 1989, was for the reference year 1999. About 7,500 establishments were selected across Canada from the approximately 200,000 listed in the Business Register. The survey questionnaires were mailed out in March and April 2000 and the data were finally released in the fall of 2001. Henceforth, the survey will be fully carried out every three years. Nine separate sectors of the construction industry in Canada were surveyed and nine separate survey questionnaire forms were issued to firms in different segments of the construction industry.[24]

  Each questionnaire covered:

  - revenue by type of construction work performed;
  - revenue by type of customer (individuals and households, governments, private industry);
  - revenue by worksite location;

[24] The separate (industrial/trade) sectors of the construction industry are listed here: (i) residential (builders, general contractors); (ii) non-residential (developers and general contractors); (iii) land sub-division and land development; (iv) highway, streets, bridge, sewer, etc.; (v) construction management; (vi) site preparation; (vii) electrical and mechanical contractors; (viii) structural work, exterior and interior finishing (framing, concrete, pouring, masonry, roofing, drywall, paint, etc.); and (ix) other special trades.

- expenses (including work sub-contracted to others);
- inventories;
- characteristics of labour;
- capital expenditures; and
- stolen and vandalized property.

Possible Use of Data by Applicants and Respondents

- It might be possible to calculate crude proxy measures of productivity for unionized versus non-unionized firms for the nine groups in Ontario. Officials indicated to us they can recreate average hours of work through some assumptions for the nine groups, but the process makes officials uncomfortable. In particular, the apprentice/journeyperson ratios of unionized and non-unionized firms are potentially useful. The timeliness of the release of the data, however, is a problem. The survey will be run comprehensively every three years and the next reference year will be 2002. Since there is about a 15-month time delay between the conduct of the survey and its release, the 2002 data may not come out until the spring of 2004. Officials indicated they would likely be interpolating the missing year data on a smaller scale. The handling of the intermediate years may not be ideal in terms of the competitive disadvantage issue. Officials indicated to us the interesting labour-oriented questions would likely not be asked in the missing years. A number of contractors have indicated they are upset with the construction survey. The complaint is that it is difficult for contractors to answer questions on the survey accurately.

164. ### *Possible Re-design Directions*

Officials have made it clear they are willing to co-operate with respect to defining information needs with precision so the questionnaire could be revised to meet more needs. Of particular interest in the questionnaires for this report are the following:

- the possibility of distinguishing journeyperson to apprentice ratios by type of activity and union non-union classifications;
- the possibility of distinguishing ICI firm total revenue compared to total construction revenues.

It is unlikely anything can be done on the frequency issue-every three years.

Comment

- In sum, the advantage is that every three years a comprehensive survey of construction firms in Ontario will be available, with some pertinent data provided at a level of disaggregation that approaches, but does not pinpoint, the ICI sector. The province-wide figures for the nine sectors surveyed would provide a good overview of some components of ICI activity.

165. *The Labour Force Survey (LFS)*

- The monthly Statistics Canada LFS provides a broad and detailed picture of the labour market in its many dimensions, including employment, unemployment and growth in the labour force. The LFS has been providing wage data since 1997 broken down by region and union status. The data are provided down to 4th digit SIC classification, though the ICI sector is not broken out of the broader NAICS classification of non-residential construction. There is a breakdown relating to employees covered by collective agreements. The wage survey data provide an average wage for the category as well as distribution on wages within the industrial classification. As noted in Statistics Canada's Guide to the Labour Force Survey (February 2001, 71-543-GIE):

  > *"respondents are asked to report their wage/salary before taxes and other deductions, and include tips, commissions and bonuses. Weekly and hourly wages/salary are calculated in conjunction with usual paid work hours per week. Average hourly wages, average weekly wages, and wage distributions can then be cross-tabulated by other characteristics such as age, sex, education, occupation, and union status. Those who are paid on an hourly basis are also identified." (Guide to the Labour Force Survey*, Feb. 2001, 71-543-GIE, p. 15)

- The wage and hours data are broken down by province and Census Metropolitan Areas (CMAs) in Ontario. The 11 sub-geographical areas that are covered in Ontario with respect to LFS union wage rates for major construction include Ottawa, Kingston/Pembroke, Muskoka/Kawarthas, Toronto, Kichener/Waterloo, Hamilton/Niagara, London, Windsor, Stratford/Bruce Peninsula, Northeast and Northwest. With respect to disaggregated detail and information, union or non-union status is covered in Questions 220 and 221 and the name of the employer is covered in 240. The surveyed employee is asked about the size of the firm as well. Employment data are available by industrial sector, including construction. A sample of some data from the LFS is listed below:

  - Tab 6B: Average hourly/weekly earnings by occupation (36 groups) and union and non-union status in the construction industry (NAICS 23), 1997 to 2000, Annual Averages – Economic Region 5 Ontario. (Data annual 1997 to 2001)
  - Tab 2B: Total actual hours worked in the construction industry (NAICS 23) by occupation (36 groups, class of workers (including union) and regions, 1997-2001-all of Ontario)

Possible Use of Data by Applicants and Respondents

- It might be possible to create an ICI wage series for Ontario. StatsCan could start by looking at the business names in the NAICS sample. Assuming the construction firms could be classified as union or non-union, a union/non-union wage series could be created at the ICI level. It has to be recognized there would be some problems in terms of which firm and trade the individual identifies with. In other words, at some expense, StatsCan could code LFS non-residential wage and employment data into ICI and non-ICI categories. Other good data that are available relate to the hours of work (actual versus usual) and the number of hours of overtime per employee. However, officials note that once a researcher delves into the union and non-union classification, the sample size becomes thin.

Comment

- The monthly publication of the detailed data is very useful. The data are useful for understanding the strength of the local construction market. As well, there are employment figures, union and non-union, broken down by 36 construction occupations for the province. It might be possible for StatsCan to develop sub-geographical figures for some of these data.

166. ### *The Survey of Employment Payrolls and Hours (SEPH)*

- The payroll survey provides a picture of compensation, hours of work and total employment as reported by employers. SEPH does not provide employment estimates (or unemployment) by age, gender and other demographic characteristics, which are regularly published and made available through the LFS. Nor does SEPH provide a breakdown of firms by union status.

Possible Use of Data by Applicants and Respondents

- Unfortunately, the SEPH data that are available do not readily disaggregate below the non-residential construction classification.

Comment

- We do not believe SEPH data have much promise with respect to helping evaluate competitive disadvantage in ICI construction in local markets in Ontario.

167. *The Workplace and Employment Survey (WES) and the Labour Cost Survey*

- The Workplace and Employee Survey (WES) is a longitudinal survey conducted by Statistics Canada and developed in conjunction with Human Resources Development Canada (HRDC). WES has been under development for the last five years. The survey was conducted for the first time in the summer and fall of 1999. Just over 6,300 workplaces and about 24,600 employees responded to the survey, representing response rates of 94% and 83%, respectively. For analytical purposes, the WES has two major components that are linked together: (i) a workplace survey that focuses on the adoption of technologies, organizational change, training and other human resource practices, business strategies and labour turnover in workplaces; and (ii) a survey of employees within these same workplaces covering wages, hours of work, job type, human capital and use of technologies and training. The survey will enable researchers to link business policies, practices and outcomes with employee characteristics, activities and outcomes.

- The forthcoming labour cost survey is still very experimental and is being developed to replicate the American Employment Cost Index, which is widely followed in the financial markets as an indicator of wage cost pressures. The new index was supposed to build upon the WES integrated approach.

A rich source of linked data are being generated by the WES survey, i.e.,

> *Under employee outcomes* – wages, earnings, hours, wage levels by worker type, training received, use of technologies and job tenure; *Under workplace outcomes* – employment growth, growth in revenues, organizational change, implementation of technologies and changing human resource practices; *Under workplace characteristics* – technology implemented, financial data, business strategies, unionization, compensation schemes, training provided, mix of full-time, part-time, contract and temporary employees, organizational change, subjective measures of productivity, profitability; type of market; *Under worker/job characteristics* – education; age/gender; occupation, management responsibilities, work history, tenure, family characteristics, unionization, use of technology, participation in decision making, wages and fringe benefits, work schedule arrangements and training taken.

Possible Use of Data by Applicants and Respondents

- The workplace survey does provide wage information, with union non-union breakdowns and some self-employment information for total construction, both residential and non-residential for all of Ontario.

- Information should be available on a one-time only basis regarding data on market share by unionized and non-unionized firms, as well as some data on wage and non-wage construction costs.

- With respect to construction, the aggregation level is above the level of ICI construction. There is also no published information by type of project. However, construction activity can be linked directly to occupational categories of workers.

- The survey does provide average hours worked per employee together with non-wage costs and asks employers about other compensation costs and issues such as union versus non-union status of employees and wages paid for regular full-time work.

- The hours of work arrangements in union versus non-union employees and firms is also an informative outcome of the survey.

- The survey provides a range of new data relating to the incidence of activities in firms and among their workers broken down by union and non-union status. The range of issues are listed above.

Possible Re-design Directions

- The survey could be supplemented with new questions. In other words, if a client sets out the specific needs, then StatsCan officials will calculate the sample size required for an acceptable level of reliability. The costs of collecting the new data would also be provided.

Comment

- The frequency of publication of the survey data may be a problem for ICI users. As well, the level of disaggregation both by region and industry group is a major problem for using the data. A major uncertainty at this time is the potential to disaggregate the Ontario construction sector into the ICI components. The Labour Cost Survey will not be useful for purposes of Bill 69 applications.

168. ***The 2000 Special Survey of the Construction Industry prepared for HRDC***

- The National Construction Industry Wage Rate Survey (Ontario) was a special, one time, survey of the construction sector conducted by StatsCan on behalf of HRDC. The survey (Ontario) used the March 2000 version of Statistics Canada's Business Register (BR) as its sampling frame. Respondents were asked to provide the following information for up to six occupations in their establishment:

The Data Collected

- usual number of hours worked per week for full-time employees;
- starting hourly wage for full-time journeyperson employees;
- usual journeyperson hourly wage for full-time employees;
- maximum hourly wage for full-time employees;
- most frequent hourly wage paid for full-time employees;
- number of employees currently employed in the establishment;
- indicate if the employees for the occupation are unionized;
- number of full-time employees currently employed for the occupation;
- indicate if the establishment usually has full-time employees for the occupation;
- indicate if the establishment has done commercial or institutional construction work in the locale, i.e., Ontario, in the last 12 months.
- the regional component of the survey was based on a series on Ontario Economic Regions (ER). The industry component of the stratification was based on a three-digit level of the 1980 Standard Industrial Classification (SIC), which resulted in covering 14 sub-sectors of the construction industry and 35 occupation groups.

Possible Use of Data by Applicants and Respondents

- There is little doubt that applicants and respondents will want to review the available data. The data set is very rich as the construction industry/workforce is broken down into 35 occupational categories.

- Hourly wages paid per occupation group are also provided for the 35 occupations on four bases: (i) journeyperson starting, (ii) journeyperson usual, (iii) maximum and (iv) most frequent paid.

- As well, a number of different Ontario regions are covered. The survey tables we examined had data on full-time employee construction wages for Toronto, Northeast and Northwest Ontario excluding Toronto, Ottawa, Kitchener/Waterloo/Barrie, Hamilton/Niagara, Windsor/Sarnia, Kingston and Muskoka and London and Stratford/Bruce Peninsula.

- The occupation information was also broken down on a unionized and non-unionized firm basis.

- One basic problem, however, is the union / non-union data split was not provided on a sub-regional basis for Ontario. It is clear the data possibly exists and could be mined, subject to statistical reliability of small samples.

Comment

- The data are very useful, but already are becoming a bit dated. Consideration should be given to repeating the survey at an ICI Ontario level, perhaps every three years.

- As a benchmark for what was happening in Ontario construction in 2000, the data set are quite excellent. The data are also useful because wage compensation is broken down between union and non-union classifications and for different occupation categories.

169. ***Union Wage Rates in the Construction Price Statistics***
(Statistics Canada, Construction Price Statistics, Third Quarter 2001, 62-007-XPB)

- The above-noted report provides construction union wage rate indexes, new housing price indexes, apartment building construction price indexes, non-residential building construction price indexes and machinery and equipment (M&E) price indexes. The price series are timely, published quarterly and the construction union wage rate indexes, basic rates plus supplements, are published for selected cities in Canada.

- Sixteen trades and eight CMA's in Ontario are covered. In a technical note, StatsCan reviews the current collective agreement rates for 16 trades engaged in building construction in 20 metropolitan areas across Canada. The figures are provided in terms of basic rates and basic rates including supplementary benefits (vacation pay, statutory holiday pay, employers' contribution to pension plans, health and welfare plan, industry promotion and training funds.) The details are published monthly on CANSIM. Nine cities in Ontario are covered with respect to union wage rates for major construction – Ottawa, Toronto, Hamilton, St. Catharines, Kitchener, London, Windsor, Sudbury, Thunder Bay.

- In the technical note, StatsCan observes that the index measures contractors' selling price change on non-residential construction, which is primarily ICI construction. The indexes relate to general and trade contractors' work, but exclude the cost of land, design and real estate fees. The national index uses a base for seven cities, including Ottawa and Toronto and for five project types: offices, warehouses, shopping centers, factories and schools.

Possible Use of Data by Applicants and Respondents

- There is no separate ICI breakdown under construction prices. StatsCan used to collect data from the Canadian Construction Association as the prime data source. Now they collect data from the provincial employer councils.

- The updates in the new collective agreements often are slow to be input.

- However, data are available on CANSIM and are relatively inexpensive.

Comment

- The survey will not be very helpful to either an applicant or a respondent. The union data may provide some validation for cities, however the collective agreements data are superior.

170. *Public and Private Investment Surveys*

- StatsCan generates three surveys on private and public investment. The first is carried out in November and December and yields preliminary estimates of capital spending in the current year and spending intentions for the coming year. The intentions are updated in a second survey in June and actual capital expenditures are collected in a survey carried out between March and September of the year following the reference year.

- Public and private investment covers industrial, commercial and institutional building and engineering works such as roads, dams, transmission lines, pipelines, oil well drilling and mine development.

Possible Use of Data by Applicants and Respondents

- The data will be of limited use to applicants or respondents.

171. *The Construction Sector Council (CSC)*

- The CSC, which was launched April 9, 2001, is a partnership between HRDC, the Canadian Office of the Building and Construction Trades Department and its affiliates and the National Construction Labour Relations Alliance. Its 18-member board, made up of nine business and nine labour representatives, will focus on issues such as the skills shortages in many construction trades, labour demand and supply, inter-provincial mobility and the impact of information technologies on the industry.

Possible Use of Data by Applicants and Respondents

- The CSC has a number of initiatives underway which could have a bearing on the competitive disadvantage measurement issue. The CSC plans to develop an occupational forecasting model for construction trades. The forecast model would attempt to estimate, statistically, labour requirements per construction project, by type of labour. As well the CSC will be developing some rough productivity indicators at the sector level. The numerator could be the volume of business – the denominator could be the wage bill. This approach could provide an opportunity to compare the productivity performance of unionized and non-unionized firms in the Ontario ICI sector.

- Adding in questions on unionized versus non-unionized firms would be an obvious follow-up for the OCS to pursue.

Comment

- There are considerable opportunities for the OCS to collaborate with the CTC.

172. ### *Workplace Safety and Insurance Board data (WSIB)*

- The OCS has been utilizing WSIB data to determine market share data for unionized construction firms in specialized ICI sectors.

- The work entails obtaining a list of all contractors in a specific market making contributions to WSIB over the relevant time period. Union contractors are then identified and the list submitted to WSIB. Based on these data, WSIB can compile assessable payroll and lost-time injury information for the union and non-union construction firms.

- The OCS has already undertaken one such review for the ICI painting industry.

- It should be noted that payroll information and union status company identification are the key to this exercise. These data can be used to compare the contributions to the WSIB of unionized firms against non-unionized firms for selected groups. In essence, one can determine whether non-union firms are paying their way in the realm of WSIB contributions. One can also use these data as proxy indicators of the market share in a particular ICI market.

Four Sets of Market Share Data are Possible

- This approach of combining WSIB data with outside information on classifying the union status of the firms generates four kinds of data.
    - unionized company market share based on distribution of assessable payroll;
    - unionized company market share of estimated man-hours of work;
    - reported lost-time for injuries – unionized compared to non-unionized firms;
    - lost working time for unionized compared to non-union firms.
- The information for union man-hours data is derived directly from the construction unions. The non-union man hours are calculated by using WSIB data that convert assessable payroll figures into man-hours of work by dividing total payrolls by an estimated hourly wage rate.

An Interesting Approach – but There are Major Measurement Problems

OCS correctly cautions against using these data as an accurate measure of the market share of unionized construction firms.

- Some firms are involved in more than ICI construction. ICI construction cannot be easily isolated.
- Independent operators do not make WSIB contributions and are therefore excluded from the analysis.
- WSIB contributions are subject to payroll ceilings; thus assessable payroll information may be underestimated.
- Regional identification of ICI construction is limited by the fact some contractors work in several regions, but report payroll contributions from head office.
- The various trades do not always clearly link up with WSIB rate categories.
- There is an identification problem with respect to firms. WSIB premiums are higher for residential work than for ICI. Thus a firm which does a mix of work would want to claim that it is involved in ICI work, rather than in residential construction.

Possible Re-design Directions

It might be helpful to determine whether WSIB would collaborate in terms of redesigning some of the data that are collected.

- WSIB clearly has to collect assessable payrolls information. The agency could also collect total payroll figures, which would then provide an improved estimate of the size of the total construction market in a specific location.

- WSIB could require a statement by the member contracting firms as to their union or non-union status.

Comment

- Even if the data were improved to the extent of including these "extra pieces" of WSIB collectible information, the market share calculations would still be far from perfect.

- There would still be some cross-over problem between residential firms and ICI in the data. There would still be some problems with matching trades with WSIB rate group categories. And, of course, the regional head office problem would still exist with respect to pinpointing market location.

- Under present practises, the WSIB data provide some useful market intelligence. However, the data set has to be more substantially improved in order to be useful to applicants and respondents in Bill 69 cases.

173. *Building Permits*

- The StatsCan Building Permits Survey covers all Canadian municipalities that issue permits. The data published include residential and non-residential building permits. The total value of building permits is obtained by summing the following elements: residential, industrial, commercial and institutional.

Possible Use of Data by Applicants and Respondents

- It is highly unlikely such aggregate data will be very useful either to an applicant or respondent.

174. *CMD, Private Listings of Projects – Some Information on Winners and Losers*

- CanaData Construction Forecasting Services is a firm that solicits information directly from tendering authorities and also gathers information from municipal council minutes, business development and re-zoning applications and searching newspaper notices of tenders.

- CMD Building Reports (CMDBR) reports on all construction projects from the earliest stage possible. CMBDR provides, for a fee, information relating to the notice and awards of building and construction contracts in Canada. The firm has no other major competitor in Canada, except StatsCan.

- The CMBDR data we examined for the Ontario region provided information on the project type (commercial, government, apartment, warehouse, etc.), project owner, project value, the range of bidders, contractor types and the name of the winning firm.

- The start and project data are available at a CMA and county level and the firm will provide customized reports. Their report on starts and total footage is a valuable early warning tool and, in fact, is published earlier than StatsCan building permits data. For example, March start data are published by the second week of April. The firm is able to customize reports based on the data fields that it collects – number of stories, dollar costs, square footage, owner, architect, etc.

- The specific data CMBDR provides are:
  - ICI starts and projects on a square footage basis for the three ICI sectors by detailed industry, region, above $250,000 in size.
  - Building permit spending data for the three ICI sectors.

Possible Use of Data by Applicants and Respondents

- The firm does not provide any information on a union/non union basis. Moreover, the firm does not provide much information, if any, on involvement by trade.

175. ### *Statistics Canada's Financial Performance Reports*

- StatsCan has a number of financial publications that can be used to monitor the financial health of the construction sector in Canada. The core coverage is on assets, liabilities, income, expenses and other types of tax information from corporate tax returns filed with Revenue Canada. Aggregate information is available at an industry level.

- Analytically the data can be used to create, at an industrial level, a range of useful indicators of financial health such as a statement of change in financial position as well as gross profit margin, net profit margin, return on equity, pre-tax profit to assets, pre-tax profit margin, liabilities to assets and distribution of firms by percentage of profit/loss.

Specific Publication Sources for Financial Performance Data

- Financial Performance Indicators for Canadian Business, Volume 1, Medium and Large Firms (firms with revenues of $5M and over) 1996 reference year (61F0058XPE/F).
- Financial Performance Indicators for Canadian Business, Volume 2, Small and Medium Firms (firms with revenues under $25M) 1994 reference year (61F0059XPE/F).
- Financial Performance Indicators for Canadian Business, Volume 3, Small and Medium Firms, principal financial ratios by detailed industries 1994 to 1996 reference years (61FOO6OXPE/F).
- Financial Performance Indicators for Canadian Business (61C0030).
- Computer Interactive Benchmarking (61F0059XCB).
- Quarterly Financial Statistics for Enterprises, (cat. 61-008-XPB).

The latter document (Quarterly Financial Statistics) is the most up-to-date and is published 90 days after the end of each quarter.

> *"For the construction industry, the information is located in Table 18 - Real estate developers, builders and operators and Table 19 Building materials and construction." (*Source ibid*.)*

Possible Use of Data by Applicants and Respondents

- Canadian construction firms can compare their own financial performance to an industry average.
- The StatsCan data also facilitate comparative analysis and forecast modelling for ICI construction firms.
- Finally, the data set will also illustrate how a typical construction firm is structured.

Comment

- It is rather unlikely this financial information will prove relevant either to an applicant or a respondent, other than in the case of indicating general financial under-performance. The primary problem is the financial data are not broken down by union and non-union firms.
- However, the data might provide a standard or benchmark for assessing the financial performance of some ICI construction firms.

Chapter VIII: Estimated Costs of Creating and Maintaining a Database to Assist Bill 69 Applicants and Respondents

176. This Chapter discusses the potential financial outlays associated with some of the more promising approaches to providing practical and relevant data with respect to local ICI competitiveness issues. Four specific approaches or directions for collecting data are discussed:

A. Creating a Bidding Experience Information Base to be Collected and Updated by the OCS.

B. Improving the Monthly Labour Force Survey (LFS) with Respect to Local Union and Non-Union Wages.

C. Expanding the StatsCan Triennial Construction Survey to Cover ICI Ontario Regions.

D. Replicating an ICI Ontario Version of the Special 2000 HRDC Survey.

Some General Observations

177. It became clear fairly early on in our work the StatsCan data would likely be of limited use in local ICI Bill 69 applications and responses. StatsCan data are helpful in spotlighting broad trends in construction and, in some instances, some of the broader developments that can be linked to ICI activity in Ontario. Nonetheless, our broad-brush view is that StatsCan construction data tend to be quite remote from specific, local ICI competitiveness issues. While StatsCan data can be improved upon from an ICI perspective, the cost of moving in this direction, with one possible exception, will likely be prohibitive. Consequently our preferred approach is to rely more heavily on the local market intelligence available to the key stakeholders, the applicants and the respondents. In our view, StatsCan data sources can provide useful supporting background information regarding local ICI developments, but the locally originating data will turn out to be more persuasive. Obviously, StatsCan can, for a fee, customize some of the surveys to relate more closely to ICI needs. Consequently, the financial costs of customizing some aspects of three specific surveys are also briefly discussed. As will be evident from a costing perspective, the more promising approaches relate to the collection of local market ICI intelligence.

A. Creating a Bidding Experience Information Base to be Collected and Updated by OCS

178. We assume the OCS will be granted the mandate to use its own funds to assemble and monitor local ICI bid (win, lose, etc.) data. This new role for the OCS can be broken down into approximately three separate components or tasks.

Task 1: Provision and assembly of the raw data

- The OCS already subscribes to CMD data as well as to the *Daily Commercial News*. In other words, the CMD data are already purchased, but obviously are not yet mined for strategic, local competitive information. We were informed by OCS that the organization currently spends about $4,000 per year for the keyline service provided by CMD. There was also an additional $1,500 software cost for installing the CMD system. In addition to the CMD data, OCS also subscribes to the Canadian Capital Projects database provided by the Ottawa consulting from Informetrica. The database only covers major projects with a value in excess of $50M. OCS views the Informetrica data as a useful supplement to CMD data.

Task 2: Mining of CMD data and the compiling of other local market intelligence.

- There will be a need to dialogue with local construction associations and local unions on bidding situations. One technically-trained professional and support staff would be required at the OCS to follow up on the detailed situation at the local ICI level.

Task 3: The consulting component

- The new staff person would also have to be available to local applicants and respondents on the basis of out-of–pocket extra costs. We are not able to provide an actual budget estimate for this new mandate, although we feel it falls naturally within the OCS's mandate.

B. Improving the Monthly Labour Force Survey (LFS) with Respect to Local Union and Non-Union Wages and Employment

179. An approach that holds some promise for both applicants or respondents is utilizing the monthly LFS data for union and non-union wage and employment information. Indeed, StatsCan has suggested it might be possible to create an ICI union/non-union wage series for sub-geographical sectors in Ontario. Assuming the construction firms could be classified as union or non-union, a wage and employment series could be created at the ICI level. Potentially, a union/non-union wage series also be created for a number of sub-regions in Ontario.

180. Here is how StatsCan describes the worksteps and pricing of this exercise in several correspondences with Arthur Donner (Geoff Bowlby, Head of Analysis, Labour Force Survey, Statistics Canada, April 11 and April 15, 2002) :

- From the description in the North American Industry Classification System (NAICS), the exercise would focus on the "five-digit" industry 23122 (non-residential building construction) which resembles the ICI industry. Note the LFS does not normally code its responses to that level of detail.
- To derive ICI data from the LFS would involve coding all LFS questionnaires for a specified period that had previously been coded to the broad "construction" (NAICS 23) category and to re-code them to two categories – non-residential building construction and all other construction.
- StatsCan would utilize a list of establishments in non-residential building construction from the Business Registry (a database of all companies in Canada used for business survey sample selection) that StatsCan considers to be in NAICS 23122.
- The final figures will be subject to some sampling error problems, since in LFS terms, the ICI industry is relatively small. "On an annual average basis, I think we can expect a co-efficient of variation (CV) of 15-20% on total employment in ICI in Ontario. This means two times out of three, the 'true' number of people employed in ICI in Ontario will lie within 15-20% of the LFS estimate. Or, 19 times out of 20, it will lie within 30-40% of the LFS estimate (2X the CV at the 66% confidence interval). This is not bad, although not the best quality data either."(Bowlby, April 11, 2002)
- The process would cost about $3,000 to $4,000 per year for twelve months of data. StatsCan officials do not recommend going back any further in time with their data than 1999. Thus to derive ICI (non-residential construction) construction wage and employment data for 1999 to 2001 in sub-regions of Ontario on a union/non-union basis would cost about $9,000 to $12,000.

C. Expanding the StatsCan Triennial Construction Survey to Cover ICI Ontario Regions

181. The intention of this approach, using the Construction Survey, is to create a construction data set for Ontario's ICI industry in as much geographic detail as possible. According to correspondence with a StatsCan official, "I believe that the Ontario (fair wage) sample was close to 8,000 firms. At a cost of roughly $200 per firm, this would work out to about $1.6M. The earliest this could be done would be for the reference year 2003 (data available in 2005). This avenue would need to be explored in more details, but the ballpark figure gives a good estimate of the cost involved." Thus it appears the costs of StatsCan providing data below the existing broad industry classification and, in more geographic detail, would be prohibitive, especially when placed in the context of the reporting time lag and marginal usefulness of the new data. We have no specific cost estimate in this regard, but are convinced the approach is both too expensive and not practical.

D. Replicating an ICI Ontario Version of the Special HRDC Survey

182. We were informed the original 2000 Special Survey of construction cost HRDC about $1.6M to mount across Canada. A comparable, annual survey for Ontario ICI seems prohibitively expensive. With respect to the potential cost of an annual survey at the ICI level in Ontario, a StatsCan official indicated the following: "All this said, the 2000 survey in Ontario for HRDC cost about $616,000. To do the survey you are considering on a one-time only basis would probably now cost about $700,000. If you were to enter into a Memorandum of Understanding to commit to an annual survey to take place for at least five years, there would be a cost-savings. In the first year of such an agreement, the cost might be around $600,000. It would grow by about 3% a year to cover salary increases, etc. In order to piggyback on another survey, we would have to have other related surveys – obviously. At the moment, the only other survey that would be a candidate for such discussions would be the HRDC survey. However, it is expected that this survey will only occur every 3 or 4 years. In between, you would be on your own. In order to piggy-back, there would have to be discussions between the parties involved to share costs, etc." (Monica Weise, Statistics Canada, e-mail message to Arthur Donner, April 4, 2002.)

Options and Other Considerations

Perhaps OCS could piggyback with other organizations to share the costs. Absent such sharing, it is again likely that the costs exceed the potential benefits by a substantial margin.

Chapter IX: Conclusions and Recommendations

Defining "Competitive Disadvantage"

183. We have given the words "competitive disadvantage" a broad definition which we believe accords with the proper legal canons of statutory construction as well as with sound and accepted economic principles. Therefore despite significant measurement difficulties, the words should be viewed in a wide context, including not only the more easily measurable components of costs but also the more difficult, less observable costs factors such as productivity, product quality of the final project, etc. Based on the expansive definition of competitiveness, we have developed a checklist of 21 issues that should be taken into consideration by the applicants, respondents and arbitrators in applications brought under Section 163.

184. The jurisdiction to make binding and authoritative decisions as to the meaning of "competitive disadvantage" rests, of course, with arbitrators appointed under Section 163.3 and potentially with reviewing courts, where the arbitrator's construction is "patently unreasonable". However, we have observed that Bill 69 prohibits the arbitrator from giving reasons for her/his decision. This deprives the parties of reasoned guidance, both as to the meaning of "competitive disadvantage" and the materiality of evidence relevant to determining whether it exists in particular applications. As observed, this provision of the Bill is at odds with the trend in the courts to require reasoned judgments in administrative law: *Baker v. Canada* (*Minister of Citizenship and Immigration*, [1999] 2 S.C.R. 817 and in other areas as well – see *R. v. Sheppard* [2002] SCC 26 (File No.: 27439). More important, it is arguably tantamount to permitting an arbitrator to determine her/his own jurisdiction without being subject to judicial review, contrary to Section 96 of the *Constitution Act* – see *Creview v. Quebec* (Attorney General) [1981], 127 D.L.R. (3rd) 1. The Ministry of Labour is now reviewing the operation of Bill 69. We recommend the Bill's prohibition of written reasons for an arbitrator's decision be brought to the Ministry's attention for possible repeal.

Measuring "Competitive Disadvantage"

185. The most appropriate and accessible information for measuring local ICI market competitiveness is local market intelligence. In an ideal world, the OCS could play a useful role in collecting, analyzing and disseminating local ICI bidding information, on request, to the parties of interest. As a practical matter, we acknowledge there may be difficulties in doing so. The principal sources of this information will be the local contractors associations and local building & construction trades councils. As for the contractors, their associations, or some of them, will include non-union firms who are unlikely to agree that local intelligence should be shared with the OCS. Moreover, there may well be reluctance in the contractor community at large about sharing information which could compromise their tendering positions.

    As for the unions, their willingness and capacity to collect information will likely vary greatly from locality to locality. These are important reservations. Nonetheless, we believe the OCS should confer with the key stakeholders and determine whether it is feasible to serve as the central repository for receiving, analyzing and disseminating this critical information.

186. After an extensive review of the relevant StatsCan data, we conclude that, with one major exception, most of the data in its present form are remote from the specific purposes necessary for Bill 69 applications. Customized data are an option, but in most cases costs are prohibitive. Some of the existing disaggregated StatsCan and private sector survey data may be of limited supplementary assistance to applicants and respondents.

187. Customizing monthly Labour Force Survey (LFS) data to provide ICI employment and wages for union and non-union construction employees at sub-regional levels in Ontario could prove useful to applicants and respondents with respect to the "competitive disadvantage" issue. There is still some question as to the statistical reliability of some of the data that could be generated. Consequently we recommend that the OCS undertake a pilot project with StatsCan to provide customized LFS data. The costs of undertaking the pilot project are not onerous.

188. Some of the newer technological developments, such as individual employer/employee "smart cards", on which a virtually limitless amount of relevant information can be encoded, are promising potential aids, both to the measurement of competitive disadvantage and also the enforcement of statutory and regulatory requirements. If the appropriate input terminals can be placed on job sites and, if employers and employees can be persuaded to use the system, the intelligence base and its accessibility, could be greatly enhanced. In addition, there could be multiple cost savings on tracking skills, hours (including overtime), apprenticeship training, etc. We therefore commend and support the ongoing work on this subject under the National Industry Skills Data Card Project.

189. Based on our preliminary overview, we believe there are useful measurement techniques and approaches to be learned from the Americans, especially those responsible for administering the "prevailing wage" provisions of the *Davis-Bacon Act*. A summary of the survey and other collection and publication processes used under Davis-Bacon appears in the Appendix section. We recommend the OCS pursue these matters with the Davis-Bacon administrators. In addition, if the OCS has not already done so, we believe contact should be established with appropriate officials in the U.S. Labour Department's Bureau of Labour Statistics (BLS), where even more comprehensive labour force data on a county-by-county basis is tracked and analyzed than is surveyed by StatsCan.

Reducing Competitive Disadvantage through Enhanced Enforcement of Statutes and Regulations

190. As earlier stated, persistent allegations of inadequate enforcement of existing laws against non-union firms were made to us. To address this critical issue, the Quebec approach may be instructive. We acknowledge there are substantial differences in the statutory framework governing construction labour relations in Quebec. Nevertheless, the Commission de la Construction du Québec (CCQ) is a tripartite agency like the OCS, albeit with much expanded authority. The additional responsibilities of the CCQ include the performance of an active role in enforcing the full range of statutory requirements imposed on the industry. In carrying out that function, the CCQ detects and reports on illegal activities in the construction industry's underground economy. Time did not permit us to conduct an in-depth investigation of the CCQ's important enforcement activities, although we were told significant funding support is received from the Quebec government. We recommend the OCS pursue the investigation of this aspect of Quebec's approach to ensuring adequate enforcement of its construction industry laws.

191. Another aspect of the Quebec system is compulsory registration of all contractors. Some Ontario trade associations are taking action on their own to ensure all contractors within their trade sector are subject to mandatory registration as a condition of being able to carry on business. This course of action is being actively pursued, for example, by the Electrical Contractors Association of Ontario (ECAO). If this approach proves to be feasible and, if registration is required with a single government agency to which all statutory and regulatory enforcement authorities have access, it would greatly ease information gathering, not only for the purposes of enforcement, but for tracking the other issues relating directly or indirectly to competitiveness referred to throughout this report. We therefore recommend the OCS liaise directly with the ECAO and the CCQ to assess the desirability of recommending a system of compulsory registration.

192. In order for complaints of inadequate or disparate enforcement against non-union firms to carry weight, whether in Bill 69 arbitrations or elsewhere, the evidence must be specific and verifiable. One way to gather evidence would be through an OCS-sponsored survey of existing enforcement practices and procedures, focussing on the *Trades Qualifications and Apprenticeship Act*, the *Workplace Safety and Insurance Act*, the *Occupational Health & Safety Act*, and the *Fair Wage Schedule*. Any such survey should scrutinize both published and unpublished government data with respect to such indicators as the number of inspectors, the frequency of site inspections, union and non-union, the number of complaints, the number of infractions, the penalties involved, compliance with objectives and other measured outcomes. A principal objective of this project would be to determine whether the government's current integrated approach for allocating inspectors, which is based on so-called measurable risk parameters, is working for ICI construction. Has the reported level of complaints of infractions under the integrated approach increased or decreased? Have the number of inspections per type of firm altered over time? Is the time allowed for compliance an issue that warrants a concern? Is there a bias in favour of non-union firms? The survey should also include a comprehensive questionnaire to be sent to construction firms and business agents in order to try to quantify and develop a track record of their experiences with complaints and enforcement issues. One of the principal objectives would be to determine the adequacy of the complaints-based approach to detecting infractions. We recommend the OCS undertake a survey of this sort, which will have to be carefully designed, with appropriate regard being given to privacy and freedom of information laws.

Appendices

Appendix 1
Individuals and Parties Consulted

Date	Description
04/04/02	Briefing with OCS Steering Committee – Steve Coleman, Patrick Dillon, Katherine Jacobs, Scott Macivor, Eryl Roberts and Gary White
04/05/02	Meeting with Executive Board, Provincial Building and Construction Trades Council of Ontario
04/06/02	Meeting with Fernando Traficante, Director, Sector Competitiveness Branch, Ministry of Economic Development & Trade (now Ministry of Enterprise, Opportunity and Innovation)
04/07/02	Meeting with labour law counsel – Bruce Binning, Harold Caley, Gary Caroline and Alan Minsky
04/08/02	Meeting with Ian Welton, Director, Revenue Policy, Workplace Safety & Insurance Board
04/08/02	Meeting with Don Franks, author of the Franks Report
04/11/02	Meeting with Scott Thompson, counsel to the Electrical Contractors Association of Ontario
04/12/02	Meeting with representatives of Electrical Trades Bargaining Agency
04/13/02	Meeting with Jerry Meadows, Senior Policy Advisor, Labour Management Services, Ministry of Labour
04/15/02	Meeting with Brian Foote, Director of Labour Relations, General Contractors' Section, Toronto Construction Association
04/15/02	Meeting with Clive Thurston, President, Ontario General Contractors' Association
04/15/02	Meeting with Rob Easto, Manager, Program Standards and Development Unit and Fred Long, Ministry of Training, Colleges and Universities
04/18/02	First trade consultation interview meeting – invitees included Bricklayers, Carpenters, Cement Masons, Labourers, Operating Engineers, Plasterers, Rodworkers, Steeplejacks, Teamsters and Terrazzo, Tile & Marble Workers
04/19/02	Second trade consultation interview meeting – invitees included Electricians, Glaziers, Insulators, Painters, Plumbers/Pipefitters, Refrigeration Workers, Roofers, Sheet Metal Workers and Sprinkler Fitters
04/21/02	Third trade consultation interview meeting – invitees included Boilermakers, Elevator Constructors, Ironworkers and Millwrights
04/21/02	Meeting with Don Dickie, Vice President and General Manager, Construction Safety Association of Ontario
04/21/02	Arthur Donner traveled to Ottawa to meet with officials from Statistics Canada, including Pierre Despéres, Construction Section; Howard Kerbes, Workplace & Employee Survey; Serge Lavallé, Workplace & Employment Survey; Albert Neer, Housing & Input Prices; Bob Pagnutti, Manufacturing, Construction & Energy Division; Brian Preston, Construction Section and Monica Weise, Small Business & Special Surveys
04/22/02	Conference call with Paul Stoll, Sector Studies & Partnership Division, Human Resources Development Canada
04/28/02	Further meeting with Brian Foote, Director of Labour Relations, General Contractors' Section, Toronto Construction Association

Date	Description
03/01/02	Interim report to OCS Steering Committee
03/4-8/02	Numerous telephone conversations with federal government officials, including George Gritziotis, Construction Sector Council; Paul Stoll, Sector Studies & Partnership Division, Human Resources Development Canada and Brian Wallace, Industry Canada
03/11/02	Meeting with Rick Charney, counsel to the Mechanical Contractors Association of Ontario
03/12/02	Meeting with Patrick Dillon, Business Manager, Provincial Building and Construction Trades Council of Ontario
03/12/02	Meeting with Bert Gardner, President, Construction Employers Co-ordinating Council of Ontario
03/13/02	Meeting with Bill Jemison, President, Ontario Erectors Association
03/15/02	Meeting with Eryl Roberts, Executive Vice President, Electrical Contractors Association of Ontario and George Docherty, Guild Electric Limited
03/19/02	Meeting with Joe Keyes, General Manager, Construction Labour Relations Association of Ontario
03/20/02	Further meeting with Paul Stoll, Sector Studies & Partnership Division, Human Resources Development Canada
03/21/02	Further meeting with Bill Jemison, President, Ontario Erectors Association and Donald Goss, General Sales Manager, ADF Group Inc.
03/21/02	Meeting with Neil McCormick, Business Manager, Ontario Pipe Trades Council
03/21/02	Meeting with Tom Connolly, Business Manager, Ontario Provincial Council, Labourers International Union of North America
03/21/02	Meeting with Steve Coleman, Executive Vice President, Mechanical Contractors Association of Ontario
03/25/02	Southwestern Ontario Regional Meeting in Chatham with representatives of Employee/Employer Bargaining Agents (EBAs)
03/26/02	Central Ontario Regional Meeting in Hamilton with representatives of Employee/Employer Bargaining Agents (EBAs)
03/27/02	Meeting with Bud Calligan, Secretary-Treasurer, Carpenters' District Council of Ontario
03/28/02	GTA Regional Meeting in Toronto with representatives of Employee/Employer Bargaining Agents (EBAs)
04/01/02	Teleconference with Steve Coleman, Executive Vice President, Mechanical Contractors Association of Ontario; John McNurney, Director of Labour Relations, Mechanical Contractors Association, North America and Bernie Vondersmith, Executive Vice President, Mechanical Contractors Association, Maryland
04/02/02	Eastern Ontario Regional Meeting in Kingston with representatives of Employee/Employer Bargaining Agents (EBAs)
04/03/02	Northeastern Ontario Regional Meeting in Sudbury with representatives of Employee/Employer Bargaining Agents (EBAs)
04/04/02	Northwestern Ontario Regional Meeting in Thunder Bay with representatives of Employee/Employer Bargaining Agents (EBAs)

Date	Description
04/05/02	Meeting with Ontario government officials Angela Forest, Assistant Deputy Minister of Policy, Communications and Labour Management Services Division, Ministry of Labour; Sandie Birkhead-Kirk, Director, Workplace Support Services Branch, Director or Apprenticeship, Ministry of Training, Colleges and Universities and Helle Tosine, Assistant Deputy Minister, Operations Division, Ministry of Labour
04/08/02	Tim Armstrong's meetings in Washington, including Kimberly Beg and Eileen Barkas-Hoffman, Commissioners, Federal Mediation & Conciliation Service; John Frank, Section Chief (U.S. East) Employment Standards Administration (Construction Wage Determination), Department of Labour; Carl Shaffer, Director or Organizing, Building and Construction Trades Department, AFL-CIO; Terry Sullivan Section Chief (U.S. West), Employment Standards Administration (Construction Wage Determination), Department of Labour and George Werking, Commissioner, Office of Federal and State Programs, Bureau of Labour Statistics, Department of Labour)
04/09/02	Further meeting with Rob Easto, Manager, Program Standards and Development Unit, Ministry of Training, Colleges and Universities
04/17/02	Meeting with OCS Steering Committee to present draft report
04/19/02	Conferred with President, Quebec Building Trades Council to discuss enforcement role of Commission de la Construction du Québec (CCQ)

Appendix 2
Employee and Employer Bargaining Agencies, ICI Construction

Union	Trade	Management
International Brotherhood of Boilermakers Local 128	**Boilermakers**	Boilermaker Contractors Association
Bricklayers Employee Bargaining Agency	**Bricklayers**	Masonry Industry Employer Council of Ontario
Carpenters' District Council of Ontario	**Carpenters**	Carpenters Employer Bargaining Agency
Cement Masons Employee Bargaining Agency	**Cement Masons**	Cement Masons Employer Bargaining Agency
Demolition Labourers Employee Bargaining Agency	**Demolition**	Demolition Employer Bargaining Agency
International Union of Elevator Workers	**Elevator Constructors**	National Elevator and Escalator Association
International Brotherhood of Electrical Workers Construction Council of Ontario	**Electrical Workers**	Electrical Contractors Association of Ontario
International Union of Painters and Allied Trades	**Glaziers**	Architectural Glass and Metal Contractors' Association
International Association of Heat and Frost Workers, Local 95	**Insulators**	Master Insulators' Association of Ontario
Ironworkers Local 765	**Erectors**	Ontario Erectors Association
Labourers Employee Bargaining Agency	**Labourers**	Labourers Employer Bargaining Agency
Millwright Regional Council of Ontario	**Millwrights**	Association of Millwrighting Contractors of Ontario
International Union of Operating Engineers, Local 793	**Operating Engineers**	Operating Engineers Employer Bargaining Agency
International Union of Painters and Allied Traders	**Painters**	Ontario Painting Contractors' Association
Plasterers Employee Bargaining Agency	**Plasterers**	Plasterers Employer Bargaining Agency
Precast Concrete Employee Bargaining Agency	**Precast Erectors**	Precast Concrete Manufacturers Association
Ontario Pipe Trades Council	**Plumbers/Steamfitters**	Mechanical Contractors' Association of Ontario
UA Local 787, Refrigeration Workers	**Refrigeration/Air**	Ontario Refrigeration and Air Conditioning Contractors

Union	Trade	Management
Ironworkers Local 765	**Rodworkers**	Rodworkers Employer Bargaining Agency
Ontario Sheet Metal Workers' and Roofers Conference	**Roofers**	Ontario Industrial Roofing Contractors' Association
Ontario Sheet Metal Workers' and Roofers Conference	**Sheet Metal**	Ontario Sheet Metal and Air Handling Group
UA Local 853, Sprinkler Fitters	**Sprinkler Fitters**	Canadian Automatic Sprinkler Association
Steeplejack Employee Bargaining Agency	**Steeplejacks**	Steeplejack and Masonry Restoration Contractors Association
Teamsters Locals 879 / 880	**Teamsters**	Teamsters' Employer Bargaining Agency
Tile and Terrazzo Employee Bargaining Agency	**Terrazzo, Tile and Marble**	Terrazzo, Tile and Marble Guild of Ontario, Inc.

Provincial Building and Construction Trades Council of Ontario		Construction Employer's Co-ordinating Council of Ontario

Appendix 3
Range and Location of Hourly Wage Packages
ICI Agreements Ended April 30, 2001

		Hourly Wage Packages			
Union Trades	**# of Local Areas**	**Highest & Location**	**Lowest & Location**	**Difference (Hi-Lo)**	**% Difference as of Lowest**
Boilermakers	0	Province-wide package $39.04			
Bricklayers					
Bricklayers	14	$37.96 Toronto	$35.28 Barrie	$2.68	7.6%
Tile & Terrazzo	10	$34.50 Toronto	$33.26 Kingston, Ottawa, Sudbury	$1.24	3.7%
Carpenters	21	$37.51 Toronto (OLRB#8)	$32.43 Ottawa (zone 3 Pembroke)	$5.08	15.7%
Millwrights	0	Province-wide package $38.19			
Electricians	13	$39.87 Toronto	$37.91 Quinte-St. Lawrence	$1.96	5.2%
Elevator Constructors	4	$41.02 Toronto	$39.71 Ottawa	$1.31	3.3%
Insulators	3	$38.01 Central (zone 1)	$36.14 Eastern (zone 3)	$1.87	5.2%
Ironworkers					
Erectors	6	$37.27 Toronto	$36.68 Thunder Bay	$0.59	1.6%
Rodworkers	8	$37.27 Ottawa	$34.97 Sudbury	$2.30	6.6%
Labourers					
Demolition	13	$25.16 Windsor	$22.97 Sarnia	$2.19	9.5%
Labourers	19	$32.71 Toronto	$27.65 Chatham	$5.06	18.3%
Precast Concrete	18	$32.93 Toronto	$27.64 Chatham	$5.29	19.1%

		Hourly Wage Packages			
Union Trades	**# of Local Areas**	**Highest & Location**	**Lowest & Location**	**Difference (Hi-Lo)**	**$ Difference as of Lowest**
Operating Engineers	9	$37.12 Toronto	$35.11 Sault St. Marie	$2.01	5.7%
Painters					
Glaziers	12	$33.89 Toronto	$26.27 KBP; Sault St. Marie, Sudbury	$7.62	29.0%
Painters (Commercial)	13	$33.45 Toronto, Oshawa	$29.51 Sault St. Marie	$3.94	13.4%
Plasterers					
Cement Masons	9	$33.69 Toronto	$28.90 Sarnia	$4.79	16.6%
Plasterers	8	$33.37 Toronto	$28.36 Sarnia	$5.01	17.7%
Steeplejacks	3	$26.49 Area 1	$24.29 Area 3	$2.20	9.1%
Plumbers	18	$39.64 Toronto	$36.18 Cornwall	$3.46	9.6%
Refrigeration Mechanics	4	$41.10 (Central Ont.) (zone 1)	$39.45 Northern Ont. (zone 4)	$1.65	4.2%
Sprinkler Fitters	4	$39.11 Toronto (zone 4)	$37.17 Western Ont. (zone 3)	$1.94	5.2%
Sheet Metal Workers					
Roofers	13	$34.47 Toronto	$28.77 S.S.M.	$5.70	19.8%
Sheet Metal Workers	16	$38.10 Toronto	$35.98 Barrie	$2.12	5.9%
Teamsters	15	$32.44 Toronto	$28.27 Peterborough	$4.17	14.8%

Appendix 4
Range of Hourly Wage Rates
ICI Agreements Ended April 30, 2001

		Hourly Wage Rates			
Union Trades	**# of Local Areas**	**Highest & Location**	**Lowest & Location**	**Difference (Hi-Lo)**	**$ Difference as to % of Lowest**
Boilermakers	0	Province-wide Rate $27.79			
Bricklayers					
Bricklayers	14	$30.10 Ottawa	$26.64 Sarnia	$3.46	13.0%
Tile & Terrazo	10	$28.45 Hamilton	$25.72 Kingston	$2.73	10.6%
Carpenters	21	$28.61 Kingston	$24.55 Ottawa (zone 3 Pembroke)	$4.06	16.5%
Millwrights	0	Province-wide Rate $28.40			
Electricians	13	$31.58 Thunder Bay	$27.62 London	$3.96	14.3%`
Elevator Constructors	4	$33.48 Toronto	$32.31 Ottawa	$1.17	3.6%
Insulators	3	$28.75 Central (zone 1)	$27.05 Eastern (zone 3)	$1.70	6.3%
Ironworkers					
Erectors	6	$27.45 Toronto	$26.85 Thunder Bay	$0.60	2.2%
Rodmen	8	$27.97 Thunder Bay	$25.40 Sudbury	$2.57	10.1%
Labourers					
Demolition	13	$20.56 Windsor	$16.90 Timmins	$3.66	21.7%
Labourers	19	$25.41 Toronto	$21.89 Cambridge	$3.52	16.1%
Precast Concrete	18	$25.63 Toronto	$21.90 Kitchener	$3.73	17.0%

		Hourly Wage Rates			
Union Trades	**# of Local Areas**	**Highest & Location**	**Lowest & Location**	**Difference (Hi-Lo)**	**$ Difference as to % of Lowest**
Operating Engineers	9	$26.54 Toronto	$24.71 Sault St. Marie	$1.83	7.4%
Painters					
Glaziers	12	$27.65 Toronto	$20.72 K-B-P; Sault St. Marie, Sudbury	$6.93	33.4%
Painters (Commercial)	13	$26.35 Toronto, Oshawa	$22.39 Grand Valley	$3.96	17.7%
Plasterers					
Cement Masons	9	$27.07 Toronto	$23.16 Ottawa	$3.91	16.9%
Plasterers	8	$26.78 Toronto	$23.07 Sarnia	$3.71	16.1%
Steeplejacks	3	$21.80 Area 1	$19.80 Area 3	$2.00	10.1%
Plumbers	18	$29.52 Hamilton	$24.67 Cornwall	$4.85	19.7%
Refrigeration Mechanics	4	$33.47 (Central Ont.) (zone 1)	$31.97 Northern Ont. (zone 4)	$1.50	4.7%
Sprinkler Fitters	4	$30.51 Toronto (zone 4)	$28.75 Western Ont. (zone 3)	$1.76	6.1%
Sheet Metal Workers					
Roofers	13	$29.08 Toronto 01/01 $28.85 05/00	$22.62 Sault St. Marie	$6.46 $6.23 05/00	28.6% 27.5%
Sheet Metal Workers	16	$28.81 Peterborough	$26.67 Barrie	$2.14	8.0%
Teamsters	15	$25.26 Toronto	$21.47 Peterborough	$3.79	17.7%

Appendix 5
Review of Some of the Data Sources that May be Pertinent to Applicants and Respondents

1. Appendix 5 focuses in some detail on the potentially useful information available in the public domain to undertake either a compensation/productivity type of gap analysis, a market share review or both. The primary sources of information are Statistics Canada (StatsCan) data and a number of private trade publications. Thirteen potential sources of information are explored in this chapter.

   - the 1999 Survey of the Construction Industry;
   - the Labour Force Survey (LFS);
   - the Survey of Employment Payrolls and Hours (SEPH);
   - the Workplace and Employment Survey (WES) and the related Labour Cost Survey;
   - the 2000 Special Survey of the Construction Industry prepared for HRDC;
   - union wage rates data in the Construction Price Statistics;
   - public and private investment surveys;
   - Construction Sector Council as a source of future data;
   - Workplace Safety & Insurance Board data (WSIB);
   - building permits;
   - CMD, private Listings of projects – some information on winners and losers; and
   - Statistics Canada's Financial Performance Reports.

A. The 1999 Survey of the Construction Industry

2. StatsCan recently released a comprehensive survey of employers for the construction industry in Canada. The survey, which had not been conducted since 1989, was for the reference year 1999. About 7,500 establishments were selected across Canada from the approximately 200,000 listed in the Business Register. The survey questionnaires were mailed out in March and April 2000 and the data were finally released in the fall of 2001. In other words, there was an approximate 15-month time lag in terms of access to relevant data. The OCS has been a supporter of StatsCan's new efforts. Nine separate sectors of the construction industry in Canada were surveyed and nine separate survey questionnaires forms were issued to firms in different segments of the construction industry.

The separate (industrial/trade) sectors of the construction industry are:

- Residential – builders, general contractors.
- Non-Residential – developers and general contractors.
- Land Sub-division and land development.
- Highway, streets, bridge, sewer, etc.
- Construction management.
- Site preparation.
- Electrical and mechanical contractors.
- Structural work, exterior and interior finishing (framing, concrete, pouring, masonry, roofing, drywall, paint, etc.)
- Other special trades.

3. Each questionnaire covered the following factors: (i) revenue by type of construction work performed, (ii) revenue by type of customer (individuals and households, governments, private industry), (iii) revenue by worksite location, (iv) expenses (including work sub-contracted to others), (v) inventories, (vi) characteristics of labour, (vii) capital expenditures, and (viii) stolen and vandalized property. A flavour of the kind of information the construction report provides is set out below in an excerpt from a StatsCan report.

> *"The total expenses for the construction industries in 1999 reached $100.1 billion, up 9.7%, slightly less than the gain in revenue. Total profit for the industry rose 27.8%, as total profit margins went from 5.8% to 6.7%."*
>
> *"Within the prime contracting group, the largest expense item in 1999 was for work subcontracted to others, which accounted for about 38% of operating expenses. It was followed by construction materials and supplies, which made up 25% of operating expenses, and salaries, wages and benefits (18%). The non-residential building industry showed the highest proportion of work subcontracted to others, accounting for nearly 59% of operating expenses.*
>
> *In contrast, within the trade-contracting group the largest expense category was construction materials and supplies, accounting for 35% of operating expenses. It was followed by salaries, wages and benefits (33%), and work subcontracted to others (12%). The building exterior finishing work industry registered the highest proportion of operating expenses going to construction materials and supplies (nearly 42%)."* (Statistics Canada, The Daily, December 12, 2000).

Possible Use of Data by Applicants and Respondents

4. StatsCan uses the National Industrial Classification Codes System (NAICS). In other words, the survey provides average yearly earnings data for nine industries; however, the hours of work figures are missing. In other words, it might be possible to calculate crude proxy measures of productivity for unionized versus non-unionized firms for the nine groups in Ontario. Officials indicated to us they can recreate average hours of work through some assumptions for the nine groups, but the process makes officials uncomfortable.

5. Some of the data available is potentially useful, particularly the journeyperson/apprentice ratios of unionized and non-unionized firms. As well, the breakdown of the ICI sector by the nine specific industry/trade groups is potentially useful.

6. The timeliness of the release of the data, however, is a problem. The survey will be run comprehensively every three years and the next reference year will be 2002. Since there is about a fifteen-month time delay, the 2002 data may not come out until the spring of 2004.

7. Officials indicated they would likely be interpolating the missing year data on a smaller scale. Handling of the intermediate years may not be ideal in terms of the competitive disadvantage issue. Officials indicated to us that the interesting labour-oriented questions would likely not be asked in the missing years.

8. In sum, the advantage is that every three years a comprehensive survey of construction firms in Ontario will be taken, with very useful data at a disaggregated level. Some of this data can be tied back to the ICI sector in Ontario. The province-wide figures for the nine sectors would provide a good overview of some components of the ICI sector.

Concerns with the Construction Survey

9. The Construction Sector Council (CSC) has expressed a number of concerns that are similar to our own with respect to the ICI sector. The CSC is worried the construction employers' survey, while potentially valuable, is rather dated in terms of its release.

10. A number of contractors have indicated to the CSC they are upset with the Construction Survey. The complaint is that it is difficult for contractors to accurately answer questions on the survey. The CSC has complained directly to StatsCan, suggesting the survey is flawed. Basically, the request is for questions the respondents can answer. It is hoped StatsCan might fix some of the problems in time for the 2002 survey. However, it may be that there is not enough time for careful re-design.

11. With respect to our interests, what would be needed is clearly beyond the direction currently being contemplated. The wage bill data and employment information do not relate to detailed individual categories of construction.

12. To satisfy the CSC, they would need to create average labour usage indicators defined for detailed sectoral categories. However, if you go to that level of precision, there might be an employer respondent revolt.

Suggested Re-design of the Survey to Fit ICI Competitiveness Issues

13. Officials have made it clear they are willing to co-operate with respect to defining information needs with precision, so the questionnaire could be revised to meet more needs.

14. Of particular interest in the questionnaires for this report are the following (i) the possibility of distinguishing journeyperson to apprentice ratios by type of activity and union non-union classifications, and (ii) the possibility of distinguishing ICI firm total revenue compared to total construction revenues.

15. It is unlikely anything can be done on the frequency issue of every three years.

Answers to Questions Posed to a StatsCan Official regarding 1999 Survey of the Construction Industry (Pierre Despres, March 5, 2002 concerning the data for the 1999 Survey of the Construction Industry)

Question:

16. Would you have a simple description of the survey and the kind of data that is collected? I do have the questionnaires, but no simple description of the survey other than what is on the web. In particular, it would be helpful if you have a description of the data on the wage bill, union status, journeymen, etc.

Answer:

Item 1 – sub-provincial estimates:

The original sample design targeted the publication of provincial and national estimates. As such, firms selected take some strata (that is those that are selected to represent all those that were not) carry a weight that is adjusted to reflect that larger representation. But these weights adjustments were established at the provincial level and not at a sub-provincial level. The impact is that there is no guarantee the distribution below the provincial level will bear any logical resemblance to what you might expect. Each respondent is identified by its city and even its address location (except for complex enterprises where the re-allocation of head office revenues may be based on taxation pattern.) In summary, sub-provincial estimates are not really feasible and, as such, we would underscore the unreliability of them.

The issue of confidentiality is also at play here. In terms of some official sub-provincial geographic classification, there are some that do exist for the Census of population and are part of the official Statistics Canada Standard Geographical Classification. But the survey did not use it as such. There is a concordance between the postal code and the Standard Geographical Classification.

Technically, unless there is a confidentiality issue, all the data that was collected (or imputed) is releasable under the Access to Information Act. Nonetheless, the practice of making available data that Statistics Canada could not defend in a public arena is frowned on. There is also the matter of costs incurred to tabulate these specific groupings that would need to be addressed.

In your note you ask for a description of the data on the wage bill, union status, journeymen, etc. If this means the actual estimated data, at this point, we have not released any of it. The reason being that for most of these questions, the actual response rate is about 30-35%. Which means everything else was imputed. The imputation of these data cells is one that is difficult to control when the response rate is so low. The overall impact is that the pattern shown by the actual reported data, in most cases, is very different than the one shown by the imputed and overall estimated data. We have done some review of the information and, if truly needed, we will engage in the process of validation, confidentiality and publication of these data. For each enterprise, we technically collected the average number of employees (field and office) for each of the twelve months of their fiscal year, the total wage bills. From this we calculated a yearly average of number of employees and their associated wage bills. No breakdown by union/non-union or type of trades is available from that. We then collected, for the field employees, the percentage of journeymen, apprentice and other types. Using the yearly average number of employees, we can estimate the yearly average number of journeymen, apprentice and other. We also collected the overall percentage of unionized field workers (without distinction to types of trades). Applying that percentage to then average number of employees, we can estimate a number for unionized or non-unionized employees. Finally we collected data on the total annual number of hours worked by field employees. Lots of information at first glance, but most of it is disjointed.

Question:

17. Am I correct in assuming that all of the reported data, by industry, are available for Ontario?

Answer:

Yes, all nine individual surveys are available for Ontario, as are for all provinces and territories.

Question:

18. Can the journeyperson to apprentices ratios be calculated for union and non-union firms in Ontario? For the nine different trades? For any regions?

Answer:

The estimated number of employees that are journeypeople and apprentice can be calculated so a ratio between the two can be. The only way to further split that information into unionized and non-unionized would be to apply the percentage of unionized employee to both of these categories. Given this breakdown would be made at the enterprise level, it would be feasible to do for all nine individual surveys, for all provinces and territories. Again, at the regional level, it is unclear what could be done.

Question:

19. Is there any way of creating an ICI category, or part of an ICI category, for these data?

Answer:

As part of the survey, we did collect information at the enterprise level on the type of client/construction type. In that module, we did separate the categories along the following lines (i) residential, (ii) commercial (iii) institutional, (iv) industrial, (v) civil engineering, (vi) and (vii) exports. By cross-referencing this data with the labour related information we can generate some sort of estimates by the three categories of ICI. Here again we will be stretching the information to its weakest point.

Question:

20. If there is a sub-geographical area classification for Ontario? What is it?

Answer:

21. *(See previous answer).*

B. Statistics Canada, The Labour Force Survey (LFS)

22. StatsCan publishes two monthly labour market and employment surveys. The LFS statistics are gathered directly from households across Canada, while the SEPH data are gathered directly from firms and increasingly from the payroll deductions filed with Revenue Canada. The LFS was designed to provide a broad and detailed picture of the labour market in its many dimensions, including employment, unemployment and growth in the labour force. Initially the LFS was a quarterly survey, but since 1952 it has become a monthly survey.

Accordingly, LFS employment and unemployment data are widely quoted and generally accepted as the authoritative source of labour market information by analysts, public officials and financial commentators. The LFS has improved the statistical reliability of its surveys over the past year.

Why Do Two Separate Surveys Of Employment Exist?

23. The two surveys have a different historical rationale and were intended to serve different audiences. The SEPH was originally intended to provide information to be used in the compilation of the national accounts (income, output and earnings information). The payroll survey provides a picture of compensation, hours of work and total employment as reported by employers. But the coverage is narrower than the LFS coverage, since SEPH does not cover unpaid workers, farm workers and most of the self-employed in Canada. At present there are about 2.2 million self-employed Canadians. The LFS employment estimates were intended to provide information on the labour force status of individuals. The LFS is the primary source for data on unemployment, labour force and broad employment trends. The LFS uses a sample of households while SEPH samples firms and also incorporates administrative payroll information. The fact that both LFS and SEPH provide comparable employment information on an industry basis is useful, but at times causes real problems for non-professionals. With respect to wage issues, the LFS has been collecting such data only since January 1997; the information has been collected on the usual wages or salaries of employees at their main job.

24. The LFS has been providing wage data since 1997, broken down by region and union status. The data are provided down to 4th digit SIC classification, though there is no ICI sector breakdown, rather the broader NAICS classification of non-residential construction. There is a breakdown relating to employees covered by collective agreement. The wage survey data provide an average wage for the category as well as distribution on wages within the Industrial Classification. As noted in Statistics Canada's Guide to the Labour Force Survey (February 2001, 71-543-GIE):

> *"respondents are asked to report their wage/salary before taxes and other deductions, and include tips, commissions and bonuses. Weekly and hourly wages/salary are calculated in conjunction with usual paid work hours per week. Average hourly wages, average weekly wages, and wage distributions can then be cross-tabulated by other characteristics such as age, sex, education, occupation, and union status. Those who are paid on an hourly basis are also identified." (Guide to the Labour Force Survey*, Feb. 2001, 71-543-GIE, p. 15)

25. The wage and hours data are broken down by province and Census Metropolitan Areas (CMAs) in Ontario. The 11 sub-geographical areas that are covered in Ontario with respect to LFS union wage rates for major construction include Ottawa, Kingston-Pembroke, Muskoka/Kawarthas, Toronto, Kichener/Waterloo, Hamilton-Niagara, London, Windsor, Stratford–Bruce Peninsula, Northeast and Northwest. With respect to disaggregated detail and information, union or non-union status is covered in questions 220 and 221 and the name of the employer is covered in question 240. The surveyed employee is asked about the size of the firm as well. Employment data is available by industrial sector, including construction. A sample of some data from the LFS is:

- Tab 6B – average hourly/weekly earnings by occupation (36 groups) and union and non-union status in the construction industry (NAICS 23), 1997 to 2000, Annual Averages – Economic Region 5 Ontario. (Data annual 1997 to 2001).
- Tab 2B – total actual hours worked in the construction industry (NAICS 23) by occupation (36 groups, class of workers, including union and regions, 1997-2001-all of Ontario).

Possible Use of Data by Applicants and Respondents

- It might be possible to create an ICI wage series for Ontario. StatsCan could start by looking at the business names in the NAICS sample. Assuming the construction firms could be classified as union or non-union, a union/non-union wage series could be created at the ICI level.
- It has to be recognized there would be some problems in terms of which firm and trade the individual identifies with.
- In other words, at some expense, StatsCan could code LFS non-residential wage and employment data into ICI and non-ICI categories.
- Other good data that are available relate to the hours of work (actual versus usual) and the number of hours of overtime per employee. However, as officials note, once you get into the union and non-union classification, the sample size becomes thin.

Answers to Questions Posed to a StatsCan official regarding the LFS (Geoff Bowlby, Head of Analysis, Labour Force Survey, February 27, 2002)

Question:

26. Does the LFS publish disaggregation below overall construction at sub-geographical areas? For instance, do the wage figures extend into Industrial, Commercial and Institutional sectors in Ontario? I think the answer is no.

Answer:

No, we do not publish any detailed construction information for sub-provincial areas. There is a table on the CD that shows construction employment, unemployment and labour force in the various economic regions in Ontario, but that is the most detail we publish. There is a distinction between what we publish and what we can produce, however. We could produce wage estimates for the construction industry by economic region, but the sample size may get pretty thin and therefore the data may be very difficult to interpret.

Question:

27. If there is only a limited breakdown, does it go as far as the non-residential classification in the NAICS?

Answer:

No, we "code" our LFS responses to the four-digit NAICS level. We therefore have data for: 1-2311 land subdivision and land development; 2-2312 building construction; 3-2313 engineering construction; and 4-2314 construction management. Non-residential construction is a "five-digit" NAICS industry (23122). (SEPH codes to this degree of detail, although you cannot get sub-provincial estimates from SEPH.)

Question:

28. Using NAICS 1997 Industrial Classification, non-residential construction seems to somewhat resemble the ICI classification used in Ontario, Industrial, Commercial and Institutional). Roughly (in percent terms) how much larger would non-residential construction be than ICI? What are the extra items in coverage in the non-residential classification?

Answer:

Very interesting. According to the NAICS manual, the non-residential building construction industry comprises establishments primary engaged in constructing commercial, institutional and industrial buildings. It would appear, therefore to actually be ICI. There are a couple of areas of construction specifically excluded from non-residential construction that you might consider ICI. They are "the construction of heavy industrial plants and mills, of which a building is incidental to the complex" – they go into "engineering construction". As well, the construction of water filtration, sewage treatment and garbage disposal plants goes into engineering construction.

Question:

29. Is the union/non-union breakdown on wages available for the sub-regions in total construction in Ontario?

Answer:

Yes. Again, we must be careful about the quality of the data at the sub-provincial level, especially when we start to break out the data.

Question:

30. How far does that union/non union wage breakdown go? Is it into the eleven CMAs or cities mentioned in one of the documents? Does it go into the various trades in construction? For instance, by type of work?

Answer:

The union/non-union breakout can be applied to any level of industry and any level of geography. It can also be applied to any construction occupation. The only group not covered by the union/non-union variable are the self-employed, but one could presume they are not unionized.

Question:

31. It was mentioned that StatsCan could look at the business names underlying the NAICS sample and, assuming the names could be classified as union versus non-union, an ICI sector break could be reconstituted by status of firm. In other words, at some expense StatsCan could code LFS non-residential data into ICI and non-ICI. Any idea of how the client costs could be estimated?

Answer:

Given what we discovered in (3) above, it might be a question of re-coding respondents in NAICS 2312 into NAICS 23122 or otherwise. The cost of the coding exercise would depend on the number of months/years for which you want data and on whether or not you wanted data for provinces other than Ontario. We should talk about this in more detail later if you are interested in going this route.

Question:

32. How does StatsCan charge for asking additional questions for one province, i.e., Ontario? The questions might relate to what trade – particularly construction trade – was involved, to link back to union/non union status or separate I, C, I sectors?

Answer:

We run "supplementary surveys" off the LFS on a regular basis. These are sets of questions applied to certain respondents. The person to talk to about this is Wayne Smith, Director of the Special Surveys Division 613- 951-9476. Yours would be a tricky case. Presumably, you would want to ask extra questions of those in the construction industry, but the determination of whether the person is in construction is made in Ottawa, after the survey is completed and therefore any extra questions could not be triggered until the following month.

C. The Survey of Employment Payrolls and Hours (SEPH)

33. Canada's Survey of Employment, Payroll and Hours had its origins back in 1918 in an all employment survey. The current integrated SEPH can be traced back to 1983. The SEPH data source has undergone, and continues to be in, the midst of integrating its data with Canada Customs and Revenue (CCR data). The SEPH was originally intended to provide information to be used in the compilation of the national accounts (income, output and earnings information). The payroll survey provides a picture of compensation, hours of work and total employment as reported by employers. But the coverage is narrower than the LFS coverage, since SEPH does not cover unpaid workers, farm workers and most of the self-employed in Canada. At present there are about 2.2 million self-employed Canadians. Here is a sampling of the kind of data that are available: (i) employment by enterprise size of employment for all employees, for selected industries classified using the NAICS, quarterly and annually; (ii) average weekly earnings by enterprise size of employment, for all employees, for selected industries classified using the NAICS, quarterly and annually; and (iii) average weekly hours by enterprise size of employment, for employees paid by the hour for selected industries classified using the NAICS, quarterly and annually.

Both the LFS and SEPH provide industrial breakdowns of employment using the same SIC classifications. However, coverage under SEPH is restricted to non-farm payrolls and, because of the employer-based source of information, also excludes the self-employed and those who have opted out of the labour market. The latter two groups of individuals – the self-employed and the dropouts from the labour force – have become very prominent in the 1990s compared to other periods of time.

Comparisons of LFS with SEPH

34. In other words, SEPH does not provide employment estimates (or unemployment) by age, gender and other demographic characteristics, which are regularly published and made available through the LFS. Nor does SEPH provide a breakdown of firms by union status. Finally, while analysts tend to rely on LFS employment data at the broad level, at the same time, LFS industrial employment figures are always treated with caution. It is well known that the responses to the survey question relating to industry classification of the jobholder are quite prone to error. StatsCan reports a 51% proxy response rate by individuals in households contacted for the LFS, which makes the industrial distribution of employment under the LFS very suspect. Consequently analysts usually rely on the industrial distribution of employment figures released via the SEPH since it is well understood that employers better understand the industry that they are in.

Possible Use of Data for our Competitive Disadvantage Issue

35. Unfortunately, the SEPH data that are available do not really disaggregate below the non-residential construction classification. In theory, one should be able to determine a regional dissagregation within Ontario of the wages paid, but there would not in any event be a disaggregation based on union status of the firms. We do not believe SEPH data have much promise with respect to helping evaluate competitive disadvantage in ICI construction in local markets in Ontario.

D. The Workplace and Employment Survey (WES) and the Labour Cost Survey

36. The Workplace and Employee Survey (WES) conducted by StatsCan was developed in conjunction with HRDC. WES has been under development for the last five years. The survey was conducted for the first time in the summer and fall of 1999. Just over 6,300 workplaces and about 24,600 employees responded to the survey, representing response rates of 94% and 83% respectively. Beginning with that initial cycle, the survey will follow workplaces for at least four years and employees for two years. This longitudinal aspect will allow researchers to study both employer and employee outcomes over time. The survey of firms gathered data on payrolls, non-wage costs including benefits, has a breakdown based on union and non-union status of the firms and provides some competition/market share information. A useful feature is that the survey provides an opportunity to compare such variables as market share, business strategic approaches and the union, non-union status of the firms.

    For analytical purposes, the WES has two major components that are linked together (i) a workplace survey that focuses on the adoption of technologies, organizational change, training and other human resource practices, business strategies and labour turnover in workplaces; and (ii) a survey of employees within these same workplaces covering wages, hours of work, job type, human capital, use of technologies and training. The survey will enable researchers to link business policies, practices and outcomes with employee characteristics, activities and outcomes.

37. In other words, this relatively new survey by StastCan provides a wealth of linked data. The important objectives of the WES survey are described by StatsCan this way"

> *"One primary goal of WES is to establish a link between events occurring in workplaces and the outcomes for workers. The second goal of the survey is to develop a better understanding of what is indeed occurring in companies in an era of substantial change."*
> (Statistics Canada, Workplace and Employee Survey COMPENDIUM, 1999 Data, 71-585-XIE, p. 5.)

> *"The survey is unique in that employers and employees are linked at the micro data level; employees are selected from within sampled workplaces. Thus, information from both the supply and demand sides of the labour market is available to enrich studies on either side of the market."* (Statistics Canada, Workplace and Employee Survey COMPENDIUM, 1999 Data, 71-585-XIE, p.44)

Another important quotation from the compendium document:

> *"The employer sample is longitudinal- the sampled locations will be followed over time, with the periodic addition of samples of new locations to maintain a representative cross section. Employees will be followed for two years only, due to the difficulty of integrating new employers into the location sample as workers change companies. As such, fresh samples of employees will be drawn on every second survey occasion (i.e. first, third, fifth). This longitudinal aspect will allow researchers to study both employer and employee outcomes over time in the evolving workplace."* (ibid p.44)

38. With respect to workplace size, four groupings are used based on the number of employees (1-19, 20-99, 100-499, 500+). The six regions are Atlantic, Quebec, Ontario, Manitoba, Saskatchewan, Alberta and B.C. In Ontario, 1,626M workplaces were sampled out of an estimated population of 276, 920. Similarly, 6,187 employees were sampled out of an estimated population of 4.4 million. (ibid p.45) With respect to the construction classification across Canada, the response rate was 94.3% for workplaces and 83.8% for employees. (p.45)

The 1999 Workplace and Employee Survey Data Breakdown

Roughly speaking, the data fields being collected organize as follows:

Employee outcomes: wages, earnings, hours, wage levels by worker type, training received, use of technologies and job tenure.

Workplace outcomes: employment growth, growth in revenues, organizational change, implementation of technologies and changing human resource practices.

Workplace characteristics: technology implemented; operating revenues and expenditures, payroll and employment; business strategies; unionization; compensation schemes; training provided; mix of full-time, part-time, contract, and temporary employees; organizational change; subjective measures of productivity, profitability, etc. and type of market in which firm competes.

Worker/job characteristics: education; age/gender; occupation, management responsibilities; work history, tenure; family characteristics; unionization; use of technology; participation in decision making; wages and fringe benefits; work schedule arrangements; and training taken.

Possible Use of WES Data by Applicants and Respondents

39. The WES does provide wage information, with union/non-union breakdowns and some self-employment information for total construction and residential and non-residential for all of Ontario.

40. Among some of the important outcomes – information should be available on a one-time only basis regarding data on market share by unionized and non-unionized firms, as well as some data on wage and non-wage construction costs.

41. With respect to construction, the aggregation level is above the level of ICI construction. There is also no published information by type of project. However, there is a linkage in to occupation data of the workers.

42. But the survey does provide average hours worked per employee, non-wage costs and asks employers about other compensation costs and issues such as union versus non-union status of employees and wages paid for regular, full-time work.

43. The hours of work arrangements, union versus non-union employees and firms, is also an intriguing outcome of the survey.

44. The survey provides a range of new data relating to the incidence of activities in firms and among their workers broken down by union and non-union status. The lengthy range of issues include data on the implementation and use of information and other technologies, training, business strategies, the degree of market competitiveness, organizational change, wage levels, job stability, new forms of engaging labour, job organization, workplace revenue and employment, and so on.

    These data would be available economy-wide. There is the potential of benchmarking unionized and non-unionized firms in terms of these many characteristics. There is also scope to determine the incidence of non-wage benefits between unionized and non-unionized firms. The annual frequency of the survey, however, is also a problem.

Future Options and Developments for Using the WES Survey

45. Officials indicated they could supplement the sample with new questions. In other words, if a client set out the specific needs, then StastCan officials will calculate the sample size required for an acceptable level of reliability. The costs of collecting the new data would also be provided.

46. A major uncertainty at this time is the potential to disaggregate the Ontario construction sector into the ICI components.

47. Finally, the new survey is seen to be very important by HRDC as a policy research tool. Accordingly, StatsCan and HRDC plan to publish a series of research papers utilizing the WES longitudinal data. Here are some of the closely aligned research issues the survey data would help untangle: (i) collective

bargaining, union coverage and variable pay, new work organization or workplace organizational change; (ii) the contribution of entry and exit firms to industry growth; (iii) do new firm entrants outperform incumbents?; (iv) understanding the efficiency of how labour moves towards different types of firms; and (v) associating business outcomes with the characteristics of their workers.

Description of the Labour Cost Survey

48. The Labour Cost Index (LCI) is designed to measure the rate of change in the total cost of a unit of labour, per hour. According to StatsCan *"It is a measure of the change in the total cost of labour including wage and non-wage benefits for time worked and time not worked. Furthermore, the LCI is a measure of change in the total labour cost that controls for the same quality and quantity of work."* (Source: Kamal K. Sharan, The Labour Cost Index, 71-586-XIE, May 2001, p.1)

The LCI has two main components (i) wages and salaries and (ii) non-wage benefits. Or, as stated in the actual questionnaire to employers, *"The Labour Cost Survey collects information on wages and non-wage benefits costs which is necessary to construct a Labour Cost Index. Such an index is used to measure the change in the average cost (wage and non-wage) of one hour of labour for a fixed basket of occupations. It can help labour and management in their collective agreement negotiations and can be used by businesses in contract escalation clauses."*

Possible Use of Labour Cost Survey Data by Applicants and Respondents

49. The LCI is regarded by StatsCan as experimental and is being developed to essentially replicate the American Employment Cost Index which is widely followed in the financial markets as an indicator of wage cost pressures. The new index was supposed to build upon the WES integrated approach:

> *"The LCI is constructed to measure the average price of labour (both wage costs and non-wage benefit costs) for a given basket of occupations and not the change in the average level of labour compensation, just as the CPI measures the rate of change in the average price of a specified basket of goods and services, rather than average cost of living changes."* (p.2) The American Employment Cost Index (or ECI) is a similar measure, as it also measures the rate of change in the employee compensation bill.

50. The new survey will not provide non-wage compensation data (including hours of work, pension benefits). The survey will be broken down by unionized and non-unionized firms by the NAICS industrial classification code and the construction sector will be treated in aggregate. There will be some firm size and geography breakdown, but construction will be repeated in aggregate. Both wage and non-wage benefits costs are in the index.

51. The information on wage and non-wage benefits as well as demographic data such as gender education level, tenure and ethnicity will be collected from both the employer and employee portions of the WES.

52. The survey will be broken down by unionized and non-unionized firms, by the NAICS industrial classification code and the construction sector will be treated in aggregate. There will be some firm size and geography breakdown, but construction will be repeated in aggregate. In sum, the new survey will likely not prove helpful to applicants and respondents.

E. The 2000 Special Survey of the Construction Industry Prepared for HRDC

53. The National Construction Industry Wage Rate Survey (Ontario) was a special survey conducted by StatsCan on behalf of HRDC. The groups involved at StatsCan were the Business Survey Methods Division and Small Business and Special Surveys Division.

> *"The main objective of this study was to produce statistical information on wages for a set of occupations supplied by the client at the provincial, regional and unionized/non unionized level in the province of Ontario."* p.1 (Methodology Report On The National Construction Industry Wage Rage Survey: Phase 4 (Ontario), September 27, 2000).

54. The National Construction Industry Wage Rate Survey (Ontario) used the March 2000 version of Statistics Canada's Business Register (BR) as its sampling frame. The BR contains the universe of establishments in Canada. Establishments with six or more employees were considered to be in scope for this survey." (p.2) The survey was stratified on three bases – region, industry and occupation.

The Survey Questionnaire

55. The sample survey was conducted using a computer-assisted telephone interview (CATI) methodology. Wage survey questionnaires previously used by StatsCan were modified for this survey. Respondents were asked to provide the following information for up to six occupations in their establishment:

The Questions Asked and Response Rate

- Usual number of hours worked per week for full-time employees.
- Starting hourly wage for full-time journeyman employees.
- Usual journeyman hourly wage for full-time employees.
- Maximum hourly wage for full-time employees.
- Most frequent hourly wage paid for full-time employees.
- Number of employees currently employed in the establishment.

- Indicate if the employees for the occupation are unionized.
- Number of full-time employees currently employed for the occupation.
- Indicate if the establishment usually has full-time employees for the occupation.
- Indicate if the establishment has done commercial or institutional construction work in the locale, i.e. Ontario, in the last 12 months.

56. The regional component of the survey was defined based on a series on Ontario Economic Regions (ER). The industry component of the stratification was based on a three-digit level of the 1980 Standard Industrial Classification (SIC), which resulted in 14 sub-sectors of the construction industry and 35 occupation groups being covered.

57. Data was collected between May 5th and ended on June 30, 2002. The total sample selected amounted to 7,243 firms. Of the survey, 3,240 completed the questionnaires, 230 refused to complete, 2,369 were out-of-scope, 429 firms contacted were out of business and 552 firms could not be located. Other non-responses counted in at 358 and 65 were duplicates. The response rate was 74%. The response rate is defined as the number of completes over the total sample selected less out-of-scopes, out-of-business and duplicates.

58. The response rate was computed as follows:

Completion Status	**Count**
Complete	3,240
Refusals	230
Out-of-scope	2,369
Out-of-business	429
Unable to locate	552
Other non-response	358
Duplicate	65
Total sample selected	7,243
Response Rate	74%

> *"The large number of the out-of-scope group is composed of responding establishments that reported they did not have employees doing commercial or institutional construction work, or they did not have any of the occupations listed. . . . Some establishments, falling into the out-of-business category, could not be located because they are no longer in operation. The Business Register keeps track of businesses' births and deaths, but can never be absolutely current."* (Methodology Report On The National Construction Industry Wage Rage Survey: Phase 4 (Ontario), September 27, 2000, p.3).

59. StatsCan indicates that a response rate of 74% is considered fairly good for a voluntary survey. In their methodology document, StatsCan explains a number of technical issues, including a discussion of verifying data from influential respondents, editing of anomalies, checking for consistency and checking on outlier detection on the four wage questions, imputation taken for missing variables, (p. 4-6). The calculation of the coefficient of variation (CV) is a percentage that expresses the size of the standard error as a proportion of the estimate to which it is related. For example, if a wage rate estimate is $9.50 per hour, with a CV of 10%, this translates into a standard error of $0.95. Most of the wage-rate estimates have a CV value of 0-5% (Code A, very good), while a few others are in the good category (5-15%).

Possible Use of Data by Applicants and Respondents

60. There is little doubt that applicants and respondents will consider this data source. The data set is very rich as the construction industry/workforce is broken down into 35 occupational categories. Hourly wages paid per occupation group are also provided for the 35 occupations on four bases: (i) journeymen starting, (ii) journeyman usual, (iii) maximum and (iv) most frequent paid.

61. As well, a number of different Ontario regions are covered. The survey tables we examined had data on full-time employee construction wages for Toronto, Ottawa, Kitchener/Waterloo/Barrie, Hamilton/Niagara, Windsor/Sarnia, Kingston and Muskoka, London and Stratford/Bruce Peninsula, Northeast and Northwest Ontario excluding Toronto. The occupation information was also broken down on a unionized and non-unionized firm basis.

62. One basic problem, however, is that the union/non-union data split was not provided on a sub-regional basis for Ontario. It is clear the data possibly exists and could be mined, subject to statistical reliability of small samples.

Answers to Questions Posed to a StatsCan official regarding the 2000 Special Survey (Anne Ladouceur, Small Business and Special Survey Division, Statistics Canada)

Dear Ms. Ladouceur:

Thanks very much for participating at the meeting with me last week. And thanks for sharing the 2000 construction wage survey data with me. A number of questions re: that survey have arisen, and I would appreciate your help in understanding them better.

Question:

63. Would it be possible to obtain the original survey questions that applied in construction in Ontario?

Answer:

See attached document for questions asked and a list of occupations surveyed

Question:

64. The survey materials show a union/non-union status only province wide in Ontario. Was union/non-union status also available at a CMA level in Ontario, i.e., Windsor or Toronto, etc.? For example, could you compare Windsor union and non-union wages in construction? Could you compare Windsor union and non-union wages at the level of Industrial, Commercial and/or Institutional construction?

Answer:

Yes, union/non-union breakdown may be possible. The survey was conducted using economic regions. In cases where not enough data was collected for a specific economic region, in consultation with our client, the regions were amalgamated to permit the release of data. It may be possible to produce special tables by economic region, sub-divided into union and non-union occupations. Until the data is examined at the micro level you need, I am not in a position to tell you which economic regions have enough data points to permit us to release the data. The survey data collected was for Institutional and Commercial construction only and does not contain wage data for Industrial construction.

Question:

65. The classification "journeymen starting, journeymen usual" is itself a bit unusual? For instance, I don't think that classification is common. What was the rationale?

Answer:

The wages requested were for occupations at the journeymen level. Journeymen were defined as competent workers, workers considered to have experience in that occupation or where required by the province, workers that had certification or a ticket to work in that specific occupation. Not included were apprentices or workers at the foremen level. The wages collected were for workers "starting" with the employer, the wages the employer "usually" paid workers in that occupation. The rationale for collecting wages for workers at the "starting", "usual", "most frequent" and "maximum" level was to get an idea of the range of wages paid for that occupation for journeymen.

Question:

66. Is it correct that the survey covers wages only, omitting non-wage payments?

Answer:

Yes, it is correct to say the survey collected wages only for a work of 30 or more hours per week. The wages collected were at a regular time. No overtime hours or wages were collected and neither were any benefits paid to employees.

Question:

67. Is it correct that there was no distinction made between the three ICI sectors under the survey? For instance, does it refer strictly to total construction?

Answer:

It is not correct to say that no distinction was made between the three ICI sectors. The survey specifically targeted Institutional and Commercial construction. No wages were collected for Industrial construction.

The 2000 Survey Questions and Occupational Categories

List of questions which will be asked during the phone interview:

- How many employees does your establishment currently employ for commercial or institutional construction work, excluding owners, contract workers and volunteers?

For the occupation (name of the occupation):

- Are the employees unionized in this occupation? (fill with selected occupation)
- How many full-time employees are currently working in this occupation (in your establishment)?
- What is the usual number of hours worked per week by a full-time employee in this occupation, excluding overtime?

For, (fill with the selected occupation), if applicable, what is the starting journeyman wage or its equivalent for a full-time employee?

For (fill with selected occupation), if applicable, what is the usual journeyman wage or its equivalent for a full-time employee?

What is the maximum wage your establishment would be willing to pay full-time workers in this occupation?

What is the wage most frequently paid to full-time workers in this occupation in your establishment? Please note that the wage most frequently paid is the wage that is received the most often by full-time employees in this occupation.

In the last 12 months, has your establishment done commercial or institutional construction work in Nunavut Territory?

In the last 12 months, has your establishment done commercial or institutional construction work in the Northwest Territories?

List of occupations for which we will ask questions (please note: questions will ONLY be asked for a maximum of six occupations among this list):

- Electricians
- Plumbers and Related Welders
- Sprinkler System Installers
- Pipefitters, Steamfitters and Related Welders
- Sheet Metal Workers
- Boilermakers, except Industrial and Marine Boilermakers
- Ironworkers, excl. Reinforcing Ironworker (Rebar/Rodman)
- Reinforcing Ironworker (Rebar/Rodman)
- Carpenters
- Bricklayers
- Cement Finishers
- Tilesetters (incl. Terrazzo, marble setters)
- Plasterers and Drywall Tapers
- Drywall Installers and Finishers & Lathers
- Built-up Roofers and Shinglers
- Glaziers
- Insulators
- Painters
- Flooring Installers
- Construction Millwrights
- Heavy Duty Equipment Mechanics
- Refrigeration and Air Conditioning Mechanics
- Elevator Constructors
- Mobile Crane Operators
- Tower Crane Operators
- Straight Truck Drivers
- Road Tractor Drivers for Semi-Trailers and Trailers
- Heavy Equipment Operators (excluding Cranes, Graders, Asphalt and Paving Machine, excl. Scraper & Packer (Road roller))
- Grader Operators
- Paver and Asphalt Plant Operators
- Scraper Operators
- Packer (Road roller) Operator
- General Welders (excluding Welders related to plumbing and steamfitting)
- Flag Persons
- Helpers and Labourers (Excl. Flagpersons)

F. Union Wage Rates in the Construction Price Statistics

(Published source: Statistics Canada, Construction Price Statistics, Third Quarter 2001, 62-007-XPB)

68. The above-noted report provides construction union wage rate indexes, new housing price indexes, apartment building construction price nieces, non-residential building construction prices indexes and machinery and equipment (M&E) price indexes. The price series are timely, published quarterly and the construction union wage rate indexes, basic rates plus supplements are published for selected cities in Canada. The data are used by StatsCan as a deflator in the System of National Accounts and in the Consumer Price Index to measure the cost of dwelling repairs. Contractors and builders in escalation clause of their contracts also use the information.

69. Sixteen trades and eight CMA's in Ontario are covered. In a technical note, StatsCan reviews the current collective agreement rates for 16 trades engaged in building construction in 20 metropolitan areas across Canada. The figures are provided in terms of basic rates and basic rates including supplementary benefits. (Vacation pay, statutory holiday pay, employers' contribution to pension plans, health and welfare plan, industry promotion and training funds.) The details are published monthly on CANSIM. Nine cities in Ontario are covered with respect to union wage rates for major construction: Ottawa, Toronto, Hamilton, St. Catharines, Kitchener, London, Windsor, Sudbury and Thunder Bay.

70. In a technical note, StatsCan observes that the index measures contractor's selling price change on non-residential construction, which is primarily ICI construction (Commercial, Industrial and Institutional). The indexes relate to general and trade contractors' work, but exclude the cost of land, design and real estate fees. The national index uses a base for seven cities, including Ottawa and Toronto and for five project types: office, warehouse, shopping centers, factories and schools.

Possible Use of Data by Applicants and Respondents

71. There is no separate industrial and commercial breakdown under construction prices. StastCan used to collect data from the Canadian Construction Association as the prime data source. Now they collect data from the provincial employer councils.

72. The updates in the new collective agreements often are slow to be inputted. However, data are available on CANSIM and are relatively inexpensive.

73. The survey will not be very helpful to either an applicant or respondent. The union data may provide some validation for cities, however the collective agreements data are superior.

G. *Public and Private Investment Surveys*

74. StatsCan generates three surveys on private and public investment. The first is carried out in November / December and yields preliminary estimates of capital spending in the current year and spending intentions for the coming year. The intentions are updated in a second survey in June and actual capital expenditures are collected in a survey carried out between March and September of the year following the reference year. The survey refers to Industrial, Commercial and Institutional building and engineering works such as roads, dams, transmission lines, pipelines, oil well drilling and mine development.

Possible Use of Data by Applicants and Respondents

75. The data will be of limited use to applicants or respondents.

H. The Construction Sector Council (CSC)

76. The CSC, which was launched April 9, 2001, is a partnership between HRDC, the Canadian Office of the Building and Construction Trades Department and its affiliates and the National Construction Labour Relations Alliance. Its 18-member board, made up of nine business and nine labour representatives, will focus on issues such as the skills shortages in many construction trades, labour demand and supply, interprovincial mobility and the impact of information technologies on the industry.

Possible Use of Data by Applicants and Respondents

77. The CSC has a number of initiatives underway which could have a bearing on the competitive disadvantage measurement issue. The CSC plans to develop an occupational forecasting model for the trades in construction. The forecast model would attempt to statistically estimate labour requirements per construction project, by type of labour. As well, the CSC will be developing some rough productivity indicators at the sector level. The numerator could be the volume of business, the denominator could be the wage bill. This approach could provide an opportunity to compare the productivity performance of unionized and non-unionized firms. Adding in questions on unionized versus non-unionized firms would be an obvious follow-up for the OCS to pursue. In closing, there are considerable opportunities for the OCS to collaborate with the CSC.

I. Workplace Safety & Insurance Board Data (WSIB)

Overview on Calculating Market Share

78. The OCS has been utilizing WSIB data to determine the market share data for unionized construction firms in specialized ICI sectors. The work entails obtaining a list of all contractors in a specific market making contributions to WSIB over the relevant time period. Union contractors are then identified and the list submitted to WSIB. Based on these data, WSIB can compile assessable payroll

and lost-time injury information for the union and non-union construction firms. The OCS has already undertaken one such review for the ICI painting industry.

79. Note that payroll information and union status company identification are the key to this exercise. Using these data one can compare the contributions to the WSIB of unionized firms against non-unionized firms for selected groups. In essence, one can determine whether non-union firms are paying their way. One can also use these data as proxy indicators of the market share in a particular ICI market.

Four Sets of Market Share Data are Possible

80. This approach of combining WSIB data with outside information on classifying the union status of the firms generates four kinds of data:

- unionized company market share based on distribution of assessable payroll;
- unionized company market share of estimated man-hours of work;
- reported lost-time for injuries – unionized compared to non-unionized firms; and
- lost working time unionized versus non union firms.

81. The information for union man-hours data is derived directly from the construction unions. The non-union man-hours are calculated by using WSIB data that converts assessable payroll figures into man-hours of work by dividing total payrolls by an estimated hourly wage rate. One can also use these data as proxy indicators of the market share in a particular ICI market. However, the work is quite time laborious. As the OCS noted in its November 26, 2001 report to the two EBA's: *"The next step of the analysis is to review this information to confirm union firms have been appropriately marked (this was a manual process and errors and omissions can occur); and determine if the firm lists are representative of the ICI painting industry."*

An Interesting Approach – but There are Major Measurement Problems

82. OCS correctly cautions against using these data as an accurate measure of the market share of unionized construction firms.

83. Some firms are involved in more than ICI construction. ICI construction cannot be easily isolated.

84. Independent operators do not make WSIB contributions and are therefore excluded from the analysis.

85. WSIB contributions are subject to payroll ceilings, thus assessable payroll information may be underestimated.

86. Regional identification of ICI construction is limited by the fact some contractors work in several regions, but report payroll contributions from head office.

87. The various trades do not always clearly link up with WSIB rate categories.

88. There is an identification problem with respect to firms. WSIB premiums are higher for residential work than for ICI. Thus a firm which does a mix of work would want to claim that it is involved in Commercial or Industrial work, rather than residential construction.

New Data that the WSIB Could Collect to Improve Calculations

89. WSIB clearly has to collect assessable payrolls information; it could also collect total payroll figures, which would then provide an improved estimate of the size of the total market in the location.

90. WSIB could require a statement by the member contracting firms as to their union/non union status.

Possible Use of Data by Applicants and Respondents

91. In closing, under present practises the WSIB data provides some useful market intelligence. However, it has to be improved upon in order to be more valuable for Bill 69 cases.

92. Even if the data were improved to the extent of including these "extra potential pieces" of WSIB collectible information, the market share information would still be far from perfect.

93. There would still be some cross-over problem between residential firms and ICI in the data. There would still be some problems with matching trades with rate group data under WSIB categories. And, of course, the regional head office problem would still exist with respect to pinpointing market location.

J. Building Permits

94. StatsCan Building Permits Survey covers all Canadian municipalities that issue permits. Seasonally adjusted data for the total number of housing units as well as for the aggregate value of building permits are obtained indirectly, i.e., by adding their seasonally adjusted components. The total number of dwelling units is obtained by summing the seasonally adjusted data for single-family and multiple-use units – the total value of building permits is obtained by summing the following elements: residential, industrial, commercial and institutional.

Possible Use of Data by Applicants and Respondents

95. It is highly unlikely such aggregate data will be very useful either to an applicant or respondent.

K. CMD, Private Listings of Projects: Some Information on Winners and Losers

96. CanaData Construction Forecasting Services has been in business since 1911. The firm was recently taken over by CMD out of Atlanta, though now their ultimate owner is the publishing firm Reed Elsiver. The *Daily Commercial News* publication is also part of their organization.

97. The survey firm solicits information directly from tendering authorities and also relies on using municipal council minutes, business development and re-zoning applications and searching newspaper notices of tenders. CMD Building Report (CMDBR) reports on all leads at the earliest stage possible. CMBDR provides, for a fee, information relating to the notice and awards of building and construction contracts in Canada. The firm has no other major competitor in Canada, except StatsCan.

98. The firm has a network of 30 researchers across Canada that telephone owners, architects, developers and engineers to find information about projects at a very early stage. The firms also use a newspaper clipping service and are in touch with municipalities with respect to building permits. The firm is able to trace and capture a new construction project from a very early-on planning stage. With respect to non-residential construction, their service follows projects which have a value of $250 million or more. Once an individual project becomes an actual start, the firm is able to generate data on square footage and total construction costs, as well as some ancillary information on the general contractor, etc. New figures are published monthly.

99. The survey firm reports on projects at five phases on construction: (i) prebid, (ii) negotiated, (iii) tenders due, (iv) bid results and (v) residential starts. The CMBDR data we examined via OCS for the Ontario region provided information on the project type, (commercial, government, apartment, warehouse etc.), project owner, project value, range of bidders, contractor types and the name of the winning firm. The start and project data are available at a CMA and county level and the firm does provide customized reports. Their report on starts and total footage is a valuable early warning tool and, in fact, arrive earlier than StatsCan's building permits data. For example, March start data are published by 2nd week of April. The firm is able to customize reports based on the data fields they collect, i.e., the number of stories, dollar costs, square footage, owner, architect, etc.

100. CanaData Construction Forecasting Services provides construction market data for Canada. The firm tracks the construction industry, prepares tools to assist in planning and provides an in-depth three-year projection on the Canadian construction market. The firm publishes The CanaData Forecaster six times yearly that outlines a snapshot of the construction industry in Canada. The firm also hosts two forecast conferences a year.

The Key Data Provided For Ontario

- ICI starts and projects on a square footage basis, three ICI sectors, by detailed industry, by region, above $250,000 in size.
- Building permit spending data for three ICI sectors.

Possible Use of Data by Applicants and Respondents

101. The firm does not provide any information on a union/non-union basis. Moreover, the firm does not provide much sub-trade information.

102. OCS subscribes to some information relating to ICI trends within Ontario and publishes the data on its own WebSite with a disclaimer. The data are ICI building permits for the main regions of Ontario and ICI construction starts by square foot for the same three aggregate categories.

L. Statistics Canada's Financial Performance Reports

103. Financial data relating to the construction industry is available through StatsCan via a number of different publications. The core coverage is on assets, liabilities, income, expenses and other types of tax information from corporate tax returns filed with Revenue Canada. Aggregate information is available at an industry level. Analytically the data can be used to create, at an industrial level, a range of useful indicators of financial health such as a statement of change in financial position as well as gross profit margin, net profit margin, return on equity, pre-tax profit to assets, pre-tax profit margin, liabilities to assets and distribution of firms by percentage of profit/loss. On the WebSite for Financial Performance Indicators, StatsCan indicates that *"Standard products are available at the national level only. Provincial data may be available for some products."*

Specific Sources of Statistics Canada's Financial Performance Data

104. Financial Performance Indicators for Canadian Business, Volume 1, Medium and Large Firms (firms with revenues of $5 million and over) 1996 Reference Year (61F0058XPE/F); Financial Performance Indicators for Canadian Business, Volume 2, Small and Medium Firms (firms with revenues under $25 million) 1994 Reference Year (61F0059XPE/F) and Financial Performance Indicators for Canadian Business, Volume 3, Small and Medium Firms, Principal financial ratios by detailed industries 1994 to 1996 Reference years (61FOO6OXPE/F).

> *"Volumes 1 and 2 of this annual publication feature 15 of the most widely used financial ratios for profitability operating efficiency and solvency for many industries in construction and other fields. Distribution of the industry ratios are provided as well as a common size balance sheet structure for typical firms in each industry.*
>
> *This shows how a typical firm is structured, allowing you to make meaningful comparisons. Volume 3 includes detailed information for more than 500 industries based on over 900,000 corporate income tax statements. It also includes many ratios for small and medium sized firms, at the provincial and national level."* (Source, Statistics Canada, Useful Data for Construction, August 1998, p. 25)

105. Other useful StatsCan data sources include:
- Financial Performance Indicators for Canadian Business (61C0030).
- Computer Interactive Benchmarking (61F0059XCB).
- Quarterly Financial Statistics for Enterprises, (cat. 61-008-XPB).

106. The latter publication is most timely and uses the Standard Industrial Classification System for Companies and Enterprises, 1980 (SIC-C). The data are compiled from the results of a quarterly direct mail survey of approximately 4,000 Canadian firms with more than $10 million in assets. Aggregate information is presented by industry groupings, including a balance sheet, an income statement, a statement of change in financial position as well as some ratios.

107. The Quarterly Financial Statistics document is the most up-to-date and is published 90 days after the end of each quarter. *"For the construction industry, the information is located in Table 18 - Real estate developers, builders and operators and Table 19 Building materials and construction."* (Source ibid.)

Possible Use of Data by Applicants and Respondents

108. Canadian construction firms can compare their own results to an industry average. Furthermore, these products facilitate comparative analysis and forecast modelling. The data also show how a typical construction firm is structured.

109. It is rather unlikely that this financial information will prove relevant to either an applicant or a respondent, other than in the case of providing general financial under-performance. The primary problem is that the financial data are not broken down by union and non-union firms.

Answers to Questions Posed to a StatsCan Official regarding Financial Performance Indicators (Gail Sharland, Industrial Organization and Finance Division, StatsCan)

110. Dear Ms. Sharland:
. . . I was wondering if you could answer the following questions re: the STC financial information available.

1. What is the frequency of publication?
2. Which of these sources provide the most disaggregated data for construction?

   i.e., for monitoring financial information in construction in firms in local areas of Ontario, which publication/source would be the most appropriate?
3. Does the best source in the above disaggregate overall construction at sub-geographical area for Ontario?
4. Do the financial indicators extend into industrial, commercial and institutional sectors in Ontario?
5. If there is only an ltd breakdown re: construction in Ontario, does it go as far as the non-residential classification in the NAICS?
6. I have had only limited success with the STC web site with respect to answering the above. Is there any paper document/s that you could send me describing the surveys in more detail?

Thanks in advance for your help.
Best wishes,
Arthur Donner

111. Letter received from Lorraine Chapman at StatsCan Tuesday, March 26, 2002.

Hi, my name is Lorraine Chapman and I am in the Client Services Section of Industrial Organization and Finance Division. I received your e-mails today concerning your request for financial information on construction companies operating in Ontario. Volume 3-Province of Ontario 61 F0060 is probably what you are looking for. The classification system used for this volume was the "Standard Industrial Classification of Establishments" (which is the second link listed below). Financial performance ratios are available for 65 SICE's (from 4011 to 4499) in the construction industry in Ontario. The CD-ROMs for Vol 3 Prov Ont would cost approximately $63 per release year; for example the November 1999 CD-ROM would contain ratios for the reference years 1996, 1997 & 1998 for over 500 industries.

There is a possibility of obtaining data at sub-geographical areas for Ontario, keeping in mind that there might be some confidentiality issues to look into resulting in some regions being suppressed. This specialized data is much more costly and I would need to look into the matter further.

We are in the process of redesigning the FPICB Volumes to NAICS. Volume 1 won't be available before April 2002. Volume 2, 3 and Provinces will not be available before the summer.

Below you will find some links to the different classification systems available. The first link is NAICS and Construction is #23. The second link provides the SICE's and Construction is Division F. The third link is the SICC and Construction is Division 1. The fourth link is the NAICS 2002 for the Construction industry. This fourth link may not be available on our own databases and 1 will have to look into this matter also.

- http://disseminationlenglish/Subjects/Standard/23.htm
- http://disseminationlenglish/Subjects/Standard/sic/structure.htm
- http://disseminationlenqiish/Subjects/Standard/sic-clsic-c.htm
- http://disseminationlenglish/Subjects/Standard/naics23.htm

112. Further letter received from Lorraine Chapman on Wednesday, March 27, 2002:

I am attaching a file which will explain to you the differences in the different volumes of FPICB. We are in the process of converting our FPICB publication to NAICS as I mentioned in my previous e-mail. I am also attaching a file explaining the different Central Metropolitan Areas in Ontario. The cost of the custom request will depend on the number of ratios, number of regions, number of industries, and number of years required. Once all this has been decided, I can then give you an approximate cost for the special request. Our current CD roms are version 2000 which contain the reference years 1997, 1998, and 1999. I am also attaching a price list of the current CD roms for version 2000. The prices I quoted in my previous e-mail were for the earlier versions since you mentioned

information for the reference years 1994 to 1996. If you have any more questions, please feel free to call me at (613) 951-0047.

Financial performance indicators for Canadian business (61F0058XCB, vol. 1, $180; 61F0059XCB, vol. 2, $200; 61F0060XCB, vol. 3, $220; 10-3010XKB, vols. 1-3 and provincial/territorial detail, $725) is now available on CD-ROM.

Appendix 6
Competitiveness in the U.S. Construction Industry – An Introductory Overview

113. The characteristics and structure of the U.S. construction industry are, in most respects, save magnitude and scale, similar to those in Ontario. In particular, the same intense competition between union and non-union firms exists and is accelerating. Accordingly, we included in our research a preliminary examination of the American scene.

114. Our work included the following:

- A telephone conference with Steve Coleman, Executive Vice President, Mechanical Contractors Association Ontario and two of his U.S. colleagues, John McNurney, Director of Labour Relations of MCA America and Bernard Vondersmith, Executive Vice President of MCA Maryland.
- A one-day trip to Washington on April 8, 2002 to confer with government and labour officials, including:
    - George Werking, Commissioner, Office of Federal and State Programs, Bureau of Labour Statistics (BLS), U.S. Department of Labour;
    - Carl Shaffer, Director of Organizing, Building and Construction Trades Department, AFL-CIO;
    - Kimberly Beg and Eileen Barkas-Hoffman, Commissioners in the U.S. Federal Mediation and Conciliation Service; and
    - John Frank and Terrence Sullivan, Section Chiefs for Eastern and Western U.S. respectively in the branch of Construction Wage Determination of the Department of Labour (responsible for wage data compilation under the *Davis-Bacon Act*).

115. The statistical topography of the U.S. construction industry, including employment and union density trends, was comprehensively surveyed in 1998 by the Washington-based Center to Protect Workers' Rights (CPWR) under the chairmanship of Professor John T. Dunlop of Harvard University. Members of Dr. Dunlop's panel included Robert McCormick, President Emeritus, National Constructors Association and Robert Georgine, then President of the Building and Construction Trades Department of the AFL-CIO.

116. The product of the Committee's work was the Construction Chart Book, 2nd edition, April 1998. Attached are highlighted excerpts from the Chart Book. The similarities between the Ontario and U.S. construction environments is borne out by this summary document. As well, the Chart Book references the rich vein of statistical information available in the U.S. to track industry trends in a host of areas relevant to our study, some of which were touched on during the visit to Washington. Examples are the *Census of Construction Industries*, U.S. Department of Commerce, Bureau of Census; the Census Bureau's *County Business Patterns*; *The Value of Construction Put in Place*, the Census Bureau, the *Statistics of Income Bulletins*, the Internal Revenue Service (quarterly publications covering 200 million federal tax returns); *The Current Population Survey*, Census Bureau; *Employment Hours and Earnings*, Bureau of Labour Statistics (BLS) (monthly); the *Establishment Survey* (BLS); the *Employment Cost Index*, (BLS), the *Occupational Statistics Survey* (BLS), the *Annual Report of the Bureau of Apprenticeship and Training* and a variety of statistical publications by the U.S. Occupational Safety and Health Administration's Office of Statistics.

117. Although StatsCan and some Canadian private survey sources produce excellent data, our impressions, yet to be confirmed, are that more comprehensive, detailed and timely data of the sort needed to measure union/non-union competitiveness in the U.S. is available from the sources cited, particularly those relating to the compilation of wage data required under the *Davis-Bacon Act* (see below). In any event, a careful study of the U.S. sources might well yield helpful information concerning the feasibility and costs of augmenting Canadian data.

118. The teleconference with Messrs. Coleman, McNurney and Vondersmith of the MCA was useful in validating our tentative conclusions about the need to gather as much local intelligence and information as possible in order to effectively utilize the statutory provision for mid-contract modifications. All agreed the macro survey information available from governments is of limited use. Mr. McNurney provided some helpful material, including (i) a list of labour agreements in the U.S. with a "sub-journeyman" classification, i.e., a helper-type category as opposed to a trainee or pre-apprenticeship classification; (ii) a copy of the *Dunlop Commission Report On the Future of Worker-Management Relations*, December 1994, submitted to Labour Secretary Reich and Commerce Secretary Brown and (iii) miscellaneous items relating to improved labour/management/owner group dialogue from across the U.S., as well as information on the Federal Mediation and Conciliation Services' interest-based bargaining technique.

Washington, April 8, 2002

119. The meeting with Commissioner Werking of BLS confirmed our conclusion that a large sampling is useful if you have a large survey group. However, a full population survey is an enormous undertaking and broad-based sample surveys are unlikely to satisfy what he referred to as "locality needs". Similarly, "modeling" produces at best rough proxy estimates that Werking believes would be of limited, if any, use in arbitration or other litigation settings.

120. The BLS's *Occupational Statistics Survey*, carried out every three years, is an enormous undertaking covering all states and territories and is divided into 450 localized areas covering 750 occupational groups. Werking estimates that 75% of the U.S. workforce is covered by this survey, which receives approximately 1.2 million responses. Although it is a three-year sampling, the BLS uses an "age forwarding" technique to update the results from the two earliest years of the survey so it is current at the time of publication. However it does not distinguish between union and non-union establishments or individuals. He pointed out one impediment is that many firms are part union and part non-union and it is difficult to break these down in an accurate fashion. And, despite the division of the survey into 450 geographic different areas, because of the size of the geographic areas, it does not yield the kind of "local" data that would be helpful for our purposes.

121. Generally, he said the difficulty with both sampling and modeling is they are based on a set of hypotheses and, because of that, the results are subject to contention if a critic disagrees with the threshold assumption. As to local information, he said if it was to be obtained from any source other than the parties of interest, i.e., the local contractors and local unions, it is frequently too expensive relative to the purpose for which it is intended. He says that in the U.S. there are private contractors who do conduct local surveys in smaller areas (for example, areas covering 150 establishments). These private contractors use computer-assisted telephone interviewing (CATI) and their survey reports can usually be produced within three to four months. One of the best private surveyors in the U.S. is Eriss Inc. (www.eriss.com). It does estimating and model sampling.

122. Werking said the only mandatory surveys in the employment field are the ones carried out by the U.S. Occupational Safety and Health Administration (OSHA). All others are voluntary and, as in Canada, there is a growing resistance on the part of survey recipients to responding. This is partly because of workload pressures and partly because of concerns about confidentiality. He talked about some of BLS's ongoing survey work – the *National Compensation Survey* (which includes benefits data); the monthly *Employment Hours and Earnings Survey*; the *Household Survey* and the *Occupational Survey*. None of these surveys are designed to deal with "locality" issues. A "special request" survey would be needed for that purpose. In all survey work, he said, that periodicity is a problem.

123. As to more promising sources, he referred to the Wage and Hour Department of the Employment Standards Administration at the U.S. Department of Labour, which is responsible for compilation of wage data under the *Davis-Bacon Act*. He suggested some useful information might also be obtained from the American Statistical Association. As to individual states, they used to get federal funding for employment data surveys, but in 1996 state grants reverted to the federal authorities and the funds have been redirected to federal survey work. The states were not using uniform methods and procedures. On the other hand, state surveys usually went to at least the country level and sometimes to municipalities. Notwithstanding the withdrawal of federal funding, some states are continuing their survey activity. For example, 14 states do benefit surveys. The research units in the states are generally known as State Employment Security Agencies. The results of their work could be traced, but it would require a good deal of work to assemble it and the BLS does not have this work. Many states contract the work out to private firms.

Mention was made of the *Workforce Investment Act* of 1998, providing for the establishment of State Workforce Investment Boards, chaired by business leaders, whose mandate is to attract investment to their various states. He said he was aware some of these boards are using Eriss and other survey firms to determine such things as labour vacancy rates, etc.

124. At the meeting with Carl Shaffer, Director of Organizing, Building and Construction Trades Department, we discussed the nature and intensity of union/non-union competition in the U.S. He said his department was devoting more efforts to encourage affiliates to intensify their organizing efforts. His department compiles union density figures based on the *Current Population Survey* (CPS) and BLS information that is published annually. Employment surveys are also conducted on a monthly basis, covering 50,000 households. For the trades where an adequate number of workers cannot be surveyed, a three-year rolling average is used, i.e., 1998 + 1999 + 2000 ÷ 3. The data for the years 1990 through 2001 were provided. For all construction, the unionized rate fell from a high of 21.2% in 1991 to a low of 17.7% in 1995. It currently stands at 18.4%. Of the individual trades, the Electricians are in the higher bracket at 39% (down from 45.9% in 1990), as are the Plumbers at 32.6% (down from 41.9% in 1990). The Boilermakers are at 45.2% (having reached a high of 67.5% in 1999), the Insulation workers at 32.4%, the Millwrights at 67.6% (a new high), the Sheet Metal Workers at 39.8% (stable over the decade), the Structural Metal Workers at 60.2%, the Operating Engineers at 32.8%, the Crane and Tower Operators at 51%, etc. Information for all trades is available, but must be treated confidentially.

125. Limited insights were gleaned from the meeting with the Commissioners at the Federal Mediation and Conciliation Service. They were aware, of course, of the concerns about the incursion of non-union firms in the construction industry and said this had given rise, as it has in Canada, to the inclusion of market recovery programs in almost all construction collective agreements. They said strikes and lockouts were rare in the construction industry, at least in recent years.

Reference was also made to the aggressive efforts of the Associated Builders and Contractors (ABC), "The Voice of the Merit Shop", i.e., non-union in the U.S. construction industry. The Commissioners were able to arrange appointments with Messrs. Sullivan and Frank in the Construction Wage Determination Division of the Department of Labour to discuss the Division's wage and benefit compilation activities for the purposes of establishing prevailing wage and benefit schedules under the *Davis-Bacon Act*.

The U.S. Davis-Bacon Act

126. The Davis-Bacon Act of 1931, as amended, requires that each contract over $2,000, to which the United States or the District of Columbia is a party for the construction, alteration or repair of public buildings or public works contains a clause setting forth the minimum wages to be paid to various classes of Labourers and Mechanics employed under the contract. Under the provisions of the Act, contractors or their sub-contractors are to pay workers employed directly on the site of the work no less than the "locally prevailing" wages and fringe benefits paid on projects of a similar character. The Act gives the Secretary of Labour authority to determine such local prevailing wage rates.

127. The Wage and Hour Division of the Department of Labour has the responsibility for planning, directing and administering Davis-Bacon. While the contracting agencies, i.e., the contractors, in government have the primary day-to-day responsibility for ensuring compliance with Davis-Bacon, the Wage and Hour Division (W-H) has enforcement responsibility to ensure that prevailing wages and fringe benefits are paid in accordance with the provisions of the Act. This involves not only setting the prevailing wage, but investigating to ensure compliance and adjusting and adjudicating cases involving the payment of back wages and benefits. W-H carries out its responsibilities through its staff in its Washington headquarters and in its ten regional and 64 area offices throughout the United States. The officials with whom I met are branch directors in the Construction Wage Determination Branch. This branch has the assigned mission of determining and issuing prevailing wage information. To develop them, the branch stores and accesses thousands of files of information, including wage surveys, collective bargaining agreements and previously-established wage determinations.

128. The "prevailing wage" is defined under Davis-Bacon regulations as "the wage paid to the majority (more than 50%) of the Labourers or Mechanics in the classification on similar projects in the area during the period in question. The regulations also state that *"If the same wage is not paid to a majority of those employed in the classification, the "prevailing wage" shall be the average of the wages paid, weighted by the total employed in the classification".* To determine prevailing wages, the branch utilizes a "peak week" survey concept to ensure that wage and fringe benefit data obtained from employers reflects a payroll period during which the greatest number of workers in each classification are used on the project. The survey solicits the number of employees paid at each given rate during the peak week.

129. General wage determinations are published in the publication *"General Wage Determinations Issued Under the Davis-Bacon Act"* and are on-line as well. The determinations are issued whenever the wage patterns for a given location for a particular type of construction are well settled and it appears there will be a recurring need for determined rates. The contracting agency with a proposed construction project may then use the published determination without consulting the Department of Labour. However, the agency may request a project wage determination which, if issued, expires 180 calendar days from the date of the issuance unless an extension is granted by the Department.

130. Specific guidelines are laid down for determining prevailing wages, including fringes, for all classifications of construction workers for each of the more than 3,000 counties in the United States. To accomplish this, Davis-Bacon administrators use wage surveys to collect information on wage and fringe benefit rates on construction projects of a similar character in a pre-determined geographic area and calendar period. There is a complex, 11-step plan for conducting the survey to avoid biases and inaccuracies. The Department is assisted in the surveys by Construction Resources Analysis (CRA) of the University of Tennessee and the F.W. Dodge Division of McGraw-Hill Information Systems Company. CRA has developed and operates an automated system which produces, on demand, lists of active construction projects by county and month for the entire United States. Input to the CRA model includes data from monthly F.W. Dodge tape files of new construction projects. Since the Dodge Reports do not contain the identity of all sub-contractors, it is necessary to contact the general contractor or low bidder in some cases to obtain the names and addresses of their sub-contractors. The sub-contractors generally employ the largest portion of on-site Mechanics and Labourers, so their identification is critical to the success of the survey. There are rules for clarifying and analyzing the collected data and a week or two of intensive effort is usually required to reconcile ambiguities and incompleteness on the data and to thoroughly investigate unique area practice issues that are indicated by the survey responses.

131. When the survey data is in, the calculation of the prevailing wage rates and benefits is made manually or by computer. For the base rate, if more than 50% of the employees in a single trade are paid at one rate, that rate prevails. Otherwise the average mean rate prevails. As to the benefit rate, if it is found that the majority of employees in one craft are receiving the same hourly rate and the same amount of fringe benefits, that rate and fringe package will be determined as prevailing. If fringe benefits prevail, but 50% or less of the employees receiving benefits are paid at the same total rate, then the average fringe benefits, weighted by the number of workers who receive them, prevails.

132. Since the U.S. is composed of over 3,000 individual counties and since for Davis-Bacon survey purposes, construction is divided into four distinct types (building, heavy, highway and residential), a constant workload of more than 12,000 possible wage surveys confronts the Division. Ideally, each of these counties and types of construction would be surveyed on an annual basis. However, with finite resources, it has not been possible to conduct that number of surveys. As a result, one key task for the Division is to identify those counties and types of construction most in need of new surveys. If a particular county and type of construction currently are covered by wage determinations based upon collective bargaining agreements and there is no indication of change in the union open-shop relationship, an updated wage determination may simply be based on updated collective bargaining agreements. On the other hand, if questions are raised that a wage determination based upon a collective bargaining agreement should now reflect open shop rates or an open shop rate should be changed to the union scale, then a new survey is conducted. Detailed rules have been established for survey scheduling.

133. Even in the absence of a survey, staff in the various regions are updating the prevailing wage and benefit rates weekly and the current prevailing rate, either updated or unchanged, is always available on-line, having been configured or changed on Friday of each week. This non-survey updating is done on the basis of information supplied to or collected by Division officials as to new collective agreements and, in the case of open shops, on information supplied by contractors. Thus, for each county in the United States, there is always a prevailing wage rate and benefit rate applicable to federal projects. Experience has shown this information is usually accurate, but if it is not, Davis-Bacon provides for a review/appeal procedure.

134. Commentators refer to a number of empirical benefits from having an up-to-date prevailing wage and benefit rate program like Davis-Bacon. Under the Act, contractors are allowed to pay less than prevailing wages to employees enrolled in bona fide apprenticeship training programs. This has proven to be a powerful incentive for contractors to support well-structured training programs. It is argued that without Davis-Bacon, apprenticeship programs would decline and skilled workers would continue to leave the industry. In states where State prevailing wage laws have been repealed, apprenticeship and training levels have dropped by an average of 40%. In Utah, apprenticeship graduation rates went from 95 to 15% when the prevailing wage rate law was repealed, with the result that Utah now faces a shortage of adequately trained construction workers.

135. Repeal of state prevailing wage laws led to a 15% increase in work-related injuries, according to one analysis. It is estimated that without Davis-Bacon at the federal level, there would be an additional 76,000 new workplace injuries each year, with consequent reduction in earnings, a lower quality of life and costly long-term health care. The same study estimates that Workers Compensation costs would increase by $3 billion dollars per year without prevailing wage rates in effect.

136. Proponents of Davis-Bacon point to the strong link between fair wages and high productivity, as well as the reverse. Without Davis-Bacon, they contend, construction would revert to a low wage, low technology industry. A study using Federal Highway Administration data compared the average construction costs of bridges and highways in two groups of states. Higher-wage states build highways for 11% less than lower-wage states. As wages are bid down, so are productivity levels.

The U.S. Construction Chart Book, second edition, April 1998

137. This book attempts to use statistics to characterize the construction industry in the U.S.

138. The industry offers relatively easy entry. Very little capital is needed to start a construction business. As a result, there is a preponderance of small companies. Establishments having fewer than ten employees count for 82% of the total, although they employ only 30% of the workforce.

139. Construction is highly volatile at different points of the business cycle, with business failure rates that exceed rates for other industry sectors.

140. The employment structure in the industry is complex. The continuously changing nature of the employment relationship means that legal, regulatory and organizational institutions must be flexible and adaptable to workers having varied skills.

141. A long-term decline in real wages would discourage entrants from making careers in construction. A counterpoint to that trend may be union membership. The data show the unions offer higher wages, greater health and pension coverage and longer employment tenure for their members.

142. Newer advanced technologies are radically changing the types of skills needed for some types of work. At the same time, skilled craftspeople will continue to be essential to the industry. To produce quality work, the industry will need to devote more attention to vocational education to keep up with changes in technology and to maintain craft-specific skills. Joint labour/management apprenticeship and training programs must continue to play a large role in developing this skilled workforce.

143. Injuries in the construction industry as a whole are 40% higher than the average for all private industry. Particular problems persist amongst small- and medium-sized firms.

Major Limitations in Existing Data

144. Distinctions between construction and other industries are often blurred. Construction workers are also found to work in maintenance, real estate, sanitation, transportation and other industry sectors. The new North American Industry Classification System (NAIC) does not really address this problem.

145. The U.S. Bureau of Labour Statistics (BLS) has discontinued construction productivity measures. It is therefore difficult to measure improvements that result from safety and health programs, technological changes, better planning and changes in work processes.

146. The data on wages, fringe benefits and hours worked are of limited reliability. Wage data from the current population survey and the BLS current employment statistics series (the Household Survey and the Establishment Survey respectively) do not match. There are no recent publications on scheduling or on hours worked per year by occupation and construction.

147. There is no up-to-date information on union/non-union wage differentials of construction workers by locality.

Miscellaneous Observations

148. What are the reasons for today's apparent skills shortage? How do technology and changing industrial and labour relations drive labour market trends?

149. There is clearly under-reporting of injuries and illnesses in the construction industry. A large number of employees of sub-contractors on construction sites may be unlikely to report their work-related injuries, in part because of an employer's fear of higher insurance costs. Occupational illness data are grossly under-reported.

150. Construction produces 3.8% of U.S. Gross Domestic Product.

151. Establishments without payroll (sole proprietorships, independent contractors and partnerships) are not surveyed.

152. Construction establishments without payroll equaled 7.3% of the dollar value of all construction in 1992 (42.5 billion out of 581.6 billion).

153. Construction expenditure in 1992 was comprised of the following cost elements: materials 30.1%; sub-contracting 25.9%; wages 22.3%; benefits 5.6%; services 1.7%; rentals 1.6%; power and fuel 1.6%.

154. 82% of construction establishments have less than ten employees but account for only 28% of all employees in the industry. Those establishments having between 20 and 99 employees account for 34% of the number of employees in the industry. Those having between 100 and 500 employees account for 16%. And those with 500 or more employees have 5.6% of the total employment.

155. Of the trades, the Plumbers and Electricians are amongst the largest. Masonry workers are 2/3 the total of Plumbers and Carpenters are less than half.

156. The cost components of construction include the cost of materials installed or erected, the cost of labour, the cost of construction rental equipment, the contractor's profit, the cost of architectural and engineering work, miscellaneous

overhead and office costs chargeable to the project and interest and taxes paid during construction.

157. In the U.S. public sector, buildings account for 43% of all activity, highway and streets 29%, sewer systems 8%, military facilities 2% and other 19%.

158. In private sector construction, residential accounts for 56%, non-residential 35%, public utilities 8% and other 1%.

159. According to BLS, construction workers are 6.4% of the labour force. And 25.6% of construction workers are self-employed.

160. Union density in private sector construction was 19% in 1996. Union membership, by selected trade, appears to be as follows: Ironworkers 57%, Electrical 40%, Sheet Metal 37%, Plumber 37%, Operating Engineer 31%, Bricklayer 24%, Carpenter 18%; Labourer/Helper 16%. Note that only 10% of Labourers are organized in the U.S.

161. The average age in construction is 36.9 years, the third lowest of the 12 principal industries surveyed by the BLS. The average age in all industries in 1996 was 38.

162. For the last 36 years, employment has been increasing more rapidly for most other industries than for construction. The total number of people on public and private sector payrolls has grown 2.2 times, compared to an increase of about 1.8 times in construction. Three goods-producing non-agricultural industries – mining, construction and manufacturing – have grown only 1.2 times since 1960, while transportation, trade and finance have grown 2.8 times over the same period.

163. The length of time that a construction worker stays with a construction employer is related to union membership. In 1993, median job tenure reported by union members was five years, two-thirds greater than the median tenure reported by non-union workers.

164. Unemployment is persistently high for construction workers, partly because of the intermittent nature of construction work. In the 1982 recession, unemployment exceeded 20% in construction. Even in boom times, construction unemployment is consistently higher than total unemployment. In 1997, unemployment was roughly 9% for construction and 5% for all industries.

165. For the last two decades, the proportion of the construction workforce who are self-employed has been increasing and in the mid-1990s was 19%, 34% higher than 25 years earlier. The construction occupation with the largest proportion of self-employed workers is Carpet Layer.

166. There are various alternative work agreements in the construction economy, for example, independent contractors, independent consultants, freelance workers, on-call workers, workers supplied by temporary help agencies, workers on contract signed to customer worksites, etc. The pervasiveness of these alternative work arrangements and their effect on construction performance is not known.

167. Construction wages have not kept up with price inflation. In real terms, they have declined about 25% since 1973.

168. Construction wages are below the average for manufacturing by about $1.00 per hour.

169. In BLS surveys, benefits are defined to include paid leave, supplemental pay, insurance benefits, retirement savings benefits, legally required benefits and other benefits such as severance pay and supplemental unemployment insurance.

170. In wage levels, union members in construction often have a substantial advantage over non-members, but wage rates can vary broadly by locality.

171. Taking into account variations for occupation, education, age, gender and experience, the union wage is estimated to be about 33% higher than a non-union wage, varying by region.

172. The union affect on wages may reflect higher productivity and training levels in the union sector. However that conclusion cannot be measured by the BLS surveys.

173. Amongst the trades, the wage rates, in descending order are Electrical, Ironworker, Plumber, Sheet Metal, Welder, Bricklayer/Mason, Operating Engineer, Carpenter, Drywall Installer, Truck Driver, Painter and Labourer/Helper.

174. The average hours for construction workers are 39.7 per week. About 26% of construction workers routinely work more than 40 hours per week.

175. Overtime is often caused by a lack of proper planning, unrealistic work schedules or change-orders (orders to redo work).

176. A study by the National Electrical Contractors Association (NECA) in 1989 indicated certain overtime schedules (seven days per week or 12 hours per day) can hurt productivity and result in lower productivity per hour than the normal 40-hour workweek.

177. Construction workers are less likely than workers in most other industries to be eligible for or participate in an employer or union-provided pension plans.

178. In the U.S., joint union/management training and apprenticeship programs are significant providers of skilled labour. About 85% of graduating apprentices in 1989 graduated from union apprenticeship programs, while only 15% graduated from non-union training and apprenticeship programs.

179. Construction industries are expected to grow 9% in the decade 1996-2006.

180. Employment in most of the special trades will likely grow faster than in the entire industry because of declining demand in general contracting and growing demand for renovation, maintenance, new industrial plants and new institutions such as hospitals and schools.

181. Construction of institutions, such as hospitals, is expected to increase because of the aging of the population and the increasing use of high technology medical treatment.

182. Construction of schools will also increase to accommodate the children of the baby-boom generation.

183. The growth in construction employment and the 20-year decline in real wages compared with other industries may have contributed to a skilled labour shortage in the industry.

Appendix 7
Project Consulting Team

A three-member inter-disciplinary consulting team was hired by the Ontario Construction Secretariat (OCS) to conduct this study.

The consulting team was chaired by **Tim Armstrong**, former Chair of the Ontario Labour Relations Board and former Deputy Minister of Labour. The other team members included **Arthur Donner**, a Labour Economist who authored a study on working hours under the Employment Standards Act and **Dr. Stefan Dupré**, a political scientist with extensive involvement in public policy issues. Dr. Dupré also chaired the Royal Commission on Asbestos.