

CLAC OPEN LETTER

Not credible? Not so fast!

Labour monopolies in municipalities are an unfortunate consequence of a loophole in the *Ontario Labour Relations Act*—not the result of a planned or specific public policy aim. The effects of these monopolies include a limited number of bidders on city projects, increased construction costs, work inefficiencies, decreased productivity, and a more limited pool of skilled labourers in a time of a skilled labour shortage.

Bill 66 has given Toronto, Hamilton, Sault Ste. Marie, and the Region of Waterloo the chance to be rid of union monopolies by granting these entities “nonconstruction employer” status. By doing nothing, these municipalities will achieve the same status as all of the other 440 municipalities in the province, thereby ending the subcontracting restrictions that limit competitive, fair, and open tendering practices.

This is not an anti-union initiative but a fair solution that gives equal consideration to all trained, qualified, skilled workers.

A recent paper by the Ontario Construction Secretariat (OCS), entitled “Just Not Credible,” sets out to provide reasoned justification for the continuation of the labour law peculiarity that has created these monopolies. In doing so, the OCS demonstrates just how eager the benefactors of restricted tendering are to preserve their privileged position.

No one that has a monopoly position has ever ceded their position eagerly. The many unsubstantiated claims and unfounded assertions within the OCS paper serve to make clear just how much is at stake for these affected construction craft unions.

There are three main points the OCS argues to maintain their monopoly: cost, safety, and access to a robust and diverse labour pool.

1. Savings from Competition – Closed versus Open Tendering

On cost, the OCS argues that the effect of competition will be restricted to reduced wages, and that any savings would be inconsequential at best and at worst would result in a significant downward driver on worker salaries. What they fail to contend with is the simple supply and demand economics of construction tendering and the impact of reduced competition.

The OCS paper ignores or discredits numerous studies, and instead gives credibility to a dated Toronto city staff report that only analyzed the wage differential between prevailing union rates and the city’s published fair wage policy wage rates. The OCS gives no credence to the body of



work that demonstrates how increased competition drives better pricing without an impact on wages.

A look at fresh data on four recent ICI jobs in Toronto shows that the city currently receives only 1 to 2 compliant bids on major projects, and that the bid range is as much as 22-33 percent from contractors using the same labour costs and similar labour pools. Therefore, we stand by arms length and expert research that claims that even with fair wage policies, the city can achieve 8-25 percent cost savings on its ICI construction budget.

Further, it shows that the City of Toronto appears to have a recent problem with a lack of bidders on projects, which is forcing the city to pay significantly more for projects than could be achieved with an increased number of bidders. These bidders would also represent a variety of labour models (traditional craft-based union, alternative union, and nonunion), rather than a single, traditional craft model.

What are the productivity benefits the city will see with different labour models? For starters, let's look at how work is organized. A CLAC general contractor is not subject to 9 or 12 or 16 different trade agreements, but instead works with its employees under one, multi-trade agreement. As a result, a CLAC contractor doesn't receive a grievance when the skilled labourer installs a concrete form, or when the operating engineer unplugs the electrician's extension cord.

This kind of collaboration significantly alters the organization of work and results in a more efficient and more cooperative labour force. The kinds of labour turf fights that occur when multiple craft unions are vying to protect their work (known as jurisdictional disputes) are costly in staff and legal time due to litigation. These jurisdictional costs far outweigh any additional staff time required to administer and enforce fair wages in an openly competitive bidding environment.

Additional efficiencies are available to CLAC contractors (and others) because they can ask their employees to work 40 or 44 hours in a week, depending on the collective agreement the contractor has with its workers.

We cannot accurately forecast what the savings will be from an increased number of bidders that draw on distinct types of labour pools. However, according to research by the think tank Cardus, the cumulative savings of open tendering range from 8-25 percent. With over \$600 million in ICI projects tendered annually by the city, this amounts to annual capital cost reduction of \$48-150 million dollars per year.

2. Safety

In its submission, the OCS cites a 2015 study that it commissioned that demonstrates that "union" firms performing ICI work are safer, with fewer lost-time injuries and lower critical injury rates than nonunion firms.

Accepted at face value, the study only demonstrates that union firms are safer than nonunion firms. No commentary is offered on the record of other and alternative unions.

As support for its assertions that union membership equates to safety, the OCS claims that its affiliate unions take in contributions of \$40 million annually for training trust funds. It claims

elsewhere that it represents “over 100,000 workers,” which means that the craft unions that the OCS speaks for spend approximately \$267 per year, per worker annually.

While impressive, CLAC contractors can demonstrate similar investment, to similar effect. CLAC’s affiliated contractors contribute 20¢ per hour worked by CLAC members, and this amounts to a \$2 million annual budget. While no provincial or federal subsidies are received by CLAC’s training centres, this amounts to an approximate \$335 spent annually per member on safety training, skills development, and apprenticeship support.

It would seem that if the safety effect of union membership and the investment of training dollars per member were good prerequisites for access to city projects, then all unions should receive equal consideration. This is not the current reality.

In addition, municipalities can establish a robust and extensive set of parameters as part of the prequalification and tender award process. The Certificate of Recognition (COR™) occupational health and safety accreditation program verifies whether a fully implemented health and safety program meets national standards.

An increasing number of contractors are COR™ certified, but this is not the only means for them to demonstrate a strong safety culture. All municipalities, school boards, and public bodies set out requirements for credentials, compliance, and prior experience and must enforce them—regardless of whether they allow open competition or not.

However, if additional resources are needed for enforcement, we submit that the costs will be more than offset by the savings municipalities will receive from not having to analyze jurisdictions with tendering or having to handle jurisdictional disputes. A union membership card, while valuable, is not an adequate guarantee that a general or trades contractor has the systems and supervision in place necessary to ensure a truly safe and healthy workplace.

3. Access to Labour

Finally, the OCS paper argues—without evidence—that open tendering will lead to fewer young people being employed in apprenticeships and a weakening of equity programs that provide opportunities for construction careers. We fully support having a diverse and inclusive workforce and have been a partner with Indigenous and at-risk youth for many years.

While we agree that unions—ours and theirs—are typically the sponsors of diversity initiatives, open procurement does not prevent the city from creating additional social conditions for all contractors that support beneficial social and community objectives.

Further, labour force projections for the next decade suggest that Ontario needs to attract 103,900 new entrants to the skilled construction trades. That means that every employer and every purchaser will face, in very real ways, a skilled worker shortage.

With predictions of a looming massive skills shortage, it defies logic that buyers would choose to further restrict themselves from fully accessing the available workforce by limiting prospective workers to those who carry a particular union membership card. In doing so, they exclude 70 percent of workers who don’t belong to that union.

If the cities, Toronto school board, and public agencies like Toronto Community Housing do make the responsible choice to open tendering to competition from all qualified contractors, we would welcome the opportunity to collaborate with them and the other union and nonunion organizations on how we can set measurable targets to support apprenticeship and the inclusion of under-represented groups.

Conclusion

We are the underdog in this situation. We are fighting for fairness for all Ontarians against the most powerful unions in the country who are determined to keep their monopolies intact. Over the past two months, we have had countless meetings on this topic with councillors and city staff. They've asked us, how can we fight on this issue when we're up against such powerful connected groups?

Our answer has been simple: we are on the right side of this issue, not only for our members, but also for all businesses and for all taxpayers who fund our municipalities, school boards, and public agencies.

Sincerely,



Ian DeWaard
Provincial Director