

Hamilton-Brantford Building & Construction Trades Council

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Mike Zegarac
GM, Finance & Corporate Services
City of Hamilton
Hamilton City Hall
71 Main Street West
Hamilton, ON L8P 4Y5

Dear Mr. Zegarac:

Re: Collective Bargaining and Prevailing Wages in the Industrial, Commercial and Institutional Sector of the Construction Industry

I am writing on behalf of the Hamilton - Brantford Building & Construction Trades Council (HBBT) to provide you and your colleagues with information concerning provincial collective bargaining in the industrial, commercial and institutional sector (ICI) of Ontario's construction industry. The HBBT hopes that this letter will assist the City in the ongoing fair wage policy review and particularly, in ensuring that the amended fair wage policy accurately reflects prevailing wages in the construction industry and provides protection for all stakeholders in municipal construction.

Background

At the last meeting of the Fair Wage Committee, you requested information regarding the provincial ICI collective bargaining regime. This is a complex subject matter. To make this letter of greatest assistance, I have broken it into 3 parts:

1. The History and Key Practicalities of Provincial ICI Collective Bargaining
2. Why the provincial ICI wage rates are the prevailing wage

3. Why an accurate fair wage policy is important for construction stakeholders

1. The History and Key Practicalities of Provincial ICI Collective Bargaining

History

From the outside, the provincial ICI collective bargaining system looks like a complex labyrinth of industry relationships and legal rules that easily escapes practical understanding. To fully understand this system, it is key to understand its history, and the problems it was designed to solve.

Several expert inquiries have recognized four unique business characteristics in the construction industry which influence its labour relations, these are:^{1;2}

- **Mobility** – Construction employees do not work at fixed locations (such as factories).
- **Specialization** – Construction industry workforces are organized by craft (i.e. electricians only perform the electrical portion of a project).
- **Instability of Employment** – Construction employees are laid off at the end of each project and will normally work for several different employers during their careers.
- **Bid Competition and Sub-Contracting** – Construction work is awarded through competitive bidding processes which favour the lowest bidder.

These unique features make traditional collective bargaining, which is designed for employees who obtain workplace seniority with a single, fixed, long-term employer ill-suited to the construction industry.

From the side of the unions, these unique characteristics made it difficult to meaningfully organize. It is entirely ineffective to organize all of the employees on a single construction project, when that project is likely to end in the near future, and all the employees will be laid off. Moreover, because of the sub-contracting structure of the industry, there may be dozens of different employers involved in a single project. This means that unions would have to expend resources organizing all of them if they were to completely unionize a project – which would then end closely thereafter. This made the traditional single location, single employer, assumptions entirely ineffectual in the construction industry.

¹ *Report of the Industrial Inquiry Commission into Bargaining Patterns in the Construction Industry*, (Toronto: Ontario Ministry of Labour, 1976) (Donald E Franks) [Franks] at 2

² *Royal Commission on Labour-Management Relations in the Construction Industry*, (Toronto: Ontario Government, 1962)

On the employers' side, the strategies unions adopted in attempting to organize the construction industry created a variety of labour relations issues. Chief among them was construction unions commencing a strike against one employer, getting a favourable settlement from them, then striking another contractor, and using the favourable settlement from the first contractor to get an even higher rate with the second (this is known as Leapfrogging).³ Leapfrogging resulted in different contractors being subject to different wage costs simultaneously and a serious fragmentation of labour relations. This gave some contractors unfair competitive bidding advantages over others and undermined the level playing field.

Between 1962 and 1970, the Ontario government introduced several amendments to the *Labour Relations Act* (the "Act") targeted at addressing these issues. The most important of these was introducing a system of accreditation. Accreditation systems replaced fragmented single-employer bargaining with a system of multi-employer bargaining which allowed employers to band together into employer associations to bargain single collective agreements with trade unions, typically covering the work of a single trade in a particular geographic area.

Accreditation allowed multiple employers to negotiate a single-rate covering all applicable work with the union simultaneously – thus ensuring a level playing field. Critical to the function of this system was the prevention of single-employer bargaining. As such, employer's bound to accredited agreements cannot negotiate their own individual agreement with the union. This ensures all employers are subject to the same prevailing wage rates when they bid for work.

Despite the introduction of accreditation, labour relations in the ICI sector remained particularly problematic.⁴ In 1977, the provincial government introduced further amendments to the *Act* to provide a mechanism to address these concerns. This is the system which we now refer to as provincial ICI collective bargaining.

The 1977 amendments consolidated ICI sector collective bargaining on a province-wide basis by trade. The new scheme required employers and trade unions to seek ministerial designation for provincial collective bargaining agents who had exclusive bargaining rights for the particular trade they represent. For example, the Plumbers Union is represented at provincial bargaining by the Ontario Pipe Trades Council and the employers bound to the Plumbers Union are represented by the Plumber/Piperfitter Employer Bargaining Agency. Under this system, there can only be one employer and employee bargaining agent for each trade.

The new system prohibited individual employer bargaining and the creation of more than one collective agreement in the ICI sector for each trade. Making it generally impossible for unions or

³ *Accreditation in the Construction Industry: Five Approaches to Countervailing Employer Power*, (Montreal: Relations industrielles / Industrial Relations, 28(3), 565–582, 1973) (Joseph B. Rose) at 566

⁴ Franks at 28-33.

employers to fragment collective bargaining in the ICI sector because only a single, province-wide, collective agreement is permitted.

The outcome of the accreditation and provincial ICI bargaining mechanism has been the establishment of a system of “pattern bargaining” in the construction industry. This system helps ensure that all unionized contractors are subject to the same prevailing cost of labour within the sector they are working in. Crucially, the system also provides employers with a three-year level playing field with respect to the cost of labour when bidding work. This provides for significant labour relations stability by preventing Leapfrogging and allows unionized employers to know that they will not be undercut by their peers who can achieve better deals with the same union.

Unfortunately, there are problematic exceptions to the provincial ICI collective bargaining system. Certain employee organizations are not designated employee bargaining agents. As a result, these organizations are still permitted to bargain on a single employer basis in the ICI sector, can have multiple collective agreements pertaining to work in the ICI sector and can represent multi-trade, “all employee” bargaining units the sector. The Ontario Labour Relations Board has recognized that the existence of these employee organizations creates a significant risk for the re-emergence of Leapfrogging in the ICI sector and undermining the system of pattern bargaining protected by the *Act*.⁵ This directly undermines the capability of parties to the provincial ICI collective agreement to establish and enforce a prevailing wage rate, and thereby a level playing field with stable labour relations, in the ICI sector.

Key Practicalities

Although each provincial ICI collective agreement is unique, there are some common features. Two key ones are:

- Individual appendices which deal with the terms and conditions of employment for individuals performing certain types of work within a trade. For example, the Carpenters provincial ICI collective agreement contains individual appendices for general carpentry, drywall installation, caulking and flooring. These appendices establish prevailing wage rates for common types of work in reflection of the unique nature of each subsector.
- Specific wage and employment terms for specific geographic areas represented by local unions.

During collective bargaining, each designated bargaining agent represents a variety of stakeholders:

- Employer bargaining agents must ensure that the agreement they reach is satisfactory to the contractors they represent. In some cases, these contractors are represented at bargaining by

⁵ *International Union of Bricklayers and Allied Craftsmen, Locals 6, 7 and 25 v. Brick and Allied Craft Union of Canada*, 2004 CanLII 23568 (ON LRB) at paras. 224-225

their own industry associations. For example, masonry contractors are represented by the Ontario Masonry Contractors Association during collective bargaining with the Labourers' Union.

- Employee bargaining agents (i.e. unions) have to ensure that the agreement they reach is satisfactory to their members. These members are represented by their local unions, who provide information on the prevailing market circumstances and expectations for their respective geographic jurisdictions as well as ensure their local interests are protected during bargaining.

Labour action and disruptions have decreased significantly since the introduction of the provincial ICI collective bargaining regime. In fact, the strike which occurred during the 2022 round of collective bargaining was the first in 34 years for some trades. This is because the comprehensive bargaining scheme described above provides employee and employer parties with the information they need to make rational decisions regarding their collective bargaining positions, which they can justify to their various stakeholders, who accept them as the basis for prevailing market labour rates and employment conditions. This is the harmony achieved by the provincial ICI collective bargaining regime.

2. Why the Provincial ICI Wage Rates are the prevailing rate

The historical challenges and legal solutions outlined above have produced a system which accurately identifies the prevailing wage rates and enforces a level-playing field. There are several reasons for this:

i. Stakeholder Aggregation

Provincial ICI collective bargaining has eliminated the fractional collective bargaining process. Parties to provincial ICI collective agreements are legislatively required to negotiate a single 3-year agreement, covering all of a particular trades work across the entire province. This allows the parties to assess all of the factors which affect wage rates in the entire province (geographic area, market conditions and industrial circumstances) at once and determine what the appropriate prevailing wage for the next 3 years should be.

Moreover, as the parties to provincial ICI collective agreements have increased in sophistication, the benefits of stakeholder aggregation have grown. As noted above, many provincial ICI collective agreements involve negotiation with industry sub-groups (such as those representing drywall) and local unions who are responsible for specific geographic areas. The specialized geographic and market knowledge brought to the table by these groups contributes to a highly educated bargaining process, which considers variable cost of living, the vigor of the ICI construction market in each area, the anticipated market strength for various sub-sectors and the health of the construction industry as a

whole, at one bargaining table. The product of this is an accurate prevailing wage agreement which accounts for every key variable that contributes to wage costs.

There is no other bargaining system in Ontario's economy which provides for such a comprehensive, industry-wide, negotiating setting. Employee organizations that operate outside of this regime, and therefore bargain in a fractionalized single-employer manner, do not have access to anywhere near the same level of information on market conditions and expectations. Instead, they bargain based on each individual employers' circumstances. Such a system produces a far less accurate prevailing wage because it only focuses on the interests of a single employer. These are the exact issues which drove the introduction of the provincial ICI collective bargaining system in the first place.

ii. Market Share

The second reason why the provincial ICI wage rates reflect the prevailing rate is the market share of the unions involved in the regime. Construction is the only private-sector industry which has not fallen victim to the steady decline in union density in Canada since the 1990s. 29.4% of Ontario's construction employees are unionized. This is more than double the province's overall private sector union density (13%) and even higher than the overall union density in Ontario (26.7%), which includes the highly unionized public sector.⁶ Based on the most recent estimations of the number of people working in Ontario's construction industry, this means that around 170,000 workers are represented by Ontario's construction unions – the overwhelming majority of which are engaged in the provincial ICI collective bargaining regime.⁷

Additionally, a significant portion of construction in Ontario occurs in the ICI sector and the proportion of this share continues to grow. Practically every piece of infrastructure, whether it is a mall, an airport, a hospital or a factory, is within the ICI sector. As a result, the total value of non-residential building permits in Ontario increased in the third quarter of 2023 by 29.5% to reach \$5.8 billion.⁸ Work in ICI construction is particularly concentrated in the Hamilton area, where employment rates are expected to grow by 15% through 2029.⁹

Union density is even more significant when the companies which dominate ICI sector construction are assessed. This is because most medium to large scale ICI construction (and certainly public sector) projects are performed by a small group of highly unionized contractors. This includes firms like Aecon, Bird Construction, EllisDon, PCL, Pomerleau, and Eastern Construction. Although there are non-union general contractors working in the ICI sector, the largest ones in the sector have highly unionized

⁶ Statistics Canada, Union coverage by industry, annual (x 1,000), Table: 14-10-0070-01 (Ottawa: Statistics Canada, 2022)), Statistics calculated based on numbers for 2021

⁷ Statistics Canada, Construction (NAICS 23): Ontario, 2023-2025 (Ottawa: Statistics Canada, 2022)

⁸ *Ibid.*

⁹ Buildforce Canada, Construction & Maintenance Industry Ontario Highlights 2024-2033 (Ottawa: Buildforce Canada, March 2024) (Buildforce Canada) [Ontario Highlights 2024-2033] at 10

workforces. As a result, the percentage of unionized employees working the ICI sector (which represents a significant portion of all construction performed) is likely much higher than 29.4%.

The cumulative effect of this significant market share is that the provincial ICI collective agreements contain a prevailing wage rate which applies to at least one-third (and likely far greater) of the employees working in the ICI sector of the construction industry, which is, itself, the third largest sector of the construction industry, making-up 17% of all construction employment in Ontario in 2023 (for context, residential construction makes-up 51% of employment and the second largest sector, civil engineering, makes up 21%).¹⁰

In addition to these hard measures of the effectiveness of the provincial bargaining system, there are several overlooked costs which are integrated into the prevailing ICI wage rates. These are:

iii. Training

The cost of employee training is included in the wage package of provincial ICI collective agreements. All provincial ICI collective agreements have hourly remittances for training costs which are contributed to jointly managed union-management trust funds. These funds provide training and apprenticeships for members so that they are job ready.

While the factor of shared training costs may not seem relevant to the issue of determining the appropriate prevailing wage, it is important to remember that training costs individual employers' money. In a non-union setting, this comes in the form of costs which suppress employee wages (because employers have less to spend on wages as they spend money on training costs) and the efficiency costs of having under skilled employees on the job. Less skilled employees mean work takes longer, work taking longer costs employers more money – therefore, investing in training plays a central role in regulating overall wage costs.

Ontario's construction unions and their employer partners invested a combined \$471.4 million dollars into training and training facilities in 2019.¹¹ These are investments which each individual employer benefits from by a far greater degree than their own individual contributions, thereby putting more money on the table for employee wages. Therefore, the wage rates in the provincial ICI collective agreements, which internalize and distribute training costs, help provide an accurate reflection of the broader prevailing wage.

¹⁰ Ontario Highlights 2024-2033 at 2

¹¹ *Training Investment in Ontario's Construction Industry* (Etobicoke: Ontario Construction Secretariat, February 2022) (Prism Economics & Analysis) at 10-11

iv. Safety

The second hidden cost contained in the provincial ICI wage rates is the cost of safety. Lost-time injuries in construction are concerningly prevalent. In 2022-2023, nearly one-fifth of the total lost-time payments made by the WSIB were related to construction.¹²

This significant workplace injury cost impacts both union and non-union construction employers because it results in higher insurance premiums and the loss of key skilled workers for extended periods in a tight labour market (in a 2024 survey, union and non-union ICI contractors overwhelmingly ranked the limited availability of skilled labour as their top operational concern).¹³ However, unionized construction workplaces have been found to have a 31% lower incidence of lost-time injury claims in the ICI sector.¹⁴ This significant reduction is partly explained by the high-level of training which unionized construction employees have.¹⁵

Therefore, as with training costs, the financial resources and opportunity cost which non-union contractors face as a result of safety issues is money that could go into employees' pockets. In the unionized environment much of this money is available for contribution to employee wages because it is not being spent on increased insurance premiums or hiring additional labour to make-up for the loss of skilled employees to injury. This is another hidden expense which is reflected in the provincial ICI wage rates.

v. The Underground Economy

A final hidden expense which is included in the provincial ICI wage rates is the cost of the underground economy in Ontario's construction industry. Between 2013-2017, the provincial government lost an estimated \$1.8-\$3.1 billion annually to underground activities in the construction industry.¹⁶ The principal driver of these losses is the improper misclassification of employees as independent contractors.

Employee misclassification makes the cost of labour substantially cheaper for non-compliant employers in the construction industry. It removes the burden of WSIB costs, taxation and legislative wage premiums, resulting in wage rates which do not accurately reflect the true prevailing cost of labour. These activities are particularly prevalent in the residential sector (which employs the bulk of

¹² Workplace Safety Insurance Board, Injury characteristics - Schedule 1 and 2 (Toronto: Government of Ontario)

¹³ 2024 Contractor Survey (Etobicoke: Ontario Construction Secretariat, 2024) [2024 Contractor Survey] at 6

¹⁴ *Updating a study of the union effect on safety in the ICI construction sector* (Toronto: Institute for Work & Health, January 2021) (Lynda Robson, Victoria Landsman, Desiree Latour-Villamil, Hyunmi Lee and Cameron Mustard) at 3

¹⁵ *Ibid.* at 18-19

¹⁶ *The Underground Economy in Ontario's Construction Industry: Estimates of the Revenue Losses to Governments* (Etobicoke: Ontario Construction Secretariat: May 2019) (Prepared by Prism Economics and Analysis) at 4

workers in Ontario's construction industry) and can therefore have the effect of inaccurately skewing the true cost of labour.¹⁷

There is little opportunity for this kind of mischief in the provincial ICI bargaining regime. Wage rates are regulated by collective agreements and strictly enforced by unions. This means that the prevailing rates contained in collective agreements are an accurate reflection of the true cost of doing business for contractors.

vi. The Outcome

Based on all of these factors, the wage rates contained in provincial ICI collective agreements are the most accurate approximation of the true prevailing cost of construction labour in Ontario. These rates are the product of collective bargaining between a significant cross-section of industry stakeholders, who represent a substantial proportion of the employers and employees in the construction industry and consider the variety of hidden employer costs associated with regulated construction operations. There is no other rate which fully reflects these variables in a single place. Therefore, the results of this process, including the hidden costs related to training and safety which are encompassed in the provincial ICI rates, ought to be given overwhelming weight in the determination of a proper prevailing wage.

3. Why an accurate fair wage policy is important for construction stakeholders

There are several reasons why having a fair wage policy which accurately reflects the prevailing wage rate is beneficial for cities, workers, employers and the economy as a whole.

First, is the sheer prevalence of public sector construction projects. The most recent available data shows that, in Ontario, around 30% of spending on new construction is from the public sector.¹⁸ This makes governments the single largest purchaser of construction in Ontario. This fact has a significant impact on the prevailing employment terms and conditions in the construction labour market. When public sector purchasers of construction require high standards of training, health and safety, wage rates and regulatory compliance, it is difficult for employers to maintain a lower standard on private sector jobs. Fair wage policies were first introduced over 100 years ago in explicit recognition of the significant influence public sector employment standards have across the economy.

Second, accurate fair wage policies prevent contractors from engaging in a race to the bottom on employee wages. The prevalence and lucrative nature of public sector construction and the fact that bidding for construction work is based entirely on price means that contractors are extremely incentivized to reduce the cost of labour and thereby the cost of their bid for work. By forcing

¹⁷ *Ibid.* at 17

¹⁸ Statistics Canada, Public and private investment, summary by province and territory (x 1,000,000) (Table 34-10-0042-01)

contractors to pay a standardized wage rate, this practice is eliminated, protecting workers from harmful exploitation.

Encouraging a race to the bottom on wage rates also has compounding negative effects down the subcontracting chain. As general contractors race to the bottom on bids, they are forced to seek better offers from subcontractors to make projects viable. Those subcontractors, in turn, either walk-away or lower their bid. This results in bid shopping, wherein a general contractor seeks lower bids from several subcontractors, who are themselves forced to engage in a further race to the bottom to beat competitor subcontractors. This compounds the harm of ineffective fair wage policies down the subcontracting chain. Unfortunately, this means that the more vulnerable workers further down the subcontracting chain will absorb the worst outcomes of allowing a race to the bottom.

Third, fair wage policies play a key role in protecting the competitiveness of employers and establishing a level playing field. Establishing a prevailing labour cost creates a level playing field in bid competitions for government work. By taking away the race to the bottom as the primary mode of competition, fair wage policies encourage contractors to compete by becoming more innovative and efficient, instead of simply saving money on wages. This results in faster and higher quality construction for taxpayers, without negatively affecting the public purse.

The importance of the level playing field established by fair wage policies is particularly clear with respect to public sector projects. As practically all public sector construction projects are significant undertakings, there is only a small group of contractors able to perform the work. Many of these contractors are already bound to several provincial ICI agreements. If fair wage standards lag behind the wages these industry leading contractors pay, they are priced out of the work from the get-go. Unfortunately, the City of Hamilton Policy is a particularly prevalent example of this issue as it lags behind provincial ICI wage rates by six years. This means that large-scale, effective, contractors currently must offset wage costs from 2018 (which is before the pandemic and the last 3 years of extreme price inflation across the economy) while they are paying 2024 rates when they bid work for the City of Hamilton. This makes obtaining such work practically impossible.

Fourth, is the importance of investment in apprenticeships. Some construction industry employers invest in apprentice programs for employees, while others do not. Without appropriate fair wage policies which reflect the prevailing ICI wage rate, contractors who refuse to make such an investment have a clear unfair advantage over those that do. Some jurisdictions have previously recognized the importance of apprenticeship training and introduced fair wage legislation which requires that workers employed on public construction projects be either certified journeypersons or apprentices in recognition of the fact that apprenticeships play a critical role in the development of employable

trades skills.¹⁹ It is unreasonable for governments to support the expansion of the apprenticeship training system while giving a competitive advantage on public sector work to employers who refuse to invest in such a system. This is another area where the current City of Hamilton Policy leaves gaps that ought to be addressed.

Many of the benefits brought by fair wage policies are challenged by the entirely inaccurate (but nevertheless unfortunately common) misconception that implementing a fair wage policy which accurately reflects prevailing wages makes construction more expensive. When all variables (productivity, safety, training) are taken into account, this is simply not the case. One study concluded, in the absence of other factors, that fair wage policies which provide for parity with union wage rates might increase the cost of new construction by 4.8%.²⁰ However, this number does not take into account the productivity and safety benefits which are gained when skilled labour is employed as a result of fair wage policies.

Construction productivity is a key factor in the overall cost of projects. It is common sense that the longer a project takes and the more deficiencies which must be remediated, the more expensive the project will be. Well trained, skilled trades people are more likely to be employed by employers who pay the appropriate prevailing wage, even if they are not unionized. These trades people are more efficient than the underpaid and undertrained employees of the type of malfeasant contractors inadequate fair wage policies attract. In fact, one study found that non-union crews tend to have a greater proportion of helpers and semi-skilled labourers than union crews because of the training and skill gap which often exists between the two groups.²¹ Therefore, more efficient skilled trades people who tend to be employed by good employers willing to pay them fairly significantly offset the wage premiums required to employ them by finishing projects more quickly and without the need for additional support.

As such, it is clear that claims that double-digit increases in construction costs may result from effective fair wage policies which establish parity with relevant union rates are simply inaccurate.²² Even without taking into account the productivity gains which are achieved with such policies, there is no empirical evidence to support such exaggerated claims of cost increase.²³ In any event, a 2024 survey of both union and non-union ICI-sector contractors found that the cost of labour ranked third behind lack of skilled labour and material costs as a top business concern.²⁴ The cost of labour is not all that goes into

¹⁹ *Impact of Fair Wage Policies on the Construction Industry* (Etobicoke: Ontario Construction Secretariat: June 2006) (John O'Grady, T.E. Armstrong & Richard P. Chaykowski) [O'Grady et al.] at 13-14

²⁰ *Ibid.* at 37

²¹ *Union and Open-Shop Construction: Compensation, Work Practices and Labor Markets.* (1980) Lexington, MA: D.C. Heath (Bourdon, C. and R. Levitt)

²² O'Grady et al. at 48

²³ *Ibid.*

²⁴ 2024 Contractor Survey at 6

operating a construction business and it is therefore not to be viewed as a fatal variable in the implementation of a fair wage policy which holds parity with provincial ICI wage rates.

All of these factors demonstrate that a fair wage policy which maintains parity with the prevailing provincial ICI wage rate benefits all public sector construction stakeholders. A competitive playing field is maintained which encourages cost lowering through innovation and efficient project management instead of wage suppression and which has an insignificant effect on the overall cost of construction projects. It also supports apprenticeship and skills development. These benefits have been felt in Toronto (and other Ontario municipalities) for decades and it is time for Hamilton, which is experiencing a surge in public sector ICI construction, to also benefit.

Conclusion

I hope this letter has provided you with the information you need to understand provincial ICI collective bargaining and its effectiveness in establishing accurate prevailing wages. It is the only system of its kind in Ontario and the collective agreements it produces are the product of a complex conglomeration of interests and a reflection of the true cost of labour in the construction industry. It aligns precisely with the purposes of fair wage policies in creating a level playing field and ensuring employers and employees receive protection they need, and buyers of construction the results they deserve.