



April 4, 2013

Mayor Joe Fontana
City of London,
214-300 Dufferin Avenue
C/O City Hall
London Ontario N6B 1Z2

OFFICE OF THE
MAYOR

RECEIVED APR 12 2013
Referred to City Clerk
Subsequent Referrals
 For Action For Report
 For Information For File

Dear Mayor Fontana,

A situation has recently come to our attention in the Regional Municipality of Waterloo that could threaten the ability of that municipality to openly tender municipal projects to all eligible contractors in the Region. The situation impacting the Region of Waterloo is not unique. A similar situation has already happened in Hamilton and could be replicated in other municipalities throughout the province.

If your municipality is targeted in the future you will likely be classified as a construction employer and subject to strict contracting out restrictions for municipal projects. These contracting out restrictions can increase the costs on large infrastructure projects by up to 40% and ban between 70-90% of all union and non-union contractors and workers from participating in taxpayer funded projects.


The Christian Labour Association of Canada (CLAC) and the Progressive Contractors Association of Canada (PCA) are currently advocating for a change to the existing legislation. The change we are seeking would ensure municipalities and other public employers are not forced to adopt the province wide agreement and the restrictive contracting out restrictions if they are organized by a construction union. It is a solution that respects the constitutional rights of individual workers; ensures fairness and participation rights for all workers and contractors regardless of private affiliation; and, prevents construction monopolies that drive up costs for taxpayers.

We are bringing this issue to your attention to raise awareness and to gain your support in calling on the province to change the legislation. For your consideration, we have drafted a sample resolution that could be tabled at a council meeting in the near future. If the resolution is passed we ask that you forward a copy to the Minister of Labour and the Premier of Ontario. The Province needs to hear from all impacted parties that a legislative change is needed to ensure procurement in Ontario remains fair and open and to protect our hard earned tax dollars.

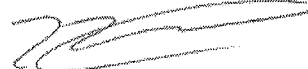
More information about the case in the Region of Waterloo and the current legislative framework has been provided in the attached documents. If you have any further questions please do not hesitate to contact us. We will be in touch to follow up in the next couple weeks.

Thank you for your consideration of this important matter.

Sincerely,



Sean Reid
Director, Federal and Ontario
Progressive Contractors Association of Canada
289-335-1181 or sreid@pcac.ca



Ian DeWaard
Regional Director
Christian Labour Association of Canada
519-653-3002 or idewaard@clac.ca

About PCA

The PCA is the voice of progressive unionized employers in Canada's construction industry. PCA member companies employ more than 25,000 skilled construction workers across Canada, represented primarily by the Christian Labour Association of Canada (CLAC). Their member companies are responsible for 40% of energy and natural resource construction projects in British Columbia and in Alberta and are leaders in infrastructure construction across Canada.
Mailing Address: 1100 South Service Road, Suite 220, Stoney Creek, Ontario, L8E 0C5

About CLAC

CLAC is an independent Canadian labour union representing over 55,000 workers in a wide range of sectors — construction, health care, retail, service, transportation, manufacturing, and others. Based on principles that promote the values of respect, dignity, fairness, and integrity, CLAC's approach to labour relations stresses membership advocacy, cooperation, and the long term interests of the workplace community. CLAC provides training support for its members to acquire, maintain and upgrade their skills. Courses are designed to keep members up to date with legislative requirements and codes, as well as provide them with applicable health and safety training.

Mailing Address: 64 Saltsman Drive,, Preston, Ontario, N3H 4R7

Open Tendering Overview

The Region of Waterloo Issue

Late last year two workers erecting a plastic garden shed on a Saturday were organized by the Carpenters Union and a certification bid was filed with the Ontario Labour Relations Board. The Region of Waterloo is currently fighting the certification attempt but if they are unsuccessful at the Labour Relations Board the municipality will be forced to adopt the Carpenter's province wide collective agreement which contains strict contracting out language. The contracting out restrictions will effectively create a labour monopoly.

For the Region of Waterloo, or any other public employer in a similar situation, there are drastic cost and fairness implications associated with closed tendering on large projects. Closed tendering can escalate the costs of projects by up to 40% and reduce the number of contractors who can bid and work on projects by up to 90%. In a fiscal environment where dollars are forced to stretch farther than before and a labour market where elected officials are working hard to create opportunities, it is not in the interest of the public to drive up costs with no value add and reduce opportunities for local individuals and companies.

The Legislative Problem

An employer, who is certified as a construction employer under the Labour Relations Act (LRA), is bound to a provincial-wide collective agreement. Many of these provincial agreements, the Carpenters agreement specifically, contain a requirement that any contracted out work must be performed by unionized construction employees represented by the union that certified the employer. The implication of this is that only select union contractors would be able to bid on industrial commercial or institutional projects that are funded by tax dollars. For example, projects like bridges, water treatment upgrades, courthouses etc. could only be tendered to contractors who have been organized by a particular union.

Public employers like municipalities can argue that they should not be considered a construction employer under the Act. The definition of a "non-construction employer" is an employer who does no work in the construction industry for which the employer expects compensation from an unrelated person. There are multiple criteria considered by the Ontario Labour Relations Board when making a determination about the status of a construction vs. non-construction employer. These criteria put municipalities and other public employers at serious risk of being deemed construction employers by the Board.

There is a solution that can fix this problem in Ontario and ensure that public employers are able to openly contract projects to eligible bidders and keep the costs competitive for publicly procured projects. The solution requires the Government to introduce a bill that would amend existing legislation.

Additional Resources

CARDUS COMPETITIVENESS MONITOR – An in depth review of the impact of construction labour monopolies in Ontario compiled by the independent think tank Cardus in October 2012.

LINK: <http://www.cardus.ca/research/workandeconomics/publications/>

CARDUS COMPETITIVENESS BRIEF – A recent document produced by the independent think tank Cardus that details the impact of potential Carpenters Union certification of the Regional Municipality of Waterloo.

LINK: <http://www.cardus.ca/research/workandeconomics/publications/>

LUMCO RESOLUTION - A copy of similar resolution calling for changes to the existing legislation that was passed by the Large Urban Mayors Caucus of Ontario in June of 2008.

LINK: <http://www.hamilton.ca/NR/rdonlyres/200D8A05-D997-47B2-9345-38CBEFD598C8/0/Jul09item45.pdf>

CITY OF HAMILTON STAFF REPORT – The City of Hamilton composed a report for Council to evaluate the impact of the certification of the Carpenters Union on the municipality. The staff report contains the cost inflation estimate on large projects of 40%.

LINK: <http://www.hamilton.ca/NR/rdonlyres/6C0B1909-8E7B-41FB-A607-5F00B21FCCCA/0/Sep12LS07012.pdf>

Proposed Resolution

WHEREAS MUNICIPALITIES are not businesses and have a different purpose and mandate from commercial enterprises

WHEREAS the OLRB treats municipalities as businesses for the purpose of the construction industry provision of the Labour Relations Act, 1995.

WHEREAS MUNICIPALITIES REQUIRE AN AMENDMENT to the Labour Relations Act 1995 and other key pieces of legislation governing public employers would ensure municipalities are able to tender construction work in a free and open competitive environment to maximize fairness and value for construction expenditures.

BE IT RESOLVED THAT the City/Township of _____ asks the Province of Ontario to amend the Labour Relations Act to add a “Public Employers” clause and amend other key pieces of legislation governing public employers to restrict public employers from conferring on any person the exclusive right of carrying on any business, trade or occupation.