
*Submission to the House of Commons
Standing Committee on Finance
2011 Pre-budget Consultation*





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Executive Summary

Merit Canada is the national voice of Canada's eight provincial open shop construction associations. Together we represent the companies and workers who build industrial, commercial and institutional, and residential construction projects coast to coast.

Merit Canada can provide valuable insights on how to improve the competitiveness and productivity of Canada's construction sector and economy at large.

As of June 2011, the Canadian construction sector employed 1.260 million Canadians, with 900,000 working in the "open shop" sector. This represents almost 8.6% of Canada's total labour force, and 33% of the goods-manufacturing sector labour force.

Merit Canada would like to share with the Standing Committee its views on how certain changes to Federal Government legislation, policies, and institutional structures could help create a more competitive and productive construction sector.

We believe that these changes would help achieve sustained economic recovery in Canada, create quality jobs, and thereby make it possible to maintain relatively low levels of taxation and achieve a balanced budget.

Our Recommendations are as follows:

- 1. Repeal Federally Regulated Minimum Wages for the Construction Industry.**
- 2. Include Open Tender Requirements for All Federally Funded Construction Projects.**
- 3. Prohibit the Subsidization of any Part of a Building Contractor's Work by a Third Party.**

In the following, we will provide a short explanation of the rationale for each of these recommendations and how they will directly and indirectly benefit Canadian taxpayers the Canadian Government.

Recommendations

Recommendation 1: Repeal Federally Regulated Minimum Wages for the Construction Industry

Summary

Merit Canada members support and promote wages and working conditions being determined directly between employers and employees or through collective bargaining processes, as freely chosen by the parties, within the boundaries of the law.

The Fair Wages and Hours of Labour Act is an out-dated instrument that no longer reflects the realities of the Canadian construction industry, needlessly duplicates Provincial acts and regulations and unnecessarily increases the costs of Government of Canada construction projects.

Rationale

- **Fair Wages and Hours of Labour Act Outdated**

While the Fair Wages and Hours of Labour Act may have been an appropriate instrument addressing specific problems during the Depression era more than 70 years ago, it flies in the face of the realities in the construction industry today.

As a general principle, rates paid under regulated minimum wages for the construction industry often exceed the rates that would be payable in the absence of such policies. Consequently, tax dollars are unnecessarily being redirected to construction workers who are already well-paid in comparison to other industries. Even worse from the point of view of governments is the pernicious influence of artificially high wages on employment: by increasing the marginal cost of labour, employers are discouraged from hiring additional workers, even during times of peak demand. While this is beneficial to those workers who are already employed, particularly the highly skilled with significant on-the-job experience, it reduces opportunities for job seekers, particularly young people with little experience.

This can also lead to construction projects taking longer to complete than they would under more flexible rules, since hiring additional workers would reduce the profitability of the project. For this reason, Merit Canada members support and promote wages and working conditions being determined directly between employers and employees or through collective bargaining processes, as freely chosen by the parties, within the boundaries of the law.

- **Wages Properly Regulated at the Provincial Level.**

To reduce administrative redundancies, and respect Provincial jurisdiction, Federal laws and regulations pertaining to labour should be limited to federally regulated industries. All of Canada's provinces and territories already have laws and regulations pertaining to employment standards, working conditions, labour relations, wages, and hours of labour of not federally regulated industries.



Merit Canada believes that the Federal Government should respect the legitimate authority of Provincial Legislatures to regulate the construction industry in their jurisdiction without interference by the Federal Government.

- **Increased Costs to the Canadian Taxpayer from the Fair Wages and Hours of Labour Act**
Since regulating wage rates at the Federal level duplicates work already done at the Provincial level, the Act creates unnecessary administrative costs for the Canadian taxpayer at the Federal level estimated at \$16,000 per complaint.

Where the Federal Fair Wage Schedule applicable only to Government of Canada construction projects sets higher rates than provincial rules, construction costs to the Canadian taxpayer from such projects are unnecessarily inflated.

- **Reduced Productivity of the Canadian Construction Sector**
Regulating wage rates is frequently justified by claims that they increase productivity of workers. However, data from other jurisdictions suggest that productivity under a system of regulated minimum wages for the construction industry is in fact lower than under a system of competitive wages.

Data from the US Department of Labor suggest that workers working in a system of regulated minimum wages in the construction industry are about 4% less productive than their counterparts working under competitive wages.

Benefits for the Government of Canada:

- Reduced administrative costs within HRSDC and Statistics Canada, which are currently tasked with collecting the data for, and administering, the Wage Schedule.
- Under the Provincial-Territorial Base Fund alone, the Canadian Government is investing \$175 million per jurisdiction— for a total of \$2.275 Billion. Most of this money is for construction projects. Considering that labour costs can amount to as much as 40% of a construction project, and assuming that deregulating minimum wages for the construction industry would increase productivity by only 1%, savings to Canadian taxpayers could be as high as \$9.1 million. An increase in productivity of 4% could result in savings of up to \$36.4 million.

Recommendation 2: Include Open Tender Requirements for All Federally Funded Construction Projects

Summary

Merit Canada members believe that only a business environment where construction contracts are awarded on the basis of corporate merit ensures that clients receive the best possible service at the best possible price.

For this reason, Merit Canada suggests the Canadian Government mandate that all construction projects financed with federal funds must be tendered without any precondition requiring contractors to be signatory to any union or abide by the terms of a specific collective agreement.



Providing equal opportunity for all contractors to submit their best bids will ensure that Canadian taxpayers receive the best value for their money.

Canadian taxpayers expect that their hard-earned money is spent in the most cost-effective manner, particularly now that the country is beginning to emerge from one of the worst economic crises in our history.

Rationale

- **Open Tendering Reduces Costs to Taxpayers**

There are many jurisdictions in Canada where open-shop contractors – more than 70% of the entire construction industry – are excluded from bidding on public works projects, even though these contractors would be able to provide the same or better services at a significantly lower cost.

Federally funded public works projects are paid for by all Canadians equally. It stands to reason that all Canadians should have an equal opportunity to provide the services these funds pay for. While local jurisdictions should be free to decide how to allocate the funds they raise locally, they must respect the rights of all Canadians when it comes to using funds raised from all Canadians.

Benefits for the Government of Canada:

- Under the Provincial-Territorial Base Fund alone, the Canadian Government is investing \$175 million per jurisdiction – for a total of \$2.275 Billion. Most of this money is for construction projects. Considering that labour costs can amount to as much as 40% of a construction project, and considering that open-shop contractors offer the same services as closed-shop contractors at up to 10% lower costs, savings to Canadian taxpayers from this policy could amount to up to \$91 million.

Recommendation 3: Prohibit the Subsidization of any Part of a Building Contractor's Work by a Third Party

Summary:

Merit Canada members promote balanced and healthy competition between all contractors within the construction industry. As such, any activities that undermine the competitive structure of the construction market in the long run should be dealt with as anti-competitive behaviour under the law.

The most significant threat to the long-term competitiveness of the Canadian construction market is posed by job-subsidization activities on behalf of craft unions, the aim of which is to create monopoly control over the labour pool in the Canadian construction industry.

Rationale:

- **Job-Subsidization discourages Competition for Contracts**

The greatest variable in bids for construction projects is labour costs. While final products and materials are the same for all bidders, there are significant differences in how companies manage their employees and work processes.



Craft unions have developed methods by which they can ensure that unionized contractors will be able to systematically underbid non-unionized competitors through direct subsidization of labour costs from union funds. These methods are variously known as MERF (Market Enhancement Recovery Funds), JTF (Job Targeting Funds), and others.

They all have in common that they provide unionized contractors with subsidies of anywhere between 20 – 50% of the labour costs for a project, allowing the beneficiary to submit bids substantially lower than that of competing contractors, generally ensuring that the bid will be won by the subsidized company.

While it seems wasteful in the short run for a union to engage in such activities, the intention of this is to systematically push non-unionized contractors out of the market or encourage them to become unionized in turn. Since under Canadian law the process of certification is much simpler than the process of decertification, once a contractor has been certified and become a closed-shop, his employees become a reliable source of union dues, which can in turn be used to systematically target other contractors.

While each individual case of job subsidization is carefully designed to avoid violation of the letter of the Competition Act, the long-term strategy is certainly designed to undermine its spirit. If continued unabated, job-subsidization programs may result in a complete elimination of the non-unionized sector of the construction industry, and make it impossible for any non-unionized contractor to compete.

The Canadian Government should therefore amend the Competition Act so third parties are explicitly prohibited from providing financial assistance to contractors bidding for construction contracts. Care should be taken to include subsidized loans and similar schemes as well.

Benefits for the Government of Canada:

- While changing the Competition Act to prohibit subsidization of any part of a building contractor's work by a third party would create only a small administrative expense, the long-term benefits to the Canadian economy from a continued competitive construction market will be significant. Lack of competition creates inefficiencies, which in turn decreases economic growth.
- Considering the Canadian construction industry creates about 12% of Canada's GDP, and employs about 8% of the Canadian workforce, even small decreases in overall efficiency due to reduced competition would cost the Canadian economy billions of dollars, and in turn reduce Canadian Government tax receipts.