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# Ontario Infrastructure: How to Make a Big Spend Go Further

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*This brief was first published by Ontario 360, a project of the Munk School of Global Affairs and Public Policy at the University of Toronto, on July 19, 2023.*

## ISSUE

The current Ontario government has rooted its policy agenda in the notion of building things. Its 2022 Speech from the Throne was [called](#) “Together, let’s build Ontario.” Its 2023 budget earmarked as much as [\\$184 billion](#) for infrastructure investments over the next decade. It has since [announced](#) plans to build the first full-scale nuclear power plant in decades.

The government’s vision to build is a healthy one. The province needs more hospitals, schools, transit, and mining-related infrastructure.

Yet fulfilling its vision will require attendant policy reforms to address regulations, red tape, and other factors that can make building things more costly and time consuming. Simply put, the government will need to pay more attention to these basic building blocks of infrastructure policy – competition and productivity. Without a competitive construction environment that incentivizes higher productivity, Ontario is unlikely to get its building plans done. And Ontarians will pay more for less of the infrastructure that we need.

The good news is that the government already has the tools in its toolbox to make Ontario one of the most competitive and productive construction environments on the continent. It executed a significant portion of a skilled trades agenda that we [recommended](#) during its first mandate, and signaled a continuation of massive investments in [productivity enhancing training](#) for skilled trades workers. This alone is an impressive accomplishment and the government – particularly Labour Minister Monte McNaughton – deserves a great deal of credit for managing a complex file with many competing, and sometimes conflicting, interests. Moreover, the passage of [Bill 66](#) in the last mandate removed a major barrier to competitive tendering.

Those moves on skilled trades and competitive tendering were the first steps to making public infrastructure construction in Ontario more productive. But more is now needed to fully deliver on this vision for building.

In particular, the government should carry out the following policy steps: (1) legislate that the City of Toronto and Toronto District School Board are non-construction employers for the purpose of opening up the market for public construction bids, (2) legislate that all public entities and Crown corporations in the province are similarly non-construction employers, and (3) initiate a review of all of its construction procurement practices as well as those of municipalities and other public entities to ensure that they are maximizing competition and engaging the full capacity of Ontario's construction markets in terms of competitive best practices.

## BACKGROUND

Understanding the case for reforming the competitive bidding model requires some recent history. It is part of a broader set of issues concerning the province's construction sector.

The current government has advanced a policy agenda that has found resonance with construction trade unions and other key stakeholders. A major one was the government's decision to replace the College of Trades with a new Crown agency called Skilled Trades Ontario. The College of Trades was initiated and [supported](#) by a majority of Ontario Building Trades unions and [opposed](#) by almost all employer-based construction associations. But it eventually became clear that it had serious [structural issues](#).

The new agency [replaced](#) its predecessor with a clarified ministerial role as well as responsibility for trade promotion, research and curriculum. Knotty issues of regulation, compliance and enforcement remain with the Ministry of Labour. The new streamlined system came as a result of significant stakeholder interaction by Minister McNaughton, his team, and civil servants. During the course of his reform efforts, he managed to hear the concerns of the entire industry – labour and employers – and crafted a solution which garnered praise of former critics, and the coalition of construction associations alike.

Another issue was related to an obscure section of the *Ontario Labour Relations Act* (OLRA) that required bidders for public infrastructure projects to employ workers from certain unions. This effectively limited billions of dollars in infrastructure projects to a small subset of contractors affiliated with the Building Trades Union. Public purchasers of construction in the OLRA were designated as “construction employers” meaning that *public* agencies and corporations were treated in the same manner as for-profit, *private* institutions. In practice, the designation prevented public bodies like municipalities (such as Toronto, Hamilton, Sault Ste. Marie, and the Region of Waterloo), school boards and universities (TDSB and University of Toronto), public housing commissions (Toronto Community Housing Commission), and even OPG and Hydro One from garnering the benefits [of fair, open, and competitive tendering](#).

This situation was untenable. As University of Toronto economist, Morley Gunderson, and I [wrote](#) in 2017:

Vast swathes of public construction work are placed under a monopoly that is imposed not for procurement best-practices, but because of an unrelated piece of labour law intended to achieve a separate and unrelated end. Workers who exercise their right to affiliate with other unions,

or no union, are forbidden to work on a public project because of that choice. In effect, only a subset of the population is able to bid on work that is paid for, and built on behalf of the whole population.

Fundamentally, the issue was one of basic public justice. Work which was paid for by all (i.e. taxpayers) was accessible only to those who exercised their private right to affiliate with particular unions. But it also had significant economic consequences. Research comparing the competitiveness of open and restricted jurisdictions, measured by the gap between winning and second bids in restricted environments, saw big gaps that were 105% higher in restricted jurisdictions than in open and competitive jurisdictions. In effect, restricted tendering was associated with significant [upward pressure on infrastructure prices for public bodies](#).

Bid data drawn from before and after [the Region of Waterloo](#) became restricted indicated significant declines in the number of contractors bidding on infrastructure work. As a result of these restrictions, the average number of bidders on a project declined from 8.14 to 3.68 bidders per project, or 55%. And the total pool of available bidders declined from 103 contractors to 17, meaning that over 83% of firms were disqualified from bidding on public infrastructure projects simply because their workers exercised their constitutional right of association in a particular way.

To its credit, the government understood that the system was both unfair to Ontario's workers and that it posed serious economic and financial harms – including the opportunity costs of spending more scarce public dollars on individual projects. To cash-poor, infrastructure-hungry municipalities like Toronto, Hamilton, Region of Waterloo, and Sault Ste. Marie, the extra costs imposed by the restrictions were standing in the way of new infrastructure and economic growth. Something needed to be done.

The passage of [Bill 66, Restoring Ontario's Competitiveness Act 2019](#), amended the Labour Relations Act to “deem municipalities and certain other entities to be non-construction employers.” This seemingly simple sentence provided municipalities with an opportunity to remove restrictions that prevented their own citizens from working on public projects and that costed municipalities billions of dollars annually. This change meant that municipalities were no longer treated in the same manner as private, for-profit, construction firms.

The potential savings offered by the legislation are massive. A study of the law's effects on the bidding environment in the Region of Waterloo showed that on 81% of the projects tendered after the lifting of the monopoly, Carpenters' affiliated firms (those which previously held a monopoly on all regional work), did not bid at all. Yet, despite the loss of Carpenters' affiliated firms, the total number of bidders rose from 3.68 bids per project under the restricted regime to 5.54, indicating a return to the highly competitive bidding environment in place prior to restriction.

This “[bouncing back through diversity](#)” was also present on a wide variety of bid data in the Region. Moreover, of the five contracts for which the Carpenters' affiliated companies did bid, their best bids were 24 percent, 12 percent, 18 percent, 14 percent, and 2 percent higher – on average 14 percent – higher than the bid that won under a competitive scenario. These findings suggest substantial savings for affected municipalities. This data was corroborated by [a report from City of Hamilton staff](#) which found price savings in the range of 9 to 32 percent, with an average savings of 21 percent. Sault Ste. Marie, likewise, has seen similar savings.

The City of Toronto, however, has not seen savings. Why? Because it has opted to maintain its restrictions through the use of a schedule in Bill 66 which allowed governments, school boards, and others to maintain their restrictive status as construction employers if they chose.

Toronto was the only municipality which chose to keep its restrictions. The TDSB, which is currently running a \$40.4 million [budget deficit](#) and is laying off staff, also chose to keep the restrictions.

Toronto is currently [postponing \\$300 million of construction projects](#) due to its lack of funds. Council explained the postponing of infrastructure projects as “entirely related to COVID, it is not because we spent too much money or any other failure on our part.” Yet, had the council not voluntarily chosen to maintain restrictions which inflate costs by anywhere from 14-21% on billions of dollars of construction projects tendered since 2019, it is highly unlikely that it would be postponing projects today.

One of the concerns raised about Bill 66 by its opponents was that it violated the fundamental freedom of association and was therefore unconstitutional. Yet, when the Carpenters’ Union took Hamilton, the Region of Waterloo, and Sault Ste. Marie to the labour board to make this case, the Board – after articulating a thorough and exhaustive rationale which upheld previous decisions on similar issues – [decided clearly](#) against the Carpenters:

Even if the consequence of that is bargaining rights acquired under the construction industry provisions of the Act are lost or collective agreements that were binding or applied only because of certain construction industry provisions of the Act no longer applied, Bill 66 does not remove these responding parties, any employees of them, or any of the Unions for that matter, from the Act and or the general provisions of the Act. The Section 2(d) rights to associate (and they are individual rights not institutional rights), organize into free and independent unions and to engage in meaningful collective bargaining are not legally impaired under the general provisions of the Act.

To sum up, the Ontario government managed to remove structural barriers to apprenticeship that acted as a brake on trades registrations and employment for jobs needed to build Ontario, and removed a decades old impediment to key municipalities, school boards, and other public entities which restricted competition and raised costs on infrastructure. It did so by combining sound principles of competition in public procurement, reduction of red-tape, and significant relationship building, and investments in the future of workers who are desperately needed to accomplish the ambitious infrastructure commitments at the heart of the government’s agenda.

## **WHY DOES THIS MATTER, AND HOW CAN ONTARIO GET THE JOB DONE?**

The key question for the Ford government is this: Can it finish the job? The short answer is yes, but it will take an equal measure of decisive, structural action to modernize Ontario’s procurement regime, reduce red-tape and renew our apprenticeship system, while making continued investments in training the next generation of workers.

The [costs of construction](#) have increased significantly over the last few years and, while some of these cost increases (non-residential construction in Toronto grew 17.3% year over year) are unlikely to continue, overall costs themselves show no signs of slowing down. Municipalities, schools, power generators, and other public entities building key pieces of infrastructure should be looking not just for ways to cut costs (rather than cancelling or delaying projects), but to get better value for their construction dollars.

## Finish the Job on Competitiveness in Public Construction Procurement

### Step 1: Make Toronto's Bidding More Competitive

The single largest municipal purchaser of construction services in Ontario is the City of Toronto. Yet it remains the only municipality to restrict its bids from the full competitive Ontario construction market.

The loudest voice in the chorus of those demanding more provincial money for infrastructure has also been the most irresponsible in the management of its procurement processes. Likewise, the TDSB, which is one of the largest K-12 educational purchaser of construction services in Ontario, remains the only school board to restrict bidding. The result is the unholy trinity of fewer projects, costing more money, and the need for higher taxes to pay for them.

Any concerns about the constitutionality of this move have been firmly buried by the labour board, which explicitly notes that freedom of association is “not legally impaired” by Bill 66. The Ford government should legislate that the City of Toronto and the Toronto District School Board are non-construction employers. It is the right and just thing to do, and would immediately move public procurement in Toronto from being the most restrictive in Ontario to being among its peers in terms of access to the full competitive market of construction providers.

### Step 2: Make Procurement for All Public Entities More Competitive

The province should take the further step of making all public entities and crown corporations non-construction employers. There are still public entities – like Ontario Power Generation, Bruce Power and Hydro One – that spend billions annually on construction and which suffer from the same restrictions through the Electrical Power Systems Construction Association (EPSCA), a 1970s era tendering relationship with Building Trade Unions that restrict new construction and maintenance contracts for power generation to a small group of [unions](#).

Ensuring that entities which are intended to serve the public are not restricted to tender bids from a few construction companies but are able to access the full range of qualified firms would not only allow us to build more for less, but would send a powerful message to investors that the government sees competitive markets as core to its overall activities on infrastructure. The capital budget for electrical service provision, and Ontario's power generation – and the costs associated with maintenance and refurbishment of generating stations like OPG's Pickering Nuclear Plant – are massive and would benefit from an “all hands-on deck” approach to labour. This would accomplish

the mutually beneficial ends of securing more bidders, which in turn will expand opportunities for labour force development and training.

### Step 3: Initiate Competitiveness Review of Construction Procurement Province-Wide

The province should take steps to review *all* of its construction procurement practices – and those of the municipalities and public entities it creates and oversees – to ensure that it is maximizing competition and engaging the full capacity of Ontario’s construction markets, in line with competitive best practices. These best practices can be drawn from [Ontario](#) sources, as well as [internationally](#) – the [UK](#), for instance, has led on this file. Increasingly, even in places where competition is not restricted from labour law, certain procurement practices are resulting in major projects getting two or fewer bids, which lead to higher prices.

Take for instance, the challenge of [bundling](#). In many instances, Infrastructure Ontario and other public entities unnecessarily bundle projects together. The result is that, due to bonding and other requirements, the full range of market players are prevented from bidding on public work and restricts work to large enterprises, of which there are few in Ontario’s construction market. The South Niagara Hospital project, for instance, is a case in point. The project received only two bids.

A second case study is the Ottawa Hospital, which received only one bid for a project [estimated](#) to be \$2.8 billion dollars. This outcome was the result of a combination of the scope of the project, but more worryingly, a highly questionable deal in which the Hospital gave exclusive labour rights to a group of building trade unions in exchange for undisclosed “charitable gifts.” The relevant parts of the agreement are worth citing.

#### Article 3

- (a) Only members in good standing of the Bargaining Agent [a group of Building Trades Unions] ...shall perform work at or in connection with the Project
- (b) All contractors and subcontractors engaged at the project shall be bound by this Project Agreement.

#### Article 11

In December of each year while this Project Agreement remains in force, each Bargaining Agent that is a member of the Eastern Ontario and Western Quebec Building and Constructions Trades Council will make a charitable gift to the Ottawa Hospital that is roughly proportional to work opportunities provided to members of the Bargaining Agent working at or in connection with the Project in that year. The amount of the charitable gift will be determined by each Member Bargaining Agent.

In short, the full scope of the construction industry was prevented from bidding on a project worth \$2.8 billion because of a backroom deal.

While such charity is to be applauded, charity should not come with strings attached, and should certainly not serve as a means to “buy” exclusive rights to supply labour to a given project. Should these types of deals proliferate, the bidding environment for Ontario’s public works will no longer be

guided by the best practice aimed at securing the best value for a project through a clearly defined, public, set of metrics.

A better way for Ontario, particularly as it seeks to do major projects like the Pickering Nuclear Plant, or the Ring of Fire, would be for Ontario to mimic the successful model Project Labour Agreement used in the development of the oil sands in the Wood Buffalo region. The “Division 8” agreement set out terms in which the full diversity of qualified labour providers and contractors were invited to develop Alberta’s resources. The result was a highly competitive construction environment which provided leading wages and benefits to workers, in which billions of dollars of construction work was completed by a wide variety of companies and labour unions.

As Ontario continues to embark on massive projects like the refurbishment of its nuclear energy providers, its energy grid, and the expansion of its mineral resources in the North, it should look to mimic this approach to PLAs while rejecting in law the possibility of monopolies on public work.

Moreover, as calls for Ontario to use construction procurement as a tool for social policy – through Community Benefits Agreements, for instance – grow, there have been some in the industry who are attempting to use these tools to restrict competitive bidding (as is currently the case in British Columbia, where CBAs have resulted in [wide scale restrictions](#) on bidding and increased costs). The Ontario government should ensure that such tools are used in ways that [serve whom they are intended to serve without unnecessarily restricting competition](#).

## **BUILDING BUILDERS: MORE MONEY WON’T FIX OUR LONG-TERM LABOUR SHORTAGES**

Yet, even if the government succeeds in creating a fully competitive and productive environment for bids on public projects, it still has [a long way to go to ensure that it has the labour force it needs to build these projects](#), especially as the boomers – who still make up a sizeable portion of the construction labour force – retire.

If Ontario wants to meet its ambitious construction goals, it will have to continue to make adjustments to its trades and apprenticeship process that make it easier to get into and ultimately work in the trades. The government should be single minded in removing barriers that prevent construction firms from most effectively and productively using its workforce.

As we noted in a previous paper, the government should start by revising its approach to apprenticeship registration and completion. The current “all or nothing” approach to trades certificates (in which, for instance, an electrician who completes four out of five steps towards her apprenticeship has nothing official to show for it on the labour market) is out of step with today’s construction needs.

The answer to this is not to dismantle registration completely, but to introduce a tiered approach that allows workers the maximum ability to work, and employers more flexibility in how to properly deploy their workforce. The current ratio system should be significantly revised alongside the introduction of a system which recognizes that workers with longer tenure need less supervision.

The best approach for this, as we note in our [previous ON360 paper](#), is to introduce a credentialing system which would allow for workers to “stack” credentials, and adjust the rules around when those workers can be deployed. For instance, a worker with 2nd year credentials would be free to work, without journey person supervision or ratios, on tasks which she is qualified to do based on her credential.

The government should also, unilaterally, remove any barriers to work for Canadian construction workers who are qualified to work in any of Canada’s ten provinces or three territories. In a similar fashion, the government should work to create a list of “pre-approved” trade designations from close trading partner countries. Workers from, for instance, the United States, the UK, Germany, and other trades systems which are internationally recognized as leaders, should automatically be able to transfer their credentials in Canada with minimal effort (perhaps language training, or basic instruction in code differences) and bureaucratic red-tape.

The government and industry have also made tremendous efforts in recent years to attract young workers as well as workers from population groups not typically associated with construction work – women and Indigenous workers, for instance. These efforts should be continued, but should also be focused to ensure they get measurable results. In some cases, this means a shift toward higher return efforts. Take, for instance, women in construction. Despite almost decades of heavy investment by government and industry alike, the number of women who work on site in construction remains low, and relatively stable (women make up [about 4%](#) of on-site workers, a number which has been relatively stable, despite [industry goals](#) of achieving 15%). This is not to say that efforts should be suspended all together. On the contrary, the role of women in the construction industry appears to have been growing, but more in off-site roles such as management, [where they make up almost 40%](#) of the workforce. Given the critical importance, and shortage, of workers in those roles (indeed leadership roles are an area where shortages are acute and critical), the industry and government should focus its efforts on areas where the returns are likely to be highest.

Similarly, the government should double down on its support of developing the Indigenous workforce. A Cardus report on [Indigenous employment](#) shows that construction is a shining star in an otherwise challenging employment landscape. Indigenous workers, in fact, are well represented in construction. Statistics Canada [data](#) show that “In 2021, an estimated 7.5% of non-Indigenous Canadians were employed in the construction industry, compared to 9.4% for the Indigenous population.” Partnering with Indigenous business groups, labour, and construction associations, as well as investing heavily in education on and off reserves for those interested in the trades not only provides the opportunity for Ontario to build its workforce, but also to take real steps toward providing stable, good-paying, jobs which can contribute to economic reconciliation.

And finally, the government should continue its efforts to deepen the exposure of young Ontarians to the trades. The government’s efforts on this in the past term were admirable – including expansion of the OYAP program to all schools in Ontario and increased investment in programs aimed at youth. It should, during this term, introduce structural changes to its curriculum, up to and including making some parts of trades education mandatory.



## CONCLUSION

The government is building infrastructure needed to take Ontario into the next century. These commitments serve a double function towards the broader goal of well-paying, stable jobs. As a Cardus report [studying the working class](#) observes, the biggest challenge facing any labour minister is the question of how to ensure that workers without a college or university education can secure meaningful work that allows them to earn enough to raise a family.

The government's progress on infrastructure and the skilled trades are a positive step. The competition and productivity that would result from the recommendations set out in this paper represent further important steps. The outcome would be not just new roads and public transit systems but a better workforce and better future for all Ontarians.

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