

JUST NOT CREDIBLE:

CHALLENGING CLAIMS ABOUT CLOSED TENDERING IN ONTARIO

1. The Hamilton faith-based Cardus organization, which is closely linked to the CLAC trade unions, published a report in September 2018 claiming that certain provisions of the Labour Relations Act are increasing the cost of municipal construction projects by 15% or more. This claim is just not credible. Municipalities that accept Cardus' claim will not see the promised cost saving of 15%. Indeed, City of Toronto report found that the upper estimate of the potential savings would be only 1.7%¹. Moreover, this upper estimate of potential savings did not take into account the significant risk of an increase in injuries on City projects, the potential loss of apprenticeships or the potential increase in the use of 'independent operators' to avoid CRA and Employment Standards Act obligations.

2. If a municipal government follows Cardus' advice, it risks an increase in the number of construction contractors doing municipal work who gain their competitive edge by:

- avoiding their responsibility to invest in apprenticeships,
- cutting corners on workplace health and safety, and
- styling workers as 'independent operators' so as to avoid paying EI, CPP and WSIB contributions.

3. Municipalities that allow themselves to be played by Cardus will not see the promised cost saving of 15%. However, they will take on a significant risk that they will see:

- fewer young people in apprenticeships,
- more work-related injuries on municipal projects, and
- an increase in non-compliance with WSIB and CRA obligations.

WHAT CARDUS SEEKS:

4. Cardus wants municipalities to use a recent change to the Labour Relations Act which allows a local government to walk away from its collective agreements with the building trades unions, if it has such agreements. Although Cardus claims that doing this will save municipalities 15% on their construction costs, Cardus' real objective is to transfer work from workers who belong to the building trades unions to workers who belong to CLAC unions. The 15% is not intended to be credible. It is intended to be a smokescreen for the real objective.

1. Staff Report, City of Toronto, "Labour and Training Costs in Construction Procurement", September 23, 2008. The City of Toronto study is discussed later in this report.

CARDUS' 15% CLAIM:

5. The purported basis for the 15% cost-savings is Cardus' claim that contractors who are not associated with the building trades (i.e., CLAC contractors and non-union contractors) are 2% to 40% cheaper than contractors that work with the building trades unions. The 15% number is somewhat in the middle of this range.

6. The following table shows the cost structure for non-residential building construction. In Ontario, this is known as the Industrial-Commercial-and-Institutional (ICI) sector of construction. The table is based on Statistics Canada's input-output tables.

Cost Structure for Non-Residential Building Construction, Ontario
Statistics Canada, Input-Output Tables (2013)

Expense Category	Percent of Total
Materials, Energy & Transportation	26.0%
Machinery & Equipment	6.0%
Financing, Leasing & Rental	3.6%
Engineering, Architecture & Other Specialized Design	8.3%
Other Professional Services	2.1%
Office & Other	2.6%
<i>Total Input Costs, Excluding Labour</i>	48.8%
Taxes on production	5.4%
Payroll Costs (Wages and Employer Contributions)	34.1%
Gross mixed income ²	7.8%
Gross operating surplus	3.8%

7. As can be seen in the above table, the payroll share of costs is 34.1%. The other costs would be comparable between contractors that work with the building trades and contractors that are non-union or work with CLAC. To reduce costs by the 15% claimed by Cardus would require payroll costs to be reduced by almost half. There is no other way to achieve cost reductions of that magnitude. Following Cardus' advice will trigger a race to the bottom. That race to the bottom will:

2. Statistics Canada explains "gross mixed income" as follows: for unincorporated enterprises, it may not be possible to estimate compensation of employees, consumption of fixed capital and a return to capital separately, in which case an estimate of mixed income, covering all these items, should be made.

- undermine investments in apprenticeship,
- increase work-related injuries on municipal construction projects by eroding health and safety standards and weakening health and safety training, and
- foster an increase in styling workers as ‘independent operators’ to avoid employer obligations to CPP, EI and WSIB.

8. A municipality that is considering whether to walk away from its agreements with the building trades unions needs to ask itself if this is the future that it wants to see for local construction workers.

CARDUS’ STRAINED EXAMPLES TO MAKE ITS CASE:

9. The Montreal Examples: In support of its 15% cost savings claim, Cardus points to the higher construction costs that prevailed in the City of Montreal as a result of what Cardus describes as restrictive bidding practices. Cardus is quite correct about restrictive bidding practices in Montreal. Witnesses that appeared before the Charbonneau Commission reported that construction costs in Montreal were 30-35% higher than in other cities³. However, to equate Montreal’s problem as equivalent to having collective agreements with the building trades unions is simply absurd. The problem in Montreal was old-fashioned corruption. The Charbonneau Commission described the involvement of organized crime in Montreal construction and a system of kick-backs to municipal politicians and their political parties. What has any of this got to do with municipal procurement in Ontario? Surely Cardus is not claiming that there is pervasive corruption and kick-backs in our municipal construction tendering. Citing the Montreal example to ‘prove’ its case just shows how weak the Cardus case is in the first place.

10. The Pattullo Bridge Example: In 2018, the B.C. government entered into an agreement with the building trades unions to increase the number of trained indigenous workers on the Pattullo Bridge reconstruction, to set aside 25% of all jobs on the project for apprentices and to increase wages by 2% per year. The estimated cost impact was 7% which included the wage increases. Cardus claims the 7% higher costs represent the consequence of restrictive tendering. In actual fact, the 7% cost increase represents the incremental costs of increasing the investments in training for indigenous workers, reserving a quarter of jobs for apprentices and applying an annual 2% wage increases. To claim that the Pattullo Bridge project supports Cardus’ 15% claim is simply misleading.

3. Commission d’enquête sur l’octroi et la gestion des contrats publics dans l’industrie de la construction (Commission Charbonneau)

11. “Academic Estimates”: Cardus references academic studies that claim higher costs of 8.0% to 25.0% when municipalities enter into agreements with the building trades. They do not mention that these “academic estimates” were developed by Cardus or arbitrarily selected by Cardus. In an earlier report, Cardus cited 21 studies showing an average cost impact of 14-17% on construction costs⁴. Cardus argues, or implies, that these studies support its dubious claims on the impact of the construction provisions of Ontario’s Labour Relations Act. A closer examination of the studies cited by Cardus shows that they do not support Cardus’ claims:

- Twelve (12) of the 21 cost estimates cited by Cardus are American. They have little, if any, relevance for Ontario and certainly have no relevance to the construction provisions of Ontario’s Labour Relations Act.
- Of the nine (9) Canadian studies, two pertain to waste collection, not construction. Again, these studies have no relevance to the construction provisions of Ontario’s Labour Relations Act
- Five (5) of the studies focus on Fair Wage Policies which are separate and distinct from the Labour Relations Act.
- Two (2) of the studies simply estimate the higher wages of unionized construction workers, but do not proffer any conclusions on actual constructions costs. To do so would require comparisons of productivity and safety differences between union and non-union workers which these studies do not undertake.

THE CITY OF TORONTO STUDY COUNTERS THE CARDUS STUDY⁵:

12. The only relevant and independent study that Cardus cites is a 2008 report prepared for the City of Toronto by its own staff. City staff were asked by City Council to estimate the cost impact of the City’s collective agreement with nine (9) construction trades. The City’s Report concluded that if these collective agreements were not in place, the City could potentially save a maximum of 1.7% of its construction costs. This assumes that (1) all of the lower costs are passed on to the City in the form of lower bid prices, (2) the City is indifferent to the likely higher number of work-related injuries on its projects, and (3) the City is indifferent to the lower investment of the non-union contractors in apprenticeship and skills upgrade training. This maximum potential savings of 1.7% is a far cry from the 15% (or more) savings claimed by Cardus.

4. Cardus, “Restrictive Tendering”, January 2017

5. Staff Report, City of Toronto, “Labour and Training Costs in Construction Procurement”, September 23, 2008

13. A key premise in all of the Cardus studies is that there is no productivity difference between union and non-union firms, so that higher union wages translate directly into higher costs. On its face, this is a highly dubious premise and one which the City of Toronto report enables us to test. It is well established (and will be discussed below) that the building trades unions and their employers invest heavily in apprenticeship training, skills upgrading and health and safety training. Unionized employers support these investments because the training directly benefits the contractors in the form of higher productivity and fewer occurrences of work-related injuries. This advantage in productivity and safety supports the higher wages and better benefits that are earned by unionized workers. Clear evidence of the productivity and safety advantage is found in the City's examination of its civil sector contracting where the City has no collective agreements with the building trades. The City's report found that 85.7% of competitively tendered contracts were nevertheless awarded to unionized contractors. In other words, the productivity and safety advantage of unionized contractors enabled them to submit the most cost-competitive bids 85.7% of the time. Cardus' assumption that union and non-union contractors have the same productivity and safety performance is simply wrong.

THE BUILDING TRADES' ADVANTAGE IN WORKPLACE SAFETY:

14. In 2015, the Institute for Work and Health analyzed WSIB claims for union and non-union employers in the ICI sector of Ontario's construction industry. The results of the analysis were published in a reputable, peer-reviewed journal⁶. The study found that⁷ :

- Lost-time injury rates are 23% lower in unionized firms,
- Musculoskeletal injury rates are 17% lower in unionized firms,
- Critical injury rates are 29% lower in unionized firms⁸.

6. Amick, Benjamin C. III PhD; Hogg-Johnson, Sheilah PhD; Latour-Villamil, Desiree MS; Saunders, Ron PhD., "Protecting Construction Worker Health and Safety in Ontario, Canada: Identifying a Union Safety Effect", Journal of Occupational and Environmental Medicine: December 2015 - Volume 57 - Issue 12 - p 1337-1342. Available at: https://journals.lww.com/joem/fulltext/2015/12000/Protecting_Construction_Worker_Health_and_Safety.14.aspx#pdf-link The study was commissioned by the Ontario Construction Secretariat (OCS). The OCS agreed that the results could be published regardless of the outcome of the analysis.

7. The estimates include both the positive union effect on safety performance and other positive effects that may arise from the fact that union contractors tend, on average, to be larger than non-union contractors. The latter is known as the 'firm size' effect.

8. Critical injuries are defined in the study as injuries that jeopardize life, cause blindness, or injuries that result in amputations, major burns, fracture of large bones, and loss of consciousness.

15. The building trades unions and their employers invest significantly in health and safety training. The building trades unions also recruit and train health and safety representatives to support safe working practices on the job. It is not surprising, therefore, that a study by the Institute for Work and Health found that “unionized construction firms have stronger hazard identification and control practices in the work site and more OHS [occupational health and safety] training”⁹.

16. The conclusion is inescapable: these investments pay off in the form of significantly lower lost-time injuries and especially in the form of significantly fewer critical injuries. A municipal government that chooses to walk away from its collective agreements is implicitly accepting that, in the absence of additional policies and interventions, there is a significant risk that there will be an increase in the number of injuries, including critical injuries, on its projects.

THE BUILDING TRADES’ ADVANTAGE IN APPRENTICESHIP AND SKILLS UPGRADING:

17. There are three important measures of investment in apprenticeship and skills upgrading:

- i) The proportion of union and non-union contractors that sponsor and employ apprentices,
- ii) The training completion rate of union and non-union apprentices,
- iii) Investments in training centres to deliver apprenticeship and skills upgrade training.

18. Sponsoring Apprentices - Union vs. Non-Union: A 2018 survey undertaken for the Ontario Construction Secretariat found that, in non-residential building construction, 81% of unionized construction contractors sponsored or employed apprentices compared to only 54% of non-union contractors¹⁰.

9. Institute for Work and Health, “Determinants of Health and Safety in Ontario’s Construction Sector”, research study supported by the Ontario Ministry of Labour Research Opportunities Program, January 1, 2017. Unpublished, but available from the Institute for Work and Health.

10. Ontario Construction Secretariat, 2018 Contractor Survey. The survey was conducted by Logit Group via telephone with 500 ICI contractors from across Ontario in January-February 2018. The margin of error for a sample of 500 is +/-4.38%, 19 times out of 20.

19. Training Completion Rates: In the unionized construction industry, the vast majority of apprentices are sponsored by joint union-management bodies. These are called Joint Apprenticeship Training Trusts or JATTs. The JATT system recruits and counsels apprentices, monitors their progress and, in many cases, delivers the provincially approved curriculum for apprentices or supplementary training. Three-quarters (75%) of apprentices in the JATT system complete their training compared to only 58% outside the JATT system¹¹.

20. Training Centre Investments: There are 95 training centres supported by the unionized construction industry. These training centres deliver a combination of skills upgrading and apprenticeship training. The estimated capital cost of these training centres is \$260.3 million. Annual contributions to training trust funds are estimated to be in excess of \$40.0 million¹². Taken together, these training centres are the equivalent of having a community college completely focused on construction industry training.

21. The facts speak for themselves. The building trades unions and their employers make substantial investments in skills upgrading and in apprenticeship training. As a result, the unionized construction contractors enjoy a significant productivity advantage in addition to their health and safety advantage (which results in lower WSIB premiums). A municipal government that walks away from its collective agreements with the building trades is implicitly saying to the industry and to young workers that investing in skills upgrading and in apprenticeship training doesn't matter and that the municipal government is indifferent to the unionized industry's superior health and safety performance.

11. Ontario Construction Secretariat, Completion Counts: Raising Apprenticeship Completion Rates in Ontario's Construction industry, 2013. Report prepared by Prism Economics and Analysis.

12. Ibid.

COMPLYING WITH TAX OBLIGATIONS AND LABOUR STANDARDS:

22. A common tactic of contractors seeking to gain an unfair competitive advantage is to style their workers as ‘independent operators’ (i.e., sub-contractors) rather than as employees. In this way, a contractor can avoid the cost of EI, CPP and WSIB contributions as well as requirements for overtime pay, vacation pay and statutory holiday pay. When all of these are taken into account, a contractor that styles its workers as ‘independent operators’ can save around 16.5% on its labour costs¹³. This is little more than gaining an unfair competitive edge on the backs of workers. In the unionized sector of non-residential construction, this type of evasion is not possible. Collective agreements establish wages and benefits and all contractors pay their required EI, CPP and WSIB contributions.

23. Workers who are styled as ‘independent operators’ do not receive T-4 slips and do not have their income reported to CRA by the contractor that engages them. It is up to the workers themselves to self-declare their income. A great many of these workers under-report their income¹⁴. That is the principal reason that the workers go along with the ruse that styles them as ‘independent operators’ rather than classifying and treating them as employees. Based on the Labour Force Survey, the number of ‘independent operators’ in the construction industry between 2013 and 2017 averaged just under 100,000 workers. Since 2013, it has been mandatory for ‘independent operators’ in the construction industry to register with the WSIB. However, the number of persons who registered as ‘independent operators’ with the WSIB over the same period averaged just over 20,400 persons. The rate of non-compliance, therefore, was approximately 80%¹⁵.

13.

Employer Contributions		
EI	2.3%	
CPP	5.1%	
WSIB (average for construction)	4.4%	
Vacation (Statutory Minimum: 2 weeks)	4.0%	
Holidays (Statutory Minimum: 10 Days)	4.0%	
Total	19.8%	
For a worker earning \$25.00/hr:		
Basic Pay	\$25.00	83.5%
Additional Payroll Costs (19.8%)	\$4.95	16.5%
Total Labour Cost	\$29.95	100.0%

14. The last published study by Statistics Canada to address the issue of under-reporting of income was: Statistics Canada, The Size of the Underground Economy in Canada, Gylliane Gervais, 1994 Cat. No. 13-603E No. 2. This study compared the income of unincorporated construction businesses that was reported to CRA with an estimate of the income attributable to these same entities based on Statistics Canada System of National Accounts. In 1991, the income reported to CRA was only 34.6% of the actual income estimated by Statistics Canada, suggesting that, at the time, almost two-thirds of income earned by unincorporated construction businesses was concealed.

15. These data are from a study by Prism Economics and Analysis commissioned by the Ontario Construction Secretariat: The Underground Economy in Ontario's Construction Industry: Estimates of the Revenue Losses to Governments, May 2019

24. Based on the high number of ‘independent operators’ in the construction industry and the high rate of non-compliance with WSIB registration requirements, the practice of styling construction workers as ‘independent operators’ appears to be widespread. Municipalities that walk away from their collective agreements with the building trades are implicitly allowing an expansion of this underground practice unless they put in place additional procedures and inspections to curtail it.

CONCLUSION:

25. The claim that municipalities can reduce their construction costs by 15% if they walk away from their collective agreements with the building trades is just not credible. The implausible 15% claim contrasts with an independent City of Toronto report estimating, at most, the savings from such an action could be 1.7%. Further, those notional savings do not take into account reputable research that finds significant differences in health and safety performance and in investments in skills upgrading and apprenticeship training between union and non-union contractors. It is no longer a matter of debate: rigorous and independent research shows that lost-time injury rate on ICI projects is 23% lower in unionized firms and critical injury rate is 29% lower. Eighty-one percent (81%) of unionized construction contractors sponsor or employ apprentices compared to only 54% of non-union contractors. Transferring work from union to non-union contractors will also increase the risk that underground practices will expand, in the absence of more extensive auditing and enforcement.

26. Municipalities considering whether to walk away from their collective agreements with the building trades need to consider whether the possibility of very modest cost savings (1.7% at most, based on independent research) are sufficient to justify the likelihood of more lost-time and critical injuries on municipal construction projects, the certainty of fewer apprenticeship opportunities, and the risk of more underground practices. We believe that municipalities, instead, should be demanding higher safety standards, more investment in apprenticeships and strict compliance with tax and reporting obligations.

27. Increased productivity is the primary means of achieving sustainably lower construction costs without sacrificing workplace safety, apprenticeship investment and compliance with tax and reporting obligations. The keys to increased productivity are:

- more investment in health and safety management systems,
- more investment in skills upgrading,
- more investment in apprenticeship,
- more investment in mechanization and digital technologies,
- and more investment in project management.

**HIGHER PRODUCTIVITY IS
THE ONLY SUSTAINABLE AND
FAIR WAY TO LOWER COSTS.
THERE ARE NO SHORT-CUTS.
RATHER THAN BUYING INTO
FALSE PROMISES OF RISK-FREE
COST-SAVINGS, MUNICIPALITIES
AND OTHER PUBLIC SECTOR
ENTITIES SHOULD FOCUS THEIR
PROCUREMENT POLICES ON THE
FACTORS THAT TRULY REDUCE
CONSTRUCTION COSTS.**

About the OCS



The Ontario Construction Secretariat (OCS) was formed in 1993 to represent the collective interests of the unionized construction industry in Ontario's industrial, commercial and institutional (ICI) construction sector. As a joint labour-management organization, OCS is dedicated to enhancing Ontario's unionized ICI construction industry by developing relationships, facilitating dialogue and providing value-added research to our industry and government partners.

About Prism Economics and Analysis

Prism Economics and Analysis (Prism Economics), established in 2000, has a long history of working with construction industry stakeholders. By delivering insightful economic and strategic analysis, Prism Economics provides confidence to governments, industry, NGOs and other clients as they seek to understand the markets they operate in, evaluate the programs they operate, or develop and implement the strategic plans they need.

