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Chair

Mr. Larry Miller

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• (1620)

[English]

The Chair (Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC)): We'll call our meeting to order.

Thank you to our witnesses, Mr. McDonald and Mr. Harris, for being here today. We apologize for the delay, but it is silly season in Ottawa and it does come every year.

Without further ado we're working on the study on how competition can make infrastructure dollars go further. We appreciate your being here.

Mr. Aubin.

[Translation]

Mr. Robert Aubin (Trois-Rivières, NDP): I would like to ask for a clarification.

[English]

The Chair: Yes.

[Translation]

Mr. Robert Aubin: I certainly don't want to slow down the process, but given the report that will be produced, I have a question about Mr. Harris. It is not of a personal nature.

The orders of the day list the Legislative Assembly of Ontario. I would like to know whether Mr. Harris is speaking on behalf of the Legislative Assembly of Ontario or whether this is simply a reference to the fact that he is a member of that assembly. This implies that we are meeting with the Legislative Assembly of Ontario through Mr. Harris.

[English]

The Chair: No. The clerk pointed this out to me when I first arrived, Mr. Aubin. This is a mistake, and it will be corrected in the minutes.

I believe Mr. Harris is here speaking about a private member's bill he has brought forward.

Mr. Robert Aubin: Okay.

Thank you.

The Chair: Mr. McDonald, you have 10 minutes, please.

Mr. David McDonald (Spokesperson, Melloul-Blamey Construction Inc.): Thank you very much for the opportunity to speak before this committee on an issue very close to our hearts, concerning value for taxpayers and fundamental human rights.

I am here as a representative of Bernie Melloul of Melloul-Blamey Construction, one of the largest contractors in the Kitchener-Waterloo region of Ontario. Mr. Melloul wanted to speak before you today, but due to another commitment is unable to attend. I have included in my presentation—which I regret has not been translated, so hopefully you'll get it later—a short bio of Mr. Melloul and his firm.

I am here as a representative due to our 20-year-long relationship as founding members of Merit Ontario, of which I am a past chair, and our shared cause of demanding that taxpayers get value for money in public construction tendering, that qualified contractors and workers not be disqualified from public tendering, and that the federal government respect charter rights in the expenditure of public money.

Others have come before this committee as representatives of various groups and organizations, but I come before you in Mr. Melloul's name as an aggrieved individual speaking directly for open-shop contractors, our employees, and employees in Ontario we have known for many years.

Others have brought forward the issue of waste in public tendering across Canada caused by monopoly tendering, so we will keep our comments short and stick to Ontario and issues from a perspective that others have not.

I've noted in other deputations that people have discussed some articles in *The Record*, on the shed issue. This is going to cause the Region of Waterloo to be threatened by a loophole in the Labour Relations Act whereby the labour board can certify the region to a carpenters' collective agreement as a private sector construction company, and thereby take over public tendering without negotiating with the region at all and create a monopoly for the carpenters' union and their affiliated contractors.

The same thing has happened in the city of Hamilton and ninefold in the city of Toronto. Essentially this means that the private sector interests will control public policy without democratic consent, and Melloul-Blamey, which has performed work for the region for decades—30 years to this point—and is currently working on the region's largest construction project, will be disqualified from any further public tendering for the region. One of its major clients will simply disappear because of a loophole in the Labour Relations Act. It and all other contractors in the region will be excluded from any federal funding that the region may receive, particularly the one-third financing of the \$800 million Kitchener-Waterloo LRT line.

The attached industry survey of union density in Ontario, prepared by organized labour itself through the Ontario Construction Secretariat, shows the devastating impact this certification would have on the taxpayers of the region and the local contracting community. Fully 87% of area contractors have no union affiliation, and they would all be disqualified from public tendering for the region. Yet the apologists for the building trades corporate control and monopoly over public tendering claim there is no cost in eliminating 87% of the competition. How absurd is that?

Listening to building trade apologists, one would think that the infrastructure of Waterloo is rotting, when it is not. The truth is that the infrastructure of Quebec and Toronto is rotting under the unaffordable and wasteful burden of building trade monopoly tendering.

The vacuous, politically motivated sophistry of those who support closed tendering and discrimination against open-shop contractors and employees must be exposed for what it is—pure self-serving, politically motivated hypocrisy. We implore the federal government to step in and impose national standards of ethical and moral tendering practices where federal tax dollars are involved. If a province does not wish to abide by these standards, they do not get the money.

There are those, of course, who say that the federal government should not or cannot impose standards that might infringe on provincial jurisdiction and authority over labour law. To that we say “nonsense”.

As per the attached excerpt from Supreme Court of Canada, Justice Bastarache in *R. v. Advance Cutting & Coring Ltd.*, 2001, noted that union-only construction tendering by governments is a violation of the charter rights of open-shop employees, and it is a form of compelled association and ideological conformity.

Of particular note in the attached Supreme Court of Canada excerpt is the reference to the most fundamental of the Etherington rights of what constitutes a violation of an individual's freedom of association:

The first liberty interest that might be threatened by forced association was the government's establishment or support of parties or causes. The second was defined as the impairment of individual freedom to join a cause of one's choice. The third and fourth consisted of the imposition of ideological conformity.

The Supreme Court of Canada is the ultimate authority and law of our country for both federal and provincial jurisdictions, and we submit that our rights are being violated by closed-shop tendering and that it is not a federal intervention into provincial jurisdiction to enforce upon them the law they chose to ignore because of misguided political motivation.

On a more practical note, there are some simple procedural processes whereby the federal government can better guarantee value for dollar and more fairness in the tendering process.

We are aware that the federal government often tenders projects in the National Capital Region under an RFP for construction management. Construction management in Ontario labour law is a process whereby a contractor puts in a bid essentially based upon time and material for managing the project, and the contracts of the subcontractors who actually perform the work on the project are

made directly with the owner, with the government. In those circumstances, construction management is allowed whether the general contractor is unionized or not. It permits open tendering. You are not obligated by union affiliation of the general contractor because the government is making the contracts and it has no obligations.

So we've had circumstances where the capital region has tendered a major project and a union general contractor has gotten the job, but then they haven't told anybody that they're going to enforce their union restrictions on the contract. That makes a huge difference in the price. The government should simply understand what the labour law is and not permit it. You can have open tendering with a unionized general contractor under a construction management agreement. There's no problem. It's done all the time.

The same thing would apply to P3 projects if you write the project properly.

Project labour agreements, I'll just say, are disasters. There should be no federal funding at all allowed in a project labour agreement with a building trade-only clause. The United States is a mass of corruption because of project labour agreements. I've experienced that personally.

Our favourite and perfect analogy on the subject of open tendering is the auto industry. Following the logic of supporters in the building trade monopoly tendering, Honda and Toyota produce in Canada poor-quality, over-priced, and unsafe vehicles by exploiting their workers because they are not unionized, whereas the public who buys the vehicles knows the truth, and the CAW would be laughed out of any public forum if it tried to make that claim.

The problem with public tendering is that politicians and public administrations buy construction services, and the public is kept in the dark as to the inflated costs, and the perverse and perhaps anti-democratic decisions politicians can make for their own political gain.

In conclusion we would ask, where does corruption start? We believe that somewhere in the long, dark history of the corrupt Quebec industry it began with little favours by politicians to gain political support based on them being sold a bill of goods that union was better, and selling that to the public and ignoring the facts. Then step by step, a political disease was thereby created and everyone soon became beholden to the “construction industry” for money and political favour.

•(1625)

Let's not let that happen in Canada. As others have said, this is not an anti-union versus union issue, but a private sector versus public sector issue. Whenever you have closed tendering, you are giving monopoly profits to the contractors affiliated to the unions, and the left and the labour movement seem to completely ignore that. You are eliminating 87% of the corporate competition and giving monopoly profits to the 13% who are left. You put two private sector partners—the labour movement and the contractors—together in a room, you eliminate all their competition for them, and if you don't expect that the public is going to get the short end of the stick out of that deal, somebody needs to have a checkup.

Thank you.

•(1630)

The Chair: Thank you very much, Mr. McDonald.

Mr. Harris, you have 10 minutes.

Mr. Michael Harris (MPP Kitchener-Conestoga, Legislative Assembly of Ontario): Thank you, Chair, and thank you for giving me the opportunity to speak to you today about the importance of preserving open tendering for public infrastructure projects, specifically as it relates to Ontario.

As your committee has heard during recent meetings, Ontario has a growing problem with closed tendering. For years, certain construction unions have successfully exploited a legal loophole in our outdated labour laws that allows them to certify public sector employers as construction companies. Once certified, these bodies are then bound by a collective agreement that is bargained at a provincial level on behalf of all construction employers and that contains strict contracting-out clauses.

The restrictions in these agreements stipulate that a certified employer must only award contracts to companies organized by a specific union. In other words, this legal loophole allows certain unions to set up labour monopolies that inflate costs and deny qualified contractors the right to work on infrastructure projects, including those funded by all three levels of government.

Sault Ste. Marie, for instance, has been certified by the United Brotherhood of Carpenters and Joiners of America, as well as the Laborers' International Union of North America. This particular set-up has restricted the overwhelming majority of contractors from working on public infrastructure in Sault Ste. Marie, since municipal projects must be awarded to companies organized by both unions. It goes without saying that this lack of competition inevitably pushes costs up. The Greater Essex County District School Board reports that its costs for public projects have jumped by 10% to 20% after being certified by several trade unions since the early 1980s.

Similarly, the City of Hamilton reported an initial 5% uptick in public infrastructure costs after it was certified by the carpenters' union in 2005. It later found, however, that the increase was closer to 40% after a consultant analyzed the impact of certification.

The millions of dollars that are needed every year to pay for these inflated costs come from taxpayers, regardless of their financial situation. Canadians are willing to pay their fair share, but they don't

want to see their taxes rise simply because the government allows certain unions to restrict open competition.

I have to say this issue got personal for me when I learned that the carpenters' union was attempting to certify my own region, the Region of Waterloo. By now, I know all of you have heard the story of how two regional workers tasked with building a blue garden shed in Wilmot Township on a Saturday signed union cards asking to join the carpenters. The Region of Waterloo, just like the other public sector employers I already mentioned, did not enter this process voluntarily. These two workers, who constituted a majority of the workforce that day, took it upon themselves to submit a certification application. If this application is successful, nearly every regional project that is put out to tender will have to go to a company organized by the carpenters' union. That means thousands of contractors and their employees will be deprived of the right to work on publicly funded infrastructure projects in the Waterloo region. In fact, this development would block as much as 90% of contractors from bidding on certain infrastructure projects.

For example, Waterloo region has tendered more than \$140 million worth of water and waste water infrastructure projects since December 2009, according to the Progressive Contractors Association of Canada. For each of these projects, 27 companies pre-qualified to bid on the work. However, if the region had been certified over that same period of time, only two companies would have pre-qualified to bid on those projects. With so few bidders, the result of this union monopoly would undoubtedly be higher infrastructure costs. In fact, Cardus estimates the increase for the Region of Waterloo could be as much as \$78 million a year. These additional costs would have to be covered by the region, as well as the province and the federal government for jointly funded infrastructure projects like the light rail transit system, which is worth roughly \$820 million.

Now just think. If this project were subject to a labour monopoly that pushed up the price by 40%, it would cost an additional \$325 million. That represents significantly higher costs for all three levels of government.

To stop this from happening in my region, and to prevent it elsewhere, I tabled a bill in the Ontario legislature last week called the fair and open tendering act. This bill is based on two fundamental principles. The first is fairness. I believe all Ontarians, regardless of their affiliation with a particular union, should have the right to work on publicly funded infrastructure projects.

•(1635)

The second is competition. When all qualified unionized and open-shop companies have the opportunity to fairly compete for contracts to build bridges, new schools, and other public buildings, we can ensure that taxpayers get the highest quality work at the lowest possible cost.

Following these two principles, this bill, if passed, would exempt municipalities and school boards from province-wide bargaining in the construction industry. In other words, unions would no longer be able to certify municipalities and school boards under the construction sector provisions contained within Ontario's labour laws.

This bill also protects workers' rights by expressly stating that unions still have the ability to organize public sector employers under the provisions in the Labour Relations Act not related to the construction industry. This is a fair and reasonable solution that has already gained a significant amount of support from both unionized and non-unionized contractors.

In fact, to date, the Christian Labour Association of Canada, Merit Ontario, the Ontario Road Builders' Association, and the Progressive Contractors Association of Canada have all backed the fair and open tendering act. Having all of these organizations publicly endorse this bill demonstrates the overwhelming support from both unionized and non-unionized contractors to preserve and maintain open tendering in Ontario by correcting a long-standing problem.

Although closed tendering has been identified as a major issue for quite some time, municipal leaders have not been able to persuade the Liberal government in Ontario to act. The Large Urban Mayors' Caucus of Ontario passed a resolution in 2008 calling on the province to exempt municipalities from province-wide collective bargaining in the construction industry, but unfortunately, it fell on deaf ears.

So clearly, there is a lot of work to be done at Queen's Park to get members of the provincial government on board with this legislative solution. But if history is any indication of the future, I'm sure the province will need an incentive to act. That's where the federal government could come in.

To ensure all workers, regardless of union affiliation, have the right to work on publicly funded projects, the federal government could require that transfer payments for infrastructure be subject to open tendering. This requirement would be similar to the federal government's open-tendering clause in the building Canada fund agreement with Nova Scotia. By taking this action, the federal government could ensure that federal tax dollars were used to improve our communities instead of subsidizing labour monopolies in Ontario.

I think what we all need to realize is that at the end of the day, there's only one taxpayer, and considering that Ontario has a \$60 billion infrastructure deficit, we should be doing everything in our power to make tax dollars go even further.

That's why I'm calling for legislative change at the provincial level and for an open dialogue with all levels of government to determine what reasonable conditions can be put in place to guarantee fair and open competition. Ensuring that all workers have the right to work on publicly funded infrastructure projects would be a good first step towards bringing our labour laws into the 21st century and protecting taxpayers across this country.

Again, I'd like to thank the committee for giving me the opportunity to speak today. I'll be happy to take your questions.

The Chair: Thank you very much, Mr. Harris. We'll move right to questions.

Mr. Aubin, go ahead for seven minutes.

[*Translation*]

Mr. Robert Aubin: Thank you, Mr. Chair.

Welcome, gentlemen. Thank you for joining us.

If you have been following this committee's work for some time, I assume you will not be surprised to hear that a few other witnesses have presented the same position as you. However, I think we agree on one issue. The Quebec and Ontario construction systems differ considerably. You are probably in a better position than me to talk about the Ontario system, and vice versa.

People have been quick to make comparisons between the astronomical costs closed bidding processes are criticized for and costs resulting from open bidding processes. That has not yet been explained to me. We have always been given figures—but they were always the same ones and always based on the same experiences.

I would like to hear an objective explanation of the situation in Ontario, so that I can understand it better. You have the right to consultation.

How many municipalities are there in Ontario, approximately?

• (1640)

[*English*]

Mr. David McDonald: I've heard of—

Mr. Michael Harris: Hundreds of municipalities.

Mr. David McDonald: —hundreds of municipalities, I know. But the LUMCO group, which was mentioned in Mr. Harris' deputation, is basically urban centres of over 100,000 people, and that was 30.

[*Translation*]

Mr. Robert Aubin: Can you give me an estimate of how many of those hundreds of municipalities use closed bidding processes? Of course, I don't expect you to give me the exact figures—an estimate will do.

[*English*]

Mr. Michael Harris: We have identified, or I have spoken to, several large municipalities: Hamilton, Toronto, Sault Ste. Marie. I referred to the Essex school board as being one of them. On top of that would be the Region of Waterloo, if certified. So a large percentage of the construction work in Ontario would be made up within those municipalities.

[*Translation*]

Mr. Robert Aubin: Do you have an idea of how many companies bid for a contract when a competition is launched in one of those municipalities?

[English]

Mr. Michael Harris: In my deputation, looking at the Region of Waterloo over the past two years, I mentioned the waste water treatment infrastructure upgrades alone, which I believe were around \$120 million. There were about 27 eligible bidders on that project. If these restrictions come into effect, the region would see that list whittled down to just two of those 27 eligible bidders.

Mr. David McDonald: I would point out that when the City of Hamilton was certified, the staff did a detailed analysis of contractors who were already pre-qualified to bid on carpenter-related work. They found that out of the more than 200 contractors only 17 were qualified now that they had to have a carpenters' agreement.

When the city put out its first request for pre-qualification on a large water treatment plant, it got no applicants. It took a year and a half.

[Translation]

Mr. Robert Aubin: Mr. Harris, did you want to add anything?

[English]

Mr. Michael Harris: Yes, I just have an example here. There was a biosolids facility built in Kitchener and there were nine eligible bidders in 2009. If these restrictive clauses come into effect, that would have been whittled down to just one eligible bidder for that project.

[Translation]

Mr. Robert Aubin: I have a bit of an issue with another part of your testimony. You implied—and I am not saying you did that intentionally, but that is my perception—that the absence of open bidding processes basically eliminates competition. It would appear that, when business is conducted with companies whose employees are unionized, competition among companies disappears.

Mr. McDonald, you are part of the business world. Are your employees unionized? Is the leverage that would enable your company to be more competitive than a unionized company due to the fact that the wages and social benefits provided to the employees are lower? I don't see how competition would make construction costs skyrocket. We are always being told—without being given concrete evidence—that costs increase by 40% when unionized companies are competing amongst themselves, compared with cases where unionized and non-unionized businesses are in competition. If you provide the same services, what could explain that difference, if not social benefits, paid leave, employees' wages, professional training and so on? A number of representatives have told us that they provide the same conditions and wages, and I believe you. So where does the difference arise from? Why would your company be more competitive?

• (1645)

[English]

Mr. David McDonald: Unlike in the organized sector, we don't spend a lot of time tooting our horn and telling everybody we're the best, the most efficient, better trained, and this, that, and the other thing, but I would certainly say we are.

It goes back to my auto industry analysis. Forty years ago the CAW and the Big Three had a monopoly over car production in North America. Competition came into the market. All of a sudden

other people were producing better cars, safer cars, cheaper cars. The CAW and the Big Three both got together and realized they had to compete, increase their standards, improve the quality of their work, and they have done so.

In the construction sector in Quebec that hasn't happened at all. It is happening in certain sectors in Ontario, such as in the road building, and sewer and water main sector, which is dominated by one union, the Laborers' International Union. That union in construction in Ontario is competitive. They don't have any of these monopoly contracts, or whatever else, and they compete quite fairly.

The biggest thing you would like to know, probably, is about wages. I managed a workforce of 200 open-shop people. On average our people made more than a unionized person, based upon the fact that an open-shop general contractor or subcontractor has to have more loyalty to his employees and guarantee them more hours. Otherwise, they will be lost. We can't call up a hiring hall and get more people.

The same thing when winter comes. If we lay them all off, they will go get some other job. They may like it somewhere else and they won't come back. So what we do is find work for them. We don't make as much money over the winter, but we keep a lot more of them. We create loyalty among them.

My policy was always basically to pay a few dollars less than the published union wage. The productivity I gained out of the loyalty of our crew made us unbeatable in terms of open competition against organized—

The Chair: Your time is up, Mr. Aubin.

Thank you, Mr. McDonald.

Mr. McGuinty, you have seven minutes.

Mr. David McGuinty (Ottawa South, Lib.): Thanks, Mr. Chair. Thanks very much, gentlemen, for being here this afternoon.

Mr. Harris, could I go to your bill for a second? Where is the bill in terms of progress through the house at Queen's Park?

Mr. Michael Harris: It was tabled for first reading on May 16.

Mr. David McGuinty: Has it been debated at all before the house?

Mr. Michael Harris: It has not been debated yet.

Mr. David McGuinty: Do you have any indication what the position of other parties will be with respect to the bill?

Mr. Michael Harris: We're hopeful other parties will see this issue in the way we have, and the fact that it's about fairness and competition, of course. As we mentioned earlier, a lot of mayors and municipalities and school boards have asked for this change to occur through the LUMCO resolution in 2008. I've had conversations with my colleagues within the Region of Waterloo from both parties, and I hope they will be supportive of this when it is called for debate.

Mr. David McGuinty: I'll pick up on my colleague's question and explore a bit more evidence about the magnitude of this problem.

I know you're probably not in a position to tell us exactly how many municipalities and public authorities might be affected by this in Ontario. Is that right?

Mr. Michael Harris: I can tell you, though, the ones that have been affected to date. The City of Hamilton, of course, the City of Toronto, the Greater Essex School Board, and Sault Ste. Marie are some of the municipalities and school boards that have currently been affected. Of course, the Region of Waterloo is pending that certification, so it's a significant amount of municipalities. Really, where the growth is happening is where they're certified and are now prone to these provisions.

• (1650)

Mr. David McGuinty: Do you have any evidence you can share with us about, say, the exact proportion of municipalities or public authorities that are affected by this, writ large across the province?

Mr. Michael Harris: I think the volume of work is significant enough. If you look at some of the significant infrastructure projects happening in Ontario, if you look at the big build in Toronto with its transit, if you look at the Pan Am Games, for instance, coming up. Ivor Wynne Stadium is now subject to, in essence, a labour monopoly and restrictive clauses that forbid contractors from bidding that large project with the Pan Am Games.

In my own region alone, we have the single largest infrastructure project of its time, the light rail transit system, \$820 million. That's some significant infrastructure dollars that would be subject to limited competition.

Mr. David McDonald: I would add the Union Station renovation project: tripartite funding, \$560 million, I believe, and wall-to-wall union. The Spadina subway extension: \$2.5 billion, again tripartite funding, and wall-to-wall union.

These are significant dollars. You have an infrastructure deficit at the Toronto community housing authority of \$750 million, and they're going downhill, because the prices they're getting in that sector from unionized contractors are just.... They're the ones that go over the 40%.

Mr. David McGuinty: I take it, then, that neither of you are in a position to really give us any hard evidence about the proportion of municipalities or public authorities in the province that are actually affected by closed bidding systems. Do you have any evidence? Do you have a document you could table with us, or some kind of analysis?

Mr. Michael Harris: Yes, I can. In fact, I can table the Cardus report that was done. The Cardus report states that if the Region of Waterloo were to become subject to these labour restrictions, in fact, 28% of Ontario's population would be subject to labour monopolies.

My region alone, the Region of Waterloo, represents just over half a million taxpayers, and that would be Ontario's fourth major urban centre to be subject to those labour monopolies. I'd reference the Cardus report.

Mr. David McGuinty: Does the Cardus report tell members of this committee exactly what proportion of Ontario municipalities are affected by closed bidding systems?

Mr. Michael Harris: Well, I think, as I had stated, that 20% of Ontario's population would be subject to labour monopolies. I can't

give you the numbers off the top of my head, but 20% of Ontarians, so....

Mr. David McGuinty: Can I explore the 40% number in your press release?

You assert that it increases infrastructure costs, I guess in every case, by 40%. Are there cases when it increases by 20%? Are there cases when it's net neutral? Are there cases when it's actually less expensive?

Again, do you have any analysis for us to help us understand how you arrived at the 40% number?

Mr. Michael Harris: I can tell you that the 40% number came from a City of Hamilton report, in fact, done by the city to evaluate the implications of closed tendering within that jurisdiction.

Mr. David McGuinty: For Hamilton?

Mr. Michael Harris: Yes.

I'll go back and reference that Cardus report again. In fact, the carpenters' union themselves admit that the costs in Hamilton had risen by 2%. Initially, the city found that it was 5%, and then, after the city consulted with a consultant to do a report, they reported that costs jumped by 40%. That's where that 40% number is coming from.

Mr. David McGuinty: Derived exclusively from the City of Hamilton?

Mr. Michael Harris: Yes, and I think that's a pretty good example to use. The City of Hamilton has gone through the certification. They're a closed-tendering municipality. I think it's reflective of what happens in other municipalities.

I believe the Essex County school board suggested that there are at least 5% to 10% increased costs.

Mr. Jeff Watson (Essex, CPC): It's 10% to 20%.

Mr. Michael Harris: Okay, 10% to 20%.

Mr. David McGuinty: Are there any other provinces where there's an existing equivalent closed bidding system that has moved to bring in the measures you're proposing for Ontario?

Mr. David McDonald: The only jurisdiction in Canada that has anything close to this would be Manitoba right now, where you have project labour agreements, which are government agreements in a certain sector, like the Red River flood project. That was under a project labour agreement, where they restricted the workers on it to be union only.

But no other jurisdiction in North America has the peculiarities that we have in Ontario, where a municipality basically is certified by the labour board and becomes a contractor. The contracts they're bound by are negotiated by the contractors, and the city doesn't have any say in negotiating. That's completely unique. That's what Mr. Harris' bill chooses to change.

• (1655)

Mr. Michael Harris: Yes, and I think it's important to note, too, that we talk about percentages, but as a percentage in terms of real dollars for taxpayers, the City of Hamilton projects that it increased their costs by \$10 million annually. That's a significant amount of money that could be used to fund other important infrastructure projects.

The Chair: Your time has expired, Mr. McGuinty.

Mr. David McGuinty: Thank you very much, Mr. Chair. I appreciate it.

The Chair: Mr. Poilievre, you have seven minutes.

Mr. Pierre Poilievre (Nepean—Carleton, CPC): One of you spoke of federal public tendering that is in some way closed. Can you explain that further?

Mr. David McDonald: Starting in the nineties, unionized general contractors wanted to look for a way that they could compete in an open market against open-shop contractors.

So what they did—I believe it was in 1989—was write into their collective agreements a construction management clause. It sets out the provisions whereby if they do not form a contractual relationship with a subcontractor, they do not have to abide by the restrictions of that subcontract. The owner, therefore, is bound to the contract.

Basically, with a construction management contract, you hire the services of a construction manager, who is a general contractor, to manage the project for you. He'll prepare all the packages. You might have a separate architect and engineer to draw up the drawings, or sometimes the general contractor will do that. But they will manage the whole process for you, on essentially a contingency basis—so much for your trailer, so much for your secretary, so much for your site supervisor or whatever else. They'll basically manage the whole project for you.

They'll put out the tenders for the subcontractors who will perform all the work on the job, but when the contract is written, the contract is with the government. There may be 20 subcontracts in this package. The direct contractual relationship is between the subcontractor and the government, or the owner.

Mr. Pierre Poilievre: So you're saying it's the general project manager who imposes union-only provisions on the subcontractor, which the government then must honour. Is that it?

Mr. David McDonald: What I'm saying is that this is what they do, but the government does not have to honour them. All they have to do is tell them, "We want construction management here, and we want open competition on all your jobs. We are not bound by the agreements, and you can't force them on us."

I've worked in exactly that circumstance with our company—

Mr. Pierre Poilievre: Can you talk about project labour management agreements?

Mr. David McDonald: I can tell you a lot of bad stories.

Mr. Pierre Poilievre: Well, I don't need a lot of bad stories. Just give me one example of where this approach has been taken.

Mr. David McDonald: The Red River floodway.

Mr. Pierre Poilievre: How was this set up, how did it work, and what was the consequence?

Mr. David McDonald: Basically, the government made a contract, essentially a collective agreement, with the building trades of the area whereby it set the terms and conditions for all employment—wage rates, pension benefits, and all that. But in addition, only members of the building trades could work on the project, even though in Manitoba union density is even lower than here.

So it excluded 85% of the construction workforce of the province from working on the job, but it also excluded all the open-shop contractors who might have wanted to do the job.

Basically, it's eliminating the competition and giving the work to your friends.

Mr. Pierre Poilievre: Do you have any documentation to share, supporting your claims in this example?

Mr. David McDonald: I don't have it now, but I could get you something, certainly.

Mr. Pierre Poilievre: Okay.

One of the opposition members asked if it's possible that closed tendering could reduce the price of infrastructure.

Is there any way that banning large numbers of competitors from submitting a bid could lower the cost?

• (1700)

Mr. Michael Harris: No. I don't see how, if there are only two coffee shops in town, the price of coffee is going to come down.

Mr. Pierre Poilievre: By the logic of closed tendering, the solution would be to eliminate one of them. Then you'd have one coffee shop in town.

Mr. David McDonald: This is part of what the labour movement in the States, in particular, often says is the potential benefit of a project labour agreement. They say, well, since our rates are the normal rates anyway, or whatever else, we'll give you a deal on our rates.

Actually, the labourers' union tried to get a project labour agreement with Windsor county back a few years for all the road work for the new bridge. They offered to give the county 50¢ an hour, which they could use for any fund they wanted or whatever else in return for getting a monopoly over all the work. The county turned them down.

Often a project labour agreement will be sold based on saying there will be a no-strike clause in the agreement, or they'll give you better overtime rates or something like that. But in the bigger perspective, whatever they give, they're taking away again.

Mr. Pierre Poilievre: All parties here have the right to submit witnesses for testimony. We've had a number of hearings and I haven't heard anybody defend this practice of banning competition.

Is there anybody you're aware of who would be prepared to defend it publicly? There are those who support it privately, and have benefited richly from it, but is there any organization that would be prepared to actually defend this practice?

Mr. David McDonald: I'm assuming that the building trades would.

Mr. Pierre Poilievre: I don't know if anyone has put them forward as a witness, but I haven't heard anything from them.

Mr. Michael Harris: I think it's fair to note that the monopoly in Hamilton is a union monopoly. Projects would still be tendered, but only by companies organized by the carpenters' union.

Mr. Pierre Poilievre: Right.

Mr. Michael Harris: This would create a union monopoly and that really necessitates a private sector oligopoly.

Mr. Pierre Poilievre: Are you aware of the existence of the Competition Bureau in Canada? Its mandate guarantees competition, and effectively bans monopolies. Isn't this closed tendering precisely the opposite, in that it guarantees a monopoly and bans competition?

Mr. David McDonald: We've looked at that in my past experience on the board of Merit, and talking to people from Merit Ontario and Merit Canada. We've looked at that option and have been told that it's very iffy, going to the Competition Bureau. We've also looked at the charter challenge issue. Essentially, on both counts, we're trying to get a political solution, rather than have somebody tell us that it's before the courts and to forget about it for now.

Mr. Pierre Poilievre: Do I have any time left?

The Chair: No, your time has expired.

Mr. Holder, you have seven minutes.

Mr. Ed Holder (London West, CPC): It's rather interesting and I appreciate our guests' testimony today. It will help round out some of the considerations as we go through this study.

As I've thought about it, it takes me back to our most recent meeting earlier this week. We had representatives who spoke against a closed shop. I think Mr. Aubin made a good point. We've heard a number of witnesses who were opposed to a closed shop. We've heard both sides, but there have been a number who have talked about the closed-shop scenario.

It seems to me that we're always talking about the financial piece, and I understand the financial piece. Surely, 27 individual firms—to use your number, Mr. Harris—is better than two, from a competitive perspective.

I was struck by what you said about the bill. The first word you used was “fair”. I asked this question last week, but I need both of your perspectives. We all have a responsibility to taxpayers at any level of government, and I would presume that we take that as one of the paramount considerations.

Assuming there was talent there, whether it was union or non-union... I guess there are two questions. First, let me ask directly, are you non-union? Can I ask you that as a direct question? Are you against union labour?

• (1705)

Mr. Michael Harris: I don't have an affiliation obviously, but absolutely not. I believe there is lots of room in Ontario and Canada for both union and non-unionized labour to perform the tasks at hand.

Mr. Ed Holder: Let's come back to what I talked about last week. I want to come back to where I thought you were trying to take the bill. I'm not sure that you put enough emphasis on it. Where is the moral imperative here? Whether you're a union worker, a non-union worker, in a closed shop or an open one, I don't care. I don't think the taxpayer particularly cares as long as it's what we used to talk about: equal pay for work of equal value. It's almost that scenario.

From a straight fairness standpoint, what's your perspective? I think I have a sense of it, but I need to hear it clearly. How is it fair that people, just because they do not belong to an organized labour organization, should be shut out of the ability to quote?

By the way, I think the contrary is true too—it shouldn't be the other way either. People who work in a union environment should not be shut out of quoting in any municipality just because they belong to a labour union. Do you have a thought on that? I want you to be really clear so I can understand this.

Mr. Michael Harris: This is about fairness. I've said regardless of one's affiliation with a particular union or a non-union, they should have the right to work on publicly funded infrastructure projects. This will ensure that taxpayers get the highest quality at the lowest cost. This is not about union or non-union. This is about fairness, ensuring that contactors, workers who are eligible and are qualified, have the ability to price and work on and compete for public infrastructure projects in Ontario, and of course across Canada.

Mr. Ed Holder: Thank you, Mr. Harris.

Mr. McDonald, I get a sense from your testimony that you're slanted one way in your perspective. I have a feeling about that, but let me ask you a separate question, and I think it relates to Mr. Harris. You talk about Ontario, but let me say Canada. Coming back to this moral imperative, do you believe there is an obligation to give every worker the right to work regardless of their union or non-union status? Depending on your answer, that might balance everything you've said thus far.

Mr. David McDonald: That's what the charter says. Government cannot discriminate against employment in the private sector based on union affiliation. I get a great deal of solace from reading that, and hopefully it will one day be true. For years I've been a supporter of the City of Toronto fair wage policy, which calls for open competition with all wages over \$30 an hour, and whatever else, without a race to the bottom.

The organized sector seems to want to destroy the fair wage policy by not having a level playing field and not letting anybody else come to play. I do not want to get rid of the labour movement. They give us incentive. If they get better than us, it's competition in how you perform the work. It's creating better mousetraps. They can do it. We can do it.

Mr. Ed Holder: Those are balanced comments, and I appreciate the way you said it. I think what I've heard clearly from the two of you is that ultimately this is about an issue of fairness. I'm not sure why anyone on either side of this table would disagree, whether we have a pro-labour or non-pro-labour stance. I think we'll all pro-labour. I can't imagine that we're anti-organized labour or anti-non-organized labour. Purely from a fairness standpoint and even in relation to the taxpayer, I don't know how anyone around this table could disagree with that intent.

The tenor of your comments earlier were interesting, Mr. McDonald, but I think the way you've summarized that is very helpful.

Mr. Harris, your focus is obviously on Ontario. I have some interest in this. I'm from the 10th largest city in Canada, London, which is very close to your region of three cities, I understand. But it strikes me that what's happened in Hamilton, and your concern of the impact that it would have....

You're here in front of a federal committee reviewing this issue. What recommendation would you have for us? I appreciate you're dealing with your own bill, but I haven't heard a specific recommendation that you might offer to this committee as to what we might consider going forward as we review our own testimony. Could you comment on that?

• (1710)

Mr. Michael Harris: In my remarks, I mentioned there's a possibility or a conversation to be had on how the federal government can ensure taxpayers that open tendering occurs, not only in Ontario but across Canada. We all know there's only one taxpayer, not a municipal, provincial, or federal taxpayer. They're all the same. There's a discussion to be had on how the federal government through the building Canada fund, ensured open tendering in Nova Scotia.

The Chair: Your time has expired.

Mr. Sullivan, you have five minutes.

Mr. Mike Sullivan (York South—Weston, NDP): I'm really getting tired of the anti-union spin that we're hearing all the time. Some of it is true and some of it is not. You stated that there's a loophole. The loophole was actually put there by the Mike Harris government—not you, Mr. Harris but the other Mike Harris—in 1995, when the Labour Relations Act was amended. They had eight years to fix it, but didn't fix it, so there must be something that even the Conservatives in Ontario thought was okay.

I note that Melloul-Blamey, and Mr. Melloul, have contributed to Mr. Harris' election, so there is a pretty close relationship between you two. I know that in the federal sphere, corporations are not allowed to donate to political parties or to candidates, but provincially, that's still allowed and that happens.

In fact, some of what is being complained of is about competition, and that some non-union contractors just don't compete, yet they want to blame something called a closed shop, which isn't actually a closed shop. In fact, earlier Mr. Kooy talked about Manitoba Hydro being a closed shop, and it's not. In fact, contractors have been successful in getting Manitoba Hydro contracts.

So there's an awful lot of misinformation being spun here in order to try to suggest that the rules are bent—and I know we're only talking about Ontario and Manitoba, really—in favour of certain trade unions. We've heard anecdote after anecdote, but nothing really concrete. In fact, we have a Labour Relations Act in Ontario that says if a trade union manages to become certified with a city, that this trade union then becomes represented. That's the way bargaining works in Ontario, and in Canada, in fact. I don't hear anybody here saying we should have a system whereby the people who work here on Parliament Hill should suddenly have to toss away their union certification because the government would like nothing more than for non-union people to come in and start doing the jobs here on Parliament Hill, yet that's what's being suggested here.

The other thing you said, Mr. McDonald, was that the U.S. is a mass of corruption because of project labour agreements. Do you have evidence of that?

Mr. David McDonald: If you want me to get you some, I'll gladly do it.

Mr. Mike Sullivan: Can you get criminal prosecutions of corruption in the U.S. as a result of project labour agreements?

Mr. David McDonald: Sure. But the bigger thing is, something probably everybody knows about is the “big dig” in Boston, the most disastrous, publicly financed infrastructure project in North America. That was a project labour agreement. At the end of it, they had to come up with \$500 million, basically, to cover the deficiencies in the performance of the work.

Mr. Mike Sullivan: Is that something to do with bad management? Or is it bad labourers? We're talking about the city of Kitchener's transit system. Is that going to be put in by the city or by Metrolinx?

• (1715)

Mr. David McDonald: That's by the city. The Toronto projects are owned by Metrolinx.

Mr. Mike Sullivan: So those are open tenders.

Mr. David McDonald: Those are going to be open tenders, correct.

Mr. Mike Sullivan: They already are.

Mr. David McDonald: Yes.

Mr. Mike Sullivan: Unfortunately, as a result of there being open tenders, there are non-union contractors who refuse to hire locally, refuse—

Mr. David McDonald: Where did you get that possibly from?

Mr. Mike Sullivan: From Metrolinx.

Mr. David McDonald: Well, I talked to Metrolinx about a month ago at a TTC meeting and they said the exact opposite. They are getting a great deal of cooperation on their projects in hiring local Toronto workers from underprivileged neighbourhoods.

Mr. Mike Sullivan: I'm running into exactly the opposite on the air-rail link construction project coming through my riding. They have refused to allow there to be any apprentices on that project. Metrolinx was asked to supply apprenticeships to an apprenticeship system, and they refused, saying, “No, we have non-union contractors. We cannot get them. We will not get them.”

Mr. David McDonald: I will ask you to get my contact information—

Mr. Mike Sullivan: I know that Metrolinx is embarrassed by that, and they're trying to do something different on the big dig, but I'm talking about—

Mr. David McDonald: You give me that information.

Mr. Mike Sullivan: Absolutely.

Mr. David McDonald: I'll try to take care of it for you, because I know a lot of those contractors and they're very concerned that they're doing exactly the right thing, including hiring adults as apprentices from underprivileged neighbourhoods, as they were asked to do.

Mr. Mike Sullivan: Let's go on from that.

The Chair: You're out of time, Mr. Sullivan.

Did you have something to add, Mr. Harris?

Mr. Michael Harris: We can come back to it.

The Chair: If you're commenting directly on Mr. Sullivan's question, go ahead.

Mr. Michael Harris: I think there is some information there that in fact you have incorrect, sir, and you know what? The Harris government did in fact try to correct this loophole through the construction employer application process, but it's the intent or how the Labour Relations Board determines this, and so that's where we have the problem. My bill clarifies that municipalities and school boards are exempt from those provisions within the act.

But I want to state that this is not about a union versus non-union issue, because in fact this prevents a lot of unionized workers from being employed on or working for public infrastructure projects across Ontario. In fact in my bill, I specifically state that. I have my notes here. I've circulated the bill to everyone. To alleviate any concerns about bargaining rights, in general the bill expressly states that a union can still organize public sector employers under sections 1 to 125 of the Labour Relations Act.

So I want to make it very clear, this is not union versus non-union, because in fact I have union support on this bill.

The Chair: Thank you.

Mr. Watson, you have five minutes.

Mr. Jeff Watson: Thank you, Mr. Chair.

Thank you to our witnesses for appearing today.

No one would ever suggest that the way to have cheaper retail gasoline is to have fewer oil companies, less refining capacity, and fewer gas retailers. For those of us in the Windsor-Detroit area who understand what a private monopoly looks like with the Ambassador Bridge, who have been arguing that a competitive bridge under public oversight would cut into revenues for them, if you do a comparison, their tolls are 35% higher than the bridge tolls at the Blue Water Bridge in Sarnia, and 42% higher than the Peace Bridge in Niagara. So I don't think that anybody is going to argue that monopolies are cheaper.

That's a tough way to argue, especially when the carpenters' union local 18 in Hamilton agrees that there's cost inflation, although they

won't say why cost inflation exists. They defend it instead. I have a quote here that they said they "have been providing Hamilton with superior craftsmanship and a construction product that is second-to-none".

I agree it's second to none, because nobody else can challenge that. Unions have argued that this is a race to the bottom, that projects would not be safer. There are provincial health and safety provisions that are in law, are there not?

Mr. David McDonald: Very much so.

Mr. Jeff Watson: Okay. We have professional associations that govern their members based on their qualifications, or their ability to meet certification and qualifications. Is that not true?

Mr. David McDonald: You have to meet both safety and quality, and productivity criteria to pre-qualify on most public projects.

Mr. Jeff Watson: Now those are arguments, by the way, that unions would typically make against non-union workers, but in fact closed tendering affects other unionized workers.

• (1720)

Mr. Michael Harris: Right.

Mr. Jeff Watson: I find it curious that they would argue that both quality—a race to the bottom—and safety on projects are somehow applicable to other unionized workers. That just seems absurd.

Under Mr. McGuinty's more successful brother—we're glad you're back at this committee, by the way—the Toronto District School Board, Government of Ontario, renewed the exclusive contract between the Toronto District School Board and the Maintenance and Construction Skilled Trades Council. Cardus estimates the construction cost inflation of the renewal at \$120 million, if I'm not mistaken.

The Greater Essex County District School Board was mentioned earlier, Penny Allen. They religiously documented purchase orders for a period of three years and pegged the cost inflation at somewhere between 10% and 20%. So this is an important issue that we're tackling here.

Now, the federal government is not interested in amending or changing labour laws.

Mr. Harris, I would say that what you're doing structurally is an attempt to actually address the issue, the way it could be solved, and that's through provincial labour laws. Having said that, the federal government does have an interest when it funds projects to ensure that taxpayer dollars go further. That's the interest, I think, of this committee in looking at the issue.

We've seen an agreement with Nova Scotia since 2007. I believe the way it works is it essentially suspends the collective bargaining agreements application to a specific infrastructure or construction project to allow that to be tendered openly. Is that your understanding of how that provision works as well?

Mr. David McDonald: I'm not an expert.

Mr. Jeff Watson: That's how I understand it to work. Having the same thing apply to projects in Ontario, would simply allow projects in which the federal government is a funding partner to have open tendering.

Would you want this committee to recommend that in our framework agreements with the provinces, including the Province of Ontario, we seek to have this type of provision, which is already in effect in Nova Scotia, apply to projects in Ontario?

Mr. David McDonald: It wouldn't be the perfect solution, but it would be very adequate, along with an exclusion of PLAs.

Mr. Michael Harris: I would say that obviously my attempt to fix what we know in Ontario were outdated labour laws from the forties and finally get them the proper attention that they deserve and need.... Clearly the federal government has a role as a funding partner in some major infrastructure projects, and so I would encourage that conversation to happen.

That route would then force the provincial government to take action on some of the outdated labour laws we have talked about and fix the problem.

The Chair: Your time is up, and our time for the meeting is up. I know we would have liked some more questions, but we have a bit of committee business that we have to deal with.

Mr. McDonald, Mr. Harris, thank you very much for being here. At some point, the committee will finalize a report, I'll table it in the House, and you will certainly be able, as anybody else will, to get a copy.

Mr. Harris.

Mr. Michael Harris: I wanted to add and would be remiss not to mention, since Mr. McGuinty asked the question about support from other parties, that I would ask him to speak to his brother on this one, so that we can gain support for—

The Chair: I'm sure that will be the topic of the next dinner.

Some hon. members: Oh, oh!

The Chair: On that note, thanks again for being here.

Mr. McGuinty is here replacing Mr. Coderre, and under Standing Order 106(2), one of the vice-chairs must be from the Liberal Party.

I would entertain a motion that Mr. McGuinty be nominated.

Mr. Watson.

Mr. Jeff Watson: I so move.

The Chair: It has been moved.

Is there discussion?

All in favour please signify.

(Motion agreed to)

The Chair: The motion is carried—unanimously, I believe.

Welcome to the committee.

Mr. David McGuinty: Thank you.

The Chair: Ms. Chow, who is not here, had indicated that she wanted to introduce her motion.

Ms. Charlton, if you would, please read the motion into the record.

• (1725)

Ms. Chris Charlton (Hamilton Mountain, NDP): Thank you very much, Mr. Chair. I think you'll find that this is a pretty routine motion. It's: That the Committee invite the Minister of Transport, Infrastructure and Communities to defend the Supplementary Estimates (A) and the Committee study this estimate prior to three sitting days before June 18, 2013.

I think it's pretty routine in all committees that the ministers come to speak to their estimates, so I'm proposing that motion and hope it will find unanimous support.

The Chair: Is there discussion on the motion?

(Motion negated)

The Chair: The meeting is adjourned. Have a good weekend.

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