Submission to the Government of Canada:

Building Canada Strong for All – Powered by Canada's Workers

Targeted Second Phase

Prepared by the BC Building Trades

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Introduction

The BC Building Trades represents over 50,000 highly skilled, unionized construction workers, who account for approximately 55 per cent of British Columbia's non-residential construction labour force. Our members are proud to have worked on some of the most significant projects in B.C.'s recent history, including LNG Canada Phase 1 and Site C, in addition to playing a significant role in B.C.'s shipbuilding industry.

B.C. has distinct workforce needs, and our affiliated unions play a key role in recruiting, training and dispatching highly skilled workers to major projects across the province.

Context

We appreciate the opportunity to contribute to the targeted second phase of the Government of Canada's consultations on *Building Canada Strong for All – Powered by Canada's Workers* and to expand on our submission regarding worker misclassification and wage theft, made during the first phase of the consultation.

A copy of our first submission is included, as are a copy of the BC Building Trades' *Report on the Underground Economy* and documents from B.C.'s 2000-2001 Joint Compliance Teams program, for reference.

Wage Theft and Enforcement

Misclassification of workers as "independent contractors" or "independent operators" continues to be a dominant source of wage theft in the construction industry.

In B.C.'s construction industry, worker misclassification costs over $308 million annually in unpaid income tax, EI and CPP contributions, Workers' Compensation premiums and other remittances.

Misclassified workers experience wage theft as they are denied vacation pay, overtime and other entitlements they are legally owed by their employers. These workers may also experience de facto wage theft if the rate they are paid as an "independent contractor" is less than the equivalent hourly wage a properly classified employee would receive for the same work.

Over the years, worker misclassification and related wage theft has become the *way of doing business* for many construction companies. This occurs for a number of reasons.

A race to the bottom to win bids

In a "lowest bid wins" environment, construction companies misclassify their workers to gain an unfair advantage by illegitimately "saving" an average of 20% on labour costs. These unscrupulous companies can then win contracts by consistently underbidding. Meanwhile, good-faith companies that properly classify their workers lose bids and work.

Over time, more companies begin to misclassify their workers so they too can "save" on labour costs, compete, win bids and survive. Other companies simply go out of business.

High mobility

The construction industry is highly mobile: workers move from project to project and have dozens of employers over the course of a career, and jobsites themselves are temporary.

A worker looking for their next job - and next paycheque - may be compelled to take a job on the condition that they agree to be classified as an "independent operator," especially as the low-bid environment incentivizes more companies to hire misclassified workers.

Under these conditions, workers in the construction industry are more vulnerable to misclassification and wage theft than workers in industries with a more traditional structure and longer-term employer/employee relationships.

Piecework trades

Within the construction industry, certain trades are more vulnerable than others. Finishing trades, such as drywallers, painters and flooring installers, are particularly vulnerable as piecework trades, e.g. the work is more easily priced by units like square feet.

2016 census data showed that 44.8% of the total finishing trades workforce were nominally self-employed, compared to just 17.8% of building equipment contractors (trades that include plumbing, HVAC and electrical). Looking at specific trades, this becomes even more apparent: 62.9% of tilesetters were nominally self-employed compared to 20.7% of plumbers, and just 7.7% of sheet metal workers.

As analysis in the BC Building Trades' *Report on the Underground Economy* shows, this discrepancy is a strong indication that workers in the piecework trades are being misclassified at higher rates than other trades.

A compliance regime dependent on tips and complaints

The major barrier to enforcement in the construction industry is the current compliance regime, which relies heavily on individual complaints and tips.

Companies that misclassify their workers have a clear financial interest in keeping these practices hidden or in misrepresenting them as regular, legal business practices. Gathering enough information to submit a tip or complaint is difficult. And those that do make reports via a tip line rarely receive any information regarding investigation outcomes or resulting enforcement actions.

The industry's high mobility compounds the challenge of enforcement and can be a deterrent to filing a complaint or reporting a tip. By the time a complaint is reviewed and an investigation initiated, the construction project may be finished, or the misclassified worker may have moved on to a new job with a new employer. Why bother making a complaint at all?

Workers may also be reluctant to report instances of misclassification and wage theft due to fears of retaliation or impact on their livelihood. Making a report can jeopardize their current job or their reputation, and therefore future work, in the industry.

Misclassified workers may also underreport their income (inadvertently or not), since they do not receive a T4, and therefore might have their own financial incentive to avoid reporting or may fear becoming the target of investigation and enforcement.

The solution: Joint Compliance Teams

The unique context of the construction industry requires a tailored solution.

The BC Building Trades calls on the federal government, via ESDC and the Canada Revenue Agency, to reconstitute Joint Compliance Teams in partnership with the Province of British Columbia, including WorkSafeBC and the Ministry of Labour's Employment Standards Branch, to proactively visit construction worksites, conduct spot checks, review payroll information and speak with workers to uncover instances of worker misclassification and wage theft. These teams can then enforce the laws and recoup lost wages and entitlements for workers and lost revenues for governments.

Each government body has specific authorities and responsibilities that are necessary for the successful operationalization of a Joint Compliance Teams program. For example, Canada Revenue Agency can compel payroll and taxation information; WorkSafeBC has authority to access job sites.

The Joint Compliance Teams model was previously successfully deployed in B.C., visiting 400 job sites between November 2000 and July 2001. Based on that experience, we know that reconstituting Joint Compliance Teams program will have a two-fold effect on the industry:

1. Specific instances of worker misclassification and underground economic activity will be uncovered and can be rectified through enforcement, recouping significant revenues for government and employment entitlements for workers.
2. The industry is likely to self-correct: companies that misclassify their workers will begin to bring themselves into compliance in order to avoid the new, real risk of investigation and enforcement.

The federal government's role

Reconstituting Joint Compliance Teams will require coordination between different levels of government and multiple government agencies, as well as dedicated resources. [1]

The BC Building Trades calls on the federal government to take the following steps without delay:

1. Confirm the federal government's intention to support and participate in a Joint Compliance Team program for the construction industry in British Columbia.
2. Identify and task the appropriate staff at ESDC and the CRA to form a working group with the Province of British Columbia, to operationalize a Joint Compliance Teams program, including:
    a. Information-sharing agreements between participating government agencies
    b. Staffing
    c. Funding
    d. Communications
    e. Internal and public reporting

The BC Building Trades would be pleased to provide industry insight and ongoing advice to support the working group and the reconstituted Joint Compliance Teams.

[1] The cost of resourcing a Joint Compliance Teams program will be negligible compared to the government revenues that can be recouped through enforcement. For the 2000-2001 program, the Province of B.C.'s share of costs was approximately $290,000 at the time, covering 4 full-time equivalent staff, travel, communications and office expenses. By comparison, it was estimated that the Province could regain $44.5 million (in 2000/2001 dollars) in tax revenues annually through enforcement.

Conclusion

Misclassification of workers as “independent contractors” is a predominant form of underground economic activity and wage theft in B.C.’s construction industry.

Construction is a unique industry. High mobility and a persistent low-bid environment create the conditions that allow misclassification to flourish and the nature of piecework adds an additional challenge for workers in those trades.

To address misclassification in construction, government must look beyond the current complaint or tip-based enforcement regime.

The BC Building Trades calls for the re-establishment of Joint Compliance Teams, to proactively visit construction sites, uncover misclassification and recoup stolen wages and unremitted taxes and other legal obligations.

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