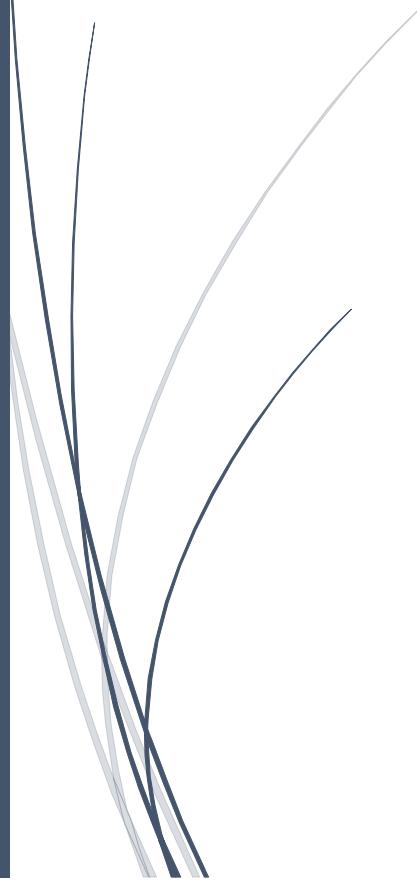


# Appendix B

## Feasibility Assessment:

### Fair Wage Policy and Community Benefits Policy

### at the City of Brampton



April 2022

# **Feasibility Assessment: Fair Wage Policy and Community Benefits Policy at the City of Brampton**

## **Executive Summary**

This report recommends that the City of Brampton adopt a Fair Wage Policy and a Community Benefits Policy for its construction procurement.

### **Construction Procurement:**

On average, the City awards 64 construction contracts *per year* of which 18 have a value of \$500,000 or more. The City awards an average of 40 non-construction contracts per year of which 10 have a value of \$500,000 or more.

The construction contracts with a value of \$500,000 or more represent, on average, 90% of the value of awarded construction work. Most (60%) of this construction work is for road work.

### **Fair Wage Policy:**

A Fair Wage Policy reduces the reputational and ethical risk to a municipality from unintentionally awarding work to a construction vendor that secured an unfair competitive advantage by paying wages that are less than the prevailing norms in the construction industry or by engaging in other unfair competitive practices. These include evading EI, CPP and WSIB contributions by styling workers as sub-contractors rather than as employees, cutting corners on health and safety and avoiding investments in training and apprenticeship.

A Fair Wage Policy does not raise wages. Nor does a Fair Wage policy restrict work to unionized contractors. Rather, a Fair Wage Policy is tied to prevailing wages. Properly designed, therefore, a Fair Wage policy has no impact on construction costs.

A Fair Wage Policy would implement the ethical criteria in the Sustainable Procurement Framework adopted by Council in May 2020. The proposed threshold for the policy is \$500,000. An analysis of construction contracts between 2017 and 2020 found that there were 258 contracts. Of these, 73 contracts had an original value of \$500,000 or more. These 73 contracts accounted for 90.7% of the value of construction work. Establishing a threshold of \$500,000 therefore captures almost all construction work when measured in value, while requiring scrutiny of fewer than 20 contracts per year. Most of these contracts are for road construction or repair. The proposed \$500,000 threshold would be the same as in the Fair Wage Policy recently adopted by the City of Vaughan. The City of Toronto is the only jurisdiction that has no threshold in its Fair Wage Policy. While adopting a lower (or no) threshold

would marginally increase the total value of covered construction work, this would be achieved at the cost of additional administrative resources to scrutinize these contracts. The \$500,000 threshold represents a sound balance between achieving a high level of coverage (90.7%) and the efficient use of administrative resources.

### **Community Benefits Policy:**

A Community Benefits Policy would implement the social objectives of the Sustainable Procurement Framework that the City adopted in May of 2020.

In the context of construction procurement, a community benefits policy refers to policies which encourage vendors to increase their outreach for hiring, training and apprenticeship opportunities to residents of Brampton and, in particular, to residents from groups which are historically under-represented in the construction industry and its training systems.

A Community Benefits Plan does not involve quotas. The emphasis is on outreach and working with community partners, including unions. No cost implications are anticipated, although it is recommended that the City proceed with a pilot project to validate this expectation.

The proposed Policy would require vendors on construction projects over \$5.0 million to include a Community Benefits Plan in their proposal or tender. The \$5.0 million threshold is proposed because only larger construction projects and the vendors that undertake these projects have the flexibility and resources to implement a Community Benefits Plan. The analysis of construction contracts between 2017 and 2020 found that there were between 1 and 8 construction contracts over \$5.0 million of value in a year. Over the period, 2017 to 2020, these large construction contracts represented approximately 44.2% of the total value of awarded construction projects. Establishing a threshold of \$5.0 million therefore ensures that the proposed Community Benefits Policy will be applied to all large construction projects. At the same time, this threshold ensures that the City's administrative resources in evaluating and monitoring Community Benefits Plans will be used efficiently. The \$5.0 million threshold will also ensure that smaller vendors, that often have limited resources, are not burdened by the requirement to develop a Community Benefits Plan.

The Community Benefits Plan which vendors for construction projects over \$5.0 million would be required to include in their tender or proposal would describe how the vendor (or its union) will undertake outreach for employment, training and apprenticeship opportunities to Brampton residents and particularly to Brampton residents from groups that have been historically under-represented in the construction industry. This approach gives vendors full flexibility in determining how they will contribute to the City's community benefits goals.

### **Compliance with Trade Agreements and the *Discriminatory Business Practices Act***

Trade agreements prohibit the implementation of local preference policies on procurements. Various agreements have different thresholds. The lowest threshold (\$100,000 adjusted for inflation) is found in the Ontario-Quebec Trade and Cooperation Agreement and applies when Quebec vendors are involved. The Canadian Free Trade Agreement (successor to the Agreement on Internal Trade) has a threshold of \$250,000 and applies to vendors who are resident in other provinces. The *Discriminatory Business*

*Practices Act* also prohibits giving preference based on location, but does not specify a threshold. The Act applies to all Ontario vendors. There are limited exemptions. A Community Benefits Policy that promotes workforce development and opportunities for disadvantaged groups in Brampton would be compliant with trade agreements. Such a policy would expand on the City's Supplier Diversity program.

#### **Administrative Costs:**

If City Council accepts the recommendation to adopt a Fair Wage Policy and a Community Benefits Policy, an additional full-time staff person will be needed to administer these policies along with the existing Supplier Diversity Program.

#### **Recommendations**

##### Fair Wage Policy

It is recommended that:

City Council endorse the principle of a Fair Wage Policy that would apply to construction work with an initial value of \$500,000 or more. The purpose of this policy is to ensure that: (1) construction vendors pay wages and benefits that are at least on par with prevailing norms in the industry, (2) that they comply with statutory requirements for benefits, the proper classification of workers as employees and obligations under the *Occupational Health and Safety Act* and *Workplace Safety and Insurance Act* and (3) that they are encouraged to invest in apprenticeship and training. In this way the Fair Wage Policy will create a level playing field that encourages the City's construction contractors to compete on the basis of productivity, quality and efficiency rather than by securing a competitive advantage at the expense of their work force. City Council requests the staff to develop a made-for-Brampton policy to achieve these goals. Staff are also requested to consult with employer associations and unions in the construction industry prior to submitting this policy for Council's consideration.

##### Community Benefits Policy

It is recommended that:

1. City Council approve the following statement for the goals of a Community Benefits Policy:

The objective of the Community Benefits is to support diversity and inclusiveness and to encourage employers to increase the opportunities for Brampton residents to pursue careers in the construction industry. The City of Brampton wishes to encourage employers to create opportunities, in particular, for youth-at-risk, members of visible

minorities, transitioning veterans, women, aboriginal persons, members of the LGBTQ2S+ community, and recent immigrants. These opportunities may include direct hires, pre-apprenticeship training, apprenticeships or other career opportunities. The goal is career opportunities, not short-term jobs.

2. City Council requests staff to develop a detailed Community Benefits Policy which would require vendors on most construction projects with a value of \$5.0 million or more to include a Community Benefits Plan as part of their tender or proposal. Community organizations and construction industry employer associations and unions should be invited to comment on the draft policy which would be implemented initially on a pilot basis.

■

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## 1. Introduction

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This report was prepared pursuant to “NRFP2020-198 Feasibility Assessment for Fair Wage Policy and Community Benefits at the City of Brampton.” The focus of the study is on the feasibility of the City of Brampton adopting a Fair Wage Policy and a Community Benefits Policy for its construction procurement. The study’s mandate was fourfold:

- First: to review the current policy environment;
- Second: to consult with community and industry stakeholders;
- Third: to assess the options available to the City; and
- Fourth: to offer recommendations for consideration by City Council.

The feasibility assessment consisted of three phases. Phase One comprised a ‘current state’ report that reviewed the City’s current policies and the broader policy environment as it pertains to Fair Wage Policy and Community Benefits Policy. Phase One also included the results of consultations with other municipalities and public agencies as well as a statistical analysis of the City’s construction procurement over the past four years. Phase Two of the feasibility assessment summarized the results of consultations with community and industry stakeholders. Phase Three set out options and recommendations. These were presented to the City’s Corporate Leadership Team and also to a workshop with members of City Council on January 17, 2022.

The reports from Phases One, Two and Three accompany this report. Persons interested in more detail than is contained in this report are referred to those reports. This report summarizes the key findings from the earlier reports and incorporates the feedback from the Phase Three presentations.

Chapter Two profiles the City of Brampton’s construction procurement.

Chapter Three summarizes the key findings in relation to Fair Wage Policy and presents a recommendation for Council’s consideration.

Chapter Four presents the findings and recommendations on Community Benefits Policy. This chapter also discusses how Community Benefits Policies need to comply with the prohibitions against local preference practices set out in various trade agreements and the *Discriminatory Business Practices Act*. This Chapter also comments on the recently enacted *Building Ontario Business Initiative Act* which will require Ontario public institutions to give preferential treatment to Ontario companies in public sector contract awards under a specified threshold, as mandated by future provincial cabinet regulations.

Chapter Five reviews the City’s current Purchasing By-law and the Sustainable Procurement Framework that City Council adopted on May 13, 2020.

Prism Economics and Analysis wishes to express its appreciation to the City officials and community and industry stakeholders who made themselves available for consultations and to the City's Purchasing Division who provided invaluable advice and support.



## 2. Analysis of Contracted Services

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More detailed information  
Report No. 1, Chapter 7, pp 88 - 91

- On average, Brampton awards 64 construction contracts per year of which 18 have a value of \$500,000 or more.
- Brampton awards an average of 40 non-construction contracts per year of which 10 have a value of \$500,000 or more.
- The construction contracts with a value of \$500,000 or more represent, on average, 90% of the value of awarded construction work.
- 60% of the construction contracts with a value of \$500,000 or more were for road work.
- Brampton awards 1-8 construction contracts per year with a value of \$5.0 million or more. Over the period 2017 to 2020, these large contracts represented 44.2% of the total value of awarded construction projects.

Between 2017 and 2020 Brampton tendered 417 contracts for services. The total value of these contracts was \$333.1 million. Approximately 70% of these service contracts were for construction services, including maintenance and repair.

The 417 contracts were categorized by procurement staff as follows:

Construction:

- Construction - Non-Residential Buildings – New Construction (ICI)
- Construction - Non-Residential Buildings – Maintenance and Repair
- Construction - Roads – New Construction or Repair
- Construction - Sewer and Watermain – New Construction or Repair
- Construction - Other Types of Construction

Non-Construction:

- Landscaping/Parks Maintenance
- Snow Removal
- Building Cleaning
- Window Cleaning
- Food Services/Catering
- Other Services

Figure No. 1 shows the distribution of the 417 contracts by dollar value and type (excluding the value of change orders). Figure No. 2 shows the percentage distribution of the 417 contracts by value and type.

Figure No. 1  
Number and Value of Contracts for Contracted Services, 2017 to 2020

	No. of Contracts				
	<\$250,000	\$250,000 to 499,999	\$500,000 to \$999,999	\$1,000,000+	Total
<b>Construction</b>					
<b>Non-Residential Buildings – New Construction (ICI)</b>	3	0	5	4	12
<b>Non-Residential Buildings – Maintenance and Repair</b>	122	16	21	9	168
<b>Roads – New Construction or Repair</b>	8	1	5	18	32
<b>Sewer and Watermain – New Construction or Repair</b>	4	0	0	2	6
<b>Other Types of Construction</b>	23	8	6	3	40
<b>Sub-Total: Construction</b>	160	25	37	36	258
<b>Non-Construction</b>					
<b>Landscaping/Parks Maintenance</b>	28	4	15	4	51
<b>Snow Removal</b>	13	1	0	0	14
<b>Building Cleaning</b>	2	0	0	2	4
<b>Window Cleaning</b>	0	1	0	0	1
<b>Food Services/Catering</b>	3	0	0	0	3
<b>Other Services</b>	54	13	7	12	86
<b>Sub-Total: Non-Construction</b>	100	19	22	18	159
	<b>Total Value of Contracts by Value Category</b>				
<b>Construction</b>					
<b>Non-Residential Buildings – New Construction (ICI)</b>	\$180,755	\$0	\$3,969,888	\$21,138,520	\$25,289,162
<b>Non-Residential Buildings – Maintenance and Repair</b>	\$9,463,262	\$5,995,984	\$16,117,481	\$16,565,899	\$48,142,626
<b>Roads – New Construction or Repair</b>	\$821,165	\$543,005	\$3,017,328	\$124,127,856	\$128,509,354
<b>Sewer and Watermain – New Construction or Repair</b>	\$0	\$0	\$0	\$1,097,360	\$1,097,360
<b>Construction - Other Types of Construction</b>	\$2,774,879	\$2,264,611	\$5,473,960	\$21,651,675	\$32,165,126
<b>Sub-Total: Construction</b>	\$13,240,061	\$8,803,600	\$28,578,657	\$184,581,310	\$235,203,628
<b>Non-Construction</b>					
<b>Landscaping/Parks Maintenance</b>	\$2,335,710	\$1,430,912	\$9,606,317	\$8,570,759	\$21,943,699
<b>Snow Removal</b>	\$823,453	\$317,297	\$0	\$0	\$1,140,750
<b>Building Cleaning</b>	\$545,169	\$0	\$0	\$4,462,903	\$5,008,072
<b>Window Cleaning</b>	\$0	\$477,105	\$0	\$0	\$477,105
<b>Food Services/Catering</b>	\$0	\$0	\$0	\$0	\$0
<b>Other Services</b>	\$4,718,393	\$4,091,973	\$5,267,877	\$55,262,774	\$69,341,016
<b>Sub-Total: Non-Construction</b>	\$8,422,725	\$6,317,287	\$14,874,194	\$68,296,436	\$97,910,642

Figure No. 2  
Percentage Distribution of Contracts by Value and Type, 2017 to 2020

	<\$250,000	\$250,000 to 499,999	\$500,000 to \$999,999	\$1,000,000+	Total
<b>Construction</b>					
Non-Residential Buildings – New Construction (ICI)	0.1%	0.0%	1.7%	9.0%	10.8%
Non-Residential Buildings – Maintenance and Repair	4.0%	2.5%	6.9%	7.0%	20.4%
Roads – New Construction or Repair	0.3%	0.2%	1.3%	52.8%	54.6%
Sewer and Watermain – New Construction or Repair	0.0%	0.0%	0.0%	0.5%	0.5%
Other Types of Construction	1.2%	1.0%	2.3%	9.2%	13.7%
<b>Total: Construction</b>	<b>5.6%</b>	<b>3.7%</b>	<b>12.2%</b>	<b>78.5%</b>	<b>100.0%</b>
<b>Non-Construction</b>					
Landscaping/Parks Maintenance	2.4%	1.5%	9.8%	8.8%	22.5%
Snow Removal	0.8%	0.3%	0.0%	0.0%	1.1%
Building Cleaning	0.6%	0.0%	0.0%	4.6%	5.2%
Window Cleaning	0.0%	0.5%	0.0%	0.0%	0.5%
Food Services/Catering	0.0%	0.0%	0.0%	0.0%	0.0%
Other Services	4.8%	4.2%	5.4%	56.4%	70.8%
<b>Total: Non-Construction</b>	<b>8.6%</b>	<b>6.5%</b>	<b>15.2%</b>	<b>69.8%</b>	<b>100.1%</b>

Brampton awarded 1-8 construction contracts per year with a value of \$5.0 million or more. These large contracts represented 44.2% of the total value of awarded construction projects.



### 3. Fair Wage Policy

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- A Fair Wage Policy reduces the reputational and ethical risk to a municipality. This risk comes from unintentionally hiring a contractor that secures an unfair competitive advantage by paying wages that are less than the prevailing norms in the construction industry or by engaging in other unfair competitive practices such as evading EI, CPP and WSIB contributions by styling workers as sub-contractors rather than as employees.
  - A Fair Wage Policy does not raise wages. Nor does a Fair Wage policy restrict work to unionized contractors.
  - A Fair Wage Policy is tied to prevailing wages. Properly designed, therefore, a Fair Wage policy has no impact on construction costs.
  - A Fair Wage Policy would implement the ethical criteria in the Sustainable Procurement Framework adopted by Council in May 2020.
  - Council is requested to endorse the principle of a Fair Wage Policy and to request staff to develop such a policy for Council's consideration. The proposed policy would apply to construction projects with a value of \$500,000 or more. This covers approximately 90% of awarded construction work.
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#### Purpose of a Fair Wage Policy

(More detailed information: Report No. 1, Chapter 2, pp 58 – 65)

Fair Wage Policies have two primary goals:

1. to “prevent suppliers from competing for government contracts by paying their employees substandard wages”;<sup>1</sup> and
2. to foster a level playing field environment in which contractors compete on the basis of quality, efficiency and productivity rather than by cutting corners on wages, benefits, statutory obligations, workplace safety or training and apprenticeship.

The term “Fair Wage Policy” is uniquely Canadian. Most jurisdictions follow the U.S. practice of describing these policies as Prevailing Wage Policies. The American terminology is a better description of the policy’s purpose. The ‘prevailing wage’ is the wage that is paid by the majority of contractors to workers in a specific trade or occupation who are working in the same sector on projects of approximately comparable scale.

The purpose of Fair Wage Policies is not to raise the wages of construction workers. The presumption is that most construction workers earn the prevailing wage and that all reputable contractors bid for municipal work on the basis of paying the prevailing wage and complying with statutory obligations. The problem that a Fair Wage Policy addresses is the corrosive challenge posed to the competitive

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<sup>1</sup> Employment and Social Development Canada (ESDC), *What We Heard: Consultations on a Modern Fair Wage Policy* (2019).

environment by the small minority of contractors that engage in unfair practices. The most concerning practices include:

1. aggressively cutting wages during economic downturns;
2. exploiting vulnerable workers (usually recent immigrants or undocumented workers);
3. evading WSIB, EI, CPP and *Employment Standards Act* obligations by improperly styling workers as self-employed sub-contractors rather than as employees;
4. cutting corners on workplace safety; and
5. foregoing investments in apprenticeship and skills training.

Fair Wage Policy is best understood as a risk management strategy that is designed to reduce the reputational and ethical risk to a municipality that unintentionally awards work to a contractor that engages in unfair competitive practices. Standard procurement procedures and market pressures are sufficient in most circumstances. However, it is virtually inevitable in the highly decentralized and intensely competitive construction industry that a minority of contractors will be drawn to unfair practices to achieve a competitive advantage. Fair Wage Policies therefore function as a guard rail that keeps competition within a framework that promotes best value based on quality, efficiency and productivity.

Properly designed, a Fair Wage Policy does not affect construction costs. This is because the Fair Wage Schedule is linked to the prevailing wages which, by definition, are the wages that are paid by the overwhelming majority of contractors. In many municipalities, the prevailing wage is less than the wage negotiated by the unionized building trades. It is therefore incorrect to describe a Fair Wage Policy as a trojan horse strategy to channel construction to unionized contractors.

No municipality wants to have public works carried out by workers who are paid below the prevailing wages or denied statutory benefits to which they are entitled. Nor do municipalities want to employ contractors who avoid their statutory obligations for EI, CPP and WSIB contributions and connive in the under-reporting to CRA of earned income. And most definitely, municipalities do not want to have workplace accidents occurring on their projects. Neither do municipalities want to award work to contractors that forego investments in apprenticeship or skills training to achieve a cost advantage.

### **Who are the ‘Bad Apples’?**

There are four ways that a small minority of contractors gain unfair labour cost advantages:

1. taking advantage of vulnerable workers: Vulnerable workers include undocumented workers, temporary foreign workers and recent immigrants. The City of Brampton is home to many recent immigrants. Indeed, a majority of the City’s population immigrated to Canada. According to the 2016 Census, 39,915 residents had immigrated within the past five years. The City has a clear interest in fostering a competitive environment for construction procurement that does *not* reward a contractor who exploits these recent immigrants.

2. Styling workers as self-employed sub-contractors. By deliberately misclassifying workers as sub-contractors rather than as employees, a contractor can evade the obligation to pay EI, CPP and WSIB premiums as well as overtime, vacation and holiday pay. This can improperly reduce payroll costs by 18-20% or more.<sup>2</sup> Contractors that engage in subterfuge should *not* be rewarded with City work because they have seemingly lower labour costs.
3. Cutting corners on health and safety. While there are no data directly tying Fair Wage Policy with health and safety performance, a contractor that is paying less than the prevailing wage or evading WSIB premiums is also likely to cut corners on health and safety.
4. Avoiding investments in training and apprenticeship: A contractor that is paying sub-standard wages is not likely to invest in training and apprenticeship, leaving to other contractors the cost burden of these investments in workforce development.

## Other Fair Wage Policies

(More detailed information: Report No. 1, Chapter 4, pp 72– 81)

### *Federal Government*

The original authority for the Federal Fair Wage Program was founded in the *Fair Wages and Hours of Labour Act* which was enacted in 1935. However, that legislation was repealed, effective January 1, 2014. The current government has promised to re-introduce a Fair Wage Program to apply to federal projects, but has not yet done so.

### *Provincial Government*

The most recent version of Ontario's Fair Wage Policy is set out in Order-in-Council 773/95 which was adopted in 1995. That regulation has not been updated since 1995 and is therefore largely out of date although it is still technically in force. OIC 773/95 applies to construction in three sectors: non-residential buildings, roads and sewer and watermain. On average the 1995 rates in the Provincial Fair Wage Schedule for Peel and York counties were around 79% of the 1995 union rates. Non-residential building construction (ICI) under \$100,000 was exempt from the Provincial Fair Wage Policy. Road construction under \$160,000 was also exempt. These thresholds have not been adjusted since 1995

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<sup>2</sup> Payroll Savings from Styling Workers as Independent Operators

Employer Cost Item	% of Payroll
EI Premiums (Employer Share)	2.2%
CPP Contributions (Employer Share)	5.5%
WSIB Premiums – Construction (basic)	2.3% to 4.5%*
Sub-Total	10.0% to 12.2%
Vacation (2 weeks statutory)	4.0%
Holidays (10 days statutory)	4.0%
Total	18.0% to 20.2%

\*+/- experience adjustment

In 2018, the previous government enacted the *Government Contract Wages Act* which established a new framework for Fair Wage Policy. ([More detailed information: Report No. 1, Chapter 5, pp 31 - 33](#)). Although enacted and proclaimed, this legislation has not been implemented. The current Premier supported the retention and updating of the City of Toronto's Fair Wage Policy during his term on City Council.

#### *City of Toronto*

The City of Toronto first introduced a Fair Wage Policy in 1893. Toronto updates its Fair Wage Schedules every three years based on the prevailing rates. For the construction industry, Toronto deems the union rates to be the prevailing rate.<sup>3</sup> This principle is appropriate for the City of Toronto in light of both the market share of unionized contractors in Toronto and the City's status as a 'construction employer'. This requires the City to use unionized contractors for a majority of the trades. (The City of Brampton, it should be noted, is not a 'construction employer'.)

Toronto's Fair Wage Policy applies to *all* work that is contracted by the City of Toronto.

The Fair Wage Policy is administered by the Fair Wage Office which consists of three persons: a Manager, an Assistant Manager and a Program Manager. The following table summarizes enforcement activity at the City of Toronto.

Figure No. 3  
City of Toronto Fair Wage Office  
Fair Wage Enforcement Activity  
Annual Staff Report, 2019

	2016	2017	2018	2019
<b>Number of Firms Reviewed</b>	2,444	2,667	2,413	2,574
<b>No. of Firms Disallowed (in breach)</b>	18	97	74	52
<b>Fair Wage Policy Investigations</b>	43	35	20	25
<b>Value of Fair Wage Violations</b>	\$1,697,026	\$157,785	\$827,680	\$346,843
<b>Number of Workers Receiving Back Wages</b>	2021	47	117	241

Across the GTA, the following organizations use the City of Toronto's Fair Wage Policy:

- Exhibition Place
- Heritage Toronto
- Hummingbird Centre for the Performing Arts
- Toronto District School Board
- Toronto Parking Authority
- Toronto Economic Development Corporation (TEDCO)
- Toronto Port Authority
- Toronto Hydro
- Toronto Public Library Board
- Toronto Transit Commission
- Toronto Zoo
- Toronto and Region Conservation Authority
- University of Toronto

<sup>3</sup> In other industries, such as janitorial services or waste collection, the City undertakes a wage survey to determine the prevailing rate.

- York University
- George Brown College

#### *Toronto Community Housing Corporation*

Toronto Community Housing Corporation (TCHC) has a Fair Wage Policy, but has not updated its Fair Wage Schedule since 2006. However, it should be noted that TCHC has collective agreements with four of the building trades unions: electricians, plumbers and pipefitters, carpenters and bricklayers.

#### *City of Hamilton*

The City of Hamilton's Fair Wage Schedule is automatically updated every three years. The Fair Wage rates are approximately 70% of the current union rates. The Fair Wage Policy applies to construction contracts with a minimum awarded value of \$500,000, excluding residential construction.

#### *City of Thunder Bay*

The City of Thunder Bay's Fair Wage Policy applies to non-residential building construction projects with a value of more than \$100,000. The policy does not apply to maintenance work or to work outside the ICI sector (*e.g.*, road work, sidewalks and sewer and watermain projects). The Fair Wage Schedules, have not been updated since 2004. The rates are approximately 62% of the current union rates. In correspondence, the City indicated it may review and possibly update its schedules, although this has not yet taken place. The City also indicated that it may increase the threshold from \$100,000 to \$500,000.

#### *City of Greater Sudbury*

The City of Greater Sudbury applies its Fair Wage Policy to all non-residential building construction with a value of more than \$160,000. The policy does not apply to road work, sidewalks and sewer and watermain projects. The City's policy uses the Provincial Fair Wage rates, *i.e.*, the rates that were applied on April 1, 1995. These rates have not been updated. The Policy states that, in the event that the Province updates or revises its Fair Wage Schedule, Sudbury's schedule will be referred back to its City Council for review.

#### *City of Oshawa*

The City of Oshawa applies its Fair Wage Policy to all non-residential building construction with a value of more than \$500,000. The policy does not apply to road work, sidewalks and sewer and watermain projects. The City applies the City of Toronto's Fair Wage Schedules.

#### *Municipality of Clarington*

The Municipality of Clarington applies its Fair Wage Policy to all non-residential building construction projects with a value of more than \$1,000,000. The policy does not apply to road work, sidewalks and sewer and watermain projects. The Municipality develops its own schedules based on the union rates. The scheduled fair wage rates are approximately 95% of the negotiated total wage package for the building trades.

### *City of Vaughan*

The City of Vaughan approved a Fair Wage Policy in December of 2020. Fair Wage Schedules are approximately 75% of the current union wage package. The Policy will apply to four sectors: non-residential buildings, roads, sewer and watermain and heavy construction. This mirrors the *Government Contract Wages Act*. The Policy applies to construction over \$500,000.

### *City of Mississauga*

The City of Mississauga released a report entitled “Making Better Choices: A Sustainable Purchasing Approach”. The report states the following:

“There is wide support for sustainable purchasing as an activity geared toward environmental, ethical, and social concerns. Internal and external stakeholders are strongly supportive of a broad definition of sustainable purchasing and a policy that includes environmental, ethical, and many social aspects of sustainable purchasing. *The City should determine its intent regarding local sourcing, apprenticeships, youth employment, and fair wages*, as these issues are important to stakeholders. There is an opportunity to intentionally source from small businesses, social enterprises, and start-up businesses”. [Emphasis added].

Based on consultations, we understand the City of Mississauga has not decided on whether to adopt a Fair Wage Policy, but in any event, would not want such a policy to diverge from a policy adopted by the City of Brampton.

### *City of Sarnia*

The City of Sarnia approved the implementation of a Fair Wage Policy on May 31, 2021. The policy applies to all construction work with a value in excess of \$50,000. The wage schedules were approved in conjunction with the capital budget in December of 2021. The scheduled wage rates are approximately 90% of union rates.

### *Other Municipalities*

There are other municipalities which do not have a Fair Wage Policy *per se*, but which specify adherence to the Province’s Fair Wage Schedule in their tendering requirements.

## **Implications of Fair Wage Policy for Construction Costs**

(More detailed information: Report No. 1, Chapter 6, pp 85 – 86)

Based on consultations with City staff, we believe that construction procurements are carried out by contractors who are paying at least the prevailing wage, if not higher. Consequently, a Fair Wage Policy that is anchored in the prevailing wage should not have any implications for construction costs. Rather such a policy will protect the City from the reputational and ethical risk of awarding work to a contractor that exploits vulnerable workers, styles workers as sub-contractors or engages in other unfair practices.

A Statistics Canada study of the union wage premium estimated that, in construction, the union/non-union wage difference for work in comparable trades and comparable sectors is approximately 19%.<sup>4</sup> A Fair Wage Policy that establishes a wage schedule that is 70-80% of the union wage rate would not, therefore, prejudice legitimate non-union contractors.

### **Stakeholder Input**

(More detailed information: Report No. 2, pp 132 - 134)

Construction unions favour the adoption of a Fair Wage Policy.

There is a divergence of views among employer organizations. The Ontario Sewer and Watermain Contractors Association and the Ontario Road Builders Association favour the adoption of a Fair Wage Policy. The Progressive Contractors Association does not oppose a Fair Wage Policy in principle, but believes that such a policy is unnecessary at this time. The Ontario General Contractors Association believes that the market generally ensures that contractors pay fair wages and that this is especially the case at the present time. The Brampton Board of Trade is strongly opposed to a Fair Wage Policy.

It was generally agreed that *if* a Fair Wage Policy is adopted:

- there must be enforcement of the policy to ensure a level playing field. Unions generally favour a proactive enforcement policy based on audits and inspections. Employer organizations believe that a complaint-based system is more practical.
- The Fair Wage Schedule should be based on collective agreement rates, although this does not mean that they should be equal to collective agreement rates. The Progressive Contractors Association prefers a survey-based methodology, but recognizes the difficulties in applying this approach.
- Prime contractors are typically responsible for the compliance of their sub-contractors, although a prime contractor that has exercised reasonable diligence should not be liable for the concealed, non-compliant behaviour of a sub-contractor.
- Appropriate penalties are cautions and prohibitions from bidding for a period of time.
- Most unions favour applying a Fair Wage Policy to all tendered construction, irrespective of the size of the project. Other unions and employer associations believe that a threshold that exempts smaller projects may be attractive on administrative grounds.

### **Comparison of Fair Wage Policy to Living Wage Policy**

(More detailed information: Report No. 2, pp 135 - 140)

Living Wage Policy and Fair Wage Policy are distinct policy instruments. Living Wage Policies establish a minimum wage which vendors of the municipal government are required to pay their employees. Living

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<sup>4</sup> Tony Fang and Anil Verma, "Union Wage Premium", Statistics Canada, *Perspectives on Labour and Income* (2002)

Wage Policy, therefore, is essentially a higher substitute for the provincial minimum wage. It is intended to *raise* the wages of low-paid workers. This may or may not have cost implications for the City of Brampton's tendering for some services.

By contrast the purpose of a Fair Wage Policy is *not* to raise wages. Rather, a Fair Wage Policy is essentially an 'insurance policy' that the City of Brampton's construction contractors are paying the *prevailing wage*.

In Ontario, the Ontario Living Wage Network publishes community-specific Living Wage Rates that are computed by the Canadian Centre for Policy Alternatives. The Living Wage for Peel Region has not been published but is likely to be around \$21.23. This compares with the current minimum wage which is \$15.00.

The Ontario Living Wage Network certifies employers as Living Wage Employers. Certification requires that an employer pay at least the community-specific Living Wage. Certification also requires that an employer incorporate a Living Wage stipulation into contracts with vendors that supply regular, ongoing services. As of April 2021, the website of the Ontario Living Wage Network reported that there were 383 certified employers. These included: the municipalities of Cambridge, Kingston, North Perth and the County of Huron.

It is unlikely that a Living Wage Policy would have any implications for *construction* work contracted by the City of Brampton, given that construction wages are above \$21.23. However, a Living Wage Policy might have implications for contracting some non-construction services, such as landscaping, building cleaning and food services where prevailing wages may be below \$21.23.

### **Elements and Aspects of a Fair Wage Policy**

(More detailed information: Report No. 1, Chapter 3, pp 66 -71 and Report No. 3, Part II, pp 166 - 176)

There is a range of issues that a Fair Wage Policy needs to address if it is to meet the requirements of transparency and due diligence, and protect the City from reputational and ethical risk. In developing a 'made-for-Brampton' policy, the City has the advantage of being able to draw on the policies developed by other municipalities.

The specific issues that a Fair Wage Policy needs to address include the following:

Fair Wage Schedules: how are the Fair Wage Schedules to be developed and how often should they be updated? Most policies link, in some fashion, to negotiated collective agreements, often with a lag and sometimes at a percentage of the negotiated rate. Updating the schedules every three years is common but not universal.

Scope of Application: to what sectors of construction should the policy apply? The four sectors are non-residential buildings (also known as the Industrial-Commercial-Institutional or the ICI sector), road, sewer and watermain and heavy construction (e.g., major transit projects). Some policies apply to all construction, others apply only to non-residential building construction.

**Threshold:** some policies apply to all construction, irrespective of value. Most policies apply only to construction above a threshold.

**Independent Operators:** some policies, notably U.S. Prevailing Wage laws, require independent sub-contractors to be remunerated no less than equivalent employees. Other policies lack this provision but require contractors to demonstrate that persons have not been improperly classified as independent sub-contractors.

**Prime Contractor Obligation:** Fair Wage Policies typically make a prime contractor responsible for the compliance of its sub-contractors. This is also the approach taken in the *Occupational Health and Safety Act* and the *Workplace Safety and Insurance Act*.

**Communication of Rights:** Most Fair Wage Policies require contractors to host a poster in a prominent location advising workers of their rights under the Fair Wage Policy. This is similar to the *Workplace Safety and Insurance Act*. Municipalities typically post their Fair Wage Policies and Fair Wage Schedules on their websites.

**Enforcement:** Most Fair Wage Policies are complaint based. A complaint triggers an investigation by the City (or designated auditor). The City of Toronto conducts proactive investigations and audits. Most policies require complainants (except affected workers) to pay a fee that is refundable if the complaint is upheld. Complainants may be other contractors, contractor associations or unions. An administration fee is levied against a non-compliant contractor that is commensurate with the costs of investigation. Non-compliant contractors are obliged to “make whole” the workers whom they under-paid. A contractor who is found non-compliant may appeal to a senior City official whose finding is final and binding. Contractors whose non-compliance is egregious or repeated may be prohibited from bidding on City work for a period of time and named on the City’s web site.

**Stakeholders:** Some municipalities establish a committee composed of employer associations and unions from the construction industry to provide feedback on the administration of the Fair Wage Policy.

## **Threshold**

The proposed threshold for the Fair Wage Policy is \$500,000. An analysis of construction contracts between 2017 and 2020 found that there were 258 contracts. Of these, 73 contracts had an original value of \$500,000 or more. These 73 contracts accounted for 90.7% of the value of construction work. Establishing a threshold of \$500,000 therefore captures almost all construction work when measured in value, while requiring scrutiny of fewer than 20 contracts per year. Most of these contracts are for road construction or repair. The proposed \$500,000 threshold would be the same as in the Fair Wage Policy recently adopted by the City of Vaughan. The City of Toronto is the only jurisdiction that has no threshold in its Fair Wage Policy. While adopting a lower (or no) threshold would marginally increase the total value of covered construction work, this would be achieved at the cost of additional administrative resources to scrutinize these contracts. The \$500,000 threshold represents a sound

balance between achieving a high level of coverage (90.7%) and the efficient use of administrative resources.

### **Developing a Fair Wage Policy**

Following direction from City Council to establish a ‘made-for-Brampton’ Fair Wage Policy, the process of developing the policy would be approximately as follows:

1. Establish a Working Committee with a staff lead from Purchasing and comprising representatives from Purchasing, Human Resources, Legal Services, Capital Works, Building Design & Construction, and Roads & Maintenance. Retain consultant, if needed.
2. Review Fair Wage Policies of other municipalities.
3. Draft proposed Fair Wage Policy for review by Working Committee.
4. Seek stakeholder input on draft policy.
5. Finalize draft Fair Wage Policy and Fair Wage Schedule and review with Office of the CAO/Corporate Leadership Team.
6. Submit to Council for approval.

### **Administrative Resources**

(More detailed information: Report No. 1, Chapter 3, pp 69 - 70)

The City will need a full-time individual to administer the Supplier Diversity Program, Community Benefits Policy and Fair wage Policy.

### **Pros and Cons**

#### *Pros*

1. A Fair Wage Policy reduces the reputational and ethical risk of hiring a contractor that secures a competitive advantage by:
  - paying less than the prevailing wage;
  - evading EI, CPP, WSIB and Employment Standards obligations by improperly styling workers as sub-contractors rather than as employees;
  - cutting corners on health and safety; and
  - avoiding investments in workforce training and apprenticeship.
2. Properly designed, a Fair Wage Policy will not raise construction costs because the Fair Wage Schedule reflects the prevailing wages that are paid by a large majority of contractors. The Fair Wage Schedule will be less than the union rate.

3. A Fair Wage Policy supports City commitments to safe working conditions as evidenced by the City's adoption of requirements for contractors of projects valued at \$5.0 million or more to have the Certificate of Recognition (COR™) which attests to their health and safety management system.<sup>5</sup>
4. A Fair Wage Policy will operationalize the ethical criteria set out in the Sustainable Procurement Framework adopted by Council in May 2020.

#### *Cons*

1. If the Fair Wage Schedule is above the prevailing wage, there will be a potential impact on the size of the bidding pool and on construction costs.
2. There are administrative costs involved in developing a Fair Wage Schedule every three years. There are administrative requirements to enforce a Fair Wage Policy, notably investigating complaints and determining whether a contractor has been non-compliant. It is possible that not all of these costs will be recovered by levying fees on complainants or non-compliant contractors.
3. In a buoyant labour market, such as we have recently experienced, the risks of contractors paying sub-standard wages are diminished. This risk is much more strongly associated with weaker labour market conditions. (However, the risks related to cutting corners on health and safety, abusing sub-contractor status and not investing in apprenticeship and training tend to be unaffected by the construction cycle.)

#### **Recommendation**

It is recommended that:

City Council endorse the principle of a Fair Wage Policy that would apply to construction work with an initial value of \$500,000 or more. The purpose of this policy is to ensure that: (1) construction vendors pay wages and benefits that are at least on par with prevailing norms in the industry, (2) that they comply with statutory requirements for benefits, the proper classification of workers as employees and obligations under the *Occupational Health and Safety Act* and *Workplace Safety and Insurance Act* and (3) that they are encouraged to invest in apprenticeship and training. In this way the Fair Wage Policy will create a level playing field that encourages the City's construction contractors to compete on the basis of productivity, quality and efficiency rather than by securing a competitive advantage at the expense of their work force. City Council requests

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<sup>5</sup> The Certificate of Recognition (COR™) is nationally trademarked and endorsed by Ontario's Infrastructure Health and Safety Association (IHSA) and the Canadian Federation of Construction Safety Associations (CFCSA). The City approved the COR™ requirement in 2017. The current requirement applies to projects \$5.0 million or greater .

the staff to develop a made-for-Brampton policy to achieve these goals. Staff are also requested to consult with employer associations and unions in the construction industry prior to submitting this policy for Council's consideration.



## 4. Community Benefits Policy

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- In the context of construction procurement, a community benefits policy refers to a policy which encourage vendors to increase their outreach for hiring, training and apprenticeship opportunities to residents of Brampton and, in particular, to residents from groups which are historically under-represented in the construction industry and its training systems.
  - A Community Benefits Plan does not involve quotas. The emphasis is on outreach and working with community partners, including unions.
  - A Community Benefits Policy would implement the social objectives of the Sustainable Procurement Framework that the City adopted in May of 2020.
  - No cost implications are anticipated, although it is recommended that the City proceed with a pilot project to validate this expectation.
  - Council is requested to endorse the formulation of a Community Benefits Policy and to direct staff to develop such a policy for Council's consideration. The Policy would require vendors on construction projects over \$5.0 million to include a Community Benefits Plan in their proposal or tender. The Community Benefits Plan would describe how the contractor (or its union) will undertake outreach for employment training and apprenticeship opportunities to Brampton residents and particularly to Brampton residents from groups that are historically under-represented in the construction industry.
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### Purpose of a Community Benefits Policy

(More detailed information: Report No. 1, Chapter 8, pp93 - 99)

There is no formal definition of ‘community benefits’. In the *Planning Act*, community benefits are associated with capital expenditures for facilities and services.<sup>6</sup>

Community benefits are also referenced in the *Infrastructure for Jobs and Prosperity Act* as one of the 14 planning principles. Workforce development goals figure prominently in the Act’s definition of community benefits which are described in the Act as:

“the supplementary social and economic benefits arising from an infrastructure project that are intended to improve the well-being of a community affected by the project, such as *local job creation and training opportunities (including for apprentices, within the meaning of section 9), improvement of public space within the community, and any specific*

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<sup>6</sup> The former sec. 37 of the *Planning Act* allowed municipalities to authorize additional height and density for buildings over and above what is permitted in the official plan in exchange for an agreement with the developer to provide “facilities, services or matters”. These facilities and services were often captioned as ‘community benefits’. Sec. 37 was subsequently amended to allow a municipality to “impose community benefits charges against land to pay for the capital costs of facilities, services and matters required because of development or redevelopment in the area...”

*benefits identified by the community.” Infrastructure for Jobs and Prosperity Act, sec. 3(13) [Emphasis added].*

The Federal Community Employment Benefits Initiative emphasizes the need to use infrastructure projects to expand opportunities for groups that have been historically under-represented or disadvantaged. Although the construction industry is not explicitly identified, the implication is that the focus is on construction. The goals of the Federal Community Employment Benefits Initiative are incorporated into the *Canada-Ontario Integrated Bilateral Agreement for the Investing in Canada Infrastructure Program*. This Agreement provides that:

“Ontario will ensure that all Projects with total estimated Eligible Expenditures of ten million dollars (\$10,000,000) or more, will report on community employment benefits provided to at least three federal target groups (apprentices - from traditionally disadvantaged communities, Indigenous peoples, women, persons with disabilities, veterans, youth, new Canadians, or small-medium-sized enterprises and social enterprises) ... The Community Employment Benefits assessments will be determined by Ontario to ensure alignment with Ontario’s Community Benefits Framework, currently being developed”. [Emphasis added].

The Crosslinx project (Eglinton LRT) operates with a Community Benefits Agreement (CBA) negotiated with the Toronto Community Benefits Network (TCBN). The CBA established a target of 10% of working hours for community-based hires with TCBN being the agency primarily responsible for recruiting candidates and delivering pre-employment training. The Hurontario LRT project will operate with a Community Benefits Framework. Mobilinx which is constructing the LRT meets with the Peel Community Benefits Network (PCBN).<sup>7</sup> All projects receiving federal funding are subject to the requirements in the *Canada-Ontario Integrated Bilateral Agreement for the Investing in Canada Infrastructure Program* which requires community benefits to be taken into account in projects funded under the Agreement.<sup>8</sup>

For the purposes of this report, which is focused on construction procurement, a Community Benefits Policy is a procurement policy that encourages vendors to reach out to residents of Brampton and, in particular, to groups which are historically under-represented in the construction industry. The emphasis is on outreach for hiring, training and apprenticeship opportunities and working with community-based organizations (including unions) to increase opportunities. Quotas play no role whatsoever and are not, in any way, an aspect or requirements of the proposed community benefits

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<sup>7</sup> Peel Community Benefits Network: <https://www.pcbn.ca/portfolio/hurontario-lrt/>

<sup>8</sup> Section 4(I) provides: “Ontario will ensure that all Projects with total estimated Eligible Expenditures of ten million dollars (\$10,000,000) or more, will report on community employment benefits provided to at least three federal target groups (apprentices - from traditionally disadvantaged communities, Indigenous peoples, women, persons with disabilities, veterans, youth, new Canadians, or small-medium-sized enterprises and social enterprises). Canada will waive the Community Employment Benefits reporting requirement at the discretion of Ontario. Ontario will provide Canada a rationale for not reporting on Community Employment Benefits as described in this section, which will be made public by Canada. The Community Employment Benefits assessments will be determined by Ontario to ensure alignment with Ontario’s Community Benefits Framework, currently being developed.

policy. Understood in this way, community benefits policy implements in construction procurement the objectives of the Sustainable Procurement Framework that the City adopted in May of 2020.

### Adoption of Community Benefits Goals

A study by the Ontario Construction Secretariat (OCS) identified a broad range of major infrastructure, private and P3 development projects that either are associated with a community benefits commitment or are expected to be. These projects had a total value of \$43.6 billion.

Figure No. 4  
Projects Associated with Community Benefits Commitments  
based on  
Ontario Construction Secretariat, *Community Benefits – Growing Trend in Public Sector Projects in Ontario*

Region/City	Project	\$ Billions
Greater Toronto	Go Expansion ON Corridor	\$10.000
Windsor	Gordie Howe International Bridge	\$5.700
Toronto	Eglinton Crosstown LRT	\$5.300
Toronto	Toronto Community Housing Corp.	\$3.200
Toronto	Finch West LRT	\$2.500
Toronto	City of Toronto - Various Projects	\$2.000
Peel	Hurontario LRT	\$2.000
Windsor	Windsor Regional Hospital	\$2.000
Toronto	Macdonald Block Reconstruction	\$1.500
Toronto	West Park Healthcare	\$1.200
Greater Toronto	GO Expansion Lakeshore West Corridor	\$1.000
Hamilton	Hamilton LRT	\$1.000
Toronto	Casino Woodbine	\$1.000
Windsor	Ambassador Bridge	\$1.000
Ottawa	Heron Gare	\$1.000
Thunder Bay	Corrections Complex	\$0.500
Toronto	GO Expansion: Union Station	\$0.500
Greater Toronto	GO Expansion: Lakeshore East Central Corridor	\$0.500
Greater Toronto	GO Expansion: Lakeshore West Central Corridor	\$0.500
Windsor	Grace Hospital Site Redevelopment	\$0.250
Greater Toronto	GO Expansion: Milton Corridor Upgrades	\$0.200
Toronto	Dufferin Mall	\$0.040
Toronto	Parkdale-UHN Long Term Care Centre Expansion	\$0.023
Toronto	Sheppard East LRT	\$0.655
Ottawa	LeBreton Flats	undetermined
	Total	\$43.568

### Other Municipalities

(More detailed information: Report No. 1, Chapter 9, pp 49 – 50)

There is no commonly adopted approach on the part of municipalities and public agencies in implementing community benefits (or social procurement). The following summaries show the range of approaches adopted:

Calgary:

Calgary assigns a weight (usually 5-10%) to a bidder's response to a "Benefit Driven Procurement Leadership Questionnaire". The questionnaire is mandatory and asks about the vendor's involvement with the apprenticeship system, the diversity of its workforce and its outreach activities to under-represented groups, etc.

Halifax:

Effective April 1, 2021, Halifax applies a Social Value Framework to its procurement. The Framework requires that all procurements over \$1.250 million incorporate workforce development and employment equity criteria, unless it is impractical. Vendor's responses to the Social Value Framework criteria have a weight of 10-30% in the technical qualification of vendors.

Mississauga:

Mississauga adopted a Sustainable Procurement Policy. The City defines sustainable procurement as

"considering social and environmental factors in the procurement process, in addition to traditional factors such as price, quality and service". Social factors are further elaborated as including "employment and training for youth and people with employment barriers (e.g., people with disabilities, new immigrants, chronically unemployed, ex-offenders, etc.) ... Suppliers that demonstrate best practices in workplace diversity, inclusion and accessibility (e.g., women, indigenous, minority-owned businesses or businesses owned by persons with disabilities)"<sup>9</sup>

Peel Region:

Peel Region's Corporate Social Responsibility Strategy directs the Region to consider the social and economic impacts of its operations. These include "... ensuring local vendor development; and *embedding community benefits into current vendor contracts*".<sup>10</sup> [Emphasis added]. The document further elaborates community benefits as including a reduction in precarious employment and an increase in apprenticeships.

Saskatoon:

Saskatoon applies a 'Triple Bottom Line' approach to its procurement. The City defines the Triple Bottom Line as follows:

"Triple Bottom Line" means an approach to sustainability whereby environmental health and integrity, social equity and cultural well-being, and economic prosperity and fiscal responsibility are integrated into decision making in a way that produces equitable solutions and mitigates undesirable trade-offs."<sup>11</sup>

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<sup>9</sup> City of Mississauga, Sustainable Procurement, Policy No. 03-06-09

<sup>10</sup> Region of Peel, *Corporate Social Responsibility Strategy*, June 22, 2017

<sup>11</sup> City of Saskatoon, Council Policy, C08-001, January 1, 2020

Toronto:

The City of Toronto adopted a Social Procurement Policy in 2016 and a Community Benefits Framework in 2019. The Social Procurement Policy embeds supply chain diversity and workforce development into procurement. The workforce development criteria empower City staff to select projects with an initial procurement value over \$5.0 million and mandate a workforce development plan as part of the evaluation criteria for selecting a vendor. In 2021, 44% of procurements over \$5.0 million were subject to a workforce development requirement. Half of all proponents on these projects included a workforce development plan as part of their proposal. Initially the City specified hard targets for training and recruitment on construction projects. The City also established Construction Connections to handle outreach and pre-employment training. However, this approach proved impractical. The City is currently reviewing how it will apply community benefits goals to its construction procurement.

Toronto Community Housing:

Toronto Community Housing Corporation (TCHC) expresses the community benefits objectives as a dollar value which the constructor then has flexibility to meet in whatever way it considers the most appropriate. In the TCHC model, the constructor can meet its community benefits requirement through training opportunities, scholarships, direct hires or by reaching out to its supply network (*i.e.*, sub-contractors, materials suppliers, professional services suppliers, lenders, *etc.*)

Vancouver:

Vancouver has developed a questionnaire similar in purpose to the Calgary questionnaire. However, answering the questionnaire is voluntary and does not figure directly into the procurement decision. Currently, Vancouver is using the questionnaire to establish a baseline against which to measure the City's progress in meeting its workforce development and inclusion goals. Vancouver is still reviewing how to apply its community benefits goals to construction procurement.

York Region:

In 2019, York Region endorsed an updating of its procurement policy which includes a commitment to social procurement and community benefits.<sup>12</sup>

### **Stakeholder and Community Consultations**

(More detailed information: Report No. 2, pp 119 - 130)

There is strong support for Community Benefits Policy among social agencies and trade unions. Most employer organizations support Community Benefits Policy *in principle*. However, all of the employer organizations stressed the need to proceed with caution. They emphasized that their support depended on how a Community Benefits Policy is designed and implemented. All of the employer organizations and the unions oppose Community Benefits Policies that introduce hiring quotas, compromise hiring standards or do not allow flexibility in how Community Benefits goals are achieved.

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<sup>12</sup> Regional Municipality of York, Regional Procurement Bylaw, Committee of the Whole, January 16, 2020

The Board of Trade opposes the introduction of Community Benefits Policy at this time. The Board believes that employers must be given time to recover from the effects of operating restrictions related to Covid. The Board is also concerned about over-regulation.

The focus of Community Benefits Policy should be on creating pathways to careers, not on creating short-term jobs. Achieving this goal will require outreach to under-represented communities and groups and, where needed, offering pre-employment training. Screening of potential recruits will be essential to ensure that individuals commencing either pre-employment training or an apprenticeship understand what a construction career entails.

Community Benefits Policy should not be restricted to the skilled trades. Community Benefits Policy should also encourage diversity and inclusion in recruiting for professional, administrative and technical careers in the construction industry.

A Community Benefits Policy should leverage the rich network of community-based organizations and programs whose activities align with the goals of Community Benefits Policy.

There is a range of procurement models potentially available to the City of Brampton. Depending on the nature of the project and the procurement process, these models include:

- awarding points for a vendor's Community Benefits Plan in competitive proposals,
- including a Community Benefits Plan in pre-qualification criteria,
- making a Community Benefits Plan a contractual requirement, and
- allowing a contract allowance or bonus for achieving Community Benefit goals.

Community Benefits Policy is complex. The City of Brampton should proceed with caution and should ensure that affected stakeholders have ample opportunity to comment on the Policy and its implementation.

### **Lessons Learned from Consultations**

(More detailed information: Report No. 2, pp 130 - 131)

1. There is no established best practice. Consequently, in formulating a Community Benefits Policy, the City should proceed with caution. Industry and community stakeholders need to be actively consulted.
2. Vendors need flexibility in how they will meet community benefits goals. The construction industry is exceedingly complex. It is therefore impractical to apply a standard rule or target that would be applicable to all projects.
3. Expectations for community benefits should be clearly described in the tender specifications or request for proposals. It is unreasonable, and potentially unlawful, to introduce expectations for community benefits after a proponent has been selected on the basis of a fixed price bid.

4. When a vendor carries out community benefits commitments, the vendor should be subject to a 'best efforts' duty. The City should not establish hard targets that vendors would be obliged to meet.
5. Many construction contractors do not have the internal capacity to deliver workforce training. Many contractors do not have experience in reaching out to historically under-represented groups. There is a need, therefore, for community connectors, i.e., community agencies and labour unions to recruit, screen, train and refer persons from target groups.
6. In the unionized industry, strategies to expand training and employment opportunities to under-represented groups therefore need to take into account the key role of unions in both training and dispatch.

## **Options Considered**

(More detailed information: Report No. 3, pp 156 - 164)

Several options were considered, but are *not* recommended.

### *Project Specific Targets on Projects over \$5.0 Million*

The City of Brampton would prescribe specific hiring and/or training requirements for projects above an initial value of \$5.0 million. Targets would be expressed as a specific number of pre-apprenticeships, apprenticeships and/or hires. The contractor would be obliged to meet the targets.

The principal advantage of project-specific targets is the targets make accountability clear. However, there are significant difficulties with project-specific targets. In the first place, the approach has only been used successfully on large projects, e.g., large-scale social housing projects, hospitals or infrastructure projects. In most years, all of the City of Brampton's projects would be much smaller. These projects do not afford the same flexibility as large projects. As a practical matter, therefore, contractors would be compelled to incorporate unnecessary hiring and training into their budgets and pass these costs on to the City. A second drawback of project-specific targets is that the City's typical projects have a duration of less than one year. Tying training and employment opportunities to such projects would encourage short-term training and hiring rather than sustainable careers. Finally, the City of Toronto experimented with hiring targets for projects with a value of \$5.0 million or more, but subsequently found that none of the projects had sufficient scale or duration to make these hiring targets sustainable. Toronto therefore abandoned project-specific targets as unworkable.

### *Contractor Incentives of Bonuses on Projects over \$5.0 Million*

The City would establish a Community Benefits Bonus that would be paid when a contractor meets specified training and hiring targets. Contractors could opt not to claim the bonus. Contracts would be awarded without consideration of whether a contractor planned to seek the bonus.

The principal advantage of the Incentive Model is that a contractor only implements a Community Benefits Plan if it wishes to apply for the Bonus. No contractor would fail to win a bid because it opted out of community benefits. There are three disadvantages to the Incentive Model. First, the Incentive

Model explicitly adds to the costs of a construction project, although the amount of additional cost is controlled by the City. Second, denial of a claim for the Bonus could result in litigation. Third, the Incentive Model links training and hiring too tightly to specific projects. Like project-specific targets, this approach encourages short-term training and hiring rather than sustainable careers.

#### *Hub Model for Projects over \$5.0 Million*

Contractors would include a Community Benefits Plan in their proposals and would be evaluated, in part, on the basis of that plan. Contractors would utilize a “hub organization”, which would be designated by the City, to handle outreach and pre-employment training.

The Hub Model is widely used in the United States on large projects. It was also used in the Vancouver Olympics Community Benefits Program. The City of Toronto established The Construction Connections Program to perform the hub function for its Community Benefits Policy.<sup>13</sup> The Construction Connections program, however, did not meet expectations.<sup>14</sup> In the Crosslinx transit project (Eglinton LRT), the Toronto Community Benefits Network (TCBN) functions as the hub, although contractors and union's are not obliged to use the TCBN.

The Hub Model is supported, in principle, by both the Ontario General Contractors Association and the Ontario Sewer and Watermain Contractors Association, although both organizations would oppose contractors being limited to recruiting from the Hub or obliged to hire hub referees. In principle, the Hub Model ensures that all contractors are able to compete for projects because the selected contractor is assured of access to the services of the Hub. The Hub Model relieves contractors and unions of the obligation to undertake outreach while involving industry stakeholders in screening and pre-employment training.

For the City of Brampton, there are three drawbacks to the Hub Model. First. at this time, without significant, additional funding, there is no obvious organization to be the Hub. Second, there would be challenges in aligning the Hub Model with the collective agreement obligations of unionized contractors. Some of these unions may prefer to manage their own recruitment, screening and training processes. These unions also may have constitutional obligations to their members which make it difficult to give preference to workers recruited through the Hub. Extensive consultations with unions would be needed to address these issues. Finally, the Hub could fail to provide the support that a contractor might reasonably expect creating ambiguity about whether a contractor was failing to meet its commitments.

#### *Vendor Questionnaire (Voluntary or Mandatory)*

The City of Brampton would introduce a questionnaire which construction vendors would be requested, but not obliged to answer.

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<sup>13</sup> The City of Toronto produced a YouTube video explaining Construction Connections: [https://www.youtube.com/watch?v=Jx\\_lzto\\_-iQ](https://www.youtube.com/watch?v=Jx_lzto_-iQ)

<sup>14</sup> City of Toronto, “Advancing the Community Benefits Framework”, Report to the Executive Committee of the City of Toronto, January 13, 2021. This report is reproduced at Appendix III

The advantages of the voluntary questionnaire approach are that it gives vendors flexibility in designing policies that align with the goals of a Community Benefits Policy. The questionnaire would also generate useful information on the current practices of the City's construction vendors. There are, however, three drawbacks to the questionnaire. First, vendors may not treat a questionnaire seriously unless answers are rated as part of the evaluation. Second, a questionnaire tends to ask about past practice; it is not forward looking. And, thirdly, some stakeholders in the community may feel that a questionnaire is a missed opportunity to advance community benefits goals.

### ***Status Quo***

The *status quo* option would mean not having a Community Benefits Policy that applies to construction procurement. The City of Brampton currently has a Supply Chain Diversity Program which applies to procurements with a value of \$25,000 to \$100,000. However, this Program would generally *not* apply to construction work, with the potential exception of small repair jobs.

The advantage of the *status quo* is that there are no additional administrative requirements nor would contractors be obliged to meet new performance requirements. There are, however, three disadvantages to not adopting a Community Benefits Policy. First, there is an expectation on the part of many community stakeholders that the City will use its procurement leverage to increase training and employment opportunities for Brampton residents, especially those residents from communities or groups that are disadvantaged or historically under-represented in the construction industry. This expectation has been reinforced by the Sustainable Procurement Framework and by introduction of community benefit agreements or goals in major infrastructure projects. Second, public policy has moved towards the incorporation of community benefits goals in construction procurement. This is evident in Ontario's *Infrastructure for Jobs and Prosperity Act*, the federal government's Community Benefits Initiative, the *Canada-Ontario Integrated Bilateral Agreement for the Investing in Canada Infrastructure Program* and the policies adopted by a number of municipalities. Thirdly, the City's ability to encourage community benefits in the construction of private developments would be lessened if the City does not apply community benefits goals to its own construction procurement. And, finally, if designed carefully, a Community Benefits Policy would enable Brampton to increase the employment and training opportunities available to its residents. Maintaining the status quo foregoes this opportunity.

### ***Recommended Option***

(More detailed information: Report No. 3, pp 151 - 156)

The City of Brampton would adopt a statement of Community Benefits Goals and request construction vendors to include in their proposals their Community Benefits Plan which would describe how they will contribute to achieving those goals. The requirement for a Community Benefits Plan would apply to projects with a value of more than \$5.0 million unless the City's staff consider the requirement impractical for a particular project.

Construction vendors would have complete flexibility in the design of their Community Benefits Plan provided they contributed to meeting the Community Benefits Goals. The opportunities created for

Brampton residents need not be tied to the specific project that is being bid upon. Unionized contractors could reference the related activities and programs of their unions. The City would include in RFPs where a Community Benefits Plan is required, a list of community-based organizations and programs that would be able to assist a vendor in implementing a Community Benefits Plan.

To ensure accountability, contractors that fail to meet their commitments would be subject to a negative evaluation which could lead to a restriction on their future bidding rights.

A vendor's Community Benefits Plan would have a weight of 10% in the award of a contract.

The City should invite the Board of Trade, contractor associations, unions and the Peel Community Benefits Network to comment on the draft policy.

The policy should be implemented on a pilot basis before being finalized.

#### \$5.0 Million Threshold

The \$5.0 million threshold is proposed because only larger construction projects and the vendors that undertake these projects have the flexibility and resources to implement a Community Benefits Plan. The analysis of construction contracts between 2017 and 2020 found that there were between 1 and 8 construction contracts over \$5.0 million of value in a year. Over the period, 2017 to 2020, these large construction contracts represented approximately 44.2% of the total value of awarded construction projects. Establishing a threshold of \$5.0 million therefore ensures that the proposed Community Benefits Policy will be applied to all large construction projects. At the same time, this threshold ensures that the City's administrative resources in evaluating and monitoring Community Benefits Plans will be used efficiently. The \$5.0 million threshold will also ensure that smaller vendors, that often have limited resources, are not burdened by the requirement to develop a Community Benefits Plan.

#### **Developing a Community Benefits Policy**

The steps in developing a Community Benefits Policy for Council's consideration are similar to the process for developing a Fair Wage Policy. If Council endorses the development of both policies, the work can be done concurrently.

Following direction from City Council to establish a 'made-for-Brampton' Community Benefits Policy, the process would be approximately as follows:

1. Establish a Working Committee with a staff lead from Purchasing and comprising representatives from Purchasing, Human Resources, Legal Services, Capital Works, Building Design & Construction and Roads & Maintenance. Retain consultant, if needed.
2. Review Community Benefits Frameworks of other municipalities.
3. Draft proposed Community Benefits Policy.
4. Seek stakeholder input on draft policy.

5. Finalize draft Community Benefits Policy and review with Office of the CAO/Corporate Leadership Team.
6. Submit to Council for approval.
7. Implement as a pilot project.

### **Administrative Resources**

The City will need a full-time individual to administer the Supplier Diversity Program, Community Benefits Policy and Fair Wage Policy.

### **Cost Implications**

Many construction contractors and their unions are already actively involved in outreach and training. Ensuring that Brampton residents are included in these activities will not entail any additional costs. For contractors that are not involved in outreach to under-represented communities, some additional costs may be incurred, although these should be modest if the contractor utilizes Brampton's network of well-connected agencies. These agencies are accessible to both unionized and non-union contractors. Additionally, there are other programs such as Helmets to Hard Hats (for veterans) and Hammer Heads (for youth at risk) which are available only to unionized contractors.

The recommended approach to community benefits gives contractors wide latitude in how they will contribute to community benefits goals. Given this flexibility and the fact that many contractors already engage in outreach and training, there should not be any cost implications for the City. It is possible, however, that the requirement to include a Community Benefits Plan in a tender or proposal will draw out the tendering process by approximately four to six weeks. It is also possible that some non-GTA contractors that may otherwise have bid on Brampton projects will decline to do so as the size of the projects may not warrant the investment in local outreach activities. However, this should not be a significant problem since most contractors are regional. The proposed pilot project will provide a practical opportunity to assess any cost implications.

### **Recommendation**

It is recommended that:

1. City Council approve the following statement for the goals of a Community Benefits Policy:

The objective of the Community Benefits is to support diversity and inclusiveness and to encourage employers to increase the opportunities for Brampton residents to pursue careers in the construction industry. The City of Brampton wishes to encourage employers to create opportunities, in particular, for youth-at-risk, members of visible minorities, transitioning

veterans, women, aboriginal persons, members of the LGBTQ2S+ community and recent immigrants. These opportunities may include direct hires, pre-apprenticeship training, apprenticeships or other career opportunities. The goal is career opportunities, not short-term jobs

2. City Council request staff to develop a detailed Community Benefits Policy which would require vendors on most construction projects with a value of \$5.0 million or more to include a Community Benefits Plan as part of their tender or proposal. Community and industry stakeholder should be invited to comment on the draft policy which would be implemented initially on a pilot basis.



## 5. Compliance with Trade Agreements, Etc.

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- Trade agreements prohibit the implementation of local preference policies on procurements over \$100,000 in the Ontario-Quebec Trade and Cooperation Agreement and over \$250,000 in the Canadian Free Trade Agreement (successor to the Agreement on Internal Trade).
- The *Discriminatory Business Practices Act* also prohibits giving preference based on location.
- Community Benefits Policies to promote workforce development and opportunities for disadvantaged groups are compliant with trade agreements. Such a policy would expand on the City's Supplier Diversity Program.

### Local Preference

A local preference policy is a provision in a Purchasing By-law that allows city staff to give preference to a vendor who meets the definition of “local”. Preference may be given in either of two ways. The first is by allowing a price differential that is favourable to a local vendor. The second is by making vendor location a rated criteria and awarding points to vendors who meet the criteria. A local preference policy needs to define “local”. Local can refer to the physical location of a vendor’s head office or regional office, whether the vendor pays local property or business taxes and the physical location of the vendor’s employees.

An example illustrates the complexity of defining “local”. Consider two hypothetical contractors. Vendor A is headquartered in Brampton and pays property and business taxes to Brampton. However, Vendor A has employees who live across the GTA. Only a small number of these employees live in Brampton and those employees may not be assigned to the Brampton job. Vendor B is headquartered in an adjacent municipality (say, Mississauga). Vendor B does not pay property or businesses taxes to Brampton. However, many of Vendor B’s employees live in Brampton. Which vendor is more local?

### *Impact of Trade Agreements*

Non-discrimination, *i.e.*, a prohibition against local preference in public sector procurement, is a core principle of trade agreements. The Canadian Free Trade Agreement (CFTA) is representative of all trade agreements in this respect. With respect to public sector procurement (including municipal procurement), the Agreement states:

#### Article 502: General Principles

1. Each Party shall provide open, transparent, and non-discriminatory access to covered procurement by its procuring entities.
2. With respect to any measure regarding covered procurement, each Party shall accord to:
  - a. the goods and services of any other Party, *including those goods and services included in construction contracts, treatment no less*

- favourable than the best treatment the Party accords to its own such goods and services; and
- b. the suppliers of goods and services of any other Party, including those goods and services included in construction contracts, treatment no less favourable than the best treatment the Party accords to its own suppliers of such goods and services.

The CFTA further specifies at section 503 (2) that:

A procuring entity *shall not impose or consider*, in the evaluation of tenders or the award of contracts, *local content* or other economic benefits criteria that are designed to favour:

- a) the goods or services of a particular Province *or region*, including those goods and services included in construction contracts; or
- b) the suppliers of a particular Province *or region* of such goods or services. [Emphasis added]

It should be noted that the local preference bar is not limited to inter-provincial trade, but also applies to inter-regional commerce. This section of the CFTA is preceded by a non-circumvention provision which bars attempts to structure tendered jobs to get around the bar against local preference.<sup>15</sup>

To ensure that there is no misunderstanding, section 502(5) of the CFTA specifically identifies certain prohibited practices. The first of these is “according a preference for local goods, services, or suppliers”. A further prohibited practice is “adopting or applying any registration system *or qualification procedure* with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of any other Party in its procurement”. (Emphasis added.)

The *Ontario-Quebec Trade and Co-operation Agreement (OQTCA)* contains an additional limitation of public sector procurement which reflects the resolution of the prior dispute between Ontario and Quebec over the inter-provincial mobility of construction workers. Section 9.1(1)(g) of the OQTCA prohibits “the requirement that a construction contractor or subcontractor use workers, materials or suppliers of materials originating from the Province where the work is being carried out.” The implication of this section is that a Quebec-based contractor would be exempt from any requirement to employ Ontario, let alone Brampton-based, workers.

All of the trade agreements establish a threshold below which prohibitions against local preference or other prohibited practices do *not* apply. The lowest threshold is found in the OQTCA. The OQTCA threshold for construction procurement by municipalities is \$100,000. This threshold is indexed to

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<sup>15</sup> The non-circumvention provisions are as follows:

503(1) A procuring entity shall not prepare, design, or otherwise structure a procurement, select a valuation method, or divide procurement requirements in order to avoid the obligations of this Agreement. This includes actions such as dividing required quantities of the goods or services to be procured, or diverting funds to entities not covered by this Chapter or to buying groups in a manner designed to avoid the obligations of this Chapter

inflation. There does not appear to be a published statement of the updated threshold. However, based on the formula set out in OQCTA (Annex 9.1), the 2022 threshold would be around \$107,600. For the CFTA, for a construction project within a municipality, the threshold is \$250,000 (section 504(3)(b)). As a practical matter, most construction procurement is above the \$250,000 threshold. Over the past four years, the total value of construction procurement that was tendered initially at less than \$250,000 was around \$3.3 million *per year*. This was 5.6% of total construction tendered.

#### *Evolution of Brampton's Purchasing By-law*

Brampton had, at one time, a weak version of a local preference policy. In the context of this policy, “local” appears to have meant the location of the vendor’s office. Section 13 of the 2007 Purchasing By-law stated that:

All things being equal, preference will be given to purchases of goods and/or services firstly to Brampton based businesses, secondly to businesses located in the Region of Peel and thirdly to Canadian owned businesses. (Sec. 13. Bylaw 193-2007)

The operative qualifier in this policy was “all things being equal”. In a competitive tender for construction work, it is exceedingly uncommon for all things to be equal. It is likely, therefore, that the local preference policy in the 2007 Bylaw had little practical impact.

By 2012, Brampton’s Purchasing By-law explicitly recognized the applicability of both the Agreement on Internal Trade (now known as the Canadian Free Trade Agreement) and the OQTCA (Bylaw 35-2012).

Brampton’s current Purchasing By-law (19-2018), adopted in 2018, aligns with the municipality’s obligations under all trade agreements. The Purchasing By-law explicitly provides at sec. 2.1 that:

The City will not adopt Discriminatory procurement practices in accordance with the requirements of any applicable trade agreements.  
(Sec 2.1, By-law 19-2018)

Prohibited discriminatory practices are listed in Schedule E of Purchasing By-law 19-2018 and include, among others:

- Registration requirements and restrictions on calls for Bids based upon *the location of a Vendor and its subcontractors*, or the place where the goods or services are produced and, generally, pre-qualification procedures that discriminate between Vendors by Province of origin. [Emphasis added].
- The consideration, in evaluating Bids, of provincial content or *economic benefits* that favour a Vendor or good of one Province over another. [Emphasis added].
- The requirement that a construction contractor or subcontractor use *workers, materials or Vendors of materials originating from the Province where the work is being carried out*. [Emphasis added].

Lest there be any uncertainty as to whether these prohibited practices prevent a local preference policy, By-law 19-2018 also provides that:

In the evaluation of Bids or award of contracts, the City *shall not impose or consider local content or other economic benefits criteria* that are designed to favour:

- a) The goods or services of a particular Province *or region*, including goods and services included in a construction contract; or
- b) The suppliers of a particular Province *or region* of such goods or services; [Emphasis added]

(Section 2.5, By-law 19-2018)

Section 2.5 of Brampton's Purchasing By-law 19-2018 is appropriately titled "No Local Preference".

There can be little doubt that the City of Brampton has explicitly barred the implementation of a local preference policy.

As far as can be determined, all other municipalities in the GTA have adopted comparable policies barring local preference. Were Brampton to break this pattern, it could lead to litigation, provincial or federal repercussions related to capital or other funding or retaliatory action by other municipalities. The City of Brampton remains committed to being in full compliance with all relevant and applicable trade agreements. One of the goals of the 2018 Purchasing By-Law was to strengthen the City's commitment to those agreements.

### Exceptions

There are several exceptions set out in the various trade agreements.

#### *Transportation of Aggregates*

The OQTCA exempts "transportation services provided by locally-owned trucks for hauling aggregate on highway construction projects". This exemption, however, does not appear in the CFTA.

#### *Poverty Reduction*

The OQTCA exempts procurements "targeting poverty reduction for disadvantaged people for which the value is below \$300,000".

#### *Small Business Set Asides*

The CFTA allows "small business set aside" programs. There does not appear to be a similar exemption in the OQTCA. It should be noted, however, that the Small Business Set Aside exemption would *not* allow the implementation of a local preference policy. The CFTA exemption provides at Section 504 (13) that a small business set aside program is exempt only if it "is fair, open, transparent, and *does not discriminate on the basis of origin or location within Canada* of goods, services, or suppliers". [Emphasis added]. In other words, a small business set aside must apply equally to all small businesses, regardless of where they are located.

### *Legitimate Policy Objectives*

All agreements allow for exemptions related to legitimate policy objectives. “Legitimate objectives” are listed in Chapter 13 of the CFTA as follows:

“legitimate objective means any of the following objectives pursued within the territory of a Party:

- (a) public security and safety;
- (b) public order;
- (c) protection of human, animal, or plant life or health;
- (d) protection of the environment;
- (e) consumer protection;
- (f) protection of the health, safety, and well-being of workers; or
- (g) *programs for disadvantaged groups*,

considering, among other things, if appropriate, fundamental climatic or other geographical factors, technological or infrastructural factors, or scientific justification; “*legitimate objective*” does not include protecting the production of a Party or, in the case of the Government of Canada, favouring the production of a Province” [Emphasis added].

Programs to promote opportunities for “disadvantaged groups” are an important exemption and, as will be discussed later, provide scope for a Community Benefits Policy focused on expanding opportunities for such persons. It is also important to note, however, that the “legitimate objective” exemption is not a blanket exemption. In addition to being restricted to one of the seven objectives specified in Chapter 13, there are other hurdles. Two of these are particularly relevant. First, the procurement measure must not be applied “in a manner that would constitute a *disguised restriction on trade*” [Emphasis added]. Second, “there are no reasonably available alternatives that would make an equivalent contribution to the achievement of the legitimate objective in a less trade-restrictive manner.”

### *Discriminatory Business Practices Act*

The stated purpose of the *Discriminatory Business Practices Act* is “to prevent discrimination in Ontario on the ground of race, creed, colour, nationality, ancestry, place of origin, sex or *geographical location* of persons employed in or engaging in business”. (Emphasis added.) The Act was adopted in the 1970s by then Premier Bill Davis to prohibit Ontario businesses from complying with the Arab League led boycott of Israeli businesses. Nevertheless, some public sector entities have interpreted the reference to “geographic location” as a bar against local preference practices and they may be correct in doing so.

There appears to be only one reported case in which the Act was the subject of judicial interpretation.<sup>16</sup> This case dealt with two minor league hockey players (age 13) who sought to play in the Greater Toronto Hockey League even though they lived outside of the GTA. Their application to play in the Greater Toronto League was refused by the Ontario Minor Hockey Association. The young players sought to reverse this decision by relying on the bar against discrimination based on “geographic

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<sup>16</sup> Beauchamp v. North Central Predators AAA Hockey Assn., 2004 CanLII 48698 (ON SC). CanLii:  
<https://www.canlii.org/en/on/onsc/doc/2004/2004canlii48698/2004canlii48698.html?searchUrlHash=AAAAAQAIRGJzY3JpbWluYXRvcnkQnVzaW5lc3MgUHJhY3RpY2VzIEFjdAAAAAAB&resultIndex=6>

location” in the *Discriminatory Business Practices Act*. The Court appears to have interpreted “geographic location” as encompassing regions within Ontario, despite the original anti-boycott context of the legislation. There is a significant risk, therefore, that an aggrieved contractor could rely successfully on the *Discriminatory Business Practices Act* to thwart the application of a local preference policy.<sup>17</sup>

### ***Building Ontario Businesses Initiative Act***

The *Building Ontario Businesses Initiative Act* received royal assent on March 3, 2022. Sec. 3 provides that: “a public sector entity shall give preference to Ontario businesses, in accordance with the regulations, when conducting a procurement process for prescribed goods and services the value of which are *under the prescribed threshold amount*”[emphasis added]. The Act does not specify the threshold values under which its requirement to give preference to Ontario suppliers applies. However, it is reasonable, to assume that the threshold will align with Ontario’s obligations under trade agreements, as discussed above. In practice, this means the *Act* would apply to procurements under either \$100,000 (the threshold in the *Ontario-Quebec Trade and Co-operation Agreement*) or \$250,000 (the threshold in the Canadian Free Trade Agreement).

The *Building Ontario Businesses Initiative Act* mandates preference to Ontario suppliers for vendors of goods and services under the threshold, but does not allow discrimination against vendors from other regions of Ontario as such discrimination is prohibited by the *Discriminatory Business Practices Act*.

Some commentators have suggested that the impact of the *Building Ontario Businesses Initiative Act* will be far reaching. This is unlikely in the case for construction-related procurement. In the first place, the analysis of construction procurement between 2017 and 2020 showed that contracts under \$250,000 accounted for only 2.5% of the total value of construction work that was put out to competitive tender. Second, it is highly unlikely that an out-of-province vendor would pursue construction opportunities under \$250,000. In the case of the City of Brampton, the potential vendors for such work are almost invariably located within the Greater Toronto and Hamilton Area. Third, out-of-province construction vendors that pursue opportunities in Ontario tend to establish an Ontario office. Some establish an Ontario subsidiary. Consequently, these vendors usually meet the requirement to be considered an “Ontario vendor”. For all of these reasons, it is unlikely that the *Building Ontario Businesses Initiative Act* will have a material impact on construction procurement. However, to the extent that the *Building Ontario Businesses Initiative Act* does apply to construction procurement, it will not diminish or otherwise constrain the City of Brampton’s ability to implement a Community Benefits Policy for its construction procurement.

### **Synopsis of Prohibitions against Local Preference and Risks of Non-Compliance**

The Canadian Free Trade Agreement (formerly the Agreement on Internal Trade) applies to all inter-provincial trade and bars discriminatory procurement practices against non-Ontario vendors and out-of-region vendors within Ontario. Similar bars against local preference policies are found in international trade agreements.

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<sup>17</sup> The Court ruled, however, that the *Discriminatory Business Practices Act* did not apply to a minor league hockey as the league was not engaged in a business.

The Ontario-Quebec Trade and Co-operation Agreement establishes the same bar but includes an additional limitation barring preference for local construction contractors or construction workers.

The *Discriminatory Business Practices Act* prohibits discrimination based on geographic location. The *Building Ontario Businesses Initiative Act* mandates preference for Ontario suppliers below a threshold which is likely to be the thresholds established in trade agreements (\$100,000 in the *Ontario-Quebec Trade and Co-operation Agreement* and \$250,000 in the Canadian Free Trade Agreement). The *Building Ontario Businesses Initiative Act* does not override the *Discriminatory Business Practices Act*. Discrimination against out of region Ontario contractors would therefore still be prohibited.

*The sum total of these trade agreements, along with the prohibition in the Discriminatory Business Practices Act is to make it unlawful for a municipality to adopt a local preference policy.* Brampton's Purchasing By-law was amended in 2018 to ensure that the City is in full compliance with these trade agreements and, by implication, also with the *Discriminatory Business Practices Act*. If the City of Brampton were to implement a local preference policy, the City would potentially be vulnerable to litigation and liable for damages. Additionally, the City would risk inviting retaliation by other municipalities and intervention by the Province. The City might also jeopardize its access to federal or provincial capital funding. *It is therefore important that in devising a Community Benefits Policy, the City ensure that it remains on side with its obligations under trade agreements and the Discriminatory Business Practices Act.*

### **Implications for Community Benefits Policy**

A Community Benefits Policy uses the City's procurement to leverage increased employment and training opportunities for residents who are economically disadvantaged. Brampton's Supplier Diversity Program is an example of a Community Benefits Policy.

In the context of construction procurement, Community Benefits Policy seeks to use procurement on larger construction projects to foster outreach and expanded training and apprenticeship opportunities for Brampton residents who are from groups that have been historically under-represented in the construction industry.

Based on the earlier discussion, it is clear that *a Community Benefits Policy cannot be a disguised means of implementing a local preference policy*. Rather, to be compliant with trade agreements, a Community Benefits Policy must be based on the "legitimate policy objective" exemption that focuses on "disadvantaged groups". While encouraging increased outreach and opportunities for economically disadvantaged residents in Brampton, a Community Benefits Policy cannot intentionally favour local vendors over other vendors.

Both the Federal Community Benefits Initiative and the *Infrastructure for Jobs and Prosperity Act* acknowledge that *inclusiveness and workforce development are legitimate policy objectives, especially when focused on "disadvantaged groups"*.

The *Canada-Ontario Integrated Bilateral Agreement for the Investing in the Canada Infrastructure Program* operationalizes the Federal Community Benefits Initiatives. The *Bilateral Agreement* provides that:

"Ontario will ensure that all Projects with total estimated Eligible Expenditures of ten million dollars (\$10,000,000) or more, will report on community employment benefits provided to at least three federal target groups

(apprentices - from *traditionally disadvantaged communities, Indigenous peoples, women, persons with disabilities, veterans, youth, new Canadians, or small-medium-sized enterprises and social enterprises*) ... The Community Employment Benefits assessments will be determined by Ontario to ensure alignment with Ontario's Community Benefits Framework, currently being developed".

The inference from *Bilateral Agreement* is that the federal government not only approves of, but actively encourages, the implementation of Community Benefits Policies, but does *not* go so far as to endorse discriminatory procurement practices that would be contrary to the obligations set out in trade agreements.

Ontario's *Infrastructure for Jobs and Prosperity Act* establishes 14 principles which are to guide infrastructure planning and investment by every broader public sector entity, including municipalities. Number 13 of these 14 principles states that broader public sector entities should:

"promote community benefits, being the supplementary social and economic benefits arising from an infrastructure project that are intended to improve the well-being of a community affected by the project, such as *local job creation and training opportunities (including for apprentices...)*, improvement of public space within the community, and any specific benefits identified by the community". (Emphasis added.)

The *Infrastructure for Jobs and Prosperity Act* specifically states that:

"the purpose of this Act is to establish mechanisms to encourage principled, evidence-based and strategic long-term infrastructure planning that *supports job creation and training opportunities, economic growth and protection of the environment, and incorporate design excellence into infrastructure planning* [Emphasis added]".

The *Act* should therefore be read as not just allowing, but mandating, Community Benefits Policies in connection with the construction and maintenance of infrastructure. Infrastructure is defined broadly as:

"the physical structures and associated facilities that form the foundation of development, and by or through which a public service is provided to Ontarians, such as *highways, bridges, bicycle paths, drinking water systems, hospitals, social housing, courthouses and schools, as well as any other thing by or through which a public service is provided to Ontarians that may be prescribed...* [Emphasis added]".

The legislation explicitly requires that, on provincial infrastructure projects, a bidder *must* provide a plan detailing how they will use apprentices, the number of apprentices they expect to employ and how they plan to support apprentices through their training. Bidders are also required to describe how they will:

"create employment opportunities arising from the construction or maintenance for apprentices who are women, aboriginal persons, newcomers to Ontario, at-risk youth, veterans, [or] residents of the community in which the infrastructure asset is located..."

Taking into account, the CFTA provisions on legitimate policy objectives, the *Canada-Ontario Integrated Bilateral Agreement for the Investing in the Canada Infrastructure Program*, and the *Infrastructure for Jobs and Prosperity Act*, we conclude that the City of Brampton has the legal scope to devise a Community Benefits Policy that would apply to its construction procurement. This policy can require construction vendors to have a plan to reach out to historically under-represented groups in Brampton and provide training and/or apprenticeship opportunities to persons in those groups. This policy, however, cannot be a disguised strategy to circumvent the bar on local preference in the trade agreements that apply to the City of Brampton or the Purchasing By-Law.

Contractors located in the GTA may be better positioned to meet the goals of a Community Benefits Policy than contractors who are located outside the GTA. However, it should be noted that unionized contractors from outside the GTA would have the same access to the outreach and training activities of local unions as would unionized contractors within the GTA. Moreover, both union and non-union contractors, regardless of where they are from, would have the same access to community-based agencies. There is therefore neither a necessary nor an implicit bias in a properly designed Community Benefits Policy that would constitute a prohibited local preference practice.

An appropriately designed Community Benefits Policy which does not discriminate based on a vendor's location would provide benefits to residents of Brampton without contravening trade agreements. Such a policy would expand on the City's Supplier Diversity program.



## 6. Brampton's Sustainable Procurement Framework

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- Brampton's Sustainable Procurement Framework adds social, environmental and ethical factors to traditional value-for-money criteria in awarding contracts.
  - The proposed Fair Wage Policy would require construction vendors to pay not less than the prevailing construction wage and to properly classify workers as employees rather than style them as sub-contractors. A Fair Wage Policy therefore implements the *ethical factor* of the City's Sustainable Procurement Framework.
  - The proposed Community Benefits Policy would require construction vendors on projects of \$5.0 million or more to have a plan to reach out to and invest in training and apprenticeships for Brampton residents and particularly for Brampton residents from groups that have been historically under-represented in the construction industry. A Community Benefits Policy therefore implements the social factor of the City's Sustainable Procurement Framework.
  - There are no amendments needed to the Sustainable Procurement Framework to accommodate either the proposed Fair Wage Policy or the proposed Community Benefits Policy.
  - To implement the Sustainable Procurement Framework, the City needs to adopt a Sustainable Procurement Strategy and Policy which sets out the specific procedures, etc. that will apply the principles of the Sustainable Procurement Framework.
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### Sustainable Procurement Framework

In May 2020, City Council endorsed a *Sustainable Procurement Framework* as the basis for developing a Sustainable Procurement Strategy. The aim of the *Framework* and the Strategy are to use the procurement process to generate social, economic and environmental value through public spending on goods, services and construction. The Framework specifically commits the City to using its purchasing to “create social, economic and workforce opportunities for unemployed and underemployed communities and diverse businesses”. The *Framework* further states that “sustainable procurement processes will maximize community benefit and environmental sustainability”.

In selecting contractors to undertake construction work on behalf of the City, four criteria have been relied upon to ensure the maximum benefit for the City and its tax payers. These are:

- the vendor's proposed price,
- the vendor's experience with comparable or approximately comparable projects,
- the vendor's ability to obtain surety bonding, when appropriate and
- the vendor's health and safety record and, when required, COR certification.

The *Sustainable Procurement Framework* does not detract in any way from these traditional value-for-money criteria when selecting construction vendors. Rather the *Framework* adds additional criteria. These can be captioned as:

- social factors including, for example, “access to quality jobs, training and apprenticeship opportunities for disadvantaged communities (*e.g.*, youth, new immigrants, people with disabilities, *etc.*)” and “vendors that demonstrate integration of workplace and supply chain diversity, inclusion and accessibility”;
- environmental factors such as GHG emissions, pollution reduction, energy, consumption, waste reduction and life cycle effects; and
- ethical factors to ensure that vendors “meet the minimum expectations of ethics and conduct, labour and human rights and health and safety in their business practices and operations”.

### **Fair Wage Policy and Community Benefits Policy**

A Fair Wage Policy implements the ethical factor of the *Sustainable Procurement Framework* by ensuring that construction vendors contracted by the City pay not less than the prevailing wage and do not evade labour standards and tax obligations by misclassifying their workers as sub-contractors rather than employees.

A Community Benefits Policy implements the social factor of the *Sustainable Procurement Framework* by encouraging construction vendors to invest in training and apprenticeship opportunities for Brampton residents and, in particular, for Brampton residents from groups that have been historically under-represented in the construction industry.

We conclude, therefore, that both the proposed Fair Wage Policy and the proposed Community Benefits Policy are fully aligned with the City’s Sustainable Procurement Framework. There are no amendments needed to the Framework to accommodate either of these policies.



# Appendix A

## Consultations and Interviews

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### Internal

- Public Works and Engineering
- Planning, Building and Economic Development
- Parks Maintenance
- Brampton Transit
- Fire and Emergency Services

### Other Municipalities and Agencies

- City of Calgary
- City of Halifax
- City of Mississauga
- Peel Region
- City of Saskatoon
- City of Toronto
- Toronto Community Housing Corporation
- City of Vancouver
- City of Winnipeg
- York Region

### Construction Industry

Chris Campbell  
Equity Diversity Representative  
Carpenters District Council of Ontario

James St. John  
Business Manager  
Central Ontario Building Trades

Andrew Regnerus  
Construction Co-ordinator – Ontario  
Christian Labour Association of Canada (CLAC)

Jason Ottey  
Director of Government Relations and Communications  
Labourers International Union of North America (LIUNA), Local 183

John Mandarino  
Executive Director  
LIUNA Canadian Tri-Fund

Sean McFarling  
General Counsel  
LIUNA Ontario Provincial District Council

David Frame  
Director of Government Relations  
Ontario General Contractors Association (OGCA)

Brian Hocking  
Chief Executive Officer  
Andrew Hurd  
Director, Policy and Stakeholder Relations  
Ontario Road Builders Association (ORBA)

Patrick McManus  
Executive Director  
Krisha Ruchlewicz  
Manager, Policy and Strategic Initiatives  
Steven Crombie  
Manager, Government Relations and Public Affairs  
Ontario Sewer and Watermain Contractors Association (OSWA)

Karen Renkama  
Vice-President  
Stephen Hamilton  
Director of Public Affairs  
Progressive Contractors Association

## Community

Cameron Moser  
Director of Services and Program Development  
Access Employment

Todd Letts  
Chief Executive Officer  
Brampton Board of Trade

Kevin Viflanzoff  
Associate Director, Purchasing  
Humber College

Gurpreet S. Malhotra  
Chief Executive Officer  
Indus Community Services

Maryam Harji  
Chantel Crooks  
Bridge2Work Specialists  
Skills for Change

John Mittregger  
Director of Employment Services  
Job Skills

Roberta Bustard  
Peel Community Benefits Network

Adaoma Patterson  
Manager - Poverty Reduction Initiatives & Community Engagement  
Region of Peel  
Peel Poverty Reduction Strategy

Shalini da Cunha  
Executive Director  
Peel Halton Workforce Development Group

Karen Lemoine  
Director, Community Engagement and Stakeholder Relations  
Sheridan College

Anne Jamieson  
Senior Manager, Toronto Enterprise Fund  
Nauman Khan  
Senior Manager, Public Affairs  
Nation Cheong  
Vice President, Community Opportunities and Mobilization  
United Way of Greater Toronto

In addition, a meeting was held with members of the Black Community. The meeting was organized by Gwyneth Chapman, Senior Advisor, Anti-Black Racism Unit, City of Brampton.

# Report No. 1

## Fair Wage Policy and Community Benefits Policy: Current State Report



May 2021

# Fair Wage Policy and Community Benefits Policy:

## Current State Report

### Executive Summary

This report summarizes the results of the first phase of the “Feasibility Assessment for Fair Wage Policy and Community Benefits at the City of Brampton.” The focus of the assignment is on construction and construction-related contracting.

This report profiles the current statutory and policy environment in relation to both Fair Wage Policy and Community Benefits Policy. The report also summarizes consultations with City staff, procurement and policy staff of other municipalities and agencies. The report also provides a statistical analysis of the City’s current contracting.

#### *Fair Wage Policy*

The purpose of a Fair Wage Policy is to reduce the reputational and ethical risk that a municipality will unintentionally engage a contractor that secures an unfair competitive advantage by paying wages that are less than the prevailing wages in the construction industry or by engaging in other unfair practices. These include: evading tax obligations by improperly styling workers as sub-contractors, cutting corners on health and safety and foregoing investments in apprenticeship and skills training. Fair Wage Policies also discourage aggressive wage-cutting during an economic downturn.

Fair Wage Policies link construction procurement to the prevailing wage. In many municipalities, the prevailing wage is lower than union wage. By linking procurement to the prevailing wage, a well-designed Fair Wage Policy does not increase construction costs since all reputable contractors bid on the basis of paying the prevailing wage. Rather, a Fair Wage Policy erects a guardrail that protects reputable contractors from being undercut by the small minority of contractors that compete on the basis of sub-standard wages or unfair practices. Fair Wage Policy should be understood as risk management policy intended to reduce the reputational risk to a municipality from hiring a contractor that pays sub-standard wages or engages in other unfair practices.

By excluding contractors that rely on unfair practices, Fair Wage Policy fosters an environment in which competition among contractors is based on quality, efficiency and productivity.

In most conditions, standard compliance provisions in contracts and market pressures ensure that construction contractors pay prevailing wages, comply with statutory and tax obligations and invest in training and apprenticeship. However, construction contracting is an intensely competitive industry. A small minority of contractors seek a labour cost advantage variously by:

- Taking advantage of vulnerable workers to pay lower wages. Vulnerable workers include undocumented workers, temporary foreign workers and recent immigrants.
- Avoiding EI, CPP and WSIB contributions and vacation and holiday pay. By improperly styling workers as self-employed sub-contractors instead of employees a contractor can evade these legal obligations and reduce payroll costs by 18-20% or more.
- Cutting corners on workplace safety. While there are no data directly associating Fair Wage Policy with health and safety performance, it is plausible to expect that a contractor that is paying less than the prevailing wage may also be cutting corners on health and safety, especially on required training costs.
- Avoiding investments in training and apprenticeship. It is equally plausible to expect that a contractor paying sub-standard wages is not investing in training and apprenticeship.

There is also a risk that lowest cost tendering practices will encourage wage cutting during an economic downturn. This occurred in the 1990s.

Properly designed, a Fair Wage Policy erects guardrails that protect the competitive environment without raising construction costs. Fair Wage Policy should therefore be understood as part of a risk reduction strategy. A review of the evidence suggests that these risks, while not widespread, are nevertheless material and should not be underestimated.

Although both the federal and provincial governments have Fair Wage Policies, these policies have not been updated and are therefore largely irrelevant in current market conditions. The previous provincial government enacted the *Government Contract Wages Act* which established an updated framework for Fair Wage Policy. This legislation has not as yet been implemented by the present government. Six Ontario municipalities currently have Fair Wage Policies: Toronto, Sudbury, Hamilton, Thunder Bay, Oshawa and Clarington. Vaughan will be implementing a Fair Wage Policy this year. Mississauga is currently investigating the feasibility of a Fair Wage Policy.

It is common, although not universal, for Fair Wage Policies to apply a contract value threshold below which the Policy does not apply. Most Fair Wage Policies are in the range of 70-80% of the current union rate. Enforcement of most policies is complaint-based, with investigation costs borne by fees levied on a non-compliant contractor or the complainant if the complaint is not sustained. (These fees are usually waived in the case of an affected worker, but not if the complainant is another contractor, a union or a contractor association.)

A Fair Wage Policy that sets the minimum wage schedule in line with prevailing wages will not have an impact on construction costs unless (and it is unlikely) the City has been regularly contracting with suppliers that pay below the prevailing wage.

### *Analysis of Contracted Services*

The contract analysis examined 417 contracts for services that were between 2017 and 2020. The total value of these contracts was \$333.1 million. Approximately 70% of these contracts were for construction services, including maintenance and repair. The analysis showed that if the City had operated a Fair Wage Policy with a threshold of \$500,000 and applied this policy only to construction projects:

1. the Fair Wage Policy would have applied to 64% of all services contracts;
2. approximately 90% of the value of contracted construction would have been subject to the Fair Wage Policy;
3. 70% of construction contracts would have been exempt. The average value of these ‘small job’ contacts was around \$120,000;
4. on average there would have been 18 contracts per year subject to the Fair Wage Policy. Removing the \$500,000 threshold would have increased this to 65 contracts per year.
5. on average, each year there were approximately 5 landscaping/parks maintenance contracts which exceeded \$500,000. These contracts covered work that is similar to construction, but not usually included in the legal definition of construction.

### *Community Benefits Policy*

Community Benefits Policy is an increasingly common requirement in large construction projects supported with capital funding by either the province or the federal government. Several municipalities have either recently launched community benefit policies or are preparing to do so. There is limited experience with these policies, however, in the context of small-to-medium sized construction projects. This suggests a need to proceed with caution. There are no established and recognized best practices. Among the lessons that may be drawn from the experience of other municipalities and agencies are:

- Projects should be assessed individually for their potential to achieve community benefits. It is impractical to apply a standard rule that would be applicable to all projects.
- The City should not establish hard targets for workforce development benefits until both the City and its construction suppliers have had significantly more experience.
- Expectations for community benefits should be clearly described in the tender or RFP. It is unreasonable, and potentially unlawful, to introduce expectations for community benefits after a proponent has been selected on the basis of a fixed price bid.

- Community Connectors play a key role in achieving workforce development benefits such as training or apprenticeship opportunities. The most effective Community Connectors will be those that have well established relationships with the construction industry.
- In the unionized industry, strategies to expand training and employment opportunities to under-represented groups therefore need to take into account the key role of unions in both training and dispatch.
- A strategy to achieve workforce development benefits needs to be linked to funding for job readiness training.
- Industry and community stakeholders need to be actively consulted.

#### *Current Policy in Construction Procurement*

Current policy does not speak to Community Benefits Policy in construction procurement, although the pursuit of social objectives is a recognized goal of procurement policy. Current policy requires contractors to comply with statutory obligations, but does not generally police that compliance. The requirement for COR certification will introduce significant new standards for health and safety performance and should significantly reduce the risk of workplace injuries on City projects. The other risks addressed by Fair Wage policy are largely not addressed by current procurement policy.

Internal consultations suggest that the Department of Public Works and Engineering would be the most affected by a Fair Wage Policy. Parks Maintenance would also be affected if a Fair Wage Policy were extended to landscaping work. There is no perception that contractors used by the City pay substandard wages. Therefore, there is not a significant concern that such a policy would affect construction costs. The possible exception to this is landscape contracting which tends to be a low-wage industry.

#### *Next Steps*

Phase Two of this assignment will consult community and industry stakeholders. City staff will be kept abreast of the results of these consultations. Phase Three will set out options which will be shared with City staff for comment and feedback.

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# 1. Introduction

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This report was prepared pursuant to “NRFP2020-198 Feasibility Assessment for Fair Wage Policy and Community Benefits at the City of Brampton.” This report is a ‘current state’ report. Its purpose is to provide a profile of the current statutory and policy environment in relation to both Fair Wage Policy and Community Benefits Policy. This report constitutes Phase One of the Feasibility Study.

Part I of this report focuses on Fair Wage Policy.

Part II summarizes a statistical analysis the City of Brampton’s procurement over the past four years.

Part III focuses on Community Benefits Policy in relation to construction procurement.

Part IV reviews Brampton’s current procurement policies in so far as they do, or do not, bear on the purposes and goals of both Fair Wage Policy and Community Benefits Policy. This section of the report also provides a precis of internal consultation and discusses next steps in assessing the feasibility of both Fair Wage Policy and Community Benefits Policy.

Prism Economics and Analysis wishes to express its appreciation to the City officials who made themselves available for consultations. The views expressed in this report are solely the responsibility of Prism Economics and Analysis.



# **Part I**

## **Fair Wage Policy**

## 2. Objectives of Fair Wage Policy

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Properly designed, a Fair Wage Policy does *not* increase construction costs. Rather, the purpose of a Fair Wage Policy is to reduce the risk that a municipality will unintentionally engage a contractor that secures a cost advantage through unfair practices. These practices can include exploiting vulnerable workers, evading tax obligations, cutting corners on health and safety and foregoing investments in apprenticeship and skills training.

Fair Wage Policies link construction procurement to the prevailing wage. In many municipalities, however, the prevailing wage is lower than union wage. By linking procurement to the prevailing wage, a well-designed Fair Wage Policy does not increase construction costs since all reputable contractors bid on the basis of paying the prevailing wage. Rather, a Fair Wage Policy erects a guardrail that protects a municipality from the ethical and reputational consequences of engaging the small minority of unscrupulous contractors. Fair Wage Policy should therefore be understood as an aspect of risk management in procurement rather than as a policy to raise wages in the construction industry.

By excluding contractors that rely on unfair practices, Fair Wage Policy fosters an environment in which competition among contractors is based on quality, efficiency and productivity.

### Goals of Fair Wage Policy

Fair Wage Policies have two goals:

3. to “prevent suppliers from competing for government contracts by paying their employees substandard wages”;<sup>18</sup> and
4. to foster a level playing field environment in which contractors compete on the basis of quality, efficiency and productivity rather than by cutting corners on wages, benefits, statutory obligations, workplace safety or training and apprenticeship.

The term “Fair Wage Policy” is uniquely Canadian. Most jurisdictions follow the U.S. practice of describing these policies more accurately as Prevailing Wage Policies. The American terminology is a better description of the policy’s purpose. The purpose of these policies is *not* to raise the wages of construction workers. The presumption is that most construction workers earn the prevailing wage and that all reputable contractors bid for municipal work on the basis of paying the prevailing wage and complying with statutory obligations. The problem that a Fair Wage Policy addresses is the corrosive

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<sup>18</sup> Employment and Social Development Canada (ESDC), *What We Hear: Consultations on a Modern Fair Wage Policy* (2019).

challenge posed to the competitive environment by the small minority of contractors that engage in unfair practices. Chief among these unfair practices are:

6. aggressively cutting wages during economic downturns;
7. exploiting vulnerable workers (usually recent immigrants or undocumented workers);
8. evading WSIB, EI, CPP and *Employment Standards Act* obligations by improperly styling workers as self-employed sub-contractors rather than as employees;
9. cutting corners of workplace safety; and
10. foregoing investments in apprenticeship and skills training.

Fair Wage Policies are best understood as an aspect of risk management in procurement that is designed to reduce the reputational and ethical risk of a municipality unintentionally awarding work to a contractor that engages in one or more of these practices. In most circumstances, municipalities can rely on standard procurement requirements<sup>19</sup> and market pressures to ensure that contractors meet their legal responsibilities to employees and also pay at least the prevailing wage. Most contractors also understand the need to replenish the skill pool by investing in training and apprenticeship. Most contractors also strive to ensure a safe workplace.

While standard procurement procedures and market pressures are sufficient in most circumstances, it is virtually inevitable in the highly decentralized and intensely competitive construction industry that a minority of contractors will be drawn to unfair practices as a means of achieving a competitive advantage. Fair Wage Policies therefore function as a guard rail that keeps competition within a framework that promotes best value based on quality, efficiency and productivity.

Properly designed, a Fair Wage Policy does not affect construction costs. This is because the Fair Wage Schedule is linked to the prevailing wage which, by definition, is the wage that is paid by the overwhelming majority of contractors. In most municipalities, the prevailing wage is less than the wage negotiated by the unionized building trades. It is therefore incorrect to describe a Fair Wage Policy as a trojan horse strategy to channel construction to unionized contractors.

No municipality wants to have public works carried out by workers who are paid below the prevailing wages or denied statutory benefits to which they are entitled. Nor do municipalities want to employ contractors who avoid their statutory obligations for EI, CPP and WSIB contributions and connive in the under-reporting to CRA of earned income. And most definitely, municipalities and public works do not want to have workplace accidents occurring on their projects. Neither do most municipalities want to award work to contractors that forego investments in apprenticeship or skills training to achieve a cost advantage.

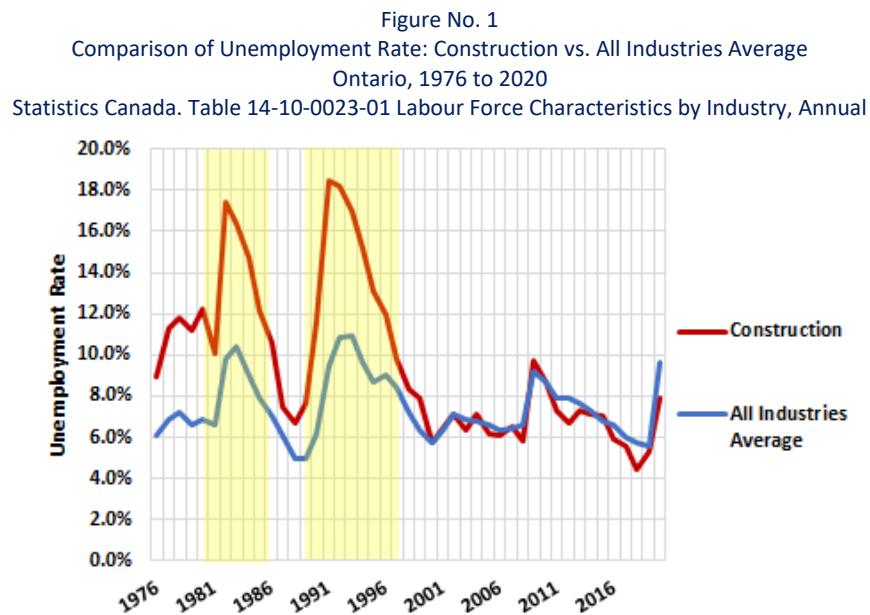
The following sections explore in more detail the risks that Fair Wage Policy seeks to reduce.

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<sup>19</sup> For example, virtually all contracts require prime contractors to comply with statutory obligations and to ensure the compliance of their sub-contractors.

### First Risk: The Risk of Wage Cutting in a Recession

Under most conditions, competition among employers for skilled construction workers prevents competitive wage-cutting from gaining momentum. The construction industry, however, is more cyclical than many other industries. During economic downturns, unemployment in the construction industry ratchets up sharply. Figure No. 1 compares the unemployment rate in the construction industry with the all-industries average.



As can be seen, there were two periods – one in the 1980s and a second in the 1990s - when the unemployment rate in the construction industry was well above 10%. In both of these periods, there was widespread wage-cutting. Procurement policies that assigned a high weight to the lowest cost bidder likely added to this wage cutting. A Fair Wage Policy erects a barrier to wage-cutting. This barrier is especially relevant during an economic downturn.

### Second Risk: The Risk of Vulnerable Workers being Exploited

There are three pools of workers who are vulnerable to exploitation. These are:

- undocumented workers (*i.e.*, workers without a legal right to reside and work in Canada),
- temporary foreign workers (*i.e.*, workers admitted to Canada under the Temporary Foreign Worker Program who may or may not be overstaying their permitted stay in Canada), and
- recently arrived immigrants who may not be aware of their rights or how to enforce them.

While none of these pools is large, taken together, they are sufficient to create a risk that a minority of contractors will seek a competitive advantage by hiring from these pools of labour and paying substandard wages.

#### *Undocumented Workers:*

There is considerable variance in estimates of the number of undocumented workers in the construction industry. A 2006 estimate by the Soave Strategy Group suggested that there were around 20,000 undocumented workers in the GTA construction industry. This represented between 11% and 12% of work force in the industry.<sup>20</sup> Other estimates that do not specifically focus on the construction industry, suggest orders of magnitude that are consistent with the Prism and Soave studies.<sup>21</sup> A 2019 study by Prism Economics and Analysis suggested somewhat more conservative estimates. Overall, Prism Economics estimated that undocumented workers represented between 5% and 9% of the GTA's construction work force. In the ICI and civil sectors, the proportion was lower, as shown in Figure No. 2.

Figure No. 2  
Estimated Distribution of Undocumented Workers  
Across GTA Construction Labour Force, By Sectors (2018)  
Prism Economics and Analysis<sup>22</sup>

Sector	Construction Labour Force 2018 <i>per BuildForce</i>	Est. No. of Undocumented Workers		Est Share of Undocumented Workers in Each Construction Sector (Trades Only)	
		Low	High	Low	High
<b>Trades Work Force by Sector:</b>					
• New Construction: Residential	37,513	3,045	5,600	8.1%	14.9%
• Residential Renovation	36,151	3,480	6,400	9.6%	17.7%
• Residential Maintenance	8,605	870	1,600	10.1%	18.6%
• ICI	22,315	609	1,120	2.7%	5.0%
• Civil	26,853	435	800	1.6%	3.0%
• Non-Residential Maintenance	11,770	261	480	2.2%	4.1%
Sub-Total: Trades	143,207	8,700	16,000	6.1%	11.2%
Contractors, Supervisors, Estimators	32,689	0	0		
Total Labour Force	175,896	8,700	16,000	4.9%	9.1%

#### *Temporary Foreign Workers (TFWs):*

Based on the 2016 Census, TFWs represent approximately 2.3% of the construction workforce in the GTA. This proportion varies across trades. As might be expected, TFWs represent a higher proportion of

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<sup>20</sup> Soave Strategy Group, "The Impact of Undocumented Workers on the Residential Construction Industry in the Greater Toronto Area" (2006).

<sup>21</sup> A summary of other reports is provided by Soave and also in City of Toronto, "Staff report: Undocumented workers in Toronto" (2012). See also L. Magelhaes, "Undocumented migrants in Canada: A scope literature review on health, access to services and working conditions", *Journal of Immigrant and Minority Health* (2009).

<sup>22</sup> Prism Economics and Analysis, "Economic Benefits of Regularizing the Status of Undocumented Workers in the GTA Construction Industry" (September 2019).

“helpers and labourers” (3.1%).

#### *Recent Immigrants:*

Recent immigrants (*i.e.*, persons who have been in Canada for five or fewer years) represented around 6% of the GTA’s construction work force in 2016. The proportion was higher among “helpers and labourers” (7.7%) and in the masonry trades (7.3%).

Taken together, undocumented workers, TFWs and recent immigrants constitute a pool of workers who may be induced or required to work for wages that are below the prevailing norm. Contractors who take advantage of these workers, especially those who employ undocumented workers and TFWs can secure a competitive advantage at the expense of other contractors who reject these practices. A Fair Wage Policy would filter out these contractors.

#### **Third Risk: Evasion of WSIB, CPP, EI and Employment Standards Act Obligations**

In the construction industry, some tradespersons are legitimately self-employed. A worker who is hired as a self-employed sub-contractor (or ‘independent operator’) is technically not an employee. Consequently, the contractor who engages this worker is not obliged to pay EI, CPP or WSIB contributions. Nor is the contractor required to pay the overtime, vacation pay or holiday pay to which a regular employee would be entitled under the *Employment Standards Act*. For workers, the financial advantage of such an arrangement is that contractor does not make deductions-at-source for sub-contractors. Nor does the contractor file T-4 slips reporting the remuneration of their sub-contractors. What a worker loses from being classed as a sub-contractor can be more than made up by deliberately under-reporting earnings. For the contractor and for many workers, styling workers as self-employed sub-contractors is a win-win proposition. The contractor enjoys significantly reduced payroll costs. The workers enjoy the advantage of under-reporting (or not reporting) their earnings. The losers in this game are governments which do not receive social security contributions or income tax receipts and other contractors and workers who are at a competitive disadvantage because they comply with their statutory obligations.

There are, of course, many self-employed construction workers whose self-employment status is legitimate. However, it is also the case that some contractors hire workers whom they style as independent operators even though these workers are employees for all intents and purposes.

Figure No. 3 shows the payroll cost savings that a contractor can achieve by styling workers as self-employed sub-contractors.

Figure No. 3  
Payroll Savings from Styling Workers as Independent Operators

Employer Cost Item	Percent of Payroll
EI Premiums (Employer Share)	2.21%
CPP Contributions (Employer Share)	5.45%
WSIB Premiums – Construction (basic)	2.30% to 4.45%*
Sub-Total	9.96% to 12.11%
Vacation (2 weeks statutory)	4.0%
Holidays (10 days statutory)	4.0%
Total	17.96% to 20.11%

\*+/- experience adjustment

As can be seen from Figure No. 3, the improper portrayal of workers as independent operators rather than employees results in a payroll savings of roughly 18-20% and likely more if higher WSIB risk-adjustment premiums were included. It is not surprising that this incentive has led to a significant increase in the share of nominally self-employed workers in the construction work force. (See Figure No. 4).



Styling workers as self-employed sub-contractors has been identified as the most significant underground economy practice in the construction industry.<sup>23</sup> Fair Wage Policies that require independent operators to be paid at least the specified Fair Wage amount remove the incentive for contractors to style their workers as self-employed sub-contractors.

#### **Fourth Risk: The Risk of Cutting Corners on Workplace Safety**

It is plausible to expect that contractors that pay less than the prevailing wage also cut corners on workplace safety when training or safety protocols entail additional costs. There are, however, no empirical studies that examine the relationship between a contractor's remuneration practices and its health and safety performance. The only indirect evidence is a comparison of health and safety performance between union and non-union firms in the ICI sector. This study was undertaken by the Institute for Work and Health (IWH) - an independent research centre, originally funded by the WSIB, and now funded by the Chief Prevention Officer of the Ontario Ministry of Labour.<sup>24</sup> The IWH study found that unionized construction firms had 25% fewer claims for lost-time injuries. Unionized firms with 50 or more employees had 44% fewer claims.<sup>25</sup>

<sup>23</sup> Ontario Construction Secretariat, "The Underground Economy in Ontario's Construction Industry: Estimates of the Revenue Losses to Governments", report prepared by Prism Economics and Analysis (2019).

<sup>24</sup> Disclosure: John O'Grady, the project lead for this report, was a former Chair of the Institute for Work and Health.

<sup>25</sup> Lynda Robson, Victoria Landsman, Desiree Latour-Villamil, Hyunmi Lee and Cameron Mustard, "Updating a study of the union effect on safety in the ICI construction sector: Final Report", Institute for Work and Health (2020)

By filtering out contractors that pay below prevailing wages, a Fair Wage Policy reduces the risk of a public authority hiring a contractor that cuts corners on safe workplace training and procedures. However, more direct strategies include requiring contractors to provide their health and safety policies and accident prevent management plans as part of their submissions. COR certification, which will be mandatory for contractors hired by the City of Brampton, requires employers to develop a health and safety management plan to monitor worksite compliance with the plan.

### **Fifth Risk: The Risk of Foregoing Investments in Training and Apprenticeship**

Investments in training and apprenticeship are important both for the opportunities that they create and because such investments are essential to maintain quality and achieve continued productivity growth. There are no studies that comprehensively compare the training and apprenticeship investments of construction employers. A 2013 study by the Ontario Construction Secretariat found that, in unionized construction, across Ontario, there are 95 training centres run by jointly trusted labour-management training trust funds. Across the province, the capital investment in these training centres was approximately \$260 million.<sup>26</sup> A review of collective agreements in the ICI sector shows that unionized contractors contribute between 0.8% and 2.1% of total payroll costs to training and apprenticeship. There is no comparable information for non-union contractors. However, a survey by the Ontario Construction Secretariat found that 85% of unionized contractors in the ICI sector invest in apprenticeship training compared to 57% of non-union contractors.<sup>27</sup> There is also evidence indicating that unionized construction workers are more likely to be certified tradespersons.<sup>28</sup> The data therefore suggest that investments in training and apprenticeship are undertaken by a large majority of unionized contractors and by a significant, though likely smaller proportion, of non-union contractors. A Fair Wage Policy that takes into account training investments as part of overall payroll costs would ensure that contractors who make these investments are not at a competitive disadvantage with contractors who do not.

### **Summary**

1. Fair Wage Policy is best understood as an aspect of risk management in construction procurement. A Fair Wage Policy reduces the ethical and reputational risk of awarding public work to a contractor that secures its cost advantage by:
  - aggressively cutting wages during an economic downturn,
  - exploiting vulnerable workers,
  - evading statutory and tax obligations by improperly styling workers as independent contractors,
  - cutting corners on workplace safety, or

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<sup>26</sup> Ontario Construction Secretariat, *Completion Counts: Raising Apprenticeship Completion Rates in Ontario's Construction Industry* (May 2013), a report prepared by Prism Economics and Analysis.

<sup>27</sup> Ontario Construction Secretariat, *2020 Contractor Survey*, (sample size: 500)

<sup>28</sup> M. Raykov and D.W. Livingstone, "Canadian Apprenticeship and Effect of Union Membership Status: Trend Analysis 1991-2002, (2005), *The Future of Lifelong Learning and Work International Conference*. Toronto. University of Toronto, Ontario Institute for Studies in Education (OISE). "Logistic regressions show a 25% to 89% higher probability for unionized workers to enroll in apprenticeship training in Canada, as compared to their non-unionized equivalents." (p 12)

- foregoing investments in apprenticeship and skills training.
  - 2. While the majority of contractors do not engage in unfair practices, the decentralized and intensely competitive nature of construction contracting makes it likely that there will always be a small minority of contractors that gravitate to these practices. By erecting a guardrail against these practices, a Fair Wage Policy fosters an environment in which contractors compete on the basis of quality, efficiency and productivity rather than by cutting corners on wages, benefits, statutory obligations, training and apprenticeship or workplace safety.
  - 3. A Fair Wage Policy establishes a wage schedule that is commensurate with prevailing wages, i.e., the wages that are paid by the large majority of contractors. In most jurisdictions, the prevailing wage is less than the wages negotiated by the building trades unions.
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### 3. Developing a Fair Wage Policy

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#### Part I: Elements of a Fair Wage Policy

There are seven aspects to a Fair Wage Policy. These are captioned in Figure No. 5.

Figure No. 5  
Elements of a Fair Wage Policy

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1. Fair Wage Schedules: Process for Determining Fair Wage Rates
  2. Scope of Application
    - a. Sectors
    - b. Thresholds
    - c. Application to Independent Operators
  3. Legal Obligation of Prime Contractors and Sub-Contractors
  4. Communication of Rights to Employees
  5. Investigation and Resolution of Complaints
    - a. Status to Register a Complaint
    - b. Fee to Register a Complaint
    - c. Complaint Form / *Prima Facie* Requirement
    - d. Investigation of a Complaint
  6. Penalties or Sanctions for Non-Compliance
  7. Enforcement Model: Proactive Audits / Inspections (optional)
  8. Administrative Requirements and Resources
  9. Stakeholder Consultations
- 

#### 1. Fair Wage Schedules

A Fair Wage schedule consists of lists of classifications and minimum pay rates. Pay rates may refer to either the basic wage or to total compensation. As will be described in Chapter Four, the Federal Fair Wage policy, when operative, applies only to the basic wage. Other Fair Wage Policies generally apply to total compensation. If the Fair Wage Policy uses total compensation, the policy needs to define the components of remuneration that are included in total compensation. Union ‘wage packages’, for example, often contain amounts designated for union purposes, such as administration or organizing. These amounts are usually excluded. Conversely, non-union employers often meet the statutory requirements for holiday and vacation pay by allowing worker to take paid time off work whereas union employers make a contribution (usually 10%) to a ‘vacation and holiday trust fund’ in lieu of allowing paid time off work. (Unionized workers take the time off work, but are compensated by the trust fund, rather than their employer). Fairness requires that the non-union practice of meeting statutory

obligations by allowing paid time off work be treated commensurately with the union practice of employer contributions to a ‘vacation and holiday trust fund’.

Establishing Fair Wage Schedules is the most challenging and potentially contentious aspect of Fair Wage Policy. The principle that informs U.S. policy (the 1931 *Davis-Bacon Act*) was that wages on federal construction projects should be commensurate with the prevailing wage. Consequently, the *Davis-Bacon Act* and its equivalent statutes at the state and municipal level are collectively known as ‘Prevailing Wage’ acts.

As will be described in Chapter Four, three approaches have emerged to establish a Fair Wage Schedule that is in line with the prevailing wage. The first is to conduct a survey. This practice was followed by the Ontario government until 1995 and was also a feature of the federal Fair Wage Policy during periods when that policy was operative. A second approach is to tie the Fair Wage Schedule to the negotiated wage packages of the building trades unions, but excluding amounts that are used for union purposes, such as contributions for union administration or organizing. This approach has been followed by the City of Toronto, although it should be noted that, as a practical matter, the City of Toronto was already bound to the collective agreements of the major building trades unions. The third approach was to link the Fair Wage Schedule to a percentage of the rates negotiated by the building trades unions. This approach was introduced by the Ontario government in 1995. On average the 1995 rates in the Provincial Fair Wage Schedule for Peel and York counties were around 79% of the 1995 union rate.

## 2. Scope of Application

There are three considerations pertaining to the scope of application. The first is the sectors of construction to which the Fair Wage Policy applies. Fair Wage Schedules are usually sector-specific because rates of pay in the construction industry tend to be tied to sectors. The Government Contract Wages Act (2018) applies to four sectors: non-residential building construction (conventionally known as the Industrial-Commercial-Institutional or ICI sector), road construction, sewer and watermain construction and heavy engineering construction (e.g., tunnels and transit). Toronto Community Housing administers a Fair Wage Policy that applies to residential construction (i.e., social housing projects). This appears to be the only example of a Fair Wage Policy that operates in the residential sector.

The second scope consideration is whether there should be a threshold below which the Fair Wage Policy does *not* apply. Among the Fair Wage Policies described in Chapter Four, only the City of Toronto’s policy does not include a threshold. The principal rationale for a threshold is that small construction projects are frequently undertaken by owner-operators, family firms or small partnerships. It is difficult in these circumstances to determine the actual wage that is being paid.

The third consideration is whether the Fair Wage Policy should apply only to employees or whether it should also apply to independent operators, *i.e.*, persons who are engaged on an individual basis as sub-contractors. The improper styling of workers as independent operators is usually associated with types of construction work that can be remunerated on the basis of easily measurable output, *e.g.*, square metres of drywall installed. More complex types of work (*e.g.*, electrical and mechanical installations or repairs) are difficult to remunerate in this way and therefore do not lend themselves to styling

employees as independent sub-contractors. In principle, procurement contracts could restrict the use of dubious independent sub-contractors by limiting a prime contractor's right to sub-contract work without a municipality's explicit approval.

### **3. Legal Obligation of Prime Contractors and Sub-Contractors**

Fair Wage Policies typically require prime contractors to oblige their sub-contractors to comply with a Fair Wage Policy. Most Fair Wage Policies hold a prime contractor responsible for the compliance of sub-contractors. This is practical on large projects where a general contractor is often the prime contractor. Holding prime contractors responsible for the conduct of sub-contractors may need to be approached with more flexibility in the context of smaller projects where the prime contractor has less capacity for oversight.

### **4. Communication of Rights to Employees**

Fair Wage Policies usually require the Fair Wage Schedule to be posted in a place where employees are likely to see it.

### **5. Investigation and Resolution of Complaints**

#### *a. Status to Register a Complaint*

A Fair Wage Policy needs to establish who may register a complaint. An aggrieved employee presumptively has status to register a complaint. Some Fair Wage Policies also allow complaints from unions, from other contractors and from contractor associations. The City of Toronto allows any person to register a complaint. A worker who registers a complaint need not be identified to the employer.

#### *b. Fee to Register a Complaint*

Some Fair Wage Policies require complainants to pay a fee when they register a complaint. This fee is waived when the complainant is an affected employee. The fee is refunded to the complainant if the complaint is upheld. (The offending contractor is then responsible to pay the costs of the investigation). The purpose of such fees is to cover investigation costs and also to deter complaints that are vexatious.

#### *c. Complaint Form / Prima Facie Requirement*

Some Fair Wage Policies require complaints to be supported with *prima facie* evidence of an infraction. In some cases, complaints must be registered using a prescribed form.

#### *d. Investigation of a Complaint*

Investigation typically involves verifying whether workers received the minimum pay *per* the Fair Wage Schedule. Employers are required by the *Employment Standards Act* to maintain records of wage payments and also to provide employees with a statement of their earnings. Most investigations consist of comparing the employer's payroll records with the Fair Wage Schedule. If there is doubt about the validity of the payroll records, it may be necessary to examine employees' earnings statements. Investigations may be conducted using the internal resources of the municipality, public agency or may be contracted to a third party, such as an audit firm.

## **6. Penalties or Sanctions for Non-Compliance**

The most common sanctions provided in Fair Wage Policies are: (1) a direction to pay the employees the monies they were due, (2) formal warnings and (3) a bar for a period of time on performing work covered by the Fair Wage Policy. Some municipalities also require a non-compliant contractor to pay the costs of the investigation. The City of Toronto applies an administrative surcharge to the monies owed to workers which is intended to compensate the City for the costs of investigating a complaint. Setting aside administrative surcharges on owed wages, there are no Fair Wage Policies that provide for outright fines. The legal authority to impose outright fines is doubtful. Some Fair Wage Policies require a non-compliant contractor to submit audited payroll statements for a period of time. Some Fair Wage Policies also empower the municipality or public agency to withhold payments to the contractor until the contractor is in full compliance with the Fair Wage Policy.

## **7. Enforcement Model: Proactive Audits and/or Inspections**

Enforcement of most Fair Wage Policies is complaint-based. Most Fair Wage Policies, therefore, do not provide for proactive audits or inspections. The City of Toronto is an exception. Toronto's Fair Wage Office undertakes proactive site inspections and also may review a contractor's payroll records. The City also requires contractors to file a copy of their wage schedule to establish that it is compliant with the Fair Wage Policy.

## **8. Administrative Requirements and Resources**

The requirements for ongoing administration of a complaint-based Fair Wage Policy are:

- 1) A procurement staff person who:
  - i. is responsible for updating the Fair Wage Schedule. This is usually done on a triennial basis. (Updating may be undertaken internally or contracted out).
  - ii. acts as a point of contact for workers or contractors with questions about compliance,
  - iii. verifies that a contractor's wage schedule complies with the Fair Wage Schedule,
  - iv. is designated to investigate complaints,
  - v. audits a contractor's payroll records, if needed (this may be undertaken internally or contracted out), and
  - vi. issues a caution or recommends penalties where these may be warranted.
- 2) A senior staff person who is designated to hear an appeal against a finding of non-compliance.

Decisions on penalties (usually a time-limited bar on performing City work) are typically made by City Council or a committee of Council, based on a recommendation from the City's Chief Administrative Officer.

If a pro-active enforcement model is chosen, additional resources will be required to undertake random audits to confirm compliance. These random audits of payroll records could be undertaken by City staff or may be contracted to an accounting firm. Cost or required resources would depend on the number of random audits undertaken. On average, Brampton issues 18-20 construction-related contracts per year with a value of \$500,000 or more. If two of these contracts (*i.e.*, 10% of the contracts) were selected each year for random audit, the likely cost would be in the range of \$5,000 to \$10,000 per audit or a maximum of around \$20,000 per year.

The cost of updating Fair Wage Schedules depends on the method adopted. A survey will cost approximately \$50,000. Basing a schedule on collective agreements will require compiling and reviewing approximately 30 collective agreements. This could be undertaken internally or contracted out.

## **9. Stakeholder Consultation / Formal Consultative Committee**

Most public authorities that operate Fair Wage Policies undertake consultations with stakeholders. In some cases, these consultations involve a formal consultative committee.

### **Part II: Process of Developing a Fair Wage Policy**

Following direction from City Council to establish a Fair Wage Policy, the process of developing a Fair Wage Policy would be approximately as follows:

- 1) A Working Committee would be appointed with a lead staff person. The Working Committee should have representation from: purchasing, human resources, parks maintenance, public works (building design and construction, facility operations and maintenance, and road maintenance) and legal. It may also be appropriate to have representation from other departments of the City.
- 2) The Fair Wage Policies of other municipalities should be compiled. An abbreviated comparison of these policies is already included in this report.
- 3) Based on the comparison of other municipalities policies, the Working Committee should give direction on the key components of the policy. These are: method for determining Fair Wage Schedules (survey or formula), scope of application (sectors and thresholds), prime contractor's obligations, communication of rights to workers, investigation of complaints, penalties for non-compliance, enforcement model and stakeholder consultation model.
- 4) Based on the Working Committee's direction, the lead staff person will prepare a draft policy for the Working Committee's review. (This may be undertaken by the lead staff person or by a consultant overseen by the lead staff person).
- 5) The Working Committee will review the draft policy and recommend edits where appropriate. This process may be repeated a few times before a final draft is produced.

- 6) The Final Draft will be reviewed by the Commissioners and Chief Administrative Officer.
- 7) The proposed Fair Wage Policy will be submitted to Council.
- 8) Based on the formula or approach adopted by the Working Committee for determining the Fair Wage Schedules, the schedules will be developed. (This may be undertaken internally or by a consultant overseen by the lead staff person).

If a consultant is retained to support the lead staff person and Working Committee, the cost would likely be around \$30,000 to \$40,000, depending on the mandate. (If a wage survey is conducted, additional costs would be around \$50,000).

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## 4. Summary of Other Fair Wage Policies

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A scan of other Fair Wage Policies indicates that most cities and public agencies establish Fair Wage Schedules that are 20-30% below the current union wage package (total compensation) for the same occupation. Toronto is the exception with Fair Wage Schedules that average 95% of the current union wage package.

Contract thresholds below which the Fair Wage Policy does not apply are common. Toronto is the only jurisdiction that does not apply a threshold.

Most Fair Wage Policies provide for complaint-based enforcement. Toronto's policy is unique providing for proactive inspections. Penalties for non-compliance typically involve an administrative charge to cover some or all of the investigation costs and potentially a bar on performing work for the city or public agency for a period of time. Non-compliant contractors are also required to pay the monies owed to their employees and may be subject to withholding of payments by the city or public agency until they have made these payments.

### Federal Government

The original authority for the Federal Fair Wage Program was founded in the *Fair Wages and Hours of Labour Act* which was originally enacted in 1935. However, that legislation was repealed, effective January 1, 2014. In its previous term, the current government committed to re-introducing a Fair Wage Program, but did not do so. Subsequent to its re-election, the current government has made no reference to a Fair Wage Policy in the Prime Minister's mandate letter to the Minister of Employment, Workforce Development and Labour.

### Provincial Government

The most recent version of Ontario's Fair Wage Policy is set out in Order-in-Council 773/95 which was adopted in 1995. That regulation has not been updated since 1995. The policy applies to construction in three sectors: ICI (non-residential buildings), roads, and sewer and watermain. Although this regulation is still technically in effect, the 1995 wage rates are so far below current market conditions as to make the policy irrelevant.

The 1995 schedules were based on the prevailing union rates, lagged by one year. In urban areas, the policy allowed for up to 15% of the required fair wage to be paid as non-statutory benefits. On average the 1995 rates in the Provincial Fair Wage Schedule for Peel and York counties were around 79% of the 1995 union rate.

Non-residential building construction (ICI) under \$100,000 was exempt from the Provincial Fair Wage Policy. Road construction under \$160,000 is also exempt. These thresholds have not been adjusted since 1995

Contractors were obliged to post the Fair Wage Schedules in a conspicuous place.

Prime contractors were required to contractually oblige their sub-contractors to comply with the Fair Wage Policy.

Discussions with Ministry of Labour staff suggest that the intended administration practice was that holdbacks permitted under the *Construction Lien Act* (since superseded by the *Construction Act*) were used to enforce, where necessary, payment of owed wages to workers.

In 2018, the previous government enacted the *Government Contract Wages Act* which established a new framework for Fair Wage Policy. Although enacted and proclaimed, this legislation has not been implemented by the current government. Chapter Five provides a detailed description of the *Act*.

## Municipalities and Municipal Organizations

### City of Toronto

The City of Toronto is a ‘construction employer’ under the *Labour Relations Act*.<sup>29</sup> As such, the City is bound to use unionized contractors in a number of the trades with which it has collective agreements. These are: carpenters, plumbers and steamfitters, electricians, bricklayers, insulators, painters, glaziers, sheet metal workers and iron workers. For ICI construction (*i.e.*, non-residential buildings), these trades would cover a large majority of workers employed on a project.

The City of Toronto first introduced a Fair Wage Policy in 1983. Toronto updates its Fair Wage Schedules every three years based on the prevailing rates. For the construction industry, Toronto deems the union rate to be the prevailing rate.<sup>30</sup> This principle is appropriate in light of both the market share of unionized contractors in Toronto and the City’s status as a ‘construction employer’ which requires it to use unionized contractors for a majority of the trades. The principle of deeming the union rate to be the prevailing rate would not be appropriate in most other municipalities where the union share of the market is often lower and the municipality is not a ‘construction employer’ under the *Labour Relations Act*.

The Fair Wage Schedules of the City of Toronto are based on the total compensation (wage package) of each construction trade. However, the Schedules exclude certain elements of the union wage package: union dues, employer association fees, and funds dedicated to industry promotion. The Fair Wage Schedules are therefore based on the wage rate plus vacation and holiday pay, health and welfare benefits, pension and training contributions. The process of triennial updating means that in some years

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<sup>29</sup> Under the *Labour Relations Act*, a ‘construction employer’ is an employer that offers construction services to third parties as opposed to self-performing construction for their own account. A ‘construction employer’ may be organized on a trade-by-trade basis by construction unions under the construction sections of the *Labour Relations Act*. When successful, this has the effect of binding the employer to the Provincial Agreement of that trade. Provincial Agreements, which are defined by the *Labour Relations Act*, apply to the ICI sector (*i.e.*, non-residential building construction and repair). The *Labour Relations Act* was amended by the current government to allow municipalities that had been deemed ‘construction employers’ to opt out. The City of Toronto elected not to opt out and therefore continues to be a ‘construction employer’.

<sup>30</sup> In other industries, such as janitorial services or waste collection, the City undertakes a wage survey to determine the prevailing rate.

the scheduled fair wage will lag the union rate. In general, the scheduled fair wage rate is around 95% of the total wage package in the collective agreements.

Contractors must post the Fair Wage Schedules in a conspicuous place.

There are no thresholds or exemptions under Toronto's Fair Wage Policy. The Fair Wage Policy applies to *all* work that is contracted by the City of Toronto. Toronto does not apply its policy to legitimate independent operators. However, the large-scale use of independent operators would not be legitimate. If CRA determined that these workers were employees, they would be covered by the Fair Wage Policy. When workers are supplied to a contractor through a temporary agency, those workers are deemed to be employees of the contactor. A contractor must identify those workers that it hires as sub-contractors.

The Fair Wage Policy is administered by the Fair Wage Office which consists of three persons: a Manager, an Assistant Manager and a Program Manager.

Contractors are required to make a statutory declaration indicating their use of union members (where required), the identity of sub-contractors, the classification and wage rates of workers, and their agreement to abide by the City's Fair Wage Policy.

Complaints may be made by any person. There is no fee charged to complainants. The first step when receiving a complaint is to determine if the project is actually covered by the Fair Wage Policy. The Fair Wage Office may undertake an inspection of payroll records based on the complaint, if the complaint is deemed credible. If the successful bidder radically underpriced its competitors, the Fair Wage Office might also investigate, in the absence of a complaint. An inspection involves requesting a contractor to provide timesheets and payroll records. Payroll records verify that the correct rate was applied. Timesheets verify that the contractor paid for all hours worked. In some cases, the Fair Wage Office may ask a worker for a pay stub to compare it with the contractor's payroll records. In some instances, the Fair Wage Office performs site inspections to verify that workers are receiving the Fair Wage.

If a contractor is non-compliant, the contractor must provide restitution to the affected workers. The Fair Wage Office applies a 15% charge to the amount of restitution to partially offset administration costs. The company is then "cited". If a second violation occurs within three years, the Fair Wage Office makes a report on the circumstances to the Government Management Committee of City Council which determines if the contractor will be barred from doing future work with the City. The period of the bar is two years. The bar applies to both being a prime contractor and being a sub-contractor.

In 2018, the Fair Wage Office conducted 20 investigations which resulted in 8 contractors being cited. A total of 117 workers received payments from their employer as a result of these investigations. The Office conducted 119 site visits.

### **Toronto Community Housing Corporation**

Toronto Community Housing Corporation (TCHC) is established by the City of Toronto to build, maintain and operate its stock of social housing. TCHC has a Fair Wage Policy, but has not updated its Fair Wage

Schedule since 2006. However, it should be noted that TCHC has collective agreements with four of the building trades unions: electricians, plumbers and pipefitters, carpenters and bricklayers.

The Fair Wage Policy applies equally to prime contractors and sub-contractors. However, the Policy does not apply to small businesses or to not-for-profit social enterprises. Small businesses are defined as owner operators, or partnerships, or principals of companies where these small businesses undertake the work themselves.

The Policy is administered on a complaint basis. TCHC undertakes its own investigation of payroll records, as required. There is a six-month time limit following substantial completion of the construction work.

Where a contractor or any sub-contractor is found to be in non-compliance with the Fair Wage Policy on two occasions within any consecutive three-year period, the Board of Directors may bar the contractor or sub-contractor from doing business with TCHC for two years. The names of all contractors and sub-contractors who have been disqualified from conducting business with TCHC are posted on the TCHC website.

### **City of Hamilton**

The City of Hamilton's Fair Wage Schedule was last updated on March 9, 2016. The Fair Wage rates are approximately 70% of the current union rate.

The Fair Wage Policy applies to construction contracts with a minimum awarded value of \$500,000, excluding residential construction. The Fair Wage Policy does not apply to legitimate independent operators.

Prime contractors are responsible for the compliance of their sub-contractors. At the commencement of the work, a contractor must post a copy of the Fair Wage Policy and the Fair Wage Schedule in a prominent location at the construction site.

After substantial performance (as defined in the *Construction Lien Act*) and prior to release of the holdback, the prime contractor must provide a statutory declaration confirming that the contractor and its sub-contractors complied with the Fair Wage Policy. The City can withhold some or all of the holdback until the declaration is received and deemed satisfactory.

A complaint alleging non-compliance may be made by any person, union or company. All complaints must be submitted in writing and contain sufficient information to enable the complaint to be investigated. The City provides a Fair Wage Complaint Form for this purpose. The complaint may be initiated at any time during the construction contract or up to 21 days after substantial performance of the project. Upon receipt of a complaint, the Manager of Procurement conducts an initial review of the complaint and advises the initiator of the complaint that the fee for investigating a complaint is \$5,000. This fee can be waived if the complainant is an employee of the contractor. Investigations of complaints are conducted by the Manager of Procurement. The City retains the right to inspect and audit the records of the Contractor or Sub Contractor.

If the contractor is found to be non-compliant, in addition to paying the owed wages, the contractor is charged a minimum fee of \$5,000 to cover the costs of the investigation and audit. After a first instance of non-compliance, a contractor may be required to provide an acceptable audited report of its payroll to the City for the next three contracts it is awarded. The contractor must bear this expense. After a second infraction, the contractor may be barred from performing City work for a period of time. A contractor can appeal a finding of non-compliance or an imposed penalty. The General Manager of Finance and Corporate Services is the final authority.

The City has established an Ad Hoc Fair Wage Committee to advise on the Fair Wage Policy and the development of schedules. The committee includes representatives of the Hamilton & District Heavy Construction Association, the Hamilton-Brantford Building and Construction Trades Council, the Labourers' International Union of North America, the Christian Labour Association of Canada, and the Merit Open Shop Contractors Association of Ontario.

### **City of Thunder Bay**

The City of Thunder Bay's Fair Wage Policy applies to ICI sector (*i.e.*, non-residential building) construction projects with a value of more than \$100,000. The policy does not apply to maintenance work or to work outside the ICI sector (*e.g.*, road work, sidewalks, and sewer and watermain projects). The Fair Wage Schedules, which have not been updated since 2004, are approximately 62% of the current union rate. In correspondence, the City indicated its intent to review and possibly update its schedules, although this has not yet taken place. The City also indicated that it may increase the threshold from \$100,000 to \$500,000.

Only prime contractors who bid, their sub-trades and their respective employees are entitled to make a non-compliance complaint. Unions and contractor associations cannot make a complaint. The fee for making a complaint is \$1,750 which is refunded if the complaint is found to be valid. Complaints are made to the Manager of the Supply Management Division. After meeting with the complainant, the Manager of the Supply Management Division then retains the services of an accounting firm to investigate the complaint. If found by the audit firm to be non-compliant, the contractor must pay the investigation fee to the City and make up the owed wages to its employees. If a sub-contractor is found to be non-compliant, the prime contractor may be held accountable to some degree. However, the majority of responsibility for non-compliance resides with the non-compliant sub-contractor.

A first instance of non-compliance results in a formal warning. Subsequent infractions may result in suspension of the prime contractor or sub-contractor for eligibility to perform City work.

There is no appeal process unless the findings of the third-party auditor are found to be in error.

### **City of Greater Sudbury**

The City of Greater Sudbury applies its Fair Wage Policy to all ICI construction projects (*i.e.*, non-residential buildings) with a value of more than \$160,000. The policy does not apply to work outside the ICI sector (*e.g.*, road work, sidewalks, and sewer and watermain projects). The City's policy uses the

Provincial Fair Wage rates, *i.e.*, the rates that were applied on April 1, 1995. These rates have not been updated. The Policy states that, in the event that the Province updates or revises its Fair Wage Schedule, Sudbury's schedule will be referred back to its City Council for review.

### **City of Oshawa**

The City of Oshawa applies its Fair Wage Policy to all ICI construction projects (*i.e.*, non-residential buildings) with a value of more than \$500,000. The policy does not apply to work outside the ICI sector (*e.g.*, road work, sidewalks, and sewer and watermain projects). The City applies the City of Toronto's Fair Wage Schedules to applicable projects.

Following substantial performance (as defined in the *Construction Lien Act*), prime contractors are required to provide the City with notification that the prime contractor and all of its sub-contractors were compliant with the Fair Wage Policy. Prime contractors are fully responsible for the compliance of their sub-contractors.

Contractors must post the Fair Wage Schedules in a conspicuous place. They are also obliged to maintain complete payroll records indicating wages and benefits paid and hours worked for a period of four years. The City will only be permitted access to these records upon receipt of a Registered Complaint.

Any contractor or sub-contractor or one of their employees that submitted a bid may register a complaint. Complainants must pay a fee of \$5,000 which will be refunded if the complaint is upheld and which also may be waived. The City then investigates the complaint. If the costs of investigation exceed \$5,000 the City may seek these additional costs from the complainant if the complaint is not upheld. The City may audit the payroll records of a contractor as part of its investigation. If the complaint is upheld, the non-compliant contractor must pay the owed wages and also reimburse the City for the costs of the investigation. The City reserves the right to withhold these amounts from monies otherwise payable to the contractor. A contractor who is found non-compliant on a second occasion may be barred from performing City work for a period of two years.

### **Municipality of Clarington**

The Municipality of Clarington applies its Fair Wage Policy to all ICI (*i.e.*, building) construction projects with a value of more than \$1,000,000. The policy does not apply to work outside the ICI sector (*e.g.*, road work, sidewalks, and sewer and watermain projects). The Municipality develops its own schedules based on the union rates for Ontario Labour Relations Board Area 9. (It should be noted that Clarington is in Board Area 9, whereas Vaughan and Toronto are in Board Area 8). The scheduled fair wage rates are approximately 95% of the negotiated total wage package for the building trades.

Procedures and obligations under Clarington's Fair Wage Policy are virtually the same as in the City of Oshawa, except that the fee charged to complainants is \$2,500.

### **City of Vaughan**

The City of Vaughan approved a Fair Wage Policy in December of 2020. Fair Wage Schedules are currently being drafted. The draft schedule is approximately 75% of the current union wage package. The current plan is to launch the Policy in April 2021. The Policy will apply to four sectors: ICI (non-residential buildings), roads, sewer and watermain, and heavy construction. This mirrors the *Government Contract Wages Act*. The Policy applies only to construction over \$500,000.

The Vaughan Policy will be complaint-based. Complainants must pay a fee of \$5,000 which is refundable if the complaint is sustained. The fee is waived for affected employees of a subject contractor. If a contractor is found to be non-compliant, the contractor must pay an administrative charge of \$5,000 or the cost of the investigation, whichever is greater. Non-compliant contractors must also recompense their employees per the Policy's requirements. A non-complaint contractor may be barred from working for the City or may be required to submit audited payroll statements showing compliance.

### **City of Mississauga**

The City of Mississauga is currently considering the feasibility of a Fair Wage Policy. The feasibility analysis has not been completed.

### **City of Sarnia**

The City of Sarnia adopted a Fair Wage Policy in December of 2021. The policy applies to construction over \$50,000. The Fair Wage Schedule is approximately 90% of the 2021 collective agreement rates. The policy applies to four sectors: (1) road work, open cut work for sewer and watermain construction, (2) tunnel work, (3) ICI construction and (4) landscaping restoration work. Enforcement is complaint-based. Complainants must pay a fee (estimated at \$5,000) to cover the costs of an investigation. The fee may be waived when the complainant is a directly affected employee. A contractor found to be non-compliant must pay the costs of the investigation and recompense the affected employees per the Fair Wage Schedule. Appeals may be made to the Manager of Procurement and then to the General Manager of Corporate Services and Treasurer. The City may withhold progress payments to a non-compliant contractor until the contractor complies with the Policy. In addition, on up to three subsequent projects, a non-compliant contractor may be required to pay for and submit assurance reports prepared by a licensed Public Accountant attesting to the contractor's compliance with the Fair Wage Policy. Contractors that are repeatedly non-compliant may be barred from bidding on City projects.

### **Other Municipalities**

There are other municipalities which do not have a Fair Wage Policy *per se*, but which specify adherence to the Province's Fair Wage Schedule in their tendering requirements. The City of London, for example, sets out this requirement in the General Conditions section of its *Environmental Standards and*

*Specifications Manual for Municipal Construction Projects.* Chapter 840 of the City of Kitchener Municipal Code, entitled “Fair Wages – City Contracts”, also provides for adherence to the Province’s Fair Wage Schedule for road construction projects.



**Figure No. 6a**  
**Key Provisions in Fair Wage Policies of Other Municipalities**  
**Schedule, Scope, Prime Contractor Liability, Proactive Audits and Inspections**

	Schedules		Scope			Prime Contractors	Enforcement
	Process to Establish Schedules	Basic Wage or Total Compensation*	Sectors	Independent Operators Included	Thresholds	Liability for Sub-Contractors	Proactive Inspections/Audits
<b>Toronto</b>	Updated every 3 years based on union rate. The City of Toronto Fair Wage Office estimates that its Fair Wage Schedule is approximately 90-95% of the current union total compensation.	Total Compensation	All Sectors	Yes	No Thresholds	Yes	Yes – by City's Fair Wage Office.
<b>Hamilton</b>	Updated every 3 years based on union rate	Total Compensation	All Sectors	No. Records must demonstrate valid independent operator status	\$500,000	Yes	Complaint based
<b>Thunder Bay</b>	Last updated 2004 based on union rates. Update under consideration.	Total Compensation	ICI only	No	\$100,000 (may be raised to \$500,000)	Yes	Complaint based
<b>Sudbury</b>	1995 Provincial rates	Total Compensation	ICI only	No	\$160,000	Yes	Complaint based
<b>Oshawa</b>	Applies City of Toronto Fair Wage Schedule	Total Compensation	ICI only	No	\$500,000	Yes	Complaint based
<b>Clarington</b>	Updated every 3 years based on union rate	Total Compensation	ICI only	No	\$1,000,000	Yes	Complaint based
<b>Vaughan (effective 2021)</b>	Updated every 3 years based on union rate	Straight Wage + 15% to account for benefits	ICI, Roads, Sewer and Watermain, and Heavy Construction	Yes	\$500,000	Yes	Complaint based
<b>Sarnia (effective 2021)</b>	Based on collective agreements. Updated	Total Compensation	ICI, Roads, Sewer and Watermain, Tunnels and Landscape Restoration.	Records required to prove status	\$50,000	Yes	Complaint based

\*Some items, such as union or association fees and political action funds may be excluded from total compensation.

**Figure No. 6b**  
 Key Provisions in Fair Wage Policies of Other Municipalities  
 Complaints and Penalties

	Complaints and Investigations			Penalties
	Complaint Process	Status to Complain	Complaint Fee or Cost*	Charges and Sanctions for Non-Compliance
<b>Toronto</b>	Investigated by City Fair Wage Office	Employee, union, contractor or sub-contractor	No	15% administration charge on owed wages. Cited on City Web Site 2 <sup>nd</sup> Violation: may be barred for 2 years
<b>Hamilton</b>	Must use Complaint Form. City investigates.	Any person.	\$5,000	\$5,000 administrative fee. 2 <sup>nd</sup> Violation: may be barred for a period of time.
<b>Thunder Bay</b>	City initially investigates. May retain outside auditor.	Employee, contractor or sub-contractor that tendered but not a union	\$1,687.50	2 <sup>nd</sup> Violation: may be barred for a period of time.
<b>Sudbury</b>	City investigates.	Employee, contractor or sub-contractor that tendered but not a union	Complainant must pay cost of investigation.	2 <sup>nd</sup> Violation: may be barred for a period of time.
<b>Oshawa</b>	City investigates	Employee, contractor or sub-contractor that tendered but not a union	\$5,000	2 <sup>nd</sup> Violation: may be barred for a period of time.
<b>Clarington</b>	City investigates	Employee, contractor or sub-contractor that tendered but not a union	\$2,500	2 <sup>nd</sup> Violation: may be barred for a period of time.
<b>Vaughan (eff. April 1, 2021)</b>	City investigates	Employee, union, contractor or sub-contractor	\$5,000	\$5,000 administrative fee or higher if investigation costs exceed \$5,000 2 <sup>nd</sup> Violation: may be barred for a period of time.
<b>Sarnia (effective 2021)</b>	City investigates	Employee, union, contractor or sub-contractor	\$5,000	\$5,000 administrative fee or higher if investigation costs exceed \$5,000. City may require an Assurance Report from a CPA 2 <sup>nd</sup> Violation: may be barred for a period of time.

\* Fee or cost may be waived if complainant is an employee of the contractor who is the subject of the complaint.

Fee or cost is refunded if complaint is upheld. Fee of cost is charged to the non-compliant contractor.

## 5. Government Contract Wages Act

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*The Government Contract Wages Act* was enacted in 2018, but has not been implemented. The legislation provided for modernizing Ontario's Fair Wage Policy.

### *Introduction*

Bill 53, *The Government Contract Wages Act* received royal assent on May 8, 2018. The legislation was not implemented prior to the recent provincial election. The current government has not indicated whether it intends to implement, modify or set aside *The Government Contract Wages Act*. This chapter summarizes the key provisions of Bill 53. However, it should be borne in mind, that some or all of these provisions may be altered by the new government.

When (or if) implemented, the *Government Contract Wages Act* will replace Order-in-Council 773/95 and the Provincial Fair Wage Program that was established by that OIC.

### *Scope of Government Contract Wages Act*

The *Government Contract Wages Act* applies to contracted construction work, building cleaning and security work undertaken by (a) ministries of the Ontario government, (b) public bodies prescribed under the *Public Service of Ontario Act*,<sup>31</sup> or (c) any prescribed body or class of bodies in receipt of provincial monies either directly or indirectly. This is a much broader scope of coverage than under the previous Provincial Fair Wage Program per OIC 773/95. Municipalities, it should be noted, are *not* 'prescribed bodies' under the *Public Service Act of Ontario* and, therefore, would not be covered by the *Government Contract Wages Act*.

In regard to construction work, the *Government Contract Wages Act* applies to four sectors: (1) industrial, commercial and institutional construction, (2) sewer and watermain construction, (3) roads construction, and (4) heavy engineering construction. The first three of these sectors were specified in the Provincial Fair Wage Program per OIC 773/95. 'Heavy engineering' construction is added under the *Government Contract Wages Act*. It should be noted, that the *Government Contract Wages Act* does not apply to residential construction and, therefore, would *not* apply to public housing directly procured by a social housing agency.

Unlike the Provincial Fair Wage Program per OIC 773/95, the *Government Contract Wages Act* does not define regions to which separate regional schedules would apply. (In the previous Provincial Fair Wage

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<sup>31</sup> The *Public Service of Ontario Act* prescribes 152 "public bodies". In the main, these are regulatory or advisory bodies that would not undertake contracted construction, cleaning or security work. However, some of the prescribed bodies could be engaged in contracting for construction, cleaning or security work. These include: Cancer Care Ontario, LCBO, McMichael Canadian Art Collection, Metrolinx, Metropolitan Toronto Convention Centre Corporation, Niagara Parks Commission, Ontario Infrastructure and Lands Corporation, Ontario Northland Transportation Commission, Ontario Place Corporation, Ottawa Convention Centre Corporation, Owen Sound Transportation Company Limited, Royal Ontario Museum, St. Lawrence Parks Commission, The Centennial Centre of Science and Technology, Workplace Safety and Insurance Board.

Program regions were defined by county boundaries.) However, sec. 4 of the Act specifies that the Director of Government Contract Wages will consider collective agreements (along with data from Statistics Canada and information from other government sources) when establishing Fair Wage Schedules. In the construction industry, the geographic scope of collective agreements is defined in terms of ‘Board Areas’, *i.e.*, geographic regions defined by the Ontario Labour Relations Board. (For example, Board Area 8 is essentially the GTA). Implicitly, by instructing the Director of Government Contract Wages to consider the wages set out in collective agreements, the *Act* is establishing a strong bias to define Fair Wage Schedules in terms of ‘Board Areas’.

### *Establishing Fair Wage Schedules under the Government Contract Wages Act*

The *Government Contract Wages Act* establishes the position of Director of Government Contract Wages and vests in that person the authority to establish minimum wage schedules. The *Act* directs that the Director consider: (1) collective agreements, (2) Statistics Canada, and (3) other government sources. The *Act* does not specify the relative weight that is to be given these factors. Nor does the *Act* suggest what the relationship should be between the Fair Wage Schedule and the wage rate for a comparable classification or occupation in collective agreements. By referring generically to collective agreements, the *Act* implicitly instructs the Director to consider all collective agreements, not just those of the building trades unions, as is the case with the City of Toronto’s Fair Wage Policy. In the construction industry, this would mean, for example, that CLAC agreements would be given weight in regions where the CLAC has a material presence.

The *Act* does not specify how regularly Fair Wage Schedules should be updated.

‘Wages’ has the same meaning in the *Government Contract Wages Act* as in the *Employment Standards Act* and therefore includes: (a) any monetary payment, (b) statutory obligations, such as vacation and holiday pay, and contractual allowances for room and board. ‘Wages’ under the *Employment Standards Act* does *not* include: tips and gratuities, discretionary bonuses, travel expenses, employer contribution to benefit plans or employee entitlements under benefit plans. The exclusion of benefit plan contributions is significant because contributions to these plans is often around 20% of total compensation in building trades unions’ collective agreements.

### *Administration and Enforcement*

The *Government Contract Wages Act* establishes the position of Director. The Director is mandated to establish Fair Wage Schedules and may maintain a list of employers that have contravened their obligations under the Schedules. While there is no requirement for the Director of Government Contract Wages and the Director appointed under the *Employment Standards Act* to be the same person, it seems likely that this was the intent.

Complaints that an employer is non-compliant with a Fair Wage Schedule may be made on a form prescribed by the Director of Employment Standards and will be investigated by an Employment Standards Officer. The Employment Standards Officer may make an order, which is subject to appeal to the Ontario Labour Relations Board. A non-compliant employer may be required to pay an

administration fee in addition to paying owed wages. A non-compliant employer may also be prosecuted under the *Act* and is subject to a fine of up to \$50,000 for individuals and \$100,000 for corporations. For subsequent offences, the maximum fine increases to \$250,000 and \$500,000 respectively. Directors of a corporation are liable if an order to pay owed wages is not carried out.

Employers are required to maintain payroll records that demonstrate compliance with Fair Wage Schedules. Prime contractors are required to advise their sub-contractors that the obligations that pertain to the prime contractor flow through to sub-contractors who must also comply with the Fair Wage Schedules. Prime contractors are obliged to advise the Director of Government Contract Wages of all sub-contracts. Prime contractors are not liable for the non-compliance of their sub-contractors, if they have informed and contractually required their sub-contractors to comply with the relevant Fair Wage Schedule.

There are no minimum thresholds that would exempt work below a certain value from the obligation to comply with the applicable Fair Wage Schedule.

The *Act* does not specifically address the treatment of independent operators. It is not clear whether these types of sub-contractors would be subject to the same minimum standards, although it is arguably possible to infer this obligation.

There are no provisions in the *Government Contract Wages Act* for either the Director of Employment Standards or the Director of Government Contract Wages to administer Fair Wage Schedules on behalf of public sector entities that are not specifically covered by the *Act*, but which voluntarily put themselves under the *Act's* Fair Wage Schedules.

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## 6. Construction Costs and Fair Wage Policies

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### Nature of the ‘Prevailing Wage’ in the Construction Industry

Wages in the construction industry differ significantly across trades, sectors and project size. The lowest wages are earned by workers with no formally certified skills who work in the renovation sector on small projects, typically for homeowners. In general, the highest wages are earned by workers in regulated trades, working in the ICI sector (i.e., non-residential buildings) on new construction projects of significant scale. These workers earn approximately two-and-a-half to three times what is earned by a semi-skilled worker doing renovation work for homeowners. The earnings of workers doing road construction would be approximately intermediate in this wage ladder. The earnings of workers doing heavy civil construction work (e.g., bridges or transit projects) would be toward the upper end of the ladder. It is important to stress that this wage ladder, which is a function of skill level, sector and project scale applies to both the union and non-union contractors and workers.

Most of the construction work contracted by the City of Brampton employs workers on the middle to upper rungs of the wage ladder. That is to say, these workers are typically skilled tradespersons who work predominantly or exclusively in the civil or ICI sectors on either new construction projects or maintenance and repair projects.

The wage ladder has important implications for understanding the term ‘prevailing wage’ in the construction industry. The prevailing wage is *not* the average wage irrespective of skill level, sector or scale of project. **Rather, the ‘prevailing wage’ is the wage that is paid by the majority of contractors to workers in a specific trade or occupation who are working in the same sector on projects of approximately comparable scale.** In sectors and trades that are heavily unionized, the prevailing wage is commensurate with the union wage. In sectors and trades that are less unionized, the prevailing wage often will be lower than the union wage.

For purposes of a Fair Wage Policy, **the ‘prevailing wage’ includes both direct wages and non-statutory benefits.** (Statutory benefits – vacation and holiday entitlement - are presumed to be paid either as paid time off or as a contribution to a trust fund in lieu of paid time off.)

### Implications for Fair Wage Policy

Based on consultations with City staff, we believe that construction procurements are carried out by contractors who are paying at least the prevailing wage, if not higher. Consequently, **a Fair Wage Policy that is anchored in the prevailing wage should not have any implications for construction costs.**

While the City does not track awarded construction work by the union status of the contractors (or sub-contractors), City officials believe that, in general,

- most small-scale maintenance and repair work on buildings is performed by non-union contractors,

- large building construction is more likely to be performed by unionized contractors,
- most construction work on large ICI projects tends to be performed by unionized contractors, although there may be exceptions in some trades,
- road work is a mix of union and non-union contractors.

The implication of this pattern of contracting is that a Fair Wage Schedule, if it were adopted, should be less than the current union rates. A Statistics Canada study of the union wage premium estimated that, in construction, the union/non-union wage difference was approximately 19%.<sup>32</sup> A Fair Wage Schedule that is approximately 80% of the union rate, therefore, should neither prejudice reputable non-union contractors nor affect the City of Brampton's costs. This would be especially true if small projects which are more often undertaken by smaller contractors were excluded from coverage. As noted in Chapter Four most Fair Wage Policies lag the union wage rate and also apply a contract value threshold below which the policy does not apply.

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<sup>32</sup> Tony Fang and Anil Verma, "Union Wage Premium", Statistics Canada, *Perspectives on Labour and Income* (2002)

## **Part II**

### **Analysis of Contracted Services**

## 7. Statistical Analysis of Contracted Services

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This chapter analyzes 417 tendered contracts for services between 2017 and 2020. The total value of these contracts was \$333.1 million. Approximately 70% of these contracts were for construction services, including maintenance and repair.

The 417 contracts were categorized by procurement staff as follows:

- Construction - Non-Residential Buildings – New Construction (ICI)
- Construction - Non-Residential Buildings – Maintenance and Repair
- Construction - Roads – New Construction or Repair
- Construction - Sewer and Watermain – New Construction or Repair
- Construction - Other Types of Construction
- Landscaping/Parks Maintenance
- Snow Removal
- Building Cleaning
- Window Cleaning
- Food Services/Catering
- Other Services

Figure No. 7 shows the distribution of these 417 contracts by contract dollar value and type (excluding the value of change orders).

Figure No. 8 shows the percentage distribution of the 417 contracts by value and type.

Figure No. 9 shows the percentage distribution of the 258 construction contracts by value and type

Figure No. 7  
Number and Value of Contracts for Contracted Services, 2017 to 2020

	No. of Contracts				
	<\$250,000	\$250,000 to 499,999	\$500,000 to \$999,999	\$1,000,000+	Total
<b>Construction</b>					
<b>Non-Residential Buildings – New Construction (ICI)</b>	3	0	5	4	12
<b>Non-Residential Buildings – Maintenance and Repair</b>	122	16	21	9	168
<b>Roads – New Construction or Repair</b>	8	1	5	18	32
<b>Sewer and Watermain – New Construction or Repair</b>	4	0	0	2	6
<b>Other Types of Construction</b>	23	8	6	3	40
<b>Sub-Total: Construction</b>	160	25	37	36	258
<b>Non-Construction</b>					
<b>Landscaping/Parks Maintenance</b>	28	4	15	4	51
<b>Snow Removal</b>	13	1	0	0	14
<b>Building Cleaning</b>	2	0	0	2	4
<b>Window Cleaning</b>	0	1	0	0	1
<b>Food Services/Catering</b>	3	0	0	0	3
<b>Other Services</b>	54	13	7	12	86
<b>Sub-Total: Non-Construction</b>	100	19	22	18	159
<b>Total: All Contracted Services</b>	260	44	59	54	417
<b>Total Value of Contracts by Value Category</b>					
<b>Construction</b>					
<b>Non-Residential Buildings – New Construction (ICI)</b>	\$180,755	\$0	\$3,969,888	\$21,138,520	\$25,289,162
<b>Non-Residential Buildings – Maintenance and Repair</b>	\$9,463,262	\$5,995,984	\$16,117,481	\$16,565,899	\$48,142,626
<b>Roads – New Construction or Repair</b>	\$821,165	\$543,005	\$3,017,328	\$124,127,856	\$128,509,354
<b>Sewer and Watermain – New Construction or Repair</b>	\$0	\$0	\$0	\$1,097,360	\$1,097,360
<b>Construction - Other Types of Construction</b>	\$2,774,879	\$2,264,611	\$5,473,960	\$21,651,675	\$32,165,126
<b>Sub-Total: Construction</b>	\$13,240,061	\$8,803,600	\$28,578,657	\$184,581,310	\$235,203,628
<b>Non-Construction</b>					
<b>Landscaping/Parks Maintenance</b>	\$2,335,710	\$1,430,912	\$9,606,317	\$8,570,759	\$21,943,699
<b>Snow Removal</b>	\$823,453	\$317,297	\$0	\$0	\$1,140,750
<b>Building Cleaning</b>	\$545,169	\$0	\$0	\$4,462,903	\$5,008,072
<b>Window Cleaning</b>	\$0	\$477,105	\$0	\$0	\$477,105
<b>Food Services/Catering</b>	\$0	\$0	\$0	\$0	\$0
<b>Other Services</b>	\$4,718,393	\$4,091,973	\$5,267,877	\$55,262,774	\$69,341,016
<b>Sub-Total: Non-Construction</b>	\$8,422,725	\$6,317,287	\$14,874,194	\$68,296,436	\$97,910,642
<b>Total: All Contracted Services</b>	\$21,662,786	\$15,120,887	\$43,452,851	\$252,877,746	\$333,114,270

**Figure No. 8**  
 Percentage Distribution of Contracts for Contracted Services by Value, 2017 to 2020  
 (n=417)

	<\$250,000	\$250,000 to 499,999	\$500,000 to \$999,999	\$1,000,000+	Total
<b>Construction</b>					
Non-Residential Buildings – New Construction (ICI)	0.1%	0.0%	1.2%	6.3%	7.6%
Non-Residential Buildings – Maintenance and Repair	2.8%	1.8%	4.8%	5.0%	14.5%
Roads – New Construction or Repair	0.2%	0.2%	0.9%	37.3%	38.6%
Sewer and Watermain – New Construction or Repair	0.0%	0.0%	0.0%	0.3%	0.3%
Other Types of Construction	0.8%	0.7%	1.6%	6.5%	9.7%
<b>Sub-Total: Construction</b>	3.9%	2.7%	8.5%	55.4%	70.7%
<b>Non-Construction</b>					
Landscaping/Parks Maintenance	0.7%	0.4%	2.9%	2.6%	6.6%
Snow Removal	0.2%	0.1%	0.0%	0.0%	0.3%
Building Cleaning	0.2%	0.0%	0.0%	1.3%	1.5%
Window Cleaning	0.0%	0.1%	0.0%	0.0%	0.1%
Food Services/Catering	0.0%	0.0%	0.0%	0.0%	0.0%
Other Services	1.4%	1.2%	1.6%	16.6%	20.8%
<b>Sub-Total: Non-Construction</b>	2.5%	1.8%	4.5%	20.5%	29.4%
<b>Total: All Contracted Services</b>	6.4%	4.5%	13.0%	75.9%	100.0%

**Figure No. 9**  
 Percentage Distribution of Construction Contracts by Value, 2017 to 2020  
 (n=258)

	<\$250,000	\$250,000 to 499,999	\$500,000 to \$999,999	\$1,000,000+	Total
<b>Construction</b>					
Non-Residential Buildings – New Construction (ICI)	0.1%	0.0%	1.7%	9.0%	10.8%
Non-Residential Buildings – Maintenance and Repair	4.0%	2.5%	6.9%	7.0%	20.5%
Roads – New Construction or Repair	0.3%	0.2%	1.3%	52.8%	54.6%
Sewer and Watermain – New Construction or Repair	0.0%	0.0%	0.0%	0.5%	0.5%
Other Types of Construction	1.2%	1.0%	2.3%	9.2%	13.7%
<b>Total: Construction</b>	5.6%	3.7%	12.2%	78.5%	100.0%

The above analysis suggests that if the City of Brampton had operated a Fair Wage Policy with a threshold of \$500,000 and applied this policy only to construction projects:

1. the Fair Wage Policy would have applied to 64% of all services contracts;
2. approximately 90% of the value of contracted construction would have been subject to the Fair Wage Policy;

3. 70% of construction contracts would have been exempt. The average value of these 'small job' contacts was around \$120,000.
4. on average there would have been 18 contracts per year subject to the Fair Wage Policy. Removing the \$500,000 threshold would have increased this to 65 contracts per year.
5. on average, each year there were approximately 5 landscaping/parks maintenance contracts which exceeded \$500,000. These contracts covered work that is similar to construction, but not usually included in the legal definition of construction.

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## **Part III**

### **Community Benefits Policy**

## 8. Overview of Community Benefits Policy

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In the context of construction procurement, community benefits refer to workforce development and employment strategies with particular emphasis on providing opportunities for training and employment in the construction industry to persons from equity-seeking and disadvantaged groups and local residents who have lost jobs. To be effective, these strategies need to be aligned with the employment practices and training institutions that are distinct to the construction industry.

Various terms and approaches are used to describe leveraging public procurement to achieve additional social and economic benefits. These include ‘community benefits’, ‘social procurement’, ‘community economic development’ and ‘triple bottom line’, among others.

There is a commitment at both the federal and the provincial level to use infrastructure projects to achieve community benefits goals, with particular emphasis on training and apprenticeship opportunities. Currently there are at least \$43 billion of infrastructure projects associated with community benefits commitments. There is also a growing trend on the part of municipal governments to use public procurement to advance community benefits objectives.

### Community Benefits and Construction Procurement

In the context of construction procurement, the central goals of community benefits policy are:

- first: to promote local workforce development through trades-related training and apprenticeship, and
- second: to promote greater opportunity in employment and training for persons from equity-seeking and disadvantaged groups.

There are different definitions of ‘equity-seeking and disadvantaged groups’, although there are broad similarities in these definitions:

- The ‘designated groups’ under the *Federal Employment Equity Act* are: women, Aboriginal peoples, persons with disabilities and members of visible minorities.
- In the *Federal Community Employment Benefits Initiative* (discussed below) the target groups are: “traditionally disadvantaged communities, Indigenous peoples, women, persons with disabilities, veterans, youth [and] new Canadians”.
- The City of Brampton’s Supply Chain Diversity Program identifies, but is not necessarily limited to: women, Aboriginal people, racial minorities, persons with disabilities, newcomers and Lesbian, Gay, Bisexual, Trans, Queer, Two-spirit (LGBTQ2S+) community.

## **Training and Employment in the Construction Industry**

There are several characteristics of the construction industry that are distinctive and which need to be taken into account when developing workforce development and employment strategies.

In the non-professional segment of the construction workforce, there are trades and non-trades occupations. Trades occupations are regulated. These occupations involve a formal apprenticeship program (two to five years) which combines employment with periods of in-school training. An apprentice is a paid employee which means that there must be sufficient work to support the apprentice in his or her training. In the unionized construction industry, apprentices are typically sponsored by a joint labour-management committee. They may take their in-school training at a college. However, in many trades, the in-school training is delivered by an industry-based training centre. The province mandates a tuition fee for in-school training, although in the unionized industry, this tuition fee is often paid by a training trust fund on behalf of the apprentice. In the non-union industry apprentices are typically sponsored by a single employer. Training for non-trades occupations (e.g., labourers, many equipment operators) is not regulated. In the unionized industry, this training is provided by industry-based training centres. In the non-union industry, training may be provided informally or by a private trainer.

Few construction employers recruit wholly untrained workers. The inherent physical dangers of construction sites mean that construction employers typically require new hires to be 'job ready' meaning that they have taken the necessary health and safety training and have a general familiarity with work practices on construction sites. For the regulated trades, many colleges, industry training centres and non-governmental organizations deliver pre-apprenticeship training which is supported by provincial grants. For unregulated occupations, pre-employment training is delivered by industry training centres or by employers. Some types of health and safety training are regulated and must be delivered by authorized training bodies.

In the non-union industry, employers manage their own recruitment and hiring. In the unionized industry, the union recruits its members and dispatches those members to employers on the basis of an 'out-of-work list'. Dispatch is based on qualifications and length of time on the list.

To be effective, both workforce development strategies and inclusiveness strategies must operate in a manner that is aligned with the practices and institutions that are distinctive to the construction industry. Strategies that circumvent or ignore these practices and institutions have little or no chance of success.

## **Community Benefits Terminology**

There are a number of descriptive terms that broadly refer to strategies to increase the social and economic benefits that a community derives from public and private development projects or from the purchase of goods and services by local governments and similar authorities.

### ***Section 37 Community Benefits***

In Ontario, the term 'community benefits' is often equated with the former sec. 37 of the *Planning Act*. This section allowed local governments to approve variances from the official plan in exchange for a developer's investment in amenities to benefit the community in which the development was taking

place. These community benefits might include community centres, parks or other amenities depending on the nature and size of the project. Amendments to the *Planning Act* have since replaced this mechanism with a ‘community benefits charge’.

#### *Community Benefits Agreements (CBAs)*

Community Benefits Agreements emerged in the United States. In the American context, CBAs are agreements negotiated between a private developer and a community coalition. Some of these agreements provided for investment in various social amenities. However, what was distinctive in CBAs was their emphasis on training and employment opportunities linked to the development project. These opportunities may be related to the construction of the project or to the subsequent operation of the project. In exchange for the CBA, the community coalition agreed to support the project which was often important for the project obtaining local approval. In some states and municipalities, CBAs subsequently became a feature of publicly funded development projects. Opinion differs on whether a CBA between a developer and a community coalition is an enforceable contract. Currently, in Ontario, CBAs apply to several large-scale public infrastructure projects.

#### *Social Procurement Policies*

Social Procurement Policies are policies adopted by local governments or public authorities. Social Procurement pertains to the use of procurement policy to secure additional social or economic benefits from public purchases over and above the specific goods or services that are the primary focus of the procurement. These social and economic benefits may include:

- greater diversity in the supply chain (*i.e.*, business opportunities for businesses owned or predominantly operated by under-represented minorities),
- training and employment opportunities for under-represented minorities, or
- other social and economic benefits, such as financial aid for training.

The focus of these social and economic benefits is primarily to assist members of historically under-represented groups or residents of local communities that are viewed as economically disadvantaged.

#### *Community Economic Development (CED) Benefits*

Community Economic Development Benefits is conceptually similar to Social Procurement. The term was adopted by some public authorities to distinguish itself from the sec. 37 meaning of community benefits.

#### *Sustainable Procurement*

Sustainable procurement primarily pertains to applying environmental sustainability principles to procurement. The term ‘sustainable development’ was introduced by the Brundtland Commission in 1987. The Commission’s report defined sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their own

needs.”<sup>33</sup> Sustainable Procurement policies assess procurement in terms of the impact on the environment of the supply and delivery of goods and services. Some sustainable procurement polices also include an assessment of broader social and economic costs or benefits to a community.

#### *Ethical Procurement*

Ethical procurement imposes conditions on suppliers. Among other considerations, these conditions may include compliance with labour standards, maintaining a safe workplace, paying employees a living wage, avoiding discriminatory practices, and seeking to be inclusive in hiring practices.

#### *Triple Bottom Line (TBL or 3BL)*

In conventional accounting, the ‘bottom line’ refers to the profit line in financial statements. TBL adds formal consideration of social and environmental costs and benefits. Equity impacts figure centrally in the assessment of social costs and benefits. Various formalized frameworks have been developed to apply TBL principles, chiefly in a private sector context. The Global Reporting Initiative (GRI) has proposed standards and metrics for implementing TBL principles in private sector reporting of business performance. The GRI also offers various tools to facilitate TBL reporting.

### **Statutory and Policy Environment**

#### *Infrastructure for Jobs and Prosperity Act*

In 2015, the provincial government enacted the *Infrastructure for Jobs and Prosperity Act*. The legislation requires that the infrastructure planning and investment of every broader public sector entity, including municipalities, among other goals, “promote(s) community benefits, being the supplementary social and economic benefits arising from an infrastructure project that are intended to improve the well-being of a community affected by the project, such as local job creation and training opportunities (including for apprentices..., improvement of public space within the community, and any specific benefits identified by the community”. The legislation may therefore be read as mandating Community Benefits Policies in connection with the construction and maintenance of infrastructure. Infrastructure is defined broadly as “the physical structures and associated facilities that form the foundation of development, and by or through which a public service is provided to Ontarians, such as highways, bridges, bicycle paths, drinking water systems, hospitals, social housing, courthouses and schools, as well as any other thing by or through which a public service is provided to Ontarians that may be prescribed...”.

The legislation also requires that bidders seeking to construct or maintain a provincial infrastructure project must provide a plan detailing how the proponent will use apprentices, the number of apprentices the proponent expects to employ in each trade and how the proponent plans to support apprentices through their training. Proponents are also required to describe how the proponent will “create employment opportunities arising from the construction or maintenance for apprentices who are women, aboriginal persons, newcomers to Ontario, at-risk youth, veterans, residents of the

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<sup>33</sup> Brundtland Commission, *Our Common Future: Report of the World Commission on Environment and Development*, United Nations / Oxford University Press (1987).

community in which the infrastructure asset is located or any other persons specified by the regulations.”

The *Infrastructure for Jobs and Prosperity Act* requires municipalities to develop infrastructure management plans. However, the community benefits mandates in the legislation are not imposed on municipalities.

#### *Bill C-344*

Bill C-344 was a private member’s bill proposed by the MP for Brampton Centre. The bill received third readings in the Commons with government support and also received first reading in the Senate. However, the 42<sup>nd</sup> Parliament was dissolved before the bill could proceed further. As a result, it did not become law. Bill C-344 would have provided that “the Minister [of Public Works] may, before awarding a contract for the construction, maintenance or repair of public works, federal real property or federal immovables, require bidders on the proposal to provide information on the community benefits to be derived from the project.”

#### *Federal Community Employment Benefits Initiative*

In June 2018, the Federal government formalized its community benefits guidance related to the use of federal infrastructure funds.<sup>34</sup> Provinces and territories are asked to develop a community employment benefits approach and to establish associated targets in the three-year infrastructure plans they will be developing under the Investing in Canada Infrastructure Program. However, it is left to the provinces and territories to determine which projects will participate in the Community Benefits Initiative. Subsequent to issuing its guidance, the federal government negotiated the *Canada-Ontario Integrated Bilateral Agreement for the Investing in Canada Infrastructure Program*. This Agreement provides that:

“Ontario will ensure that all Projects with total estimated Eligible Expenditures of ten million dollars (\$10,000,000) or more, will report on community employment benefits provided to at least three federal target groups (apprentices - from traditionally disadvantaged communities, Indigenous peoples, women, persons with disabilities, veterans, youth, new Canadians, or small-medium-sized enterprises and social enterprises) ... The Community Employment Benefits assessments will be determined by Ontario to ensure alignment with Ontario’s Community Benefits Framework, currently being developed”.

The Hurontario LRT project is one of the identified infrastructure projects in the Agreement.

Neither the *Infrastructure for Jobs and Prosperity Act* nor the Federal Community Employment Benefits Initiative formally binds Ontario municipalities in their procurement activities. However, both the provincial legislation and the federal program encourage an expectation that community benefits will figure into major construction projects. It is reasonable to expect that, in the future, capital funding for infrastructure projects will be tied to the implementation of a community benefits policy.

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<sup>34</sup> Infrastructure Canada, *Community Employment Benefits: General Guidance*, version 1.1 (June 22, 2018)

### *Municipalities*

Our consultations with other municipalities indicated a growing interest on the part of many municipal governments to use procurement policy leverage community benefits, including local employment and workforce development. Some municipal governments (*e.g.*, Toronto, Vancouver, Calgary and Saskatoon) have adopted frameworks that guide procurement policy in relation to community benefits. Other municipal governments (*e.g.*, Winnipeg, York Region, Halifax) are considering community benefits policies or are in the early stages of experimenting with a community benefits policy. The various models and strategies are discussed in more detail in Chapter Nine.

### *European Union*

Since 2014, the legal basis for public procurement in the EU has provided scope for taking account of social considerations, provided in particular they are linked to the subject-matter of the contract and are proportionate to its requirements and as long as the principles of value for money and equal access for all EU suppliers are observed. In 2010, the EU published, among other titles, *Buying Social: A Guide to Taking Account of Social Considerations in Public Procurement*. A recent study published by the EU profiled examples of public procurement being used to leverage community benefits.<sup>35</sup>

### **Trends in Community Benefits in Ontario**

The importance of the community benefits movement is evident in a study undertaken by the Ontario Construction Secretariat (OCS). The study identified major infrastructure, private and P3 development projects that either are associated with a community benefits commitment or are expected to be. These projects had a total value of \$43.6 billion. Figure No. 10 updates the OCS list:

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<sup>35</sup> European Commission, Executive Agency for Small and Medium Enterprises, *Making Socially Responsible Public Procurement Work: 71 Good Practice Cases* (May 2020).

Figure No. 10  
List of Projects Associated with Community Benefits Commitments

Region/City	Project	\$ Billions
<b>Greater Toronto</b>	Go Expansion ON Corridor	\$10.000
<b>Windsor</b>	Gordie Howe International Bridge	\$5.700
<b>Toronto</b>	Eglinton Crosstown LRT	\$5.300
<b>Toronto</b>	Toronto Community Housing Corp.	\$3.200
<b>Toronto</b>	Finch West LRT	\$2.500
<b>Toronto</b>	City of Toronto - Various Projects	\$2.000
<b>Peel</b>	Hurontario LRT	\$2.000
<b>Windsor</b>	Windsor Regional Hospital	\$2.000
<b>Toronto</b>	Macdonald Block Reconstruction	\$1.500
<b>Toronto</b>	West Park Healthcare	\$1.200
<b>Greater Toronto</b>	GO Expansion Lakeshore West Corridor	\$1.000
<b>Hamilton</b>	Hamilton LRT	\$1.000
<b>Toronto</b>	Casino Woodbine	\$1.000
<b>Windsor</b>	Ambassador Bridge	\$1.000
<b>Ottawa</b>	Heron Gare	\$1.000
<b>Thunder Bay</b>	Corrections Complex	\$0.500
<b>Toronto</b>	GO Expansion: Union Station	\$0.500
<b>Greater Toronto</b>	GO Expansion: Lakeshore East Central Corridor	\$0.500
<b>Greater Toronto</b>	GO Expansion: Lakeshore West Central Corridor	\$0.500
<b>Windsor</b>	Grace Hospital Site Redevelopment	\$0.250
<b>Greater Toronto</b>	GO Expansion: Milton Corridor Upgrades	\$0.200
<b>Toronto</b>	Dufferin Mall	\$0.040
<b>Toronto</b>	Parkdale-UHN Long Term Care Centre Expansion	\$0.023
<b>Toronto</b>	Sheppard East LRT	\$0.655
<b>Ottawa</b>	LeBreton Flats	undetermined
	Total	\$43.568

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## 9. Precis of Experience with Community Benefits

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Several models and strategies are emerging for achieving community benefits. However, there is no established and recognized best practice for achieving community benefits, especially workforce development benefits. The limited experience that is available does offer some guidance in formulating options for a community benefits policy. Key lessons learned pertain to flexibility, avoiding premature hard targets, proceeding on a project-by-project basis, engaging community connectors, and consulting with industry and community stakeholders.

### Models or Strategies for Achieving Community Benefits

Several models or strategies have emerged to achieve community benefits:

*Community Benefits Agreements (CBAs):* CBAs delegate to a community coalition and the constructor of a project the responsibility to jointly determine what benefits will be provided, how those benefits will be provided and how progress will be monitored and reported. In most cases, government is not a party to the CBA. Rather the parties are the community coalition and the entity that is constructing the project. The Metrolinx Crosstown LRT is an example of the CBA model. In this case, the CBA was negotiated between the Toronto Community Benefits Network (TCBN) and Crosslinx Transit Solutions - the consortium constructing the Eglinton LRT.

*Rated Requirements in Tenders for Inclusiveness Practices and Community Benefits:* Some municipalities assign a weight (usually 5-10%) to a bidder's response to a questionnaire that asks about the company's involvement with the apprenticeship system, the diversity of its workforce and its outreach activities to under-represented groups, etc. The City of Calgary, for example, uses a "Benefit Driven Procurement Leadership Questionnaire" for this purpose.

*Voluntary Description of Inclusiveness Practices and Community Benefits:* Some municipalities (e.g., Vancouver) use a similar questionnaire as described above. However, answering the questionnaire is voluntary. A company's response does not figure directly into the procurement decision. The objectives of this approach are threefold: first, to establish a baseline profile of inclusiveness and community benefits in procurement; second, to enable the City to measure its progress towards achieving diversity and community benefits objectives; and third to encourage companies to adopt practices that strengthen inclusiveness and community benefits.

*Preferred Suppliers on Certain Procurements:* Some municipalities are exploring the possibility of designating certain procurements as being restricted in the sense that only social enterprises or minority businesses would be entitled to submit bids.

*Rated Requirements in RFPs for a Community Benefits Plan:* Some municipalities and public agencies assign a weight to community benefits (usually around 10 to 20%), but leave it to the proponents to determine what benefits they will provide and how they will deliver those

benefits. The RFP usually indicates the type of community benefits that are sought. These may be developed by the municipality or public agency in consultation with the local community.

**Mandated Community Benefits:** On larger construction projects, some municipalities and public agencies specify particular workforce development objectives that the constructor is obliged to achieve. In some cases, these objectives are specified as a specific number of apprentices, trainees or local hires. In other cases, the objectives are expressed as a percentage of the estimated employment hours that the project will generate. A third option, which is used by Toronto Community Housing Corporation, expresses the community benefits objectives as a dollar value which the constructor then has flexibility to meet in the most appropriate way. In the TCHC model, the constructor can meet its community benefits requirement through training opportunities, scholarships, direct hires or by reaching out to its supply network (*i.e.*, subcontractors, materials suppliers, professional services suppliers, lenders, *etc.*) In some Community Benefits Agreements, the obligation to provide the mandated community benefits may be subject to a ‘best efforts’ duty or to liquidated damages in the event of a shortfall. Municipalities and public agencies that mandate community benefits determine the nature and scale of those benefits on a project-by-project basis.

### **Project-Based vs. Participation-Based Models**

Some community benefits policies are project-based while others are participation-based. Project-based policies tie a contractors’ hiring from equity-seeking groups and support for apprenticeships to work on a specific project. While this approach is potentially feasible on large infrastructure projects, it is less practical on small projects and seasonal work. Participation-based policies give preference to contractors that support apprenticeships and participate in programs that recruit from equity-seeking groups. In circumstances where unions manage recruitment and dispatch workers to employers, a contractor would be deemed to participate in outreach programs if the union that performs the recruitment and dispatch functions demonstrably participates in these programs. Participation-based models are more practical for smaller projects and seasonal work.

### **Lessons Learned**

7. Experience with mandated community benefits is confined to large projects where the constructor has the capacity to deliver employment and training opportunities. This experience is of limited value in guiding the formulation of a community benefits strategy applicable to smaller projects and small to mid-sized contractors who may not have comparable capacity to deliver employment and training opportunities. In formulating options for community benefits the City of Brampton needs to be cognizant of the fact that the strategies and models developed for large projects are likely to be inapplicable to the scale of construction procurement that is typical for the City of Brampton.
8. At the municipal level, there is no established and recognized best practice. There is limited experience with community benefits to draw on. Most municipalities are either still in the policy

development stage or have only recently begun to implement their community benefits strategy. Experience is especially limited in relation to leveraging construction procurement to achieve community benefits. In formulating options for community benefits, the City of Brampton should therefore proceed with considerable caution.

9. The construction industry is exceedingly complex. Projects differ significantly in terms of their scale, labour intensiveness and range of trades employed. It is therefore impractical to apply a standard rule that would be applicable to all projects, e.g., 10% of employment hours on a project should be reserved for apprenticeships and half of these should be targeted to persons from under-represented groups. Projects must be assessed individually for their potential to achieve community benefits.
10. Expectations for community benefits should be clearly described in the tender or RFP. It is unreasonable, and potentially unlawful, to introduce expectations for community benefits after a proponent has been selected on the basis of a fixed price bid.
11. If the City of Brampton establishes a community benefits policy, a ‘best efforts’ duty would be a reasonable requirement for construction suppliers. However, the City should not establish hard targets for workforce development benefits until both the City and its construction suppliers have had significantly more experience.
12. Most contractors do not have the internal capacity to deliver workforce development benefits. Many contractors do not know how to reach out to historically under-represented groups. Community Connectors therefore play a key role in achieving workforce development benefits such as training or apprenticeship opportunities. Community connectors recruit, screen, train and refer persons from target groups. The most effective Community Connectors will be those that have well established relationships with the construction industry. These relationships are critical to ensuring a high rate of successful transition from pre-employment training to an actual employment opportunity. A community benefits strategy therefore should explicitly incorporate a role for Community Connectors and criteria for designating agencies or organizations to fulfill this role.
13. In the unionized construction industry, the union dispatches both apprentices and skilled workers to employers. This dispatch process supersedes an employer’s traditional role in hiring workers. As well, in the unionized industry, apprentices are usually admitted into apprenticeship training by a joint labour-management committee. In the unionized industry, strategies to expand training and employment opportunities to under-represented groups therefore need to take into account the key role of unions in both training and dispatch.
14. The vast majority of persons from under-represented groups will not be job ready. Pre-employment training is therefore essential. Consequently, a strategy to achieve workforce development benefits needs to be linked to funding for job readiness training.
15. Industry and community stakeholders need to be actively consulted as part of the process of formulating a community benefits strategy.

## **Part IV**

### **Review of Current Policies and Next Steps**

## 10. Review of Current Procurement Policy

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The policy documents that pertain to construction procurement in the City of Brampton are:

1. By-Law 19-2018 – Purchasing Policy By-Law
2. General Conditions for Construction Contracts
3. Supply Chain Diversity Program
4. Requirement for COR certification

### **By-Law 19-2018 – Purchasing Policy By-Law**

The Purchasing Policy By-Law applies to all procurement undertaken by the City of Brampton. Sec. 1.1 of the Purchasing Policy By-Law states that one of the objectives of the By-Law is to “promote procurement activities and decisions which are consistent with the strategic, financial, *social* and environmental objectives of the City [emphasis added]”. The inclusion of ‘social’ objectives would appear to provide scope for adopting either or both of a Fair Wage Policy and a Community Benefits Policy, if the City wished to do so. These policies, however, would need to be consistent with the non-discrimination and transparency requirements that are also set out in the By-Law.

### **General Conditions for Construction Contracts**

There are several provisions of the General Conditions for Construction Contracts that are relevant to a discussion of Fair Wage Policy. None of the provisions of the current General Conditions appear to be relevant to Community Benefits Policy other than the general requirement to comply with the laws of the Province of Ontario.

Sec. 5 of the General Conditions sets out an explicit obligation on the part of contractors to “ensure that all of its employees, agents and sub-contractors comply with all applicable Federal, Provincial and Municipal laws and orders of government, police, fire, health, building and other authorities...” This implies an obligation to comply with *the Employment Standards Act*. The duty to comply with the *Occupational Health and Safety Act* is explicitly stated.

Sec. 7 of the General Conditions makes clear that the contractor is the ‘constructor’ within the meaning of the *Occupational Health and Safety Act*. This section references the obligations of a constructor. It also insulates the City of Brampton from any liabilities or obligations that might fall on a constructor. Sec. 7 also makes clear that a contractor is responsible for its sub-contractors’ compliance with the *Occupational Health and Safety Act*. Finally, Sec. 7 address the contractor’s responsibilities in regard to hazardous substances and the Workplace Hazardous Materials Information System (WHMIS). Sec. 20 addresses the requirement for Safety Data Sheets which are part of WHMIS.

Sec. 17 sets out a general requirement for ethical conduct. This section could be construed as barring a contractor from improperly styling its workers as self-employed sub-contractors rather than employees. However, this is arguable, not explicit.

Sec. 46 provides that “The Contractor shall not sub-contract any portion of the Contract work without prior written approval by an authorized representative of the Owner”. This implicitly gives the City of Brampton the authority to bar or limit a contactor’s practice of styling workers as self-employed sub-contractors, although the authority has not been used in this way.

Sec. 53 requires registration with the Workplace Safety and Insurance Board. The *Workplace Safety and Insurance Act* requires self-employed sub-contractors (termed ‘independent operators’ in the *Act*) to register with the WSIB and take out coverage. One of the purposes of this requirement is to curtail under-reporting of earnings by sharing registration data with the Canada Revenue Agency. The general compliance obligation set out in Sec. 5 of the General Conditions implicitly obliges a contractor to require its self-employed sub-contractors to register with the WSIB. In principle, this would discourage under-reporting of income and likely also discourage the practice of styling workers as self-employed sub-contractors since if they cannot under-report earnings there is no advantage to the worker in not being classed as an employee. However, there is no general practice of policing sec. 53 and sec 5 in this way.

### **Supply Chain Diversity Program**

The Supply Chain Diversity Program, which will be launched in the spring, encourages the City of Brampton to invite for participation in invitation tenders, suppliers that are certified as diverse by a recognized third-party. The Program encourages diverse suppliers to participate in tenders, but does not give competitive preference to these suppliers. The current program is focused on purchases between \$25,000 and \$100,000. This could apply to small maintenance and repair contracts. However, the vast majority of construction contracts would be above the \$100,000 threshold.

### **Requirement for COR Certification**

The Certificate of Recognition (COR) is a nationally recognized certification that deals with health and safety management systems. COR certification is a standard that significantly exceeds the obligations set out in the *Occupational Health and Safety Act* for an employer to “prepare and review at least annually a written occupational health and safety policy and develop and maintain a program to implement that policy”. COR requires additional managerial training, a more rigorous health and safety management system (HSMS) and an external audit of both the HSMS and compliance with that system.

Currently COR Certification for contractors performing work on City projects applies to projects over \$10.0 million in value.

### **Implications for Fair Wage Policy**

As discussed in Chapter Two, Fair Wage Policy is intended to erect guard rails that prevent contactors from competing for work by securing a cost advantage through: (1) exploiting vulnerable workers, (2) improperly or excessively styling workers as self-employed sub-contractors to avoid statutory obligations, (3) cutting corners on workplace safety and (4) avoiding investments in training and apprenticeship. Fair Wage Policy is also intended to discourage wage cutting during an economic downturn. The following table compares the current policy to managing these risks.

**Figure No. 11**  
**Risks Reduced by a Fair Wage Policy**  
**compared to City of Brampton's Current Policy**

Risk	Comment
1. Exploiting vulnerable workers (undocumented workers, temporary foreign workers, and recent immigrants)	General Conditions Sec. 17 on ethical conduct could be construed as barring such activity, but the section has not been applied in this way. Moreover, if applied for this purpose, Sec 17 would likely apply only to requiring payment of the minimum wage under the <i>Employment Standards Act</i> . This is currently \$14.25 per hour (rising to \$14.35 on October 1, 2021) which is significantly less than the prevailing wage in the construction industry.
2. Improperly or Excessively Styling Workers as Self-Employed Sub-Contractors to avoid Statutory Obligations for EI, CPP, WSIB, overtime, and vacation and holiday pay	General Conditions Sec. 46 on sub-contracting could be used to restrict the practice of styling workers as self-employed sub-contractors. In conjunction with sec. 5 on general compliance duties, the City could require contractors to ensure that their self-employed sub-contractors register with the WSIB. However, these sections of the General Conditions have not been applied in this manner.
3. Cutting corners on workplace safety	COR Certification is a strong protection against this risk, but under current policy will apply only to projects over \$5.0 million in value.
4. Avoiding investments in training and apprenticeship	There is currently no protection against this risk.
5. Discouraging wage cutting during an economic downturn	There is currently no protection against this risk.

The implication of Figure No. 11 is that a properly designed Fair Wage Policy could contribute to the City's overall risk reduction strategy and its commitment to high ethical standards. Without presupposing outcomes, this supports further consultation with stakeholders and the consideration of options.

### **Implications for Community Benefits in Relation to Construction Procurement**

Current procurement policy does not address community benefits in relation to construction procurement. Sec. 1.1 of the current Procurement By-Law would appear to permit the formulation of a community benefits policy. However, in addition to feasibility considerations, such a policy would also need to conform to the current Procurement By-Law's commitment to non-discrimination and transparency as well as the By-Law's commitment to fairness and best value.

# 11. Precis of Internal Consultations

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Internal consultations were conducted primarily with a view to developing a more detailed profile of the City's construction contracting and determining which of the City's Departments could potentially be affected by a Fair Wage Policy and/or a Community Benefits Policy that applied to construction procurement.

## Comments and Observations from Internal Consultations

### *Bidding Pool*

- The City does not give preference to local contractors, although the Supply Chain Diversity Program may encourage use of local contractors for tenders in the \$25,000 to \$100,000 range.
- The City is generally satisfied with the size and quality of the current bidding pool for contracts.
- The City utilizes pre-qualification on a project-by-project basis. There is a reluctance to apply a general pre-qualification rule because this would reduce the size of the bidding pool. However, pre-qualification is used from time to time. Parks pre-qualifies suppliers for grass work and construction. The criteria would be experience focused, but also ask about insurability, WSIB registration, and health and safety plan.
- While bids are often clustered, there are sometimes outliers that are both markedly higher or lower than the majority of bids.
- COR certification may reduce the size of the bidding pool until more contractors obtain the certification. However, the gains to health and safety performance justify this potential impact on the size of the bidding pool.

### *Contract Value:*

- New ICI construction or renovation would typically be over \$1.0 million.
- Maintenance tends to be around \$500,000
- Roads contracts are over \$1.0 million
- There will likely be one or two stormwater contracts per year over \$1.0 million.
- There are marked differences in the labour share of contracts. For example, although there are a number of contracts over \$1.0 million for parks work, these contracts include the supply of both materials and plants/trees.
- Although small contractors are drawn to bid on projects under \$500,000, it would not be correct to say that all of this work is performed by small contractors. Large contractors often bid on small projects if they have spare capacity or are in the area.

### *Sub-Contractors:*

- Large ICI contracts would involve multiple sub-contractors. Roads contracts would involve a prime contractor and perhaps two sub-contractors (one for curbs and one for concrete).

Maintenance contracts would usually only involve a prime, although a sub-contractor might be used on specialized work. Parks contractors generally do not use sub-contractors.

- The City generally has limited information on how prime contractors manage their sub-contractors. The general compliance obligations flow through to the sub-contractor, but it is the prime contractor's responsibility to ensure their compliance.
- Prime contractors must indicate the work that will be sub-contracted. The City generally reviews this only at a high level, except for large sub-contracts (e.g., electrical and mechanical) where the City needs to be confident in the capacity of the sub-contractors.

#### *Health and Safety*

- Larger contractors are COR certified.
- Smaller contractors must provide their health and safety plan which sometimes lack detail. This was a gap that the City hopes to address by expanding the requirements for COR certification.
- The City does not verify that workers have received the required training. COR will address this gap.
- COR certification will also be applied to landscaping projects over \$1.0 million

#### *Wages:*

- The City does not obtain information on wages.
- Low wages would be common in landscaping contracts.

#### *Use of Self-Employed Sub-Contractors (Independent Operators)*

- There are some specialized areas where suppliers tend to be self-employed, e.g., small soil and aggregate suppliers.
- There is no perception that the use of self-employed sub-contractors is widespread.

#### *Union/Non-Union Contractors*

- For ICI would generally not know as the City deals with the prime contractor. For large projects, the General Contractor would likely sub-contract some or all of the work to unionized contractors.
- Road work is mixed union and non-union.
- Maintenance, especially if it is under \$1.0 million (which is the norm) would often be non-union.

#### *Apprenticeship and Training*

- Information on apprenticeship and training is generally not provided. An exception would be on contracts for street lighting and traffic lights.

- In the voluntary trades, the City does not specify a preference for certified tradespersons and registered apprentices. In the compulsory trades (e.g., electrician, plumber, HVAC), contractors are required by law to use certified journeypersons and registered apprentices

*Impact of Fair Wage Policy*

- Only the small minority of contractors that are paying wages below the prevailing wage would be excluded from the bidding pool. Fair Wage Schedules that are commensurate with the prevailing wage in the construction industry would not otherwise reduce the size of the bidding pool.

*Impact of Community Benefits Policy*

- Most contractors would be able to comply with reasonable requirements regarding participation in apprenticeships (where applicable) and inclusive hiring or outreach practices, especially if there were identified community partners to assist in outreach.
- Contractors' compliance with fixed quotas would be problematic, especially for smaller contractors who may not have current hiring requirements.
- Reasonable requirements introduced in phases would be unlikely to reduce the number of bidders.
- Provided contractors are not required to hire additional persons to meet Community Benefits goals, a Community Benefits Policy would be unlikely to affect costs. Additional costs might arise if a contractor that had previously not participated in apprenticeships did so in response to the Community Benefits Policy.
- Community benefits would align with other City goals.

The following table summarizes the expected impact of a Fair Wage Policy and/or a Community Benefits Policy on construction contracting undertaken or initiated by the City's departments.

**Figure No. 12**  
**Departments Potentially Affected by Fair Wage Policy**  
**and/or Community Benefits Policy Applied to Construction Procurement**

Department	Comment
<b>Public Works</b>	Potential impact on construction and maintenance procurement. Also, potential impact on snow clearing, building cleaning and window cleaning if these activities are covered (as is the case in Toronto, but not under other Fair Wage Policies).
<b>Transit</b>	No impact. Construction procurement is handled through Public Works.
<b>Planning</b>	No impact.
<b>Parks</b>	Potential impact if landscaping and parks maintenance work is covered. Some parks maintenance may entail construction work, <i>e.g.</i> , retaining walls, inlay work and electrical or mechanical maintenance and repair.
<b>Fire</b>	No impact. Construction procurement is handled through Public Works.

As can be seen from Figure No. 12, the procurement activities of Public Works would bear the primary impact of both a Fair Wage Policy and Community Benefits Policy if these policies were applied to construction procurement. There also would be an impact on Parks if landscaping and parks maintenance contracts were covered by either policy. Landscaping work is generally not considered to be construction work, although some aspects of parks contracting, such as electrical and mechanical work, retaining walls and inlay work would be considered construction. The nature of the impact of both Fair Wage Policy and Community Benefits Policy would depend on whether a threshold was incorporated into either of these policies exempting contracts below a certain value (*e.g.*, \$500,000).



## 12. Next Steps

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Phase Two of this assignment is focused on stakeholder consultations.

For the Fair Wage Policy, these consultations will focus on:

- contractor associations (unionized and non-union),
- unions (both building trades and CLAC), and
- the Brampton Board of Trade.

For the Community Benefits Policy, the consultations will focus on:

- social agencies, e.g., United Way, Social Planning Council
- Peel Community Benefits Network
- pre-employment training deliverers, such as Hammer Heads, CHOICE, YM/YWCA, Achev, COSTI
- Hurontario LRT which is applying a community benefits policy
- construction industry stakeholders (contractor associations, unions)

The project will be advised and supported by Strategic Communication.



## Appendix A: Consultations

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### Internal

- Public Works and Engineering
- Planning, Building and Economic Development
- Parks Maintenance
- Brampton Transit
- Fire and Emergency Services

### External

- City of Calgary
- City of Halifax
- City of Mississauga
- Peel Region (pending)
- City of Saskatoon
- City of Toronto
- Toronto Community Housing Corporation
- City of Vancouver
- City of Winnipeg
- York Region

Report No. 2

Fair Wage Policy and  
Community Benefits Policy:  
Stakeholder Consultations  
including  
A Discussion of Living Wage Policy



May 2021

# Fair Wage Policy and Community Benefits Policy:

## Stakeholder Consultations

including

## A Discussion of Living Wage Policy

### Executive Summary

This report summarizes consultations with community, labour and business organizations whose comments and advice were solicited on Community Benefits Policy and Fair Wage Policy. The report also includes a discussion of Living Wage Policy.

#### Community Benefits Policy

- There is strong support for Community Benefits Policy among social agencies and trade unions. Most employer organizations support Community Benefits Policy *in principle*. However, all of the employer organizations stressed the need to proceed with caution. They emphasized that their support depended on how a Community Benefits Policy is designed and implemented. All of the employer organizations and the unions oppose Community Benefits Policies that introduce hiring quotas, compromise hiring standards or do not allow flexibility in how of Community Benefits goals are achieved.
- The Board of Trade opposes the introduction of Community Benefits Policy at this time. The Board believes that employers must be given time to recover from the effects of operating restrictions related to Covid. The Board is also concerned about over-regulation.
- The focus of Community Benefits Policy should be on creating pathways to careers, not on creating short-term jobs. Achieving this goal will require outreach to under-represented communities and groups and, where needed, offering pre-employment training. Screening of potential recruits will be essential to ensure that individuals commencing either pre-employment training or an apprenticeship understand what a construction career entails.
- Community Benefits Policy should not be restricted to the skilled trades. Community Benefits Policy should also encourage diversity and inclusion in recruiting for professional, administrative and technical careers in the construction industry.
- A Community Benefits Policy should leverage the rich network of community-based organizations and programs whose activities align with the goals of Community Benefits Policy.

- There are a range of models potentially available to the City of Brampton. Among those that warrant particular consideration are: awarding points in competitive tenders for participation in Community Benefits related partnerships and programs, including participation in these partnerships and programs in pre-qualification criteria, and allowing a contract allowance or bonus for achieving Community Benefit goals.
- Community Benefits Policy is complex. The City of Brampton should proceed with caution and should ensure that affected stakeholders have ample opportunity to comment on the Policy and its implementation.

### **Fair Wage Policy**

- Construction unions favour the adoption of a Fair Wage Policy.
- There is a divergence of views among employer organizations. The Ontario Sewer and Watermain Contractors Association and the Ontario Road Builders Association favour the adoption of a Fair Wage Policy. The Progressive Contractors Association does not oppose Fair Wage Policies in principle, but believes that such policies are unnecessary at this time. The Ontario General Contractors Association believes that the market generally ensures that contractors pay fair wages and that this is especially the case at the present time. The Brampton Board of Trade is strongly opposed to a Fair Wage Policy.
- It was generally agreed that *if* a Fair Wage Policy is adopted:
  - there must be enforcement of the policy to ensure a level playing field. Unions generally favour a proactive enforcement policy based on audits and inspections. Employer organizations believe that a complaint-based system is more practical.
  - the Fair Wage Schedule should be based on collective agreement rates, although this does not mean that they should be equal to collective agreement rates. The Progressive Contractors Association prefers a survey-based methodology, but recognizes the difficulties in applying this approach.
  - prime contractors are typically responsible for the compliance of their sub-contractors, although a prime contractor that has exercised reasonable diligence should not be liable for the concealed, non-compliant behaviour of a sub-contractor.
  - appropriate penalties are cautions and bars from bidding for a period of time.
  - most unions favour applying a Fair Wage Policy to all tendered construction, irrespective of the size of the project. Other unions and employer associations believe that a threshold that exempts smaller projects may be attractive on administrative grounds.

## **Living Wage Policy**

- Living Wage Policies establish a minimum wage which vendors to the municipal government are required to pay their employees.
- In Ontario, the Ontario Living Wage Network, publishes community-specific Living Wage Rates that are computed by the Canadian Centre for Policy Alternatives. The Living Wage for Peel Region has not been published, but is likely to be around \$21.23.
- The Ontario Living Wage Network certifies employers as Living Wage Employers. Certification requires that an employer pay at least the community-specific Living Wage. Certification also requires that an employer incorporate a Living Wage stipulation in contracts with vendors that supply regular, ongoing services. As of April 2021, the website of the Ontario Living Wage Network reported that there were 383 certified employers. These included: the municipalities of Cambridge, Kingston, North Perth and the County of Huron.
- While there do not appear to be any full-time and permanent classifications at the City of Brampton that earn less than the estimated Living Wage for Peel Region, there are a number of part-time, temporary and student placement classifications that have an hourly rate below the Living Wage. Becoming a certified Living Wage Employer would likely require raising the wages of *all* of these classifications to the Living Wage.
- The direct cost to the City of Brampton of raising the pay of *all* of its part-time, temporary and student placement classifications currently earning below the Living Wage would be around \$3.0 million. However, a much greater cost potentially would arise as a result of compression effects. Compression effects occur when the pay for a subordinate or lower level position is raised and there is a perceived need to restore the wage difference vis à vis higher classifications. This, in turn, can result in further compression effects throughout the pay grid. The cost required to address the compression effects would be a significant multiple of the direct cost of implementing a Living Wage policy.
- It is unlikely that a Living Wage Policy would have any implications for construction work contracted by the City of Brampton. However, a Living Wage Policy might have implications for contracting some types of non-construction services, such as landscaping, building cleaning and food services where prevailing wages may be below \$21.23.
- Living Wage Policy and Fair Wage Policy are distinct policy instruments. Living Wage Policy is essentially a higher substitute for the provincial minimum wage. It is intended to raise wages of low-paid workers. This may or may not have cost implications for the City of Brampton's tendering for some types of services. By contrast the purpose of a Fair Wage Policy is *not* to raise wages. Rather, a Fair Wage Policy is essentially an 'insurance policy' that would assure the City of Brampton that its construction contractors are paying the *prevailing* wage.

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# Community Benefits Policy: Report on Stakeholder Consultations

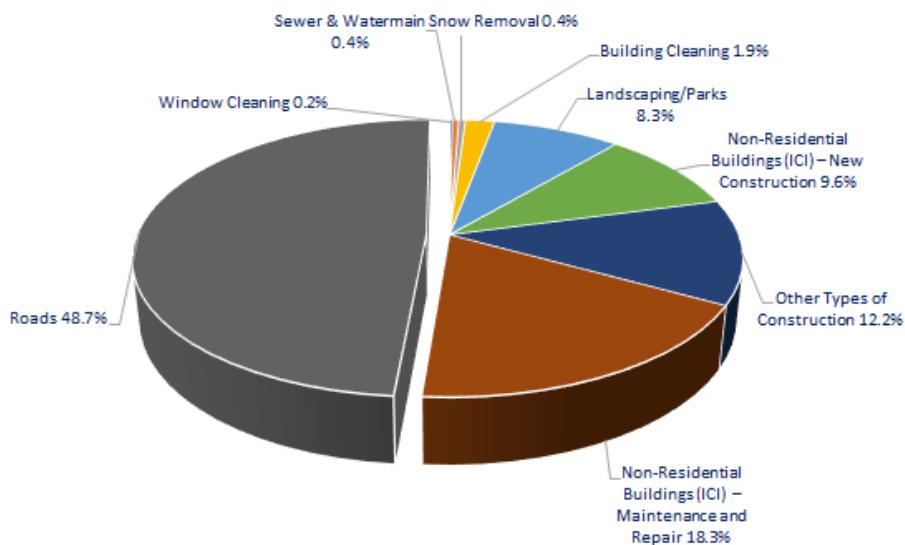
## Introduction

Consultations with community, labour and business organizations focused on Community Benefits Policy in the context of the City of Brampton's construction-related procurement. In Ontario, Community Benefits Policies or Community Benefits Agreements predominantly have been associated with large infrastructure projects (such as the Hurontario Line) or large building projects. The nature of these projects is that they have significant labour requirements (and therefore hiring opportunities) and that they are spread over three to five years. The profile of the City of Brampton's construction procurement is quite different. As Figure No. 1 shows, over the past few years, almost half (48.7%) of Brampton's construction-related procurement is for road work. Most of this work is short-term and seasonal. So also, is landscaping and parks work (8.3%). A further 18.3% of construction related procurement is for maintenance and repair work in buildings. Most of this work is also short-term. Only 9.6% of the City's construction procurement was for the construction of new buildings.

The profile of the City of Brampton's construction procurement is significantly different from the major infrastructure projects that have been the focus of recent Community Benefits Agreements.

Most of the City of Brampton's construction procurement is short-term, seasonal and small-to-mid scale.

Figure No. 1  
City of Brampton: Construction and Construction-Related<sup>36</sup> Procurement, 2017-2020  
Distribution by Type of Construction



<sup>36</sup> Construction-related includes landscaping and parks work, snow removal and window cleaning.

The occupational profile of the workforce that undertakes road work and landscaping is also markedly different from the more trades-intensive workforce that undertakes new building construction or maintenance and repair work in buildings. Road work and landscaping work, in particular, employ a narrower range of construction occupations than does non-residential building construction (conventionally known as the industrial-commercial-institutional or ICI sector. The profile of contractors that undertake work for the City of Brampton is also different from large infrastructure or new building projects. Between 2017 and 2020, the City of Brampton entered into 328 construction or construction-related contracts. Of these, 286 (87.2%) had a value of less than \$1.0 million. While large contractors sometimes undertake small projects, projects with a value of less than \$1.0 million typically attract smaller contractors. Many (perhaps most) of these smaller contractors are non-union and therefore typically would not have access to the training facilities or recruitment channels of the unionized sector of the industry. As well, the contractors that service the City of Brampton often work across the GTA and sometimes beyond the GTA. A contractor may be concurrently undertaking work for the City of Brampton and for another municipality in the GTA or beyond. Similarly, the workforce employed by these contractors may reside anywhere in the GTA or beyond. It would be exceptional for a City of Brampton project to be undertaken by a contractor with its headquarters in Brampton and its workforce recruited predominantly from Brampton. At the same time, it would be the norm for construction workers who reside in Brampton or contractors based in Brampton to work on projects across the GTA and beyond.

Some stakeholders interpret Community Benefits Policy using the experience of the Community Benefits Agreements formulated for large infrastructure projects, such as the Hurontario Line. Their focus is on tying Community Benefits goals to employment on a specific project. There are significant differences, however, between large infrastructure projects, such as the Hurontario Line, and the construction procurement that the City of Brampton routinely undertakes. The City's construction procurement is predominantly short-term, often seasonal, usually employs a narrower range of construction occupations than the ICI sector and often utilizes smaller contractors. If the City of Brampton adopts a Community Benefits Policy, that policy will need to be a 'made-in-Brampton' policy that reflects the distinct characteristics of the City's construction procurement.

The City of Brampton needs 'made in Brampton' approach that reflects the distinct nature of its construction procurement.

The Community Benefits Agreements used on large infrastructure projects are not an appropriate model.

The following sections summarize the comments and advice of stakeholders in business, the community and labour.

## **1. There is Broad Support for Community Benefits Policy, but also Important Concerns**

There is strong support for Community Benefits Policy among social agencies and trade unions. This is notably reflected in the creation of the Peel Community Benefits Network (PCBN) which is supported by both Peel Region and the United Way of Greater Toronto and which is hosted by Indus Community

Services. PCBN is supported by numerous community-based social service agencies and labour and business groups.<sup>37</sup>

The Ontario General Contractors Association (OGCA), the Ontario Sewer and Watermain Contractors Associations (OSWCA), the Progressive Contractors Association (PCA) and the Ontario Road Builders Association (ORBA) all expressed support, *in principle*, for the goals of Community Benefits Policy. However, all of these organizations stressed the need to proceed with caution and emphasized that their support depended on how Community Benefits Policies are designed and implemented. All of the employer organizations oppose Community Benefits Policies that introduce hiring quotas, compromise hiring standards or do not allow employers flexibility in how they contribute to the goals of Community Benefits Policies. Notwithstanding these important qualifications, the four employer organizations stressed that they support Community Benefits Policies that broaden diversity in the workforce and recruit new workers into the construction industry.

Both the PCA the CLAC<sup>38</sup> stressed that, while they support Community Benefits Policy, a Community Benefits Policy should not be a veil for an exclusionary policy. Both PCA and CLAC, for example, regard the Community Benefits Policy that was legislated in British Columbia as deliberately excluding contractors and workers who are not associated with the building trades unions. The PCA and CLAC believe it is unfair to identify a particular program as an *exclusive* gateway to meeting Community Benefits goals if that program excludes some contractors from eligibility for participation.

Unions and some of the larger contractor associations support the goals of Community Benefits Policy, but are critical of policies that would impose hiring quotas.

The Brampton Board of Trade opposes Community Benefits Policy as a form of over-regulation that is likely to have unintended consequences. In particular, the Board opposes the introduction of a Community Benefits Policy while companies are still struggling with the effects of Covid.

<sup>37</sup> The partners currently listed by Peel Community Benefits Network are:

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|--|---|
| <p>Community Organizations</p> <ul style="list-style-type: none"><li>• Dixie Bloor Neighbourhood Centre</li><li>• Family Services of Peel</li><li>• Acorn Canada</li><li>• Buy Social</li><li>• Toronto Enterprise Fund</li><li>• United Way of Greater Toronto</li><li>• United Achievers Community Services</li><li>• Roots Community Services</li><li>• Peel Poverty Reduction Strategy</li><li>• Peel Newcomer Strategy Group</li><li>• Achēv</li><li>• Peel Halton Local Employment Planning Council</li><li>• Peel Halton Workforce Development Group</li><li>• Ontario for All</li><li>• Indus Community Services</li><li style="padding-left: 20px;">Labour Organizations</li><li>• Peel Regional Labour Council</li></ul> | <ul style="list-style-type: none"><li>• Iron Workers Local 721</li><li>• International Brotherhood of Electrical Workers</li><li>• International Association of Heat and Frost Insulators</li><li>• Labourers, Local 506</li><li>• Labourers, Local 183</li><li>• Carpenters, Local 27</li><li>• Canadian Labour Congress</li><li>• Labour Community Services of Peel</li><li>• Building and Construction Trades Council of Ontario Business</li><li>• Mississauga Board of Trade</li><li>• Port Credit Explore</li></ul> <p>Social Enterprises</p> <ul style="list-style-type: none"><li>• Options Mississauga</li></ul> <p>Governments</p> <ul style="list-style-type: none"><li>• Region of Peel</li></ul> |
|--|---|

<sup>38</sup> CLAC is an independent union that is not affiliated with either the Canadian Labour Congress or the Building and Construction Trades Council.

The PCA and the ORBA urged caution in implementing a Community Benefits Policy. In the PCA's view, no 'perfect model' has emerged. They noted that a Community Benefits Policy which has the effect of requiring (or incentivising) additional hires to meet diversity criteria potentially imposes a greater burden on small contractors than large contractors as large contractors are more likely to have staffing vacancies which they can use to meet diversity goals. ORBA also made a similar observation. The unintended effect could be to impose additional costs on smaller contractors and thereby make them less competitive. The bidding pool might also be reduced to the potential detriment of a municipality. PCA prefers a pre-qualification model to one which awards points for diversity on a contract-by-contract basis. ORBA favours applying Community Benefits Policy initially to large projects (*i.e.*, >\$5.0 million). ORBA also suggested that a contractor could be given a 'contract allowance' to meet community benefits goals. While not opposed to pre-qualification procedures, ORBA suggested that there was a risk that a pre-qualification process might inadvertently discourage small contractors and thereby reduce the potential bidding pool.

The Brampton Board of Trade expressed the strongest reservations about Community Benefits Policy. The Board of Trade believes that mandated diversity targets interfere in the employer/employee relationship, unduly restrict employers' hiring flexibility, reduce the bidding pool on public projects and raise costs. The Board of Trade is particularly opposed to increased regulation at a time when local businesses are struggling with the effects of Covid and public health restrictions on business operations. The Board of Trade drew attention to a study of Brampton businesses by Equifax which showed that of Brampton's 66,099 businesses, 18,298 (28%) were inactive, 3,391 (5.1%) believed they were at risk of bankruptcy within 12 months, and 13,571 (20.5%) believed that they had a high or very high risk of delinquency with a financial institution within the next 12 months.<sup>39</sup>

## 2. Whom should Community Benefits Target? What should be the Goals?

Based on the 2016 Census, 5.75% of residents of Brampton who were in the labour force were employed in the construction industry. This is somewhat lower than the provincial average of 6.84%, but similar to the City of Mississauga (5.86%). The vast majority (85.8%) were men.

Community Benefits Policy serves two objectives which overlap, but which are nevertheless distinctive. The first objective is workforce development. The primary focus of workforce

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|--|
| Two Goals of Community Benefits Policy |
| 1. Workforce Development               |
| 2. A More Inclusive Workforce          |

<sup>39</sup> Equifax, "Navigating the Pandemic: Small Business in Financial Crisis", presentation to Committee of Council, Corporation of the City of Brampton, March 10, 2021.

A more encouraging picture emerges from the Brampton Board of Trade's survey of its members, released on September 10, 2020. That survey found that "businesses are quite optimistic about the future and are satisfied with City Council's pandemic response:

- 78% are confident in Brampton's economic future
- 86% are confident in their own organization's future
- 32% expect the # of staff within their organization to increase over the next 12 months
- 68% are satisfied with Brampton City Council's response to the COVID-19 pandemic

Brampton Board of Trade: <https://www.bramptonbot.com/blog/news-2365/post/brampton-businesses-are-confident-of-economic-future-26031>

development initiatives is to provide more apprenticeship opportunities for young workers to meet anticipated demand for growth and retirements and to provide a pathway to good jobs and greater economic security. The second objective is inclusiveness. The focus of inclusiveness initiatives is to broaden the participation in the construction industry of groups that historically have been under-represented in the industry. These include: aboriginal persons, members of racialized minorities and women. One stakeholder also mentioned veterans transitioning into civilian life. Another referred to assisting young workers on social assistance to transition into secure employment. Some stakeholders also emphasized the importance of assisting recent newcomers to Canada. Many of these newcomers have experience and trade or professional qualifications that are relevant to the construction industry and which they obtained in their home country.

All stakeholders stressed the importance of using Community Benefits Policy to increase accessibility to good jobs with long-term potential, rather than creating short-term jobs with no potential to become careers. Stakeholders were unanimous in questioning the value of strategies that focus on short-term employment opportunities on specific projects. All stakeholders agreed that there is little value in requiring employers to hire additional, local workers whose only purpose is to "lean on shovels" for the duration of a project. Rather the goal of both workforce development and inclusiveness is to open pathways to skilled jobs that have the potential to become long-term careers. For this reason, many stakeholders put considerable emphasis on apprenticeships.

It was also stressed by the Peel Halton Workforce Development Group and by the Black Business and Professional Association, and others, that there are also career jobs in the professional, administrative and technical categories in the construction industry. These jobs are also of interest to recent newcomers seeking to apply their training and experience in Canada. While expanding opportunities in the skilled trades is an important goal of Community Benefits Policy, careers in the skilled trades should not be the exclusive focus to the detriment of creating pathways to professional, administrative and technical careers in the construction industry.

Community Benefits Policy should focus on expanding career opportunities for Brampton residents who experience economic disadvantage and insecurity. Framing the goal of Community Benefits Policy in this way emphasizes the inclusiveness objective.

One stakeholder suggested that a Community Benefits Policy that is explicitly focused on particular racial or ethnic minorities could give rise to tensions. It was noted that there have been incidents in the past year on some worksites. This stakeholder suggested that Community Benefits Policy should be focused on expanding career opportunities in construction to persons who experience economic disadvantage and insecurity. The focus on economic disadvantage and insecurity would include members of racialized minorities, but also other groups that are disadvantaged, including youth at risk, aboriginal persons, transitioning veterans and women.

Groups for whom Community Benefits Policy expands Opportunities

- visible minorities
- youth-at-risk
- veterans
- aboriginal persons
- local residents
- transitioning veterans
- women
- recent immigrants

### 3. Some Outreach to Target Populations is already Taking Place

Some stakeholders described outreach programs that inform high school students (e.g., Carpenters, LIUNA, CLAC) of the potential for careers in the skilled trades and in the construction industry. In some

cases, these outreach activities are linked to the Ontario Youth Apprenticeship Program which enables a high school student to combine his or her studies with an apprenticeship. Other stakeholders described programs that reach out to specific groups such as women (e.g., Aecon/LIUNA), aboriginal persons, newcomers (e.g., Indus Community Services), youth at risk (e.g., Hammer Heads), transitioning veterans (e.g., Helmets to Hardhats) and racialized minorities.

Although there is no overall tracking of these outreach activities in the construction industry, it is evident from our stakeholder consultations that there are a number of recent and current outreach initiatives. It was noted by one contractor association that its members feel that their efforts to reach out to under-represented groups is not recognized by current procurement policies.

A range of outreach strategies are needed. Community Benefits Policy should not confine itself to a single outreach strategy.

The Peel Community Benefits Network (PCBN) commented that outreach strategies are different depending on the job opportunities that are being targeted. For example, in Hurontario Line Project there are Community Benefits goals both for apprenticeships and for jobs in the professional, administrative and technical stream. For apprenticeships, PCBN works closely with the school boards, using the Ontario Youth Apprenticeship Program and with the key unions involved in the project. For professional, administrative and technical opportunities, PCBN partners with community service organizations.

#### **4. There is a Vibrant Network in Community-based Resources in Peel Region**

Across Peel Region, including Brampton, there is a well-developed network of community-based organizations. These include (but are not limited to):

- Access Employment
- Achev
- African Community Services of Peel
- Brampton Multicultural Community Centre
- Catholic Crosscultural Services
- COSTI
- Indus Community Services
- Job Skills
- John Howard Society
- Skills for Change
- Toronto Regional Immigrant Employment Council (TRIEC)

All of these community-based organizations deliver employment counselling services. Some also deliver occupationally-specific training, including, in some cases, pre-apprenticeship training. Sheridan College works with many of these organizations as does the Peel Halton Workforce Development Group. Additionally, there are other programs that focus on supporting persons in specific groups to pursue careers in construction. These include Hammer Heads, which focuses on youth-at-risk and Helmets to Hardhats which focuses on transitioning veterans. The Board of Education participates in the Ontario Youth Apprenticeship Program.

## **5. Many Employers will need Support to reach Community Benefits Goals**

In the unionized construction industry, many employers depend on the union to manage outreach and pre-employment training. In the non-union industry, some employers have the internal resources to manage outreach, screening and pre-employment training. However, many employers – especially small and mid-sized employers – do not. A successful Community Benefits Policy therefore will need to identify potential “community connectors” that can assist employers in reaching Community Benefits goals.

There is a need for “community connectors”, i.e., community-based organizations that can assist employers in reaching Community Benefits goals.

## **6. Accountability is Vital**

Many stakeholders stressed the importance of tracking employer commitments to increase apprenticeships and to embrace more inclusive recruitment strategies. This is especially important if procurement policy awards points for these commitments. These additional points could have been determinative in awarding a contract. If commitments to diversity and inclusiveness factor into awarding contracts, it is essential to have a transparent and objective way to track employers’ efforts to meet those commitments. This is important not just to advance the goals of Community Benefits Policy, but also to ensure fairness in the procurement process. Contractors also need to know how they will be evaluated both in the competition for projects and in their subsequent performance of the contracted work

If commitments to inclusiveness in hiring factor into awarding a contract, fairness requires that fulfillment of these commitments be tracked.

It was also noted by some unions that many workers are reluctant to self-identify as being a member of an equity-seeking group. One union stakeholder reported that the proportion that decline to voluntarily self-identify often exceeds 50%. Neither employers nor unions collect data that identifies workers other than by age and gender. Similarly, neither employers nor unions have information on the subsequent employment history of a worker if he or she ceases to be an employee or member. These limitations make it challenging to evaluate the impact of Community Benefits Policy.

## **7. Community Benefits Requirements need to be Set Out *Prior* to Inviting Tenders**

If Community Benefits goals are to be incorporated into procurement policy, employer associations and unions stressed that those requirements need to be clear and need to be set out prior to a contractor submitting a bid. It is unfair and unreasonable for a contractor to learn of obligations that may entail an additional cost after submitting a final bid on a project that will be awarded on a fixed-price basis.

## **8. Screening is an Essential Step in the Recruitment Process**

Three stakeholders stressed the importance of screening persons prior to commencing a pre-employment training program for careers in the construction industry. Although the construction industry offers well-paid jobs, those jobs require commencing work at 8:00 (or earlier), working in

conditions that may be hazardous, and often travelling considerable distance to reach a job site. Completing an apprenticeship can require two to five years, depending on the trade. The jobs can also be physically demanding. Individuals also need to have an aptitude for the skills their trade will require. Because most construction work is undertaken by crews whose members have specific roles, absenteeism and tardiness are serious problems for an employer (as well as for other crew members). Both contractors and unions believe that it is important that individuals understand what a construction career will entail before they commence their training. They also believe that it is important that individuals have the commitment that construction jobs require. Consequently, both unions and contractors stress that it is not sufficient to simply reach out to communities. Prospective recruits need to be screened through an interview process involving persons with industry experience. Some stakeholders view the disappointing results of some outreach programs to deficiencies in their screening process. It was also noted that when an individual commences pre-employment training and then drops out, that individual has effectively denied a training spot to someone who may have had greater interest and motivation.

Both unions and contractors assign importance to screening potential recruits.

## 9. Pre-Employment Training is Required and must be Financed

Contractors and unions stressed that, in the absence of prior experience, pre-employment training is critical. Many construction worksites are intrinsically hazardous. Workers may be using or working near heavy equipment. Many clients now require contractors to have safety certifications. (The City of Brampton requires CoR certification for contractors doing work over \$5.0 million). For all of these reasons, most contractors and most unions require individuals to either have prior experience or to complete pre-employment training in construction safety and basic construction procedures.

Contractors and unions usually require individuals with no prior experience in construction to complete pre-employment training in safe work practices and basic construction procedures.

Stakeholders described four models for funding pre-employment training.

### *Pre-Apprenticeship Training:*

The province provides operating support to qualified entities to deliver pre-apprenticeship programs. These programs vary in duration. Some provide an introduction to a specific trade, in addition to training in basic safety and construction procedures. Others focus only on basic safety and construction procedures. Pre-apprenticeship programs may be delivered by colleges, union training centres, private trainers and community-based organizations provided they have the appropriate facilities, curriculum and qualified instructors. In 2018-19 (i.e., prior to Covid), there were 84 entities that received operating grants to deliver pre-apprenticeships. In Peel Region, these included Sheridan College and the Ontario Masonry Training Centre.

### *Ontario Youth Apprenticeship Program (OYAP):*

OYAP enables a high school student to pursue apprenticeship training while obtaining an Ontario Secondary School Diploma (OSSD). OYAP is delivered through school boards. The Peel District School Board participates in OYAP. As with any apprenticeship, OYAP requires employer

participation. Participation in OYAP is therefore one way that an employer could potentially contribute to achieving Community Benefits goals.

*Apprenticeship Training:*

While some unions and employers require pre-apprenticeship training, there are many instances in which an individual can enter an apprenticeship directly. Apprenticeship training involves on-the-job supervision by a qualified tradesperson and periods of in-school training. Depending on the trade, there may be two to four periods of in-school training, usually lasting 8 weeks per period. In-school training is provided by ministry-authorized Training Delivery Agents (TDAs). These are usually colleges and industry-based training centres. The province provides TDAs with operating grants.

*Industry and Community Financed Training:*

Some unions and community-based organizations deliver pre-employment training which they finance through *ad hoc* grant programs and contributions. Hammer Heads, for example, delivers training that introduces youth-at-risk to a range of trades. This training has variously been financed by *ad hoc* grants and industry contributions. Helmets to Hardhats is financed by ad hoc grants and payroll contributions from members of the building trades unions. BuildingUp has received *ad hoc* grants and also derives revenue as a social enterprise. Some pre-apprenticeship programs offered by union training centres are supported by Training Trust Funds which are financed by contributions that are negotiated as part of the collective agreement. CLAC and Merit Ontario support the pre-apprenticeship training programs offered by Herzing College. These programs are fee-based.

## 10. Hard Targets are Unworkable on Small and Mid-Sized Projects

While recognizing the importance of accountability, both employer organizations and unions were cautious about, or opposed, to hard targets. Both employers and unions believe that hard targets are especially unworkable on the small and mid-sized projects that constitute the majority of the City of Brampton's procurement activities. Most of the construction projects undertaken for the City of Brampton are too small to make it practical to specify a hard target for recruitment from designated groups. Doing so might create a short-term job (at added expense to the project), but it will not create sustainable careers in the construction industry. Similarly, contractors generally employ only the

number of apprentices to whom they can provide a reasonable prospect of continued employment. Unions follow a similar approach when admitting persons into apprenticeships. It makes no sense, therefore, to pressure a contractor to employ an unsustainable number of apprentices or to pressure a union to admit an unsustainable number of new apprentices. If the intakes are unsustainable, the apprentices will be forced to abandon their training because of a lack of employment opportunities.

The City of Brampton needs an approach to Community Benefits Policy that does not involve quotas.

The challenge for Community Benefits Policy, therefore, is to find a way to identify and monitor an employer's commitments to workforce development and inclusiveness without linking those commitments to the composition of an employer's workforce on a *specific* project, especially if that project is seasonal in duration and comparatively small in scale.

### **11. A 'Brampton Jobs for Brampton Residents' Policy is Unworkable**

Both construction employer associations and unions stressed that a Community Benefits Policy based on the formula of 'Brampton jobs for Brampton residents' is impractical. A resident of Brampton who commences a career in the construction industry will work on projects across the GTA. Similarly, the City of Brampton should expect that most of the workers that perform its work will also reside elsewhere in the GTA. A 'Brampton jobs for Brampton residents' policy might invite other municipalities to adopt comparable policies. Contractors who hired Brampton residents for a Brampton job would then be faced with the need to replace these workers with workers who reside in other municipalities when they perform work in those municipalities. The end result would be to create short-term jobs instead of career opportunities. Community Benefits Policy should not be designed in a way that inadvertently balkanizes the GTA construction industry.

The City of Brampton needs an approach to Community Benefits Policy that does not tie employment opportunities to specific projects. The focus should be on creating new pathways to careers

### **13. Need to Align with Collective Agreement Obligations**

Employer organizations stressed that their unionized members all have obligations under their collective agreements that govern how they hire, classify and pay employees. These employers cannot take on Community Benefits obligations that conflict with their collective agreement obligations. It is therefore important that unions be fully on board with a Community Benefits Policy and participate in its design. Both the Central Ontario Building Trades Council and LIUNA stressed their support for Community Benefits Policy. However, they emphasized (like the employer organizations) the need to align the achievement of Community Benefits goals with the screening policies, training requirements and dispatch rules that apply to the union's membership. Dispatch rules are often founded in the union's constitution to ensure fairness and transparency.

### **14. There are Several Potential Models for Community Benefits Policy**

Discussions with stakeholders and prior consultations with other municipalities and public agencies suggest that there are several potential approaches to Community Benefits Policy.

#### *1. Project-Specific Targets*

Project-specific targets are associated with the application of Community Benefits Policy to large projects, such as major infrastructure projects. Project-specific targets typically seek to have a certain minimum percentage of work hours assigned to apprentices with persons from target groups

given preference for a share of these hours. A variation on this approach is one used by Toronto Community Housing (TCH) which establishes a monetary value for Community Benefits and invites proponents to show how they will achieve these Community Benefits. Proponents can achieve the indicated monetary value variously through direct hires from target groups, scholarships, training, encouraging hires by their supply chain, etc. In our consultations, many stakeholders expressed the view that the small to mid-sized scale of the majority of the City of Brampton's construction procurement was not compatible with the project-specific targets.

## *2. Participation-Based Criteria in Tendering*

Some municipalities assign a percentage of points (usually 5-10%) in the evaluation of tenders and proposals to contractors' ability to demonstrate that they participate in outreach and other activities intended to support workforce development and greater diversity in the construction workforce. Contractors may be awarded points for employing apprentices, participating in programs such as Hammer Heads, Helmets to Hardhats, BuildingUp or partnering with community organizations to broaden their recruitment outreach or supporting other activities related to these goals. In the unionized sector, many employers rely on unions to implement outreach. These outreach activities are indirectly financed by employers through their contributions to training trust funds. Some municipalities that apply participation-based criteria in their tendering process utilize a questionnaire which specifies the types of activities that meet Community Benefits goals without specifying the need to partner with particular organizations or programs. These leave contractors with flexibility in determining how to meet Community Benefits goals. A number of stakeholders suggested that some form of participation-based criteria in tendering could be more appropriate for the City of Brampton than project-specific targets.

## *3. Designated Partnerships Models*

A designated partnership model identifies one or more organizations or programs that contractors should partner with to secure points under participation-based tendering criteria. Utilizing designated organizations or programs gives a municipality a greater degree of control over how Community Benefits goals are met. Using designated organizations or programs may also make it easier to verify that a contractor fulfilled the commitments made during the tendering process. Both the Progressive Contractors Association and the CLAC stressed that designated partnership models should not be limited to programs or organizations that restrict participation to contractors affiliated to the building trades unions

## *4. Hub Model*

The Hub Model was recommended for consideration by the Ontario Sewer and Watermain Contractors Association (OSWCA). The Hub Model is used in some U.S. cities. The OSWCA provided information on the Hub Model used in Seattle, Washington. The 'Hub' is a body established by the municipality to undertake outreach to under-represented communities, to screen potential recruits and co-ordinate, where necessary, the delivery of pre-employment training. Contractors and their affiliated unions agree to give preference, up to a certain target, to persons who will be recruited through the Hub. A similar model (Construction Connections) was attempted by the City of Toronto. The results fell short of expectations, in part, because the model may have been seen by some

construction unions as displacing their role in recruitment, screening and training. The Toronto Community Benefits Network (TCBN) is also developing a model that is similar to the Hub Model for its Community Benefits Agreements on major infrastructure projects.

### *5. Voluntary Reporting Models*

Voluntary Reporting Models are similar to Participation-Based Criteria in Tendering except that completion of questionnaires is voluntary and no points are awarded for participating in workforce development or workforce diversity initiatives. The information compiled from the questionnaires is used to establish a current benchmark against which the impact of future policy initiatives can be evaluated. Voluntary Reporting Models may encourage increased contractor participation in apprenticeship and workforce diversity initiatives, but does not require this participation nor prescribe how workforce development or workforce diversity goals should be achieved. Some stakeholders view Voluntary Reporting Models as being too aspirational, insufficiently substantive and lacking in accountability. Because these models are voluntary, they implicitly give a cost advantage to contractors that do *not* invest in workforce development or outreach activities to increase workforce diversity.

### *6. Prequalification Models*

Many public entities use pre-qualification procedures as part of their procurement process for at least some of their construction tendering.<sup>40</sup> Commentator Stephen Bauld notes that prequalification is not universally used. Prequalification is commonly used on large projects, but not on small projects.<sup>41</sup> The Toronto Hydro- Electric System, however, has a general pre-qualification requirement for contractors performing any type of electrical work.<sup>42</sup>

It is a common practice for pre-qualification procedures to incorporate an evaluation of a prospective vendor's health and safety record and health and safety policies. Health and safety is one of the factors recommended in the Ontario General Contractors Association *Guide to Prequalification of Contractors* which is intended to assist public entities in designing prequalification procedures.<sup>43</sup> The Toronto-Hydro-Electric System also incorporates training practices in its pre-qualification criteria.

If prequalification were generally applied to projects with a value above a certain threshold, it may be feasible to incorporate policies and practices aligned with Community Benefits goals into the

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<sup>40</sup> Payman Bergis, "Effectiveness of Prequalification Practices in Public Procurement", thesis submitted for the degree Master of Applied Sciences, Dept. of Civil Engineering, University of Toronto (2012); and Thomas Bedford, "Analysis of the Low Bid Award System in Public Sector Construction Procurement," thesis submitted for the degree Master of Applied Sciences, Dept. of Civil Engineering, University of Toronto (2009)

<sup>41</sup> Stephen Bauld, "Procurement Perspectives: The importance of pre-qualification", *Daily Commercial News*, February 26, 2016

<sup>42</sup> Toronto Hydro-Electric System Limited, "Contractor Pre-Qualification Application"  
<https://www.torontohydro.com/documents/20143/85785/conditions-of-service-reference-8-contractor-pre-qualification-application.pdf/4fc676b4-26e6-fe32-002d-2bcf8b96bf04>

<sup>43</sup> Ontario General Contractors Association has published *A Guide to Prequalification of Contractors* (2006)

prequalification criteria. This would get around the challenge of applying Community Benefits goals on a project-by-project basis.

#### *7. Incentive Model*

In an incentive model a contract offers an allowance or bonus for attaining Community Benefits goals. The advantages of this model are that it is voluntary and that the attainment of Community Benefits goals (i.e., target hires or apprenticeship) is subject to verification. The disadvantage is that the incentive model entails a moderately higher cost (i.e., the bonus or allowance), although the magnitude of this cost would be determined by the municipality.

#### *8. Large Project Model*

The large project model ties Community Benefits Policy to a specific project, i.e., target hires apply to that project. However, the Community Benefits Policy would only be applied to large projects where there is likely to be the flexibility to plan for target hires and the opportunity to retain those hires for a considerable period of time. The threshold for defining a ‘large project’ would differ based on the type of project. The difficulty with the large project model is that it could effectively exclude small and mid-sized municipalities which only undertake large projects on an occasional basis.

### **Key Take-Aways from Stakeholder Consultations**

1. The goal of a Community Benefits Policy should be to expand the opportunities for careers in the construction industry to residents of Brampton with particular emphasis on communities and groups in Brampton that have been historically under-represented in the construction industry workforce. The focus should be on creating pathways to careers, not on creating short-term jobs. Achieving this goal will require outreach to under-represented communities and groups and, where needed, pre-employment training. Screening of potential recruits will be essential to ensure that individuals commencing pre-employment training or an apprenticeship understand what a construction career entails and that they have the necessary motivation.
2. Community Benefits Policy should also encourage diversity and inclusion in recruiting for professional, administrative and technical careers in the construction industry.
3. Brampton’s Community Benefits Policy should focus on encouraging participation in workforce development and diversity outreach rather than on specifying hiring targets that are tied to particular projects.
4. Brampton’s Community Benefits Policy should leverage the rich network of community-based organizations and programs whose activities align with the goals of Community Benefits Policy. The Policy should consider identifying specific organizations and programs (“community connectors”) where participation by a contractor would meet the requirements of the Policy. The list of designated community connectors should be sufficiently broad that no contractor is implicitly excluded from access to participation.

5. Community Benefits Policy is complex. The City of Brampton should proceed with caution and should ensure that affected stakeholders have ample opportunity to comment on the Policy and its implementation.
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# Fair Wage Policy: Report on Stakeholder Consultations

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## 1. Disagreement on the Value of Fair Wage Policies

Both unions and those employer associations that represent unionized contractors support Fair Wage Policies. The reasons cited include:

- public sector employers should pay no less than the prevailing wage on tendered projects. Contractors that pay the prevailing wage (or better) should not be undercut by contractors that secure a cost advantage by paying sub-standard wages;
- contractors that pay wages below the prevailing wage are also likely to secure an additional cost advantage by cutting corners on occupational health and safety;
- contractors that pay wages below the prevailing wage are also likely to secure a further cost advantage by not investing in apprenticeship or worker training;
- contractors that pay wages below the prevailing wage often exploit workers by improperly styling them as sub-contractors to avoid paying EI, CPP and WSIB costs and holiday and vacation pay required by the *Employment Standards Act*.

Both the Brampton Board of Trade and the Ontario General Contractors Association oppose Fair Wage Policies. Both organizations believe that in current conditions, the market forces contractors to pay the prevailing wage. If they do not do so, they will be unable to recruit or retain skilled labour. The Brampton Board of Trade views Fair Wage Policies as an attempt to raise the wages of construction workers above the market level. In their view, Fair Wage Policies necessarily raise costs. The Brampton Board of Trade believes that income redistribution is not the role of municipal governments. They further argue that Fair Wage Policies do not contribute to any of the goals of the City of Brampton. In the view of the Brampton Board of Trade, it is impossible to enforce Fair Wage Policies efficiently or fairly. The Brampton Board of Trade believes that the City of Brampton already has reputational problems in the business community and that adopting a Fair Wage Policy will only compound those problems. In their view, a Fair Wage Policy will lead to reduced employment, reduced hours and higher costs for taxpayers.

The Progressive Contractors Association stressed the need to proceed with caution and to take account of the complexity of remuneration in the construction industry. While not opposed to Fair Wage Policy in principle, the Progressive Contractors Association shares the view that such a policy is not needed at this time because market forces are ensuring that all contractors pay the prevailing wage.

The Ontario Road Builders Association believes that the majority of road work undertaken in Brampton is performed by unionized contractors. Since these contractors already pay a high wage, they do not see a Fair Wage Policy affecting the City's costs.

## **2. Determining Prevailing Wage**

Unions, and most employer associations view the negotiated wages found in collective agreements as a strong indicator or guide to the prevailing wage. They note that the City of Toronto, which has the longest continuously administered Fair Wage Policy, relies on the negotiated wages found in collective agreements and tracks those rates closely.

Both the CLAC and the Progressive Contractors Association point out that exclusive reliance on the building trades collective agreements fails to take account of the collective agreements between CLAC and its employers (who are represented by the Progressive Contractors Association). They stress the need for taking account of all collective agreements, not just the building trades agreements. CLAC notes that contractors who employ its members have performed work in the past for the City of Brampton and Peel Region.

It was also stressed by unions and employer associations that the Fair Wage Schedules should reflect total compensation, not just the direct hourly wage. In the case of unionized employees, benefits can represent 20-30% of total compensation.

The Progressive Contractors Association favours a survey-based approach to determining the prevailing wage, but acknowledges that Statistics Canada no longer conducts the *National Construction Industry Wage Rate Survey* and that wage surveys can be costly to administer.<sup>44</sup>

## **3. Administration and Enforcement**

Unions and the employer associations representing unionized contractors stressed the importance of enforcement. The building trades and the employer associations representing contractors bound to the building trades favour the City of Toronto model which involves proactive inspections and audits. They believe that the prospect of being inspected or audited fosters compliance better than a complaint-based system in which inspections or audits occur only if there is a complaint.

Concern was expressed that inspections or audits triggered by anonymous complaints could lead to harassment. However, it was generally accepted that a worker should be allowed to complain about non-compliance without necessarily putting themselves in jeopardy by having their name identified to the subject employer.

It was suggested by the CLAC that employers should be required to file their wage schedule at the time of contracting with the City. For a unionized contractor, if the negotiated wages comply with the Fair

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<sup>44</sup> The *National Construction Industry Wage Rate Survey* was administered by Statistics Canada to support the Federal Fair Wage Program. The survey tracked construction wages by trade and region. The sample was restricted to building construction in the institutional and commercial segments of the ICI sector. The last Ontario survey was conducted in 2009.

Wage Schedule, the contractor should be deemed compliant. Unions have both the legal and organizational ability to enforce their collective agreements.

The OGCA suggests that a complaint-based enforcement model is easier and less costly to administer than one which involves proactive inspections and audits. The OGCA does not believe that contractors should be subjected to the added expense of an audit in the absence of a credible complaint about non-compliance.

Penalties, if applicable, should consist of a bar on bidding for a period of time.

#### **4. Prime Contractor Responsibility**

Unions and employer associations believe that the norm in the construction industry is that a prime contractor is responsible for the compliance of its sub-contractors. Most contracts between a prime contractor and a sub-contractor specify that the obligations arising from the contract between the owner/client and the prime contractor also flow through to the sub-contractors. This principle is applied to occupational health and safety. The OGCA, however, noted that any increase in the responsibilities of a prime contractor add administrative burden and therefore cost. The OGCA also believes that a prime contractor should not be liable for a sub-contractor's non-compliance, if the prime contractor took reasonable measures to ensure compliance. ORBA suggests that a statutory declaration by a sub-contractor should suffice to meet a prime contractor's obligation under a Fair Wage Policy.

#### **5. Scope and Thresholds**

Some unions favour applying a Fair Wage Policy to all tendered construction, irrespective of the size of the project. They note that the City of Toronto applies its Fair Wage Policy in this fashion. They also suggest that non-compliance is likely to be more common among the small contractors who typically undertake smaller projects. Other unions and employer associations believe that a threshold that exempts smaller projects may be attractive on administrative grounds. Policing small projects, they suggest, requires an expenditure of administrative resources with limited overall impact.

# Discussion of Living Wage Policy

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## Background

The Living Wage movement arose in the United States in the late 1980s. The movement was prompted by the refusal of state and federal government to increase minimum wages. The first Living Wage Ordinance (i.e., bylaw) was adopted by the City of Baltimore in 1994. Since then, more than 140 cities in the United States have adopted Living Wage Ordinances. Living Wage Policies establish a minimum wage which vendors to the municipal government are required to pay their employees.

Living Wage Policies differ from minimum wage laws in three respects. First, only employers that are vendors to a municipality (and, in some cases, recipients of grants or other forms of financial assistance) are covered by the policy. This contrasts with statutory minimum wage policies which apply to all employers, irrespective of whether they are doing business with a public sector entity. Second, the required wage established under Living Wage Policies is typically higher (often substantially higher) than the statutory minimum wage. As will be discussed later, the required wage under a Living Wage Policy is intended to be sufficient for a worker to support his or her family without recourse to income or means-tested financial assistance (e.g., ‘food stamps’ in the United States). Finally, the required wage under a Living Wage Policy is specific to a particular municipality and therefore reflects estimated living costs in that municipality. This also contrasts with statutory minimum wage policies which typically apply without modification to an entire state or province. More than 50 U.S. cities have adopted municipal Minimum Wage Ordinances in place of or in addition to Living Wage Ordinances. The legality of some of these municipal minimum wage laws has been challenged.<sup>45</sup>

The City of New Westminster in British Columbia appears to have been the first Canadian municipality to adopt a Living Wage Policy. The policy was adopted in 2011. In 2017, the City of Vancouver became a certified Living Wage Employer.

## Employer Certification as ‘Living Wage Employers’

In Ontario, the Ontario Living Wage Network, publishes community-specific Living Wage Rates. These rates are computed by the Canadian Centre for Policy Alternatives. The Ontario Living Wage Network also certifies employers as Living Wage Employers. Certification requires that an employer pay at least the appropriate community-specific living wage rate to its full-time, part-time and contract employees. Certification also requires that an employer incorporate a living wage stipulation in contracts with vendors that supply regular, ongoing services.<sup>46</sup> The Network’s guide to certification describes these as services as janitorial, security and catering services. The guide specifically states that *ad hoc* contracted service work is not covered.

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<sup>45</sup> Labor Center, University of California at Berkeley: <https://laborcenter.berkeley.edu/inventory-of-us-city-and-county-minimum-wage-ordinances>

<sup>46</sup> Ontario Living Wage Network, *A Guide to Becoming a Living Wage Employer*, Revision 2.1 2-2020

As of April 2021, the website of the Ontario Living Wage Network reported that there were 383 certified employers. These included: the municipalities of Cambridge, Kingston, North Perth and the County of Huron.

### Determining the ‘Living Wage’

A ‘living wage’ is defined as the minimum income necessary for a worker to meet basic needs. The goal of a living wage is to allow a worker to afford a basic, but decent, standard of living through employment earnings without needing to access social assistance (Ontario Works), employment insurance (EI) or charitable support (e.g., food banks).

There are broadly three approaches to determining a ‘living wage’.<sup>47</sup>

#### 1. Percentage of Prevailing Average Hourly Wage

The first approach to determining a ‘living wage’ is to peg the ‘living wage’ as a percentage of the average hourly wage, as measured by Statistics Canada’s Survey of Employment Payroll and Hours (SEPH) or the Labour Force Survey (LFS). In Ontario, in 2021, the all-industries, average hourly earnings (excluding overtime) for workers paid by the hour was \$26.19.<sup>48</sup> Using the Labour Force Survey, the average hourly earnings were \$30.25. The difference reflects two factors. First, the LFS includes overtime and second, the LFS includes salaried workers, whereas the SEPH estimate is based solely on hourly-paid workers. Currently, the minimum wage in Ontario is \$14.25 which is 54.4% of the average hourly earnings based on SEPH or 47.1% based on the LFS.

The living wages published by the Ontario Living Wage Network range from \$15.84 (Muskoka 2016) to \$22.08 (Toronto 2020). The unweighted average is \$17.51 which is 66.9% of the SEPH-based average hourly earnings.

#### 2. Earnings Commensurate with Low Income Cut-Off (LICO)

Statistics Canada estimates a Low Income Cut-Off (LICO) which is equivalent to the ‘poverty line’. Households at the LICO threshold spend 20 percentage points more than the average family on food, shelter and clothing. Households below the LICO threshold devote an even larger proportion of their income to these necessities. The LICO is estimated for different types of families, for rural areas and for different sizes of urban centres. The benchmark family is two adults and two children. In 2019, the LICO for this family in an urban centre with a population of 500,000 or more was \$49,106 before taxes.<sup>49</sup> In 2019, a family with only one full-time earner at 40 hours per week would need to earn \$23.60 per hour to meet the LICO threshold. In a two-earner family, the current minimum wage in Ontario would generate \$59,280, if both adults worked 40 hours per week.

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<sup>47</sup> A detailed description of the different methods used to compute a living wage can be found in Richard Anker, “Estimating a living wage: A methodological review”, Conditions of Work and Employment Series No. 29, International Labour Office (ILO). Geneva (2011)

<sup>48</sup> Statistics Canada. Table 14-10-0206-01 Average hourly earnings for employees paid by the hour, by industry, annual <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1410020601>

<sup>49</sup> Statistics Canada. Table 11-10-0241-01 Low Income Cut-offs (LICOs) before and after tax by community size and family size, in current dollars <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1110024101&pickMembers%5B0%5D=2.2&cubeTimeFrame.startYear=2015&cubeTimeFrame.endYear=2019&referencePeriods=20150101%2C20190101>

### *3. Self-Sufficiency Measure*

A self-sufficiency measure estimates the cost of a basic standard of living using broadly accepted statistical sources. The cost of a basic standard of living differs, of course, depending on the composition of the household. A common practice is to use a two-adult / two children family as the benchmark. It is also usually assumed that both adults work full-year, full-time. The ‘living wage’ is the earnings before taxes and other deductions required to achieve this basic standard of living.

The Canadian Centre for Policy Alternatives (CCPA) has developed a self-sufficiency measure which is utilized by the Ontario Living Wage Network (and Living Wage Canada) to generate community-specific living wage rates. The CCPA methodology estimates the cost for a benchmark family (two adults / two children) based on the Statistics Canada ‘market basket measure (MBM)’. However, the CCPA methodology includes some expenditures that are not in the MBM, such as the cost of a basic two-week vacation. The CCPA also assumes a 37.5-hour week, not a 40-hour week, although it retains the assumption that both adults are full-time earners.<sup>50</sup> Living costs are based on community-specific cost estimates. The current living wage for the City of Toronto is \$22.08. For Halton Region, the published rate is \$20.38. The Ontario Living Wage Network has not published a rate for Peel Region, although it is likely to be intermediate between Halton Region and the City of Toronto, *i.e.*, approximately \$21.23. This is somewhat lower than the earnings needed to meet the 2019 LICO threshold.

### **Living Wage and Direct Employees of the City of Brampton**

There do not appear to be any full-time positions at the City of Brampton that earn less than the estimated Living Wage for Peel Region. However, there are a large number of part-time, temporary and student co-op positions for which the average hourly wage is less than \$21.21. In total, the persons in these part-time classifications worked 552,539 hours in 2019. These include Crossing Guards (approx. 24% of hours), various recreational instructors (approx. 22% of hours), student co-op placements (approx. 8% of hours) among others.

Raising the wages for *all* of these part-time classifications to the estimated Living Wage would entail a direct financial cost to the City of Brampton. This direct cost would be approximately \$3.0 million per year if the Living Wage were applied to all classifications. It could be argued, however, that the Living Wage was not intended to apply to some of these classifications, such as students on a co-op placement or to persons who are supplementing their income by working as part-time recreational instructors. Nevertheless, certification as a Living Wage Employer would likely require raising the hourly wage for *all* directly-employed classifications currently earning less than the Living Wage.

A potentially much greater cost than the direct cost arises when there is a need to offset compression effects. A compression effect occurs when the pay for a subordinate lower level positions is raised and there is a perceived need to restore the wage difference vis à vis other classifications. This, in turn, can have further compression effects throughout the pay grid. Estimating the number of full-time positions potentially affected by compression effects is complex and is outside the scope of this study. However, it should be noted that the potential cost of offsetting compression effects easily could be a significant multiple of the direct cost of implementing a Living Wage policy.

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<sup>50</sup> Hugh Mackenzie and Jim Stanford. “A Living Wage for Toronto”, Canadian Centre for Policy Alternatives (2008)

## **Living Wage and Contracted Construction Work**

It is unlikely that a Living Wage Policy would have any implications for construction work contracted by the City of Brampton. Two data series maintained by Statistics Canada suggest that wages in the construction industry would generally exceed the estimated Living Wage for Peel Region (\$21.21). The Survey of Employment, Payroll and Hours is a survey of employers. This survey estimates that the average hourly wage in construction for 2020 was around \$32.34 on a provincial basis. This estimate, it should be noted, is an ‘all occupations’ average for hourly-paid workers. A somewhat more nuanced picture emerges from the *Labour Force Survey (LFS)*. For Ontario, the LFS estimates that, in 2020, median wages for occupation groups in construction ranged from \$21.62 for trades helpers and labourers to \$30.05 for industrial and electrical trades. Some construction labourers would be paid less than the median wage. However, these construction labourers are more likely to be working in the residential renovation and repair sector and not in ICI or civil construction.

## **Living Wage for Other Types of Contracted Work**

A Living Wage Policy might have implications for contracting some types of non-construction services. The LFS estimates that the median wage for ‘Service Support Occupations’ (which includes building cleaners and food preparation workers and counter workers) was \$15.38. The LFS also suggests that the median wage for landscape workers was \$18.32. As noted above, these estimates of the median wage may underestimate the prevailing wage paid by vendors supplying customers such as the City of Brampton. Nevertheless, the data do suggest that a Living Wage Policy might have implications for labour costs in non-construction services contracted by the City of Brampton.

## **Comparison of Living Wage to Fair Wage**

Living Wage Policy and Fair Wage Policy are distinct policy instruments. They may complement one another, but they are not substitutes since they serve different purposes:

- Fair Wage Policy applies only to construction tendering whereas Living Wage Policy applies to all types of tendering for services.
- The purpose of Fair Wage Policy is not to raise wages. Rather, a Fair Wage Policy is essentially an ‘insurance policy’ that would assure the City of Brampton that its construction contractors are paying the prevailing wage. By contrast a Living Wage Policy could require contractors in some industries to pay above the wages that currently prevail in that industry.
- A Fair Wage Policy should *not* raise construction costs to the City of Brampton, since the large majority of its contractors already pay the prevailing wage. A Fair Wage Policy would target only the small minority of contractors that achieve a cost advantage by paying sub-standard wages. By contrast, a Living Wage Policy may

have some cost impact on certain types of contracting for services where wages are often less than the Living Wage.

- Living Wage Policy is essentially a higher substitute for the provincial minimum wage. The justification for this is that the provincial minimum wage does not take regional differences in living costs into account.
- Living Wages are associated with voluntary systems of employer certification. However, certification is not widespread. Consequently, the City would likely need to either require employer certification as a condition of bidding or verify that a vendor's wages complied with the Living Wage Policy.
- There is no broadly accepted methodology for computing the Living Wage. Currently the most often cited computation is that developed by the Living Wage Network and technically supported by the Canadian Centre for Policy Alternatives.

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## **Next Steps**

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This report summarizes the comments and advice from stakeholders in both the community and the construction industry. Following a review of this input, options and recommendations will be developed for consideration by the City of Brampton. After reviewing these options and recommendations, a report and recommendations will be presented to City Council for its consideration.

## **Appendix: Stakeholders Consulted**

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### **Construction Industry**

Chris Campbell  
Equity Diversity Representative  
Carpenters District Council of Ontario

James St. John  
Business Manager  
Central Ontario Building Trades

Andrew Regnerus  
Construction Co-ordinator – Ontario  
Christian Labour Association of Canada (CLAC)

Jason Ottey  
Director of Government Relations and Communications  
Labourers International Union of North America (LIUNA), Local 183

John Mandarino  
Executive Director  
LIUNA Canadian Tri-Fund

Sean McFarling  
General Counsel  
LIUNA Ontario Provincial District Council

David Frame  
Director of Government Relations  
Ontario General Contractors Association (OGCA)

Brian Hocking  
Chief Executive Officer  
Andrew Hurd  
Director, Policy and Stakeholder Relations  
Ontario Road Builders Association (ORBA)

Patrick McManus  
Executive Director  
Krisha Ruchlewicz  
Manager, Policy and Strategic Initiatives  
Steven Crombie  
Manager, Government Relations and Public Affairs  
Ontario Sewer and Watermain Contractors Association (OSWA)

Karen Renkama  
Vice-President  
Stephen Hamilton  
Director of Public Affairs  
Progressive Contractors Association

## Community

Cameron Moser  
Director of Services and Program Development  
Access Employment

Todd Letts  
Chief Executive Officer  
Brampton Board of Trade

Kevin Viflanzoff  
Associate Director, Purchasing  
Humber College

Gurpreet S. Malhotra  
Chief Executive Officer  
Indus Community Services

Maryam Harji  
Chantel Crooks  
Bridge2Work Specialists  
Skills for Change

John Mittregger  
Director of Employment Services  
Job Skills

Roberta Bustard  
Peel Community Benefits Network

Adaoma Patterson  
Manager - Poverty Reduction Initiatives & Community Engagement  
Region of Peel  
Peel Poverty Reduction Strategy

Shalini da Cunha  
Executive Director  
Peel Halton Workforce Development Group

Karen Lemoine  
Director, Community Engagement and Stakeholder Relations  
Sheridan College

Anne Jamieson  
Senior Manager, Toronto Enterprise Fund  
Nauman Khan  
Senior Manager, Public Affairs  
Nation Cheong  
Vice President, Community Opportunities and Mobilization  
United Way of Greater Toronto

In addition, a meeting was held with members of the Black Community. The meeting was organized by Gwyneth Chapman, Senior Advisor, Anti-Black Racism Unit, City of Brampton.

Report No. 3:

Fair Wage Policy and  
Community Benefits Policy:  
Options, Recommendations and  
Implementation Plans



August 2021

# Fair Wage Policy and Community Benefits Policy:

## Options and Recommendations

### Executive Summary

This report sets out options and recommendations for both a Construction Services Community Benefits Policy and a Fair Wage Policy.

#### **Community Benefits Policy**

The report recommends the following statement of goals:

The objective of the Construction Services Community Benefits Policy is to support diversity and inclusiveness in the construction industry and to encourage construction employers to increase the opportunities for Brampton residents to pursue careers in the construction industry. The City of Brampton wishes to encourage construction employers to create opportunities, in particular, for youth-at-risk, members of visible minorities, transitioning veterans, women, aboriginal persons, members of the LGBTQ2S+ community, and recent immigrants. These opportunities may include direct hires, pre-apprenticeship training, apprenticeships or other career opportunities with a company. The goal is career opportunities, not short-term jobs.

The report recommends that the City of Brampton adopt a “Construction Services Community Benefits Policy” that would require contractors making a proposal on projects of \$5.0 million or more in value to include a Community Benefits Plan (CBP) in their proposal. The CBP would include discussion of any or all of the following:

- how the company/organization will support apprenticeships;
- how the company/organization will provide training and/or employment opportunities to persons in one or more of the following groups: youth-at-risk, members of visible minorities, transitioning veterans, women, aboriginal persons, members of the LGBTQ2S+ community, and recent immigrants;
- how the company/organization will partner with community-based organizations and/or unions to provide training and employment opportunities to persons in these groups,
- how residents of Brampton may specifically benefit from these training and employment opportunities,

- such other policies or activities of the company/organization that will contribute to the goals of the City of Brampton's Construction Services Community Benefits Policy, and
- how these community benefits will be documented.

The commitments in the contractor's CBP need not be tied to the project being bid. A contractor could meet its CBP commitments through its overall business activities. This provides contractors with flexibility while still incorporating community benefits goals in construction tendering. The City would include in RFPs a list of community-based partners and programs with which a contractor could collaborate to meet their CBP commitments.

The report recommends that a CBP be a mandatory component of proposals on projects with an initial value of \$5.0 million or more and have a weight of 10% in the evaluation of proposals. CBP would be evaluated on the basis of four factors: (1) the number of direct hires, pre-apprenticeships or apprenticeships involving persons from target groups, (2) the number of direct hires, pre-apprenticeships or apprenticeships involving residents of Brampton, (3) the planned documentation of these direct hires, pre-apprenticeships or apprenticeships, and (4) partnerships with community-based organizations or programs that operate in Brampton.

The report considered other options which it did not recommend. These included:

- voluntary or mandatory questionnaires on recruitment and training practices,
- project-specific hiring and training targets,
- designated community partners,
- a hub model, and
- an incentive model.

### **Fair Wage Policy**

The report recommends adoption of a Fair Wage Policy and recommends the following statement of goals:

The objective of the City of Brampton Fair Wage Policy is to ensure that employers performing work procured by the City, pay wages and benefits that are not less than the prevailing norms in their industry and that they comply with statutory requirements for benefits and the proper classification of workers as employees. In this way the Fair Wage Policy will create a level playing field that encourages the City's contractors to compete on the basis of productivity, quality and efficiency rather than by securing a competitive advantage at the expense of their work force.

### *Scope and Application*

The report recommends that the City's Fair Wage Policy should apply initially only to construction work. The policy would not apply, therefore, to snow removal, landscaping or parks maintenance. The specific branches of construction that should be covered by the Fair Wage Policy are:

- industrial, commercial and institutional (ICI) sector,
- sewers and watermains sector,
- roads sector, and
- heavy engineering sector

The City's Fair Wage Policy should apply only to construction projects with an initial contract value of \$500,000 or more. On average, the City has 18-20 such projects per year. The City's Fair Wage Policy should apply to independent operators. Tender and RFP documents would indicate whether the Fair Wage Policy applies to the work being bid.

#### *Setting a Fair Wage Schedule*

The report recommends that the Fair Wage Schedule be based on the union rates applicable three years prior, using the following formula: Direct Wage Plus 15% = Total Compensation. The resulting Fair Wage Schedule would be approximately 70-75% of the union wage package. This is the approach adopted recently by the City of Vaughan.

#### *Legal Obligation of Prime Contractors*

The report recommends that the City's Fair Wage Policy should make prime contractors responsible for the compliance of their sub-contractors.

#### *Communication of Rights to Employees*

Prime contractors would be responsible for ensuring that their employees and the employees of any sub-contractors are aware of their rights under the City's Fair Wage Policy. Similar to the practice of the Ontario government and the WSIB, the report recommends that the City should print a poster advising workers that they are covered by the City's Fair Wage Policy and inviting them to check the City's website to determine if they are being paid in accordance with the policy. Whenever practical, contractors should be required to put up the poster in a readily accessible spot.

#### *Investigation and Resolution of Complaints*

The report recommends that enforcement of the Fair Wage Policy be complaint based. The report recommends against proactive inspections.

The report recommends that any contractor, employer organization, union or affected worker should be entitled to register a complaint that a contractor is not compliant with the Fair Wage Policy. A potentially affected employee should be allowed to have their identity protected. Complaints would be investigated by City staff or by an auditor. An investigation would involve comparing the subject contractor's payroll records to the Fair Wage Schedule.

The City should apply a \$5,000 complaint fee to complainants other than affected workers. The fee would be refunded if the complaint is upheld. The \$5,000 complaint fee is commensurate with the investigation costs.

When a contractor is found non-compliant, the contractor should be required to pay the owed wages to the affected workers and also pay an administrative charge to cover the cost of investigating the complaint. The minimum administrative charge should be \$5,000.

Decisions on non-compliance, investigation costs and any penalties should be made by the Purchasing Division. A contractor may appeal a non-compliance finding, the assessment of investigation costs or any penalties. The first level of appeal would be to the Director of Purchasing. If there is no resolution at this stage, a final review would be undertaken by the Commissioner of Corporate Support Services whose decision would be final. This appeal system is comparable to the appeal process recently adopted by the City of Vaughan. [Note to Draft: amend titles as appropriate]

A first instance of non-compliance should result in a warning, unless the non-compliance is egregious. Subsequent instances of non-compliance or egregious non-compliance should result in a bar from bidding on City work for a period up to three years. Non-compliant contractors should also be identified on the City's website. Egregious non-compliance occurs when a third or more of the contractor's employees are paid 10% or more below the Fair Wage Schedule. The City should reserve the right, but not the requirement, to terminate a contract in the case of egregious non-compliance.

#### *Stakeholder Consultations*

The report recommends that the City should invite stakeholder comment on the proposed policy before it is implemented and then establish a stakeholder committee following implementation to provide feedback on the administration of the Fair Wage Policy.

#### *Detailed Policy*

The report recommends that the City consider the Fair Wage Policy of the City of Toronto and also the recently adopted Fair Wage Policies of the City of Vaughan and the City of Sarnia when developing a detailed policy.



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# Part I

## Community Benefits Policy: Options and Recommendations

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### Proposed Statement of Goals

The following is suggested as a working draft for a statement of the goals of a Construction Services Community Benefits Policy:

**Recommendation:  
Statement of Goals  
Construction Services Community Benefits Policy  
Proposed Working Draft**

The objective of the Construction Services Community Benefits Policy is to support diversity and inclusiveness in the construction industry and to encourage construction employers to increase the opportunities for Brampton residents to pursue careers in the construction industry. The City of Brampton wishes to encourage construction employers to create opportunities, in particular, for youth-at-risk, members of visible minorities, transitioning veterans, women, aboriginal persons, members of the LGBTQ2S+ community, and recent immigrants. These opportunities may include direct hires, pre-apprenticeship training, apprenticeships or other career opportunities with a company. The goal is career opportunities, not short-term jobs.

### Threshold

Implementing community benefits on construction projects can be complex. On smaller projects, construction employers make use of established crews. In many cases, these contractors do not have the flexibility to adapt the composition of their crews for Community Benefits goals. While employers in seasonal branches of construction may undertake frequent recruiting, employers in other branches of construction hire less frequently. Smaller employers have less capacity to offer career opportunities rather than short-term jobs, since many of their projects are both small in size and also short-term. For all of these reasons, it is impractical to apply a community benefits policy to small and even to mid-sized construction projects. Community benefits is also a new policy area. It is important to proceed cautiously.

It is recommended that for an initial period of five years, the City of Brampton's Construction Services Community Benefits Policy apply to projects with an initial tendered value of \$5.0 million or more. A review of tendered construction work indicated that in the period 2017 to 2020, there were 258

awarded contracts with a total value of approximately \$235.2 million. The 16 projects with an initial tendered value of \$5.0 million or more represented almost 70% of this construction work, measured by value. Most, but not all, of these projects are related to road construction and maintenance. By focusing on projects with a value of \$5.0 million or more, the City of Brampton can have a significant impact while avoiding the complications that arise from attempting to apply a community benefits policy to a large number of comparatively small and short-term projects.

**Recommendation:  
Value Threshold for Applying  
Construction Services Community Benefits Policy**

For an initial period of five years, the City of Brampton's Construction Services Community Benefits Policy should apply to projects with an initial tendered value of \$5.0 million or more. After five years of experience in administering the policy, consideration could be given to lowering the threshold.

## Options

### **Recommended Option**

#### **Mandatory Community Benefits Plan on Projects over \$5.0 Million**

##### **Description**

The City of Brampton would introduce a requirement for vendors to include a Community Benefits Plan (CBP) in any proposal for a project over \$5.0 Million. Inclusion of a CBP would be mandatory. Proposals that do not include a CBP would be ineligible for consideration.

The CBP would include a description of the proposed community benefits *per* the Statement of Goals and how the community benefits will be documented.

CBPs would have a weight of 10% in the award of the contract. CBPs would be evaluated on the basis of four factors: (1) the number of direct hires, pre-apprenticeships or apprenticeships involving persons from target groups, (2) the number of direct hires, pre-apprenticeships or apprenticeships involving residents of Brampton, (3) the planned documentation of these direct hires, pre-apprentice or apprentices, and (4) partnerships with community-based organizations or programs that operate in Brampton.

It should be noted that in the community benefits that contractors could describe in their CBPs would be related to their overall business activities. Community benefits commitments would *not* be tied to the particular project on which the contractor is bidding. This provides contractors with flexibility.

Unionized contractors should be allowed to include in their CBP reference to the recruitment and training activities of the unions with which they have collective agreements. This is necessary because many unionized contractors rely on the union to recruit and train workers who are then dispatched by the union to the contractor.

The City would include in RFPs where a CBP is required, a list of community-based organizations and programs that would be able to assist a contractor in implementing a CBP. This list would include organizations and programs that are accessible to non-union contractors or contractors with collective agreements with the Christian Labour Association of Canada (CLAC).<sup>51</sup>

**Example:**

The City of Winnipeg requires vendors on some types of procurement to include a CBP in their proposal. For example, a 2019 RFP for a proponent to develop a food service operation included the following section in the RFP:<sup>52</sup>

B13.1 Describe your social Community Benefit plan, including but not limited to:

- a) How the organization intends to create and advance reconciliation and indigenous relations;
- b) How the organization proposes to train and hire vulnerable populations, including people with disabilities and the chronically unemployed or under employed;
- c) How the organization will provide the opportunity, or make an effort to provide community social benefits, including but not limited to: reducing homelessness, reducing child and family poverty, reducing crime, as well as promoting wellbeing and community safety.

It should be noted that Winnipeg does not, at this time, apply a CBP requirement to its construction procurement. However, there is currently a City-sponsored working group exploring options with the construction industry for applying a CBP requirement to construction.

**Pros and Cons**

The advantages of mandating a CBP for projects over \$5.0 million are:

1. The recommended option gives contractors flexibility in how they will meet the Statement of Goals in Brampton's Construction Services Community Benefits Policy. Flexibility was an important concern of employers.
2. The recommended option allows unionized companies to gain credit for relevant activities of the unions with whom they have collective agreements if those recruitment and training activities align with the Statement of Goals. This

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<sup>51</sup> The Christian Labour Association of Canada (CLAC) is a distinct labour organization with no relationship to the building trades unions. Employers with collective agreements with the CLAC often belong to the Progressive Contractors Association of Canada.

<sup>52</sup> City of Winnipeg, RFP No. 1380-2019, "Food Service Space for Lease at 510 Main Street"

is important since, in the unionized construction industry, it is often the union which recruits, trains and dispatches workers, rather than the company.

3. The recommended option is forward looking. It asks contractors what they will do in the future, not what they did (or did not do) in the past.
4. The recommended option engages community-based organizations and programs, although it does so in a non-prescriptive way.
5. The recommended option ensures that projects of \$5.0 million or more will have a community benefits component, thereby meeting the expectations of many community stakeholders without imposing onerous requirements on small contractors.
6. The recommended option invites proponents to indicate how the community benefits to which they commit will be documented. It does not prescribe a particular documentation method.

The potential disadvantages of mandating a CBP are:

1. The requirement for a CBP may discourage non-resident contractors who only occasionally bid on Brampton projects. This could potentially reduce the size of the bidding pool.
2. A contractor may perceive that there will be additional costs associated with a CBP and incorporate these costs into the bid price. For contractors that are already supporting apprenticeships and engaging in diversity hiring, there would not be any additional costs.
3. The requirement for a CBP may draw out the process for preparing a proposal as contractors that currently do not support apprenticeship or engage in diversity hiring may need to consult with community-based organizations or programs. It is estimated that these contractors may need one month to identify and work with community partners.

It should be noted that these disadvantages apply to most of the other options canvassed as well.

**Recommended Option:  
Mandatory Community Benefits Plans  
on Projects with a Value of \$5.0 Million or More**

1. For construction projects with an initial value of \$5.0 million or more, contractors should include a Community Benefits Plan (CBP) as part of their proposal. The CBP should address how the contractor will meet the goals of the City's Construction Services Community Benefits Policy.
2. The CBP would include discussion of any or all of the following:
  - how the company/organization will support apprenticeships;
  - how the company/organization will reach out to persons in one or more of the following groups: youth-at-risk, members of visible

- minorities, transitioning veterans, women, aboriginal persons, members of the LGBTQ2S+ community and recent immigrants;
- how the company/organization will partner with community-based organizations and/or unions to reach out to persons in these groups,
  - how residents of Brampton may specifically benefit from these outreach activities,
  - such other policies or activities of the company/organization that will contribute to the goals of the City of Brampton's Construction Services Community Benefits Policy, and
  - how these community benefits will be documented for subsequent verification, where necessary, by the City of Brampton.
3. CBPs should have a potential weight of 10% in the award of the contract.
  4. CBPs would be evaluated on the basis of: (1) the number of direct hires, pre-apprentices or apprentices involving persons from target groups, (2) the number of direct hires, pre-apprentices or apprentices involving residents of Brampton, (3) the planned documentation of these direct hires, pre-apprentices or apprentices, and (4) partnerships with community-based organizations or programs operating in Brampton.
  5. A contractor is not required to tie its community benefits commitments to a specific construction project but could meet those commitments through its overall business activities.
  6. In RFPs that require a CBP, the City should include a list of community-based partners and programs with which a contractor could collaborate to meet the commitments in the CBP.
  7. To ensure accountability, contractors that fail to meet their CBP commitments would be subject to a negative evaluation which could lead to a restriction on their future bidding rights.
  8. The City should invite the Board of Trade, contractor associations, unions and the Peel Community Benefits Network to comment on the draft Construction Services Community Benefits Policy before finalizing that policy.

#### **Alternative Option One:**

#### **Designated Community Benefits Plan Partners for Projects over \$5.0 Million**

##### **Description**

Alternative Option One is the same as the recommended option, except that contractors would be required to collaborate with one of the Designated CBP Partners.

Designated CBP Partners would be chosen by the City of Brampton. A Designated CBP Partner could be a community-based organization or program or a trade union that undertakes training and recruitment

activities aligned with the goals of the Construction Services Community Benefits Policy. The City would invite organizations and programs to apply for Designated CBP Partner status.

As in the Recommended Option, contractors would include a CBP in their proposals and indicate which Designated CBP Partner(s) they would be collaborating with. CBPs would be evaluated in the same manner as in the Recommended Option. Designated CBP Partners would provide the City with information to confirm whether a contractor had fulfilled (or not fulfilled) its commitments .

At least some of the Designated Partners would need to be accessible to non-union contractors and contractors with collective agreements with the Christian Labour Association of Canada (CLAC). This is necessary to ensure that the Community Benefits Policy is not exclusionary. Consultations with stakeholders indicate that there are a number of programs and organizations that potentially could be Designated Partners.

#### **Pros and Cons**

The principal advantage of the Designated Partner Model is that it creates a level playing field for contractors. All contractors would have an opportunity to collaborate with a Designated CBP Partner.

There are three drawbacks to the Designated Partner Model:

1. This option is overly prescriptive. Some contractors may prefer to handle recruitment, screening and pre-employment training on their own, without the assistance of a Designated CBP Partner.
2. All of the potential Designated CBP Partners depend, at least in part, on external funding to deliver their programs. Their ability to be effective partners may vary over time, depending on the funding environment for their programs and the conditions attached to that funding.
3. When outcomes fall short of expectations, there may be a dispute about the relative roles of the contractor and the Designated CBP Partner.

These considerations lead us to conclude that the City should *not* prescribe collaboration with Designated CBP Partners.

#### **Alternative Option Two: Project-Specific Targets on Projects over \$5.0 million**

##### **Description**

The City of Brampton would prescribe specific hiring and/or training requirements for projects above an initial value of \$5.0 million. Targets would be expressed as a specific number of pre-apprenticeships, apprenticeship and/or hires. The contractor would be obliged to meet the targets. A dollar value would be assigned to the targets. Pre-apprentice training would be valued at \$20,000 per person, apprenticeships at \$50,000 per person, and direct hires at \$100,000 per person. The contractor would be subject to liquidated damages to the extent that the targets were not met.

#### **Pros and Cons**

The principal advantage of project-specific targets is the targets make accountability clear. Using payroll records, a contractor must demonstrate that it has employed or trained the requisite number of workers from target groups and/or the City of Brampton. Contractors are aware of this obligation before bidding and can incorporate any associated costs into their proposal.

There are significant difficulties with project-specific targets:

1. Project-specific targets have only been used on large projects with a value of over \$500 million, *e.g.*, large-scale social housing projects, hospitals or infrastructure projects. The scale and duration of these projects means that contractors have the flexibility to incorporate training and hiring targets into their work plans. However, the smaller the project and the shorter its duration, the less flexibility there is to adjust hiring and training plans. In most years, all of the City of Brampton's projects would be under \$20 million. These projects do not afford the same flexibility as mega-projects. As a practical matter, therefore, contractors would be compelled to incorporate unnecessary hiring and training into their budgets and pass these costs on to the City in the form of higher bid prices.
2. Training and hiring targets are tied too tightly to specific projects. This will encourage short-term training and hiring rather than sustainable careers.
3. The City of Toronto experimented with hiring targets for projects with a value of \$5.0 million or more, but subsequently found that none of the projects had sufficient scale or duration to make these hiring targets sustainable. Toronto therefore abandoned project-specific targets as unworkable.

Specific hiring targets may be feasible on projects over \$500 million. However, specific targets are not practical for the types of construction projects that the City of Brampton typically undertakes. For this reason, project-specific targets are not recommended.

#### **Alternative Option Three**

#### **Incentive Model applicable to Projects over \$5.0 million**

##### **Description**

The City would establish a Community Benefits Bonus that would be paid when contractor met specified training and hiring targets. The training and hiring targets would be valued in the same manner as in Alternative Option Two. The Bonus would be paid in proportion to the targets met. Contractors could opt not to claim the bonus. Contracts would be awarded without consideration of a contractor's CBP.

#### **Pros and Cons**

The principal advantage of the Incentive Model is that it makes CBPs voluntary. A contractor only implements a CBP if it wishes to apply for the Bonus.

There are three disadvantages to the Incentive Model. First, the Incentive Model explicitly adds to the costs of a construction project, although the amount of additional cost is controlled by the City. Second, denial of a claim for the Bonus could result in litigation. Third, the Incentive Model links training and

hiring too tightly to specific projects. It may therefore encourage short-term training and hiring rather than sustainable careers.

#### **Alternative Option Four:**

##### **Hub Model**

###### **Description**

Contractors would include CBPs in the same manner as in the Recommended Option except that they would also agree to utilize the “hub organization” as a source for training and hiring to meet CBP goals.

The City would establish (or designate) a “hub organization” to undertake five functions:

- 1) recruiting from target groups,
- 2) screening of applicants,
- 3) pre-employment/pre-apprenticeship training,
- 4) placement with contractors, and
- 5) monitoring of subsequent employment to track progress towards meeting Community Benefits goals.

The hub organization may contract out some of these functions to other bodies, such as colleges, other community organization and industry or union training centres. Contractors undertaking work on projects over \$5.0 million would agree to meet community benefits goals by hiring persons recruited, screened and trained by the hub organization.

###### **Examples:**

The Hub Model is widely used in the United States on large projects.

In the Vancouver Olympics Community Benefits Program, the hub role was played by the Vancouver Construction Association.

The City of Toronto established the Construction Connections program to perform the hub function for its Community Benefits Policy.<sup>53</sup> The Construction Connections program, however, did not meet expectations.<sup>54</sup>

In the Crosslinx transit project (Eglinton LRT), the Toronto Community Benefits Network (TCBN) functions as the hub, although contractors and union's are not obliged to use the TCBN.

###### **Hub Organization for Brampton**

A hub organization needs an administrative infrastructure to co-ordinate between contractors and the organizations that will undertake recruitment, counselling and training. This would require at least 1-2 full-time persons as well as office facilities. At this time, there does not appear to be an organization in

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<sup>53</sup> The City of Toronto produced a YouTube video explaining Construction Connections: [https://www.youtube.com/watch?v=Jx\\_lzto\\_-iQ](https://www.youtube.com/watch?v=Jx_lzto_-iQ)

<sup>54</sup> City of Toronto, “Advancing the Community Benefits Framework”, Report to the Executive Committee of the City of Toronto, January 13, 2021. This report is reproduced at Appendix III

Brampton that has the staff resources or experience to take on the functions of a hub. However, there may be organizations that would be interested in taking on these functions if they were provided with additional funding. The necessary funding would be in the range of \$300,000 to \$500,000.

The Hub Model needs to be established with the support and cooperation of unions and contractor associations. In the construction industry, unions often undertake the recruitment, training and placement functions. In many cases, before being hired by a unionized contractor, a worker must first be admitted into membership in the union. Unless unions are involved in the design and management of the Hub, they could view the Hub as an unwelcome competitor. Similarly, before contractors will willingly hire someone supplied by the Hub, they must have confidence in its management and operation.

#### Pros and Cons

The Hub Model has a number of strengths:

1. Both the Ontario General Contractors Association and the Ontario Sewer and Watermain Contractors Association support a version of the Hub Model, although they would oppose contractors being restricted to recruiting from the Hub.
2. In principle, the Hub Model ensures that all contractors are able to compete for projects because the selected contractor is assured of access to the services of the Hub
3. The Hub Model relieves contractors and unions of the obligation to undertake outreach while involving industry stakeholders in screening and pre-employment training.

For the City of Brampton, there are three drawbacks to the Hub Model:

1. At this time, without additional funding, there is no obvious organization to be the Hub.
2. There could be challenges in aligning the Hub Model with the collective agreement obligations of unionized contractors. Contractors that are signatories to collective agreements with the building trades unions are often obliged to employ workers dispatched by the union. Some of these unions may prefer to manage their own recruitment, screening and training processes. These unions also may have constitutional obligations to their members which make it difficult to give preference to workers recruited through the Hub.
3. Contractors would be obliged to meet the training and hiring goals in the CBP, but the Hub could fail to provide the support that a contractor might reasonably expect.

These considerations lead us to be cautious about the Hub Model. While the organizational challenges and collective agreement issues are tractable, the funding challenge is more troublesome. The Hub Model may be suitable for large infrastructure projects. However, at this time, the Hub Model is not appropriate for the City of Brampton.

### **Alternative Option Five:**

#### **Voluntary Vendor Questionnaire on Projects above \$5.0 Million**

##### **Description**

The City of Brampton would introduce a questionnaire which construction vendors would be requested, but not obliged to answer.

The questionnaire would only be applied to projects with a budgeted value of \$5.0 million or more. Projects with a value of less than \$5.0 million are more likely to attract smaller vendors. Smaller vendors often have less flexibility in adapting to Community Benefits goals.

The questionnaire would seek information on vendors' activities and practices that align with the stated objectives of the Construction Services Community Benefits Policy. These activities and practices would include, among others: participation in the apprenticeship system, other types of training, partnerships with community-based organizations or programs whose activities align with the Construction Services Community Benefits Policy, and involvement in outreach activities to facilitate diversity and inclusiveness in recruitment. Responses to the questionnaire would *not* factor into awarding construction contracts.

The voluntary questionnaire would have three purposes: (1) to compile information on the current activities and practices of the City's vendors, (2) to enable the City to measure, over time, progress in meeting Community Benefits goals for construction procurement, and (3) to encourage construction vendors to adopt recruitment and training practices that align with the City's community benefits goals.

##### **Example:**

The City of Vancouver currently uses a voluntary questionnaire as part of its Sustainability and Ethical Procurement (SEP) Framework. The questionnaire addresses diversity, workforce development, living wage, and environmental sustainability. Vancouver's questionnaire applies to all vendors, whether for goods or services. As will be noted below, Vancouver has had difficulty applying its questionnaire to construction vendors.

As part of the questionnaire, Vancouver's vendors are asked to identify themselves in terms of diversity criteria. These include consideration of both ownership and the composition of a vendor's workforce. Vancouver's goal is to award 50% of contracts and 50% of contract value to diverse vendors by 2023. Owing to the complexities arising from union dispatch systems which substitute for direct employer recruitment, the City has not yet determined how to classify construction vendors in terms of its diversity criteria.

Currently, vendors' answers to Vancouver's questionnaire do *not* factor into awarding contracts.

Vancouver encourages (but does not require) its vendors to obtain relevant certifications such as:

- Certified B Corp (offered by B Lab)
- Certified Social Enterprise (offered by Buy Social Canada)
- Supplier Diversity Certification (offered by the Canadian Aboriginal and Minority Supplier Council)
- WBE Certification (offered by Women Business Enterprises Canada),

- CGLCC Certification (offered by the Canadian Gay and Lesbian Chamber of Commerce)
- International Sustainability and Carbon Certification (ISCC)
- Living Wage Employer (offered by Ontario Living Wage Network)
- Fair Trade Certification (offered Fair Trade Canada, administered by Flocert)
- Green Business Certifications (various certifications offered under the auspices of Green Business Certification Inc.)

### Pros and Cons

The principal advantages of the voluntary questionnaire approach are:

1. The voluntary questionnaire would give vendors flexibility in designing policies or undertaking activities that align with the goals of the Community Benefits Policy. The questionnaire would not prescribe policies nor require collaboration with particular community organizations or programs.
2. If accepted by the vendor community, the questionnaire would generate useful information on the current practices of the City's construction vendors. This would better enable the City to determine how, at a future time, it might factor vendors' answers into the criteria for awarding contracts.
3. The voluntary questionnaire would signal to construction vendors that, at a future date, the City might make the questionnaire mandatory and factor vendors' answers into awarding contracts. The City's vendors would have time to prepare for this and would also have had an opportunity to provide the City with feedback on the questionnaire.

There are three drawbacks to the voluntary questionnaire:

1. Vendors may not treat a voluntary questionnaire as seriously as they would a mandatory questionnaire.
2. The questionnaire is not forward looking.
3. Some stakeholders in the community may feel that a voluntary approach is a missed opportunity to advance community benefits goals. Potentially this concern could be addressed by establishing a time period after which the City would consider making the questionnaire mandatory and incorporating vendors' responses into the evaluation of proposals.

These drawbacks lead us *not* to recommend Option Two.

## **Alternative Option Six:**

### **Mandatory Vendor Questionnaire on Projects above \$5.0 Million**

#### **Description**

This option is similar to the Voluntary Questionnaire approach, except that the questionnaire would be mandatory for construction vendors bidding on projects above \$5.0 million and would be evaluated. Contractors' answers to the questionnaire would have a weight of 10% in awarding contracts.

#### **Example:**

The City of Calgary requires vendors to complete a questionnaire. Like the Vancouver questionnaire, the Calgary questionnaire applies to all vendors, not just those in the construction industry. However, unlike the Vancouver questionnaire, the Calgary questionnaire focuses only on diversity, inclusion and workforce development. Vendors' answers are taken into account when awarding contracts.

Depending on the nature of the procurement, vendors' responses may have an overall weight of 5-10% in evaluating proponents.

#### **Pros and Cons**

As noted, this option differs from Option Two in two respects. First, the questionnaire would be mandatory on projects over \$5.0 million and second, vendors' answers would factor into awarding a contract. These changes from Option Two alter, to some degree, the pros and cons:

The advantages of a Mandatory and Evaluated Questionnaire would be:

1. As with a voluntary questionnaire, vendors would have flexibility in designing policies or undertaking activities that align with the goals of the Community Benefits Policy.
2. A mandatory and evaluated questionnaire would be more aligned with the expectations of community.

The principal difficulties or challenge with a Mandatory and Evaluated Questionnaire is that the questionnaire approach is not forward looking. It focuses on past practices and activities, not on future commitments. It may also be difficult to develop criteria to evaluate responses to a questionnaire. For these reasons the questionnaire approach is not recommended.

## **Alternative Option Seven:**

### **Status Quo**

#### **Description**

The *status quo* option would mean not having a Community Benefits Policy that applies to construction procurement.

The City of Brampton has a Supply Chain Diversity Program which applies to procurements with a value of \$25,000 to \$100,000. However, this Program would generally *not* apply to construction work, with the potential exception of small repair jobs.

### Pros and Cons

The principal advantage of the *status quo* is that there are no additional administrative requirements nor are there additional performance requirements that contractors would be obliged to meet.

The disadvantages of not adopting a Community Benefits Policy are:

1. There is an expectation on the part of many community stakeholders that the City will use its procurement leverage to increase training and employment opportunities for Brampton residents, especially those residents from communities or groups that are disadvantaged or historically under-represented in the construction industry. This expectation has been reinforced by the introduction of community benefit agreements or goals in major infrastructure projects, including the Hurontario Line. Currently there are at least \$43 billion of infrastructure projects associated with community benefits commitments<sup>55</sup>
2. Public policy is moving towards the incorporation of community benefits goals in construction procurement. This is evident in Ontario's *Infrastructure for Jobs and Prosperity Act*, the federal government's Community Benefits Initiative, the *Canada-Ontario Integrated Bilateral Agreement for the Investing in Canada Infrastructure Program* and the policies adopted by a number of municipalities including Toronto, Vancouver, Saskatoon, Victoria, and Calgary. Halifax and Winnipeg are in the process of developing policies. Community Benefits Agreements and Community Benefits Policies are common in the United States and increasingly common in the European Union.<sup>56</sup>
3. The City's ability to encourage community benefits in the construction of private developments may be lessened if the City does not apply community benefits goals to its own construction procurement.
4. If designed carefully, a Community Benefits Policy enables a municipality to increase the employment and training opportunities available to its residents, especially to members of those communities that may experience greater disadvantage. Maintaining the status quo foregoes these opportunities.

In light of the disadvantages of maintaining the status quo, this option is not recommended.

A comparison chart of the Recommended Option and the Alternative Options follows on the next page.

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<sup>55</sup> Ontario Construction Secretariat, *Community Benefits: Growing Trend in Public Sector Projects in Ontario* (2019)

<sup>56</sup> European Commission, Executive Agency for Small and Medium Enterprises, *Making Socially Responsible Public Procurement Work: 71 Good Practice Cases* (May 2020).

Canadian Council for Public Private Partnerships, *P3s and Community Benefits Agreements in Canada* (nd)

Figure No. 1  
Comparison of Recommended and Alternative Options

Option	Description	Scope	Mandatory or Voluntary	Evaluated	Evaluation Criteria	Community Benefits tied to Specific Project	Community Partners	Penalty for Failing to Deliver Community Benefits
<b>Recommended Option</b>	Mandatory CBP	Proposals >\$5.0	CBP is Mandatory	10%	1) the number of direct hires, pre-apprentices or apprentices involving persons from target groups, 2) the number of direct hires, pre-apprentices or apprentices involving residents of Brampton, 3) the planned documentation of these direct hires, pre-apprentices or apprentice, and 4) partnerships with community-based organizations or programs operating in Brampton.	No. Contractor can meet community benefits commitments through any of its projects.	Resource list provided, but not prescribed	Negative evaluation which could lead to a restriction on future bidding rights.
<b>Alternative #1</b>	Designated Partners Model	Proposals >\$5.0	CBP is Mandatory	10%	Same as Recommended Option	No. Same as Recommended Option.	Must be selected from Prescribed List	Same as Recommended Option
<b>Alternative #2</b>	Project Targets	Proposals >\$5.0	Specified Community Benefits are Mandatory.	n/a	Hiring, pre-apprenticeship and apprenticeship targets are specified in the RFP. A dollar value is assigned to these community benefits. Contractor is obliged to provide the specified benefits.	Yes. Specified community benefits are part of project delivery.	Resource list provided, but not prescribed	Liquidated damages
<b>Alternative #3</b>	Incentive Model	Proposals >\$5.0	Voluntary	10%	Same as Recommended Option.	No. Same as Recommended Option.	Resource list provided, but not prescribed	Incentive bonus withheld for failure to deliver agreed community benefits.
<b>Alternative #4</b>	Hub Model	Proposals >\$5.0	CBP is Mandatory	10%	Contactor agrees to take on direct hires, pre-apprentices or apprentices through the Hub. Contractor determines the number of persons to be taken on. Maximum points awarded to contractor that agrees to take on the most persons from the Hub.	No. Same as Recommended Option.	n/a Hub serves this purpose	Same as Recommended Option
<b>Alternative #5</b>	Voluntary Questionnaire	Proposals >\$5.0	Answering Questionnaire is Voluntary	n/a	n/a	n/a	n/a	Answers are subject to statutory declaration. False information may lead to termination of contract.
<b>Alternative #6</b>	Mandatory Questionnaire	>\$5.0	Answering Questionnaire is Mandatory	10%	Factors include contractor's practices re: <ul style="list-style-type: none"><li>• apprenticeships</li><li>• training</li><li>• diversity hiring strategies</li><li>• collaboration with community groups and programs</li></ul>	No	n/a	Answers are subject to statutory declaration. False information may lead to termination of contract.
<b>Alternative #7</b>	Status Quo	n/a	n/a	n/a	n/a	No	n/a	n/a

## **Proposed Implementation Plan**

1. Establish a Working Committee comprising persons from Purchasing, Human Resources, Legal Services, Capital Works, Building Design & Construction and Roads & Maintenance.
2. If needed, retain services of consultant to draft policy for review by Working Committee.
3. Review Community Benefits Frameworks of:<sup>57</sup>
  - City of Toronto
  - Metrolinx
  - Toronto Community Benefits Network – template agreement
4. Draft proposed “Construction Services Community Benefits Policy” for review by Working Committee, based on recommendations in Feasibility Study.
5. Revise and finalize working draft for “Construction Services Community Benefits Policy”.
6. Request approval of CAO’s Office to seek stakeholder input on working draft.
7. Circulate a synopsis of the “Construction Services Community Benefits Policy” to community and industry stakeholders, inviting their written input. Stakeholders to include:
  - Brampton Board of Trade
  - Progressive Contractors Association
  - Toronto Area Road Builders Association
  - Ontario Road Builders Association
  - Ontario Sewer and Watermain Contractors Association
  - Ontario General Contractors Association
  - Central Ontario Building Trades Council
  - International Union of Operating Engineers, Local 793
  - Labourers International Union of North America, Local 183
  - Christian Labour Association of Canada
  - Peel Community Benefits Network
8. Finalize “Construction Services Community Benefits Policy”
9. Draft proposed amendment to Purchasing By-Law to implement “Construction Services Community Benefits Policy”.
10. Review proposed amendment to Purchasing By-law with CAO’s Office.
11. Submit to Council for approval.

It is estimated that the implementation plan will require approximately 15-20 days of time from the lead on the Working Committee and 3-5 days of time from each of the Working Committee members. If a consultant is hired to assist in drafting and revising the proposed policy, the estimated costs are approximately \$20-25,000.

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<sup>57</sup> While there are a number of municipalities that have broadly defined social procurement policies, only the City of Toronto, Infrastructure Ontario, Metrolinx and Toronto Community Housing have experience applying community benefits to construction. Except for the City of Toronto policy (which has been suspended for review), the other policies all deal with mega-projects.

## Part II: Fair Wage Policy: Options and Recommendations

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### Appropriateness of a Fair Wage Policy

As noted in the Report on Stakeholder Consultations, the purpose of a Fair Wage Policy is *not* to raise the wages of construction workers, but to ensure that workers on City projects are always paid at least the prevailing wage in the industry. Although there is no hard statistical evidence, it is generally believed by industry stakeholders that contractors that pay below the prevailing wage are also likely to cut corners on health and safety, under-invest (or make no investments) in workforce skills, deliberately misclassify workers as self-employed sub-contractors so as to avoid employer contributions for Employment Insurance (EI), Canada Pension Plan (CPP), Workplace Safety and Insurance Board (WSIB) and employer obligations under the *Employment Standards Act* for overtime, vacation pay and statutory holidays. A Fair Wage Policy is therefore an aspect of risk management. Its purpose is to erect a guardrail that prevents opportunistic contractors from competing for City work on the basis of sub-standard wages or working conditions.

When the overall demand for construction services is strong, most contractors pay the prevailing wage because they must do so to attract and retain skilled labour. Consequently, while the risk of the City hiring a contractor that pays below the prevailing wage still exists, that risk is modest. However, the construction industry is cyclical. When the overall demand for construction services weakens, the risk of opportunistic contractors securing City work on the basis of sub-standard wages or working conditions increases. Recent immigrants tend to be among the most vulnerable to this opportunism. As a municipality with a large population of recent immigrants, the City of Brampton may need to be more sensitive to this risk.<sup>58</sup>

Whether the City of Brampton should adopt a Fair Wage Policy to curtail the risk of hiring contractors that pay below the prevailing wage and likely engage in other unacceptable practices is dependent on two factors. The first is whether the Fair Wage Policy unintentionally imposes requirements on contractors that discourage some contractors from bidding for municipal work. Reducing the bidding pool increases the risk of higher costs. The second consideration is whether the Fair Wage Policy imposes significant administrative requirements on the City of Brampton and thereby increases the costs of contract administration. This report will recommend a Fair Wage Policy that is designed to avoid both of these eventualities. The Fair Wage Policy recommended in this report is therefore one which will reduce the risk of the City of Brampton hiring contractors that pay below the prevailing wage and likely also engage in other unacceptable practices while, at the same time, avoiding impositions on contractors that could raise construction costs by reducing the bidding pool or significantly affect the costs of contract administration.

### Proposed Statement of Goals

The following is suggested as a working draft for a statement of the goals of a City of Brampton Fair Wage Policy:

**Recommendation:  
Statement of Goals  
Proposed Working Draft**

The objective of the City of Brampton Fair Wage Policy is to ensure that employers performing work procured by the City pay wages and benefits that are not less than the prevailing norms in their industry and that they

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<sup>58</sup> Based on the 2016 Census, the share of recent immigrants (i.e., persons immigrating to Canada within the last five years) in total population was 6.7% in the City of Brampton compared to 3.5% for the province of Ontario overall.

comply with statutory requirements for benefits and the proper classification of workers as employees. In this way the Fair Wage Policy will create a level playing field that encourages the City's contractors to compete on the basis of productivity, quality and efficiency rather than by securing a competitive advantage at the expense of their work force.

## Scope and Threshold

Most Fair Wage Policies apply only to tendered construction work above a certain threshold value. In principle, however, a Fair Wage Policy could apply to all contracted work. The City of Toronto, for example, applies its Fair Wage Policy irrespective of the size of the contract and also applies its policy to various types of non-construction work including security services, building cleaning maintenance, window cleaning and landscaping.

It is recommended that, at least initially, the City of Brampton restrict its Fair Wage Policy to construction work. The reasons are as follows:

- First: except for the City of Toronto, Fair Wage Policies are applied only to construction. Construction has been the exclusive focus of Fair Wage Policy (or Prevailing Wage Policy, as it is known in the United States) since at least the 1930s.
- Second: the risk of workers being deliberately misclassified as self-employed subcontractors so as to avoid employer costs and obligations is material in the construction industry, but largely irrelevant in security services, building cleaning maintenance, window cleaning and landscaping.
- Third: security services, building cleaning maintenance, window cleaning and landscaping are low-wage industries. The primary protection for workers in these industries is the minimum wage. Policies that focus on these sectors typically do not try to enforce the prevailing wage (which is already low) but rather attempt to *raise* wages and improve working conditions. This is a different policy goal from Fair Wage Policy.

The construction industry comprises of distinct branches or sectors. The *Labour Relations Act* recognizes seven sectors: the industrial, commercial and institutional (ICI) sector, the residential sector, the sewers and watermains sector, the roads sector, the heavy engineering sector<sup>59</sup>, the pipeline sector and the electrical power systems sector. Within the residential sector, it is common to distinguish three sub-sectors: single-family low-rise construction, multi-unit condo or apartment construction, and renovation. Wages differ across these sectors as do, in many cases, the skills and occupational composition of construction crews. Municipal Fair Wage Policies typically apply only to the ICI sector, the sewer and watermain sector, the roads sector and the heavy engineering sector.

The analysis of construction contracts described in the Current State Report showed that between 2017 and 2020, there were 258 construction contracts awarded by the City of Brampton. Of these, 73 contracts had an original value of \$500,000 or more. These 73 contracts accounted for 90.7% of the value of construction work. Establishing a threshold of \$500,000 therefore captures almost all construction work when measured in value while requiring scrutiny of fewer than 20 contracts per year. Most of these contracts are for road construction or repair. The City of Vaughan recently adopted a threshold of \$500,000 for its Fair Wage Policy.<sup>60</sup>

<sup>59</sup> The “heavy engineering sector” comprises tunnel and transit work.

<sup>60</sup> The City of Vaughan’s Fair Wage Policy applies only to construction projects over \$500,000 in value. ‘Construction’ is defined as: “A project in the construction industry where the businesses are engaged in constructing, altering, decorating, repairing or demolishing buildings, structures, roads, sewers, water or gas mains, tunnels, bridges, canals or other works at the site, and where the project falls within one or more of the following sectors:

- The industrial, commercial and institutional sector
- The sewers and watermains sector
- The roads sector
- The heavy engineering sector

Controlling the deliberate misclassification of workers as self-employed sub-contractors, rather than employees, is an important objective of a Fair Wage Policy. Therefore, the policy should apply to independent operators. Independent operator is a term used by the *Workplace Safety and Insurance Act* to describe a worker who is self-employed, does not employ other workers, supplies their own tools and equipment and who attests that they work for multiple clients. In the construction industry, independent operators are required to take out WSIB coverage. Applying the Fair Wage Policy to independent operators ensures that they are remunerated at the same rate as an employee performing comparable tasks and that the prime contractor has no incentive to misclassify workers as independent operators.

#### **Recommendation: Scope and Application**

The City's Fair Wage Policy should apply initially only to construction work. When the policy is reviewed, consideration could be given to broadening the scope to potentially include other sectors that are similar to construction, such as high-rise window cleaning, landscaping, and snow removal.

The specific branches of construction that should be covered by the Fair Wage Policy are:

- industrial, commercial and institutional (ICI) sector,
- sewers and watermains sector,
- roads sector, and
- heavy engineering sector

The City's Fair Wage Policy should apply only to construction projects with an initial contract value of \$500,000 or more.

The City's Fair Wage Policy should apply to independent operators.

Tender and RFP document would indicate whether the Fair Wage Policy applies to the work being bid.

### **Establishing the Fair Wage Schedule**

A Fair Wage Schedule should be a reasonable approximation of the prevailing wages. There are four aspects to the prevailing wage: trade or occupation, sector, region and the structure of total compensation.

Trades and Occupations: when estimating the prevailing wage, it is important to compare like to like. The majority of construction occupations are defined by clearly identifiable trades. In some sectors, certain occupational classifications are not trade based. This tends to be the case in road construction where there are usually three or more levels of labourers, distinguished by their role.

Sector: as noted earlier, the four sectors of construction that are relevant to a municipal fair wage policy are: the industrial, commercial and institutional (ICI) sector, the sewers and watermains sector, the roads sector, and the heavy engineering sector.

Regions: construction labour markets are regional. The Ontario Labour Relations Board recognizes the regional nature of the construction labour market by designating distinct geographic areas which are known as Labour Board Areas. The Labour Board views the GTA as single regional labour market which it designates as Labour Board Area Eight.

Structure of Total Compensation: stakeholders were emphatic that the prevailing wage needs to reflect total compensation, not just the direct hourly wage. There are important differences between the union and non-union sector in how they provide benefits. For the building trades unions, all collective agreements set out a direct hourly wage and the hourly

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but excludes landscaping work, snow removal and maintaining buildings or equipment. “

contributions required of an employer for the various benefits, e.g., health insurance, pensions, vacation and holiday pay, etc. The sum of direct wages and benefits is known as the wage package. It should be noted, however, that in some collective agreements the wage package includes amounts attributed to purposes that should not be considered part of compensation. These include organizing funds and other union-purpose funds. The wage package also typically includes employer contributions to support training. In the non-union sector, these non-wage components of total compensation are handled differently. For example, group health benefits, if they are offered, are usually financed as a monthly or quarterly premium based on covered payroll and the number of persons electing individual or family coverage. The hourly cost needs to be calculated. Statutory holidays in the non-union sector usually involve a paid day off work, whereas, in the unionized sector, employers contribute 4% of hourly pay to a trust fund. In the non-union sector, vacation entitlement may be paid in cash (4% per the *Employment Standards Act*) or workers may be entitled to paid time off work. Some non-union employers may have service-related entitlement to vacation which exceeds the minimum under the *Employment Standards Act*. In the unionized sector, employers contribute 6% or 8% to a trust fund instead of providing paid time off. In the non-union sector, employers may incur a cost for training, but they do not contribute specified amounts to a training fund. These differences between how the union and non-union sector treat the non-wage components of total compensation need to be taken into account when a Fair Wage Schedule is adopted.

There are three approaches to establishing a Fair Wage Schedule that is intended to reflect the prevailing wage. The first is to conduct a survey. This practice was followed by the Ontario government until 1995 and was also a feature of the federal Fair Wage Policy during periods when that policy was operative. The principal disadvantage of the survey method is cost. To obtain a sufficient sample of employers across all of the relevant sectors would entail surveying costs between \$30,000 and \$50,000 depending on sample size. While obtaining wage information is generally practical, obtaining information on benefits costs is more complicated. In the non-union sector, not all workers may be eligible for benefits. The premiums for benefits may be calculated on a covered payroll basis for all employees of a company. This makes it difficult to estimate the hourly cost of the benefits for construction workers. As well, some employers may offer contingent benefits, such as matching contributions to an RRSP which depends on the worker's contribution. Owing to its cost and the difficulty of collecting reliable information on benefits, the survey approach is not recommended.

A second approach is to tie the Fair Wage Schedule to the negotiated wage packages of the building trades unions, but exclude amounts that are used for union purposes, such as contributions for union administration or organizing. This approach has been followed by the City of Toronto, although it should be noted that, as a practical matter, the City of Toronto was already bound to the collective agreements of the major building trades unions. The disadvantages of tying the Fair Wage Schedule to the negotiated wage packages of the building trades unions is that the wage packages of the building trades unions are higher than the compensation paid by non-union contractors. The union rate cannot be described as the prevailing rate. This method is therefore not recommended.

A third approach to developing a Fair Wage Schedule is to link the Fair Wage Schedule to a *percentage* of the rates negotiated by the building trades unions. There are two ways to do this. The first is the 'Percentage of the Wage Package' method. The second is the 'Direct Wage Plus Percentage' method. These two methods can be designed such that they are interchangeable.

Regardless of the method that is chosen, it is a common practice for the Fair Wage to be based on the union rates from 1 to 3 years prior. In the case of the City of Vaughan, the Fair Wage Schedule that took effect in 2021 was based on the union rates as of January 1, 2018.

#### *Direct Wage Plus a Percentage*

The Direct Wage Plus a Percentage method was adopted by the City of Vaughan. This approach takes the direct hourly wage from the union collective agreement and adds a percentage to account for non-wage components of total compensation. In the case of Vaughan, this percentage was 15% which was the benefits share in the Ontario policy from 1995.

Union collective agreements include statutory benefits in their total package. Non-union contractors pay a direct wage plus statutory benefits (vacation and holidays). They may or may not provide additional non-statutory benefits, such as sick leave, health insurance or retirement

benefits. Statutory benefits (vacation and holidays) are typically costed at 7.7%, but may be 7.3% if August 1<sup>st</sup> is not paid as a holiday. (Legally August 1<sup>st</sup> is a public holiday, not a statutory holiday).

The following example shows how the Direct Wage Plus a Percentage method was applied by the City of Vaughan to the Labourers, Group 1 doing road work. This pay grade comprises: Grade Persons, Asphalt Rakers, Road, Curb and Side Walk Finishers, Carpenters, Curb Setters, Brick Setters, Pipe Layers, Curb Machine Operators, Concrete Paving Track Setters, Tail End Paver and Asphalt Grinder Operators.

Total Union Package at January 1, 2018 (established May 1, 2017)	\$55.49
Benefits (includes statutory benefits)	\$18.13
Direct Wage	\$37.36
Add 15%	\$5.60
<b>Fair Wage Schedule - Total Compensation</b>	<b>\$42.96</b>
Current Union Total Package at January 1, 2021 (established May 1, 2019)	\$59.29
Fair Wage as a Percent of Current Union Total Package	72.5%
Components of Total Compensation (for comparing to non-union)	Direct Hourly Wage Plus Hourly Equivalent of: Statutory Holiday Pay Statutory Vacation Pay Non-Statutory Benefits

#### *Percentage of the Wage Package Method*

The Percentage of the Wage Package method was introduced by the Ontario government in 1995 when it updated the Provincial Fair Wage Schedule. On average the 1995 rates in the Provincial Fair Wage Schedule for Peel and York counties (roughly equivalent to Labour Board Area Eight) were around 79% of the 1995 union rate.

When using the Percentage of the Wage Package Method, the negotiated wage package needs to be adjusted to remove items that are not properly related to compensation, i.e., monies that are used for union or administrative purposes.

The following table illustrates how the Percentage of the Wage Package Method would have been applied to Labourers, Group 1 had the City of Vaughan opted for that approach.

Total Union Package at January 1, 2018 (established May 1, 2017)	\$55.49
Applicable Percentage	77.5%
<b>Fair Wage Schedule: Total Compensation</b>	<b>\$42.96</b>
Current Union Total Package at January 1, 2021 (established May 1, 2019)	\$59.29
Fair Wage as a Percent of Current Union Total Package	72.5%
Components of Total Compensation (for comparing to non-union)	Direct Hourly Wage Plus Hourly Equivalent of: Statutory Holiday Pay Statutory Vacation Pay Non-Statutory Benefits

#### *Pros and Cons of Each Method*

The Direct Wage Plus a Percentage method is simple. There is no need to exercise discretion on whether certain items should be excluded from the negotiated union wage package. The method yields a Fair Wage Schedule that is reasonable. It does not exclude non-union or CLAC contractors from bidding on City work, but does erect a guardrail to ensure that the City does not hire a contractor that pays below the prevailing wage.

For comparison purposes, the Direct Wage Plus a Percentage method would align the City of Brampton with the City of Vaughan, which is another large GTA municipality. The Percentage of the Wage Package method would compare with the City of Toronto's approach, although Toronto ties its Fair Wage Schedule to the most recent union negotiated package (minus non-compensation items) not to a three-year lagged package.

Both the Direct Wage Plus a Percentage method and the Percentage of the Wage Package method are practical and reasonable approaches to approximating the prevailing wage. Both approaches allow flexibility in how employers handle the non-wage component of total compensation.

**Recommendation:  
Establishing the Fair Wage Schedule**

It is recommended that the Fair Wage Schedule be established by using the Direct Wage Plus a Percentage method.

**Legal Obligation of Prime Contractors**

In the construction industry, prime contractors are responsible for the performance of their sub-contractors. The *Occupational Health and Safety Act* make prime contractors responsible for the compliance of their sub-contractors with the *Act* and its regulations. This principle should be applied to the Fair Wage Policy. This is also the practice in other jurisdictions that have Fair Wage Policies.

**Recommendation:  
Legal Obligation of Prime Contractors**

The City's Fair Wage Policy should make prime contractors responsible for the compliance of their sub-contractors.

**Communication of Rights to Employees**

Contractors are also required to put up posters respecting employment standards, occupational health and safety and employee rights and duties regarding workers compensation. (See next page).

Other jurisdictions with Fair Wage Policies require contractors to put up a poster advising workers that they are covered by a Fair Wage Policy. For many construction projects, this is the construction trailer. The Fair Wage Schedule should be published on the City's web site and contractors should be obliged to inform their employees of their rights under the City's Fair Wage Policy.

**Recommendation:  
Communication of Rights to Employees**

Contractors and sub-contractors should be obliged to inform their employees of their rights under the City's Fair Wage Policy. Specifically, contractors should be required to provide employees with a City-published information sheet and also required to put up a City-published poster in an accessible location (whenever practical). The Fair Wage Policy and Fair Wage Schedules should be published on the City's web site.

Ministry of Labour, Training and Skills Development

# Employment Standards in Ontario

The Employment Standards Act, 2000 (ESA) protects employees and sets minimum standards for most workplaces in Ontario. Employers are prohibited from penalizing employees in any way for exercising their rights under the ESA.

## What you need to know

### Public holidays

Ontario has a number of public holidays each year. Most employees are entitled to take these days off work and be paid public holiday pay. Visit [Ontario.ca/publicholidays](http://Ontario.ca/publicholidays).

### Hour of work and overtime

There are daily and weekly limits on hours of work. There are also rules around meal breaks, rest periods and overtime. Visit [Ontario.ca/hoursofwork](http://Ontario.ca/hoursofwork) and [Ontario.ca/overtime](http://Ontario.ca/overtime).

### Termination notice and pay

In most cases when terminating employment, employers must give employees advance written notice of termination or termination pay instead of notice. Visit [Ontario.ca/terminationofemployment](http://Ontario.ca/terminationofemployment).

Learn more about your rights at:

**Ontario.ca/employmentstandards**  
1-800-531-5551 or TTY 1-866-567-8893

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Version 8.0

Ontario 

### Other employment rights, exemptions and special rules

There are other rights, exemptions and special rules not listed on this poster, including rights to severance pay and special rules for assignment employees of temporary help agencies.

### Leaves of absence

There are a number of job-protected leaves of absence in Ontario. Examples include sick leave, pregnancy leave, parental leave and family caregiver leave. Visit [Ontario.ca/ESAguide](http://Ontario.ca/ESAguide).

### Minimum wage

Most employees are entitled to be paid at least the minimum wage. For current rates visit [Ontario.ca/minimumwage](http://Ontario.ca/minimumwage).

# IN CASE OF INJURY OR ILLNESS AT WORK



1

### Get medical help

Your employer is responsible for providing first aid. Go to the doctor or hospital if you need treatment. Your employer pays for your transportation.



2

### Document

Tell your employer about your injury or illness. They investigate and keep a record of what happened.



3

### Report to the WSIB

Employers must tell us within three days if an injury or illness happens. You can report by submitting Worker's Report of Injury/Illness (Form 6).



4

### Work together

We work with you and your employer to help you recover and return to work safely and at the right time.

Questions? We're here to help.

Call us at: 1-800-387-0750 | TTY: 1-800-387-0050  
For details visit [wsib.on.ca/reporting](http://wsib.on.ca/reporting)

wsib  
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# Health & Safety at Work

## ► Prevention Starts Here

Ontario's Occupational Health and Safety Act gives workers rights. It sets out roles for employers, supervisors and workers so they can work together to make workplaces safer.

### ► Workers have the right to:

- Know about workplace hazards and what to do about them.
- Participate in solving workplace health and safety problems.
- Refuse work they believe is unsafe.

### ► Workers must:

- Follow the law and workplace health and safety policies and procedures.
- Wear and use the protective equipment required by their employer.
- Work and act in a way that won't hurt themselves or anyone else.
- Report any hazards or injuries to their supervisor.

Employers must NOT take action against workers for following the law and raising health and safety concerns.

### ► Employers must:

- Make sure workers know about hazards and dangers by providing information, instruction and supervision on how to work safely.
- Make sure supervisors know what is required to protect workers' health and safety on the job.
- Create safe workplaces and safety policies and procedures.
- Make sure everyone follows the law and the workplace health and safety policies and procedures.
- Make sure workers wear and use the right protective equipment.
- Do everything reasonable in the circumstances to protect workers from being hurt or getting a work-related illness.

### ► Find out more:

[ontario.ca/healthandsafetyatwork](http://ontario.ca/healthandsafetyatwork)

Call the Ministry of Labour,  
Training and Skills Development  
at 1-877-202-0000

Report critical injuries, fatalities,  
workplace illnesses and  
Workplace health and safety information,  
weekdays 8:30am – 5:00pm.  
Emergency? Always call 911 immediately.

Find out more:  
[ontario.ca/healthandsafetyatwork](http://ontario.ca/healthandsafetyatwork)

► Supervisors must:

- Tell workers about hazards and dangers, and respond to their concerns.
- Show workers how to work safely, and make sure they follow the law and workplace health and safety policies and procedures.
- Make sure workers wear and use the right protective equipment.
- Do everything reasonable in the circumstances to protect workers from being hurt or getting a work-related illness.

Ontario 

## **Investigation and Resolution of Complaints**

In most jurisdictions with Fair Wage Policies, enforcement arises from investigation of complaints. Most jurisdictions do not undertake proactive inspections or investigations in the absence of a formal complaint. It is a common practice to require employers, employer organizations and union to pay a refundable fee if making a complaint. The typical fee is \$5,000 which is intended to be commensurate with the cost of inspecting payroll records to determine if a contractor has complied with the Fair Wage Policy. The fee is refunded if the complaint is upheld. An affected worker is not subject to the fee requirement if making a formal complaint. The identity of a worker who complains is not revealed to the contractor. If a contractor is found non-compliant, pursuant to a complaint, an administrative charge is levied that is commensurate with the costs of the investigation. This administrative charge is a minimum of \$5,000, but may be higher if the investigation costs were higher.

Investigation involves comparing payroll records with the City's Fair Wage Schedule. This may be done by internal staff or an external audit firm. Decisions on non-compliance, investigation costs and any penalties should be made by the Purchasing Division. A contractor may appeal a non-compliance finding, the assessment of investigation costs or any penalties. The first level of appeal would be to the Director of Purchasing. If there is no resolution at this stage, a final review would be undertaken by the Commissioner of Corporate Support Services whose decision would be final. This appeal system is comparable to the appeal process recently adopted by the City of Vaughan.

Non-compliance should result in a warning and a requirement that the contractor pay the owed wages to its employees. However, the non-compliance is egregious or the non-compliance is a second offence, the contractor may be barred from bidding on City work for a period up to three years. Non-compliant contractors should also be identified on the City's website. Egregious non-compliance would occur when a third or more of the contractor's employees were paid 10% or more below the Fair Wage Schedule.

The City of Toronto's Fair Wage Office publishes annual reports. For the four-year period 2016 to 2019, the City of Toronto issued 6,463 contracts. During this period the City conducted 123 investigations (including proactive investigations where there was no complaint). Over the four-year period there were 35 instances of non-compliance. This is a non-compliance rate of approximately 0.5%. The total value of the owed wages that were not paid was somewhat over \$3.0 million. Assuming that the Fair Wage Policy applies only to contracts with an initial value of \$500,000 or more, the number of covered contracts each year would be around 18-20. Based on the City of Toronto's experience, Brampton should not expect to undertake more than 1-2 investigations per year and perhaps fewer.

### **Recommendation:**

#### **Investigation and Resolution of Complaints**

Any contractor, employer organization, union or affected worker should be entitled to register a complaint that a contractor is not compliant with the Fair Wage Policy. A potentially affected employee should be allowed to have their identity protected. Complaints should be investigated by City staff or by an auditor. Investigation will involve comparing the subject contractor's payroll records to the Fair Wage Schedule.

The City should apply a \$5,000 complaint fee to complainants other than affected workers. The fee should be refunded if the complaint is upheld. The complaint fee should be commensurate with investigation costs.

When a contractor is found non-compliant the contractor should be required to make whole the compensation of the affected workers and pay an administrative charge to cover the cost of investigating the complaint. The minimum administrative charge would be \$5,000.

Decisions on non-compliance, investigation costs and any penalties should be made by the Purchasing Division. A contractor may appeal any of these decisions to the Director of Purchasing. If there is no resolution at this stage, a final review would be undertaken by the Commissioner of Corporate Support Services whose decision would be final.

Non-compliance should result in a warning, unless the non-compliance is egregious. Subsequent instances of non-compliance or egregious non-compliance should result in a bar from bidding on City work for a period up to three years. Non-compliant contractors should also be identified on the City's web site. Egregious non-compliance occurs when a third or more of the contractor's employees were paid 10% or more below the Fair Wage Schedule.

### **Stakeholder Consultations**

Some jurisdictions establish a committee to receive stakeholder feedback on the administration of their Fair Wage Policy. This enables the municipality to adjust its administrative procedures when appropriate.

#### **Recommendation: Stakeholder Consultations**

The City should establish a stakeholder committee comprising industry representatives to provide feedback on the administration of the Fair Wage Policy.

## **Proposed Implementation Plan**

1. Establish a Working Committee comprising persons from Purchasing, Human Resources, Legal Services, Capital Works, Building Design & Construction and Roads & Maintenance.
2. If needed, retain services of consultant to draft policy for review by Working Committee and to compute Fair Wage Schedule.
3. Review Fair Wage Policies of other jurisdictions, notably:
  - City of Toronto
  - City of Vaughan
  - City of Sarnia
4. Draft proposed Fair Wage Policy for review by Working Committee, based on recommendations in Feasibility Study.
5. Revise and finalize working draft of Fair Wage Policy.
6. Request approval of CAO Office to seek stakeholder input on working draft.
7. Circulate a synopsis of the “Construction Services Community Benefits Policy” to community and industry stakeholders, inviting their written input. Stakeholders to include:
  - Brampton Board of Trade
  - Progressive Contractors Association
  - Toronto Area Road Builders Association
  - Ontario Road Builders Association
  - Ontario Sewer and Watermain Contractors Association
  - Ontario General Contractors Association
  - Central Ontario Building Trades Council
  - International Union of Operating Engineers, Local 793
  - Labourers International Union of North America, Local 183
  - Christian Labour Association of Canada
8. Finalize Fair Wage Policy and Compute Fair Wage Schedule *per Policy*.
9. Review proposed Fair Wage Policy and Fair Wage Schedule with CAO Office.
10. Submit to Council for approval.

It is estimated that the implementation plan will require approximately 15-20 days of time from the lead on the Working Committee and 3-5 days of time from each of the Working Committee members. If a consultant is hired to assist in drafting and revising the proposed policy and computing the Fair Wage Schedule, the estimated costs are approximately \$30-35,000.

