



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

Schedule 9, Changes to the Labour Relations Act, 1995 - Restoring Ontario's Competitiveness Act, 2019

Date: May 29, 2019
To: Executive Committee
From: City Manager
Wards: All

REASON FOR CONFIDENTIAL INFORMATION

This report is about labour relations. It is also about potential litigation that affects the City of Toronto.

SUMMARY

On April 2, 2019, *Restoring Ontario's Competitiveness Act, 2019* (the Act) passed 3rd reading and received Royal Assent on April 3, 2019.

This report provides an overview of the changes made to the *Labour Relations Act, 1995* by Schedule 9 of the Act and analyses the anticipated impact on the City of Toronto. The impacts of other sections of the Act are addressed in a separate report for information titled "*Bill 66, Restoring Ontario's Competitiveness Act, 2019 - City Impacts*".

Schedule 9 amends Section 127(1) of the *Labour Relations Act, 1995* (the LRA) by deeming public bodies, including municipalities, school boards, hospitals, colleges, universities and local boards, within the meaning of the *Municipal Act, 2001* and the *City of Toronto Act, 2006*, as non-construction employers.

It also provides a mechanism through which municipalities who wish to remain as construction employers may opt out of the application of the section within three (3) months from April 3, 2019.

The City is bound to nine province-wide collective agreements in the Industrial, Commercial and Institutional (ICI) sector of the construction industry.

As a result, the City has until July 3, 2019 to decide if it will choose to opt-out and remain a construction employer. This authority to opt-out requires a Council decision. If Schedule 9, Changes to the *Labour Relations Act, 1995*

the City does nothing, it will, by default, become a non-construction employer and the province-wide collective agreements that the City is bound to in the ICI sector will no longer apply to the City.

If Council decides to opt out and the notice of election is filed with the Ministry, the election is irrevocable. Should the City wish, at a later date, to be deemed a non-construction employer, it must make application to the Ontario Labour Relations Board (OLRB) under the existing definition of non-construction employer in the LRA and, the OLRB must determine that the City meets the high threshold within the LRA.

RECOMMENDATIONS

The City Manager recommends that:

1. City Council take no action, thereby confirming the City of Toronto as a non-construction employer effective the day subsections 127 (1) to (4) of the Labour Relations Act, 1995 come into force;
2. City Council direct the City Manager in consultation with the Chief Financial Officer & Treasurer and Deputy City Managers, to report back on the financial and program impacts to the City being a non-construction employer; and
3. City Council direct that the confidential information contained in Confidential Attachment 1 remain confidential in its entirety, as it pertains to labour relations and potential litigation that affects the City of Toronto.

FINANCIAL IMPACT

The City is party to nine construction trade union collective agreements in the Industrial, Commercial and Institutional (ICI) sector. The City is not bound to collective agreements for its construction work in other sectors.

In 2018, the City awarded approximately \$2.6 billion in contracts for all goods and services, of which approximately \$1.8 billion was construction contracts. \$616 million of those construction contracts were in the ICI sector.

Table 1: City of Toronto Total Awarded Construction Contracts for 2018 by designated Construction Sectors

Construction Sector	Value of Award	Proportion
I.C.I.	\$616,832,915.21	33%
Heavy Construction	\$329,598,090.67	18%

Construction Sector	Value of Award	Proportion
Road Work	\$194,812,046.96	10%
Sewer & Watermain	\$722,033,775.91	39%
Total	\$1,863,276,828.75	

Although the City is generally subject to collective agreements in the ICI sector, the construction industry in Toronto is highly unionised such that the City's construction tenders in the non-ICI sector also primarily get awarded to unionised general contractors as demonstrated in Table 2 below. In the ICI sector, non-unionised general contractors must utilize subcontractors unionised with the trades to which the City's is bound by collective agreements for related work.

Table 2: Construction Contracts Awarded in 2018

Construction Sector	Total Value of Contract Award to Non-Unionized General Contractor	# of Contracts	Total Value of Contract Award to Unionized General Contractor	# of Contracts
I.C.I.	\$109,162,398.38	55	\$507,670,516.83	127
Heavy Construction	\$1,765,409.62	1	\$327,832,681.05	8
Road Work	\$52,038,311.22	33	\$142,773,735.74	62
Sewer & Watermain	\$24,281,414.25	2	\$697,752,361.66	42
Total	\$187,247,533.47		\$1,676,029,295.28	

There are various studies that indicate increasing competition in procurement has the potential to lower costs. The studies vary substantially in their estimate of resulting savings from increasing competition. The estimated savings range from 2% to as high as 30 to 40%.¹ The European Study cited a range of savings between 2 to 10%, while

¹ See for example Brian Dijkema, Dr. Morley Gunderson, *Restrictive Tendering: Protection for Whom?* Cardus (2017) <https://www.cardus.ca/research/work-economics/reports/restrictive-tendering-protection-for-whom/> and Brian Dijkema, *Shortchanging Ontario Cities*, Cardus (2018) <https://www.cardus.ca/research/work-economics/reports/shortchanging-ontarios-cities/>, Lukas Vogel, *Macroeconomic effects of cost savings in public procurement*, European Union Economic Papers 398 Schedule 9, Changes to the *Labour Relations Act*, 1995

the studies by Cardus cited a range of savings between 8% and 40%. In attempting to extrapolate from the studies, it is important to note that the City's Fair Wage Policy and the prescribed wage schedules closely mirror prevailing collective agreement rates. This is not the case in many jurisdictions.

Competitive bidding on construction projects involves inherent uncertainty for each bidder. There are numerous interrelated factors that go into any particular bid, especially in respect of large scale work (such as materials cost, labour, value and pricing of work to be performed by sub-contractors, equipment, supervision, mark-up on return, overhead and return on investment). Projects differ in size, specialization and location. Projects of the same size may differ substantially in specifications. Similar projects built at different times or in different locations may face shortages or surplus of labour or materials arising from the overall state of the economy and/or industry conditions. As a result it is difficult to assess the potential savings from becoming a non-construction employer.

Savings at the low end of the range noted in the studies (i.e. 2 to 8%), would translate to approximately \$12.0 million to \$48.0 million per year in savings (or funds available for additional construction projects), based on approximately \$600 million of industrial, commercial and institutional (ICI) construction work per year.

However, it is unclear how much increased competition the City will receive on its construction tenders as a result of becoming a non-construction employer and consequently it is not possible to determine with any certainty what, if any, savings will result.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

EQUITY IMPACT

Should the City of Toronto choose to take no action and become a non-construction employer there may be negative equity impacts.

Becoming a non-construction employer may undermine the success of some of the City's workforce development initiatives, including those that are a key component of its Community Benefits work. Some of the City's workforce development initiatives provide access to pathways to good quality construction jobs for Torontonians from equity-seeking groups, and First Nations, Metis and Inuit people. Low-income youth, Black and racialized Torontonians, immigrants and women are amongst the priority equity-seeking groups who benefit from the City's efforts to create pathways to construction jobs. For these equity-seeking groups, access to jobs and training, and the resulting economic security, may be negatively impacted. Further, becoming a non-construction employer may have broader implications and lead to a decrease in the quality of work in the ICI construction sector.

(November 2009)

http://ec.europa.eu/economy_finance/publications/pages/publication16259_en.pdf

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To mitigate the possible equity impacts, should the City decide to become a non-construction employer, it would be critically important that Council reaffirm its continued support for the Fair Wage Policy and the City's continued commitment to partnering with unions on workforce development and community benefits programs. The City may also need to identify or develop alternative models to ensure the continued success of workforce development.

DECISION HISTORY

At its meeting on January 30 and 31, 2019, City Council requested that, following the adoption of Bill 66 by the Province, the City Manager report back to City Council on the impacts of the legislation on the City of Toronto. The following is the link to the report: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.MM2.10>

COMMENTS

Restoring Ontario's Competitiveness Act, 2019, Schedule 9

Restoring Ontario's Competitiveness Act, 2019 (the Act) received Royal Assent on April 3, 2019. Subsection 14(1) & (2) of Schedule 9 of the Act (the Schedule is appended as Attachment 1) will come into force on a day to be proclaimed by the Lieutenant Governor. The subsections amend section 127 of the LRA in a few ways that are of significance for the City:

- Municipalities are listed among the entities deemed to be non-construction employers under subsection 127 (1) of the LRA;
- On the day the provisions come into force, any trade union that represented employees of one of the listed entities no longer represents those employees who are in the construction industry; and
- Any collective agreements binding the entity in respect of the construction industry ceases to apply.

If the City takes no action, on the day the legislative changes come into force, the City will no longer be a construction employer. This will mean that the City will no longer be bound to the nine construction trade agreements to which the City is currently bound. It will also mean that the City cannot be certified by other construction trade unions.

Opt-Out Election

The Act contains a provision which allows the named entities to opt-out of being deemed "non-construction employers." Opting-out of the provisions will result in the City remaining a construction employer, i.e. maintaining the status quo.

The opt-out provisions came into force on April 3, 2019. As such, the City has three (3) months from April 3, 2019 (i.e., July 3, 2019) to file an election, in writing, with the Minister of Labour.

Opt-Out Election is Irrevocable

Once filed, the opt-out election is irrevocable. Should the City wish, at a later date, to be declared a non-construction employer, it must make application to the Ontario Labour Relations Board (OLRB) under the following definition of 'non- construction employer' found in subsection 126(1) of the LRA:

"non- construction employer means an employer who does no work in the construction industry for which the employer expects compensation from an unrelated person"

It should be noted that the current definition of non-construction employer in the LRA (above) presents employers with a high threshold to meet. Although there are notable exceptions, a number of employers who have applied to the OLRB to be declared non-construction employers under this definition have been unsuccessful. For instance, Sault Ste. Marie has twice tried to be deemed a non-construction employer by the OLRB. Both applications were unsuccessful.

In essence, Schedule 9 provides the City with a singular and time limited opportunity to choose to become a non-construction employer.

If the City opts out now, the City will find it difficult to reverse course. Doing so will require the City to file an application with the OLRB and adduce evidence to establish that it meets the defined threshold. The City's application will likely be opposed by the trade unions to which the City is bound. In addition to the need to meet the high legal threshold set out in the LRA, the resulting litigation will likely be protracted, expensive and highly contentious.

Similarly, should the City do nothing now and become a 'non-construction employer' that decision will be irreversible under current legislation. Once the City becomes a non-construction employer, the City will not be subject to certification by construction trades.

The City of Toronto's Current Labour Trades Requirements

The City of Toronto has been considered a construction employer and been bound by the province-wide collective agreements applicable to trades in the Industrial, Commercial and Institutional (ICI) sector for many years. The earliest certification was in 1978.

The City is bound to nine province-wide collective agreements in the ICI sector of the construction industry with the following trades (some of which also claim jurisdiction beyond the ICI sector):

- Carpenters,
- Electricians,

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- Plumbers,
- Painters,
- Glaziers,
- Bricklayers,
- Sheet Metal workers,
- Asbestos workers and
- Ironworkers

Where the City tenders municipal infrastructure and/or building projects, or otherwise has construction work performed for the City in the ICI sector or where an applicable accreditation order applies to the City in another sector, the use of union workers is required, subject to the jurisdiction of the collective agreements. On a typical ICI sector project, the amount of work that must be performed by unionised workers ranges significantly.

As required by the LRA, collective bargaining in the ICI sector is done on a province-wide basis, with the accredited Employer Bargaining Agency ("EBA") and various union locals bargaining as a group. When an employer is certified by the OLRB for the ICI sector with respect to a particular construction union, that employer becomes bound to the province-wide ICI agreement for that union.

By virtue of the subcontractor provisions in the collective agreements, only unionized contractors and/or sub-contractors are permitted to perform construction for the City with respect to many aspects of ICI-sector work (and certain other types of construction work in other sectors). All other contractors and their employees are precluded from performing such work. That said, to this point, the City has had a practice of contracting with both unionized and non-unionized general contractors (GC's). However, those GC's must use unionized sub-contractors for work falling within union jurisdiction.

Where work does not fall within the jurisdiction of these unions, it must be performed in compliance with the Fair Wage schedules, but does not have to be assigned to unionized firms or workers.

While the City operates largely as a non-unionized employer in sectors outside of the ICI sector, as the above charts indicate, most of the work done in those sectors is done by unionized contractors. This is reflective of the very high rates of unionization in those sectors.

Accordingly, should the City become a non-construction employer, it is reasonable to expect that much of the City's ICI work will continue to be done by unionised employees.

City of Toronto's Fair Wage Policy

The City's Fair Wage Policy was first implemented in 1893 to ensure that contractors working for the City paid their workers the union rates or, for non-union workers, the prevailing wages and benefits in their field.

The objectives of the Fair Wage Policy are to:

- (1) Produce stable labour relations with minimal disruption
- (2) Compromise between wage differentials of organized and unorganized labour
- (3) Create a level playing field in competition for City work
- (4) Set standards in the workplace that contractors must meet
- (5) Protect the public and guard workers from exploitation
- (6) Enhance the reputation of the City for fair and ethical business dealing.

The Fair Wage Policy provides wage protection to workers while they work on City contracts. The Fair Wage Policy requires contractors to pay workers in accordance with the fair wage schedules. The Policy seeks not only to protect workers, but also to level the playing field for contractors; i.e., aggressive contractors are not able to win City contracts by paying workers less than the value of the work assigned and as prescribed by the fair wage schedules. The Fair Wage rates in many cases align with collective agreement wage rates in the construction industry.

Fair wage schedules are established every three years, taking into account the prevailing wage rates in particular industries. The Fair Wage Office consults with employee and employer groups, associations, construction unions, organizations, and City operating divisions in developing the schedules. The City's current fair wage schedules contain rates for the years 2016 to 2019. Those rates will remain in effect, subject to future amendments.

City of Toronto Procurement of Construction

The competitive bidding process for public procurement allows any contractor who has the experience and qualifications, the financial capacity for providing performance bonds for the construction contracts and who can meet various legislative requirements, to submit a bid and be given an equal consideration in the award of the contract. As part of any procurement, bidders have to agree to comply with the Fair Wage Policy, and in the case of construction, will also be required to follow the City's current trade requirements.

City Council has two (2) options available:

1. Opt-out of the deemed non-construction employer provisions and remain a construction employer. The election to opt-out must be submitted to the Minister of Labour, in writing, by July 3, 2019.

This option would maintain the status quo with the nine (9) trade unions and with the City's processes and requirements for construction procurement. The City would remain subject to additional union certification applications under the LRA.

2. Take no action and become a non-construction employer.

If the City does nothing, any collective agreement binding the City and the nine (9) trade unions would cease to apply immediately on the date the changes come into force.

POTENTIAL IMPLICATIONS OF BECOMING A NON-CONSTRUCTION EMPLOYER

1. Procurement of Construction Services

It is reasonable to expect that more competition will lead to lower prices. What is difficult to predict is how much competition will increase by the City becoming a non-construction employer and precisely what cost savings the City would achieve since bidders will still have to comply with the City's Fair Wage policy.

Cost savings could result from:

- union firms that are currently permitted to perform City work competing more aggressively for City work,
- firms competing for City work having a broader pool of subcontractors to draw from;
- firms bound to other unions now being permitted to perform City work; and
- non-union firms also being able to compete for City work.

As outlined in the Financial Impact section of the report, it is reasonable to expect that increased competition will result in some savings.

Municipalities that more recently became certified by construction trade unions are able to compare data from their pre-certification context to their current context in making their decisions about 'opting out'. In contrast, the City was first certified by a construction trade union in 1978 and was unionised with eight (8) trades at the point of amalgamation, so there is not the same comparative data to rely on. Forecasting the potential impact of increased competition on number of bids and construction costs, in the City's context, will require detailed and more specialised economic analysis.

Potential savings should not primarily result, however, from competition on wages or through driving down wage rates. Unless City Council directs otherwise, bidders will still be required to comply with the City's Fair Wage Policy, which sets a 'wage floor' for various types of work. The fair wage rates are comparable to union rates.

Although there is no certainty on the likelihood and amount of savings, given the irrevocability of the decision to opt out, all things considered, the City is better served by positioning itself to achieve the possible savings.

2. Social Policy Implications: Poverty Reduction, Quality Jobs and Inclusive Workforce Development

There will likely be social policy implications of the City opting to become a non-construction employer. In 2015, City Council unanimously adopted a 20-year Poverty Reduction Strategy. One of the key recommendations of the Poverty Reduction Strategy is to improve the quality of jobs in Toronto for low-income residents, including those jobs created through City procurement. It is well documented that unionized jobs generally are of a greater quality than non-unionized jobs. If the City chooses to become a non-construction employer, it is possible there will be a decline in the demand for unionized construction workers. While the rate of unionization in the construction sector

is high, the increased opportunity for the City's construction work to be done by non-unionized workers may decrease job quality in the construction ICI sector and increase the precarity of construction work in Toronto.²

The City has a number of initiatives that have a focus on construction employment as a pathway to quality jobs, including the Social Procurement Program and the forthcoming Community Benefits Framework. To support this workforce development goal, the City, in partnership with the provincial government, the Provincial Building and Construction Trades Council of Ontario and other stakeholders established the Construction Connections Program in 2017.

The City's efforts to support low-income and equity-seeking Torontonians' access to pathways to construction apprenticeships and jobs is currently heavily reliant on the participation of the construction trades. Specifically, the City relies on support from the construction trades to effectively guide candidates through the construction career pathway and onto City construction job sites. The City is currently or planning to work with construction trades to place jobseekers onto the job sites of over 40 City construction projects through the City's Social Procurement Program. Additionally, while the City itself invests in the training provided to job-seekers, the City also benefits from the unions' significant investment in the training centres.

Although most of the City's social procurement and community benefits union partners are unions to which we are currently bound by collective agreements, the City also partners with unions that are not currently bound to us. Becoming a non-construction employer may undermine the City's existing strong partnerships with construction unions in the ICI sector. If the unions in the ICI sector decrease their participation in and support of the City's Social Procurement and various Community Benefits programs, the City will need to identify or develop alternative models to ensure the continued success of workforce development.

Construction Connections, which relies on partnerships with unions in the ICI sector, as well as others outside the ICI sector, has served over 200 job seekers in Toronto since 2017, leading to the completion of construction pre-apprenticeship and apprenticeship training, acquiring union memberships, and obtaining placements in jobs as part of registered apprenticeships in a number of trades, including general labour, painting/glazing, iron work, masonry, carpentry, and others.

The City's union partners are currently involved in apprenticeship training, job readiness training (including health and safety), dispatching and tracking of the employment outcomes of program participants.

3. Fair Wage Office

² Canadian Centre for Policy Alternatives, "Good, safe jobs in Ontario's Construction Industry Under Threat," February 2019. <http://behindthenumbers.ca/2019/02/11/good-safe-jobs-in-ontarios-construction-industry-under-threat/>
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If the City becomes a non-construction employer all the City's construction work will be subject to the Fair Wage Policy i.e. even work that is currently subject to collective agreement rates.

The Fair Wage Office administers the Fair Wage Policy. The FWO investigates complaints and takes enforcement action when it is determined that a contractor has not paid its workers Fair Wage rates.

Currently, the FWO has four staff. They experience resource challenges in addressing current volumes and the increasing complexity of oversight requirements and investigations. The existence of the nine collective agreements and the unions' shared interest in ensuring compliance with the collective agreements and Fair Wage Policy has allowed the Fair Wage Office to strategically deploy its limited oversight and investigatory resources. A change in the City's construction employer status will place increasing pressure on the FWO. For instance, it may be necessary for the FWO to step in to proactively monitor sites.

The structure of the Fair Wage Policy and the Fair Wage Schedules also currently contemplate the collective agreements. Should the City become a non-construction employer a comprehensive review of Municipal Code Chapter 67, Fair Wage, the Fair Wage schedule and Policy (e.g. deleting references to the collective agreements) and the City's related processes (e.g. changing the bidder notification and evaluation processes) will be required to ensure that the City's goals continue to be met.

4. City Employees

The City directly employs approximately 73 employees who are represented by their respective construction trade unions, within the following divisions: Facilities Management; Parks, Forestry & Recreation and Long Term Care Homes & Services. The employees belong to trades including: carpenters; electricians, painters, plumbers, and sheet metal workers.

If the City becomes a non-construction employer these City employees will cease to be represented by their respective trade unions. The legislation is silent on what happens to employees in this scenario and provides little direction to the Ontario Labour Relations Board (OLRB) on determining the representational rights or bargaining unit configuration for such employees.

5. Access to Additional Skilled workforce when needed

The City has also benefitted from having prompt access to a skilled workforce in these respective trades through the hiring hall and hiring procedures under the ICI agreements. The related terms in the ICI agreements are highly flexible and favourable to employers. The City has also benefitted from the training that various unions provide to their membership directly.

6. Grievance and Litigation Activity

The City has had a reasonably productive and positive labour relations relationship with the nine unions to which the City is bound in the ICI sector.

Notwithstanding the overall positive working relationship, annually, the City typically becomes a party to thirty (30) grievances or more wherein one of the nine unions alleges that a contractor has violated one or more collective agreements to which the City is bound. Most of those cases are resolved through the payment of damages by the contractor. However, some cases become quite acrimonious and the City has had to resolve the cases and pay damages. The City expends resources on participation in these grievances.

As a non-construction employer, the City would no longer incur the staffing, labour relations and legal expenses for collective agreement compliance.

Finally, becoming a non-construction employer eliminates the possibility of the City being certified with any other construction unions.

7. The City's commercial manoeuvrability

The City stands to gain significant commercial manoeuvrability by becoming a non-construction employer. As a non-construction employer, the City will have more flexibility in entering into section 37 *Planning Act* agreements, leases (both as landlord and as tenant), joint ventures, philanthropy, donations and commercial agreements with private entities and agreements with other levels of government that result in construction work being performed for the benefit of the City.

It is important to note that the continued application of the City's Fair Wage Policy will ensure that greater commercial maneuverability does not affect workers' wages.

8. Qualified Contractors - Contractors would still be required to demonstrate they are qualified, experienced and capable of performing the work.

Should the City become a non-construction employer, bidders would still need to comply with all of the other requirements the City sets out in a particular procurement such as the ability to obtain bonding, experience to demonstrate the bidder's qualifications, capability to perform the work, and the ability to meet health and safety requirements, including the requirement that contractors be certified under the Certificate of Recognition (COR) program, which is a criteria that the City has been, and will continue to require on all construction procurements. Should the City become a non-construction employer, Staff will review whether any changes are necessary to the manner in which bidders are pre-qualified.

9. Contract Administration

By becoming a non-construction employer, the City may need to review its processes and increase contract administration, including enhancing its inspection capacity, for construction contracts that were previously required to use unionized trades.

10. Transition

The non-construction employer provisions of the Act are not currently accompanied by any transitional provisions or periods. As a result, there is no legislative guidance on transitioning from the current construction environment to a new environment as a non-construction employer.

As an example, should Council decide that the City should become a non-construction employer, staff will have to consider the impact on contracts out in the market and not yet awarded; or those procurement processes that have closed but are not yet awarded. In addition, the City should expect that the Act will face litigation being launched by the affected Unions, including possibly a Charter challenge. This adds an additional layer of uncertainty to City contracts should the City become a non-construction employer.

Conclusion

The amendments to the Labour Relations Act provide the City with two options. The City may choose to take no action and become a non-construction employer effective on the date proclaimed by the Lieutenant Governor. Alternatively, the City may choose to opt out by July 3, 2019, which will maintain the City's status quo as a construction employer.

The City Manager recommends that the City take no action and become a non-construction employer.

Ideally, the City would have commissioned an economic analysis to determine potential impacts on competition, savings and workforce development. Unfortunately, the timelines in the legislation have not allowed for that.

Although initially there will likely be substantial uncertainty and also protracted litigation related to the legislation and perhaps Council's decision to become a non-construction employer, based on the information currently available, staff determined that, on balance and in the long run, it is in the City's best interest to take no action and become a non-construction employer.

In reaching the conclusion, a paramount consideration is the existence of the Fair Wage Policy which ensures that workers will be paid fairly. In choosing to become a non-construction employer, it would be important for Council to reaffirm its continued support for the Fair Wage Policy and the City's continued commitment to partnering with unions on workforce development and community benefits programs.

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SIGNATURE

Chris Murray
City Manager

ATTACHMENTS

Confidential Attachment 1 - Schedule 9, *Changes to the Labour Relations Act, 1995 - Restoring Ontario's Competitiveness Act, 2019*

Attachment 1: *Restoring Ontario's Competitiveness Act, 2019, Schedule 9, Labour Relations Act, 1995*

Attachment 1

RESTORING ONTARIO'S COMPETITIVENESS ACT, 2019, SCHEDULE 9, LABOUR RELATIONS ACT, 1995

12 (1) Section 125 of the Labour Relations Act, 1995 is amended by adding the following subsection:

Same

(2.2) The Lieutenant Governor in Council may make regulations providing for any transitional matter that the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of the amendments made by the Restoring Ontario's Competitiveness Act, 2019.

(2) Subsection 125 (3) of the Act is amended by striking out “subsection (2) or (2.1)” and substituting “subsection (2), (2.1) or (2.2)”.

13 The definition of “non-construction employer” in subsection 126 (1) of the Act is repealed and the following substituted:

“non-construction employer” means,

- (a) an employer who does no work in the construction industry for which the employer expects compensation from an unrelated person, or
- (b) an employer who is deemed to be a non-construction employer under subsection 127 (1); (“employeur extérieur à l'industrie de la construction”)

14 (1) The Act is amended by adding the following section:

Deemed non-construction employer

127 (1) The following entities are deemed to be non-construction employers:

1. A municipality.
2. A local board as defined in subsection 1 (1) of the Municipal Act, 2001 or in subsection 3 (1) of the City of Toronto Act, 2006.
3. A local housing corporation as defined in section 24 of the Housing Services Act, 2011.
4. A corporation established under section 203 of the Municipal Act, 2001 or under section 148 of the City of Toronto Act, 2006.
5. A district social services administration board established under the District Social Services Administration Boards Act.

6. A school board within the meaning of the School Boards Collective Bargaining Act, 2014.
7. A hospital within the meaning of the Public Hospitals Act.
8. A college established under the Ontario Colleges of Applied Arts and Technology Act, 2002.
9. A university in Ontario that receives regular direct operating funding from the Government and the university's affiliates and federates.
10. A public body within the meaning of the Public Service of Ontario Act, 2006.

Effect on bargaining rights and collective agreements

(2) Paragraphs 1 and 2 apply with respect to a trade union that represents employees of a non-construction employer referred to in subsection (1) employed, or who may be employed, in the construction industry:

1. On the day this subsection comes into force, the trade union no longer represents those employees of the non-construction employer who are employed in the construction industry.
2. On the day this subsection comes into force, any collective agreement binding the non-construction employer and the trade union ceases to apply with respect to the non-construction employer in so far as the collective agreement applies to the construction industry.

Amendment of unit

(3) A non-construction employer referred to in subsection (1) or a trade union affected by the application of subsection (2) may apply to the Board to redefine the composition of a bargaining unit affected by the application of subsection (2) if the bargaining unit also includes employees who are not employed in the construction industry.

Non-application of ss. 127.1, 127.2

(4) Sections 127.1 and 127.2 do not apply with respect to a non-construction employer referred to in subsection (1).

(2) Section 127 of the Act, as enacted by subsection (1), is amended by adding the following subsections:

Opt-out election

(5) An entity referred to in subsection (1) may elect to opt out of the application of subsections (1) to (4) if, on the day the Restoring Ontario's Competitiveness Act, 2019

receives Royal Assent, a trade union represents employees of the entity who are employed, or who may be employed, in the construction industry.

Same, required content

(6) An election made under subsection (5) must be made by a person or body with authority to bind the entity, must be prepared in writing and must set out the day on which it was made.

Same, timing

(7) An election made under subsection (5) must be filed with the Minister within three months after the day the Restoring Ontario's Competitiveness Act, 2019 receives Royal Assent.

Election irrevocable

(8) Once filed with the Minister, an election made under subsection (5) is irrevocable.

Minister may publish

(9) The Minister may publish an election made under subsection (5), including by publishing it on a Government of Ontario website.

Effect of election

(10) If an entity made an election under subsection (5) and filed it with the Minister in accordance with subsection (7), subsections (1) to (4) do not apply in respect of that entity.

Application under s. 127.2 permitted

(11) For greater certainty, an entity who made an election under subsection (5) and filed it with the Minister in accordance with subsection (7) is not precluded from subsequently making an application under section 127.2.

Commencement

15 (1) Subject to subsection (2), this Schedule comes into force on the day the Restoring Ontario's Competitiveness Act, 2019 receives Royal Assent.

(2) Sections 12 and 13 and subsection 14 (1) come into force on a day to be named by proclamation of the Lieutenant Governor.