

Feasibility Assessment for a Fair Wage Policy



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Executive Summary

This report assesses the feasibility of the City of Vaughan adopting a Fair Wage Policy, *i.e.*, a policy that would establish minimum wage standards for contracted construction that are commensurate with the prevailing wage. The report summarizes and reviews consultations with stakeholders, analyzes data on the City's contracted construction, describes Fair Wage Policies in other jurisdictions and sets out five options for consideration.

Current City practice, which is based on stakeholder consultations, references in bid documents the Provincial Fair Wage Schedule that is applicable to York Region. At the time this practice was instituted, the relevant Fair Wage Schedule was the Schedule that was established in 1995¹. This Schedule has not been updated since 1995 and is no longer relevant to actual labour market conditions in York Region. However, the Order-in-Council establishing the Provincial Fair Wage is still technically in effect.

During the consultations for this report, the previous provincial government enacted Bill 53 – the *Government Contract Wages Act*. The new provincial government has not indicated if it intends to implement, modify or set aside the *Government Contract Wages Act*. If the legislation is implemented, a Director of Government Contract Wages would establish new Fair Wage Schedules and the Director of Employment Standards would be responsible for investigation of complaints and issuing compliance orders. Appeals would be handled by the Ontario Labour Relations Board. Municipalities are not explicitly covered by the *Government Contract Wages Act*.

There is a wide divergence of opinion among stakeholders on the appropriateness of a Fair Wage Policy at the municipal level. Six key issues emerged from our consultations:

1. The impact of a Fair Wage Policy on the City's construction costs,
2. The potential impact of a Fair Wage Policy on reducing the risk of the City engaging contractors with weak health and safety practices,
3. The potential impact of a Fair Wage Policy on supporting contractors that invest in training and apprenticeship,
4. The potential impact of a Fair Wage Policy on curtailing underground practices,
5. The potential impact of a Fair Wage Policy on preventing low-bid procurement policies from putting undue downward pressure on wages and working conditions, and
6. A concern expressed by residential contractors that if a Fair Wage Policy applied to municipal procurement of housing (*i.e.*, social housing), the Fair

¹ Prior to the enactment in May of 2018 of the *Government Contract Wages Act*, the Provincial Fair Wage Policy was based on a 1995 Order-in-Council: OIC 773/95.

Wage Schedules should be based on norms and standards in the residential sector not on norms and standards that may operate in other sectors, such as institutional-commercial-and-industrial (ICI) sector.

If, in the main, Vaughan's contractors currently pay the prevailing wage, then the impact on construction costs of a Fair Wage Policy would be negligible. However, if a material number of Vaughan's contractors currently pay *less* than the prevailing wage, then a Fair Wage Policy would have an impact on some of Vaughan's construction costs. There have been no complaints that Vaughan's contractors pay less than the prevailing wage, although this does not preclude the possibility that some contractors may do so or that future contractors may do so.

There is limited evidence on the impact of a Fair Wage Policy on health and safety performance, investment in training and apprenticeship, the underground economy, or preventing downward pressure on wages and working conditions. However, there is reason to believe that a Fair Wage Policy could have some positive effect, although these goals could also be pursued through other policies.

Five options are presented for consideration:

1. Status Quo: continue the current practice of referencing the Provincial Fair Wage Schedule in bid documents;
2. Adopt the 'Toronto Model';
3. Adopt a Made-in-Vaughan Fair Wage Policy;
4. If and when the *Government Contract Wages Act* is implemented, adopt the new Provincial Fair Wage Schedules with a Made-in-Vaughan Administrative Policy; and
5. If and when the *Government Contract Wages Act* is implemented, the City of Vaughan could adopt the new Provincial Fair Wage schedules and explore the possibility of arranging with the Provincial Director of Government Contract Wages and the Provincial Director of Employment Standards for administration, investigation and enforcement. The feasibility of this option is uncertain as is the potential cost that the provincial government might require for providing administration, investigation and enforcement services.

It is important to note that under both the previous provincial policy (based on OIC 773/95) and the recently enacted (but not yet implemented) *Government Contract Wages Act*, any entity in the public sector that is not formally covered by the Fair Wage Policy, but which voluntarily applies the Provincial Fair Wage Schedule is also responsible for administering and enforcing the policy. Consequently, the Province plays *no* role in administering its Fair Wage Schedules when those Schedules are adopted by a municipality. Therefore, if the City continues its current practice of referencing the Provincial Fair Wage Schedules in bid documents, the City will need to either adopt administrative policies to accompany the updated Provincial Fair Wage Schedules or explore the scope for the province taking on that role. If administrative policies are adopted by the City of Vaughan, these policies will need to address a number of issues, including: whether exemption thresholds should apply, the applicability to independent

operators (owner-operators), the responsibility of prime contractors or the compliance of their sub-contractors, compliance and investigation procedures, administrative fees, an appeals procedure, and penalties for non-compliance.



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1. Introduction

In 2016, representations were made to City Council urging the City of Vaughan to adopt a Fair Wage Policy. Following a staff report to Council in December 2016, Council requested additional information, including consultations with stakeholders and a feasibility assessment.

The following sections provide a brief overview of Fair Wage Policies, list the organizations consulted and summarize the structure of the report.

Fair Wage Policies: The Context

Fair Wage Policies emerged at the municipal level in Britain, the United States and Canada in the nineteenth century.² In Canada, the first example of a Fair Wage Policy appears to be the policy adopted by the City of Toronto in 1893. Federal and provincial Fair Wage Policies were mandated in the 1930s, although there have been periods when the policies were either rescinded or not updated.

The current regulatory environment can be summarized as follows:

- The federal government operated a Federal Fair Wage Policy from the 1930s until 1984 when the policy was rescinded, following a change of government. The Federal Fair Wage Policy was then reinstated in 1997 and continued until 2014 when it was rescinded. The current government has stated its intention to re-introduce a Fair Wage Policy.
- The Provincial Fair Wage Policy has operated without interruption since it was introduced in the 1930s. The most recent version of this policy was based on Order-in-Council 773/95. However, the Fair Wage Schedules under this policy were last updated in 1995. Since 1995, wages for construction workers have increased by more than 50%, thereby rendering the province's Fair Wage Schedules largely irrelevant to actual market conditions.³ In May 2018, the government enacted Bill 53, *The Government Contract Wages Act* which, if implemented, would supersede OIC 773/95. Although enacted and proclaimed, *The Government Contract Wages Act*, has not been implemented. The new government has not indicated how it intends to proceed on this matter.
- At the municipal level in Ontario, Fair Wage Policies are operated by the following municipalities: Toronto, Hamilton, Thunder Bay, Greater Sudbury, Oshawa and

² Dr. Richard P. Chaykowski, "Research Review relating to Fair Wage Policies", appendix to Ontario Construction Secretariat, *Impact of Fair Wage Policies on the Construction Industry*, a report prepared by Prism Economics and Analysis and T.E. Armstrong Consulting (June 2006)

³ Based on average hourly wage of all construction workers as estimated by the Statistics Canada labour Force Survey (CANSIM Table 282-0071). The Labour Force Survey began collecting wage information in 1997.

Clarington. The City of Pickering adopted a Fair Wage Policy in 2011, but repealed the policy in 2016. Toronto Community Housing has its own Fair Wage Policy.

The City of Vaughan does not have a formal Fair Wage Policy. However, the City incorporates a standard requirement in its contracts requiring contractors to pay the appropriate union wage, if they are in a contractual relationship with a union, or the rate established in the relevant provincial Fair Wage Schedule if they are not unionized. Other municipalities, for example the City of London, have similar policies that reference the provincial Fair Wage Schedule.

Consultations and Research undertaken for this Report

Consultations were undertaken with all parties that made representations to the City on a Fair Wage Policy as well as with other representative stakeholders. The following is a list of the stakeholder consultations that were undertaken:

Unions and Union Organizations:

- Carpenters Union: Ontario Provincial District Council
- Central Ontario Building Trades
- CLAC
- International Brotherhood of Electrical Workers, Local 353
- International Union of Operating Engineers, Local 793
- Labourers Union, Local 183
- Toronto and York Region Labour Council

Employer and Business Organizations:

- Construction Labour Relations Association of Ontario
- General Contractors Section
- Greater Toronto Sewer and Watermain Contractors Association
- Merit Shop Open Contractors Association (Merit Ontario)
- Ontario General Contractors Association
- Progressive Contractors Association of Canada
- Toronto Area Road Builders Association
- Vaughan Chamber of Commerce – Government Relations Committee*
- RESCON (Residential Construction Council of Ontario)
- BILD GTA**

Meetings or email exchanges were undertaken with:

* At the time of preparing this report, the Chamber of Commerce had not taken a position on Fair Wage Policies. However, two members of its Government Relations Committee offered their perspectives on Fair Wage Policies.

**BILD GTA offered no views on Fair Wage Policy and recommended that we consult with RESCON

- the Ontario Ministry of Labour
- Employment and Social Development Canada (ESDC)
- Fair Wage Office, City of Toronto
- Manager of Supply, City of Thunder Bay

A meeting was also held with senior City staff in the following departments or organizational units:

- Infrastructure Delivery
- Parks Development
- Human Resources
- Transportation Services, Forestry & Parks Operations
- Facility Maintenance Services
- Environmental Services
- Procurement Services
- Legal Services
- Corporate Initiatives and Intergovernmental Relations

Additional research was undertaken on:

- the design and administration of the Fair Wage Policies of other Ontario municipalities;
- the City of Vaughan's competitively tendered construction contracts for the period 2014 to 2016;
- the previous federal Fair Wage Policy (repealed in 2014);
- the current provincial Fair Wage Policy;
- various statistical sources on the share of labour costs in construction work; and
- the history and impact of Fair Wage Policies.

Outline of this Report

Chapter Two summarizes consultations with stakeholders and with City staff and reviews the issues raised in those consultations. Chapter Three discusses the elements of a Fair Wage Policy. Chapter Four discusses the scope and administration of Fair Wage Policies in other jurisdictions. Chapter Five examines contracted construction work undertaken by the City of Vaughan and considers how a Fair Wage Policy might affect the City's costs. Chapter Six summarizes the provisions of the recently enacted (but not as yet implemented) *Government Contract Wages Act*. Chapter Seven presents options for consideration.

Prism Economics wishes to express its appreciation to the City staff responsible for managing procurement for their cooperation and advice. The views expressed in this report are solely the responsibility of Prism Economics.



2. Stakeholder Consultations

The first part of this chapter summarizes the consultations undertaken for this report. A more detailed summary of these consultations can be found in an appendix to this report. The summary of stakeholder perspectives endeavours to reflect accurately the comments made by stakeholders. Reporting these perspectives does not imply either agreement with or validation of the comments. The consultant's perspectives on the key issues raised by stakeholders are presented in the second part of this chapter.

Summary of Stakeholders' Perspectives

Unions

Union stakeholders cite several reasons for their advocacy of Fair Wage Policies. The core reason is to prevent what is termed 'a race to the bottom'. By this the unions mean that a small number of opportunistic contractors can trigger downward pressure on wages and working conditions by taking advantage of unemployment to pay less than the prevailing wage and to cut corners on occupational health and safety. The unions believe that, without a Fair Wage Policy that establishes minimum standards, there is an unavoidable risk that the lowest bid principle will undermine working conditions in ways that should be unacceptable to a local government.

The unions also believe that contractors that pay a fair wage are much more likely to invest in health and safety training and maintaining safe working conditions, whereas contractors that pay below the prevailing wage are unlikely to make these training investments or to give workplace health and safety the priority it deserves. Similarly, the unions believe that contractors that pay a fair wage are more likely to invest in skills training and in apprenticeship. Contractors that pay below the prevailing wage are unlikely to make these investments.

The unions believe that it is short-sighted on the part of municipal governments to award projects to contractors who do not invest in health and safety or skills training. The unions believe that the workers who are most likely to be paid below the prevailing wage are recent immigrants who are unaware of their rights or industry standards. The unions also believe that contractors that pay less than the prevailing wage are more likely to engage in underground practices, such as paying workers in cash or styling workers as independent operators so as to avoid employer contributions for Employment Insurance (EI), the Canada Pension Plan (CPP) and the Workplace Safety and Insurance Board (WSIB).

The unions also believe that municipalities should favour local contractors over contractors that use workers from other regions of the province where wages may be lower. The unions believe that municipal procurement policies should encourage contractors to compete on the basis of quality and productivity, not on the basis of which contractor can access the lowest paid workers. The unions suggest that contractors that compete on the basis of quality and productivity are more likely to provide long-term value.

The unions do not believe that Vaughan should wait upon the provincial government to update its Fair Wage Policy. Most unions believe that the GTA is one labour market and that the Fair Wage Policy of the City of Toronto is an appropriate standard for Vaughan. Some unions, however, would support Vaughan's adoption of an updated provincial Fair Wage Policy. In general, the unions believe that a Fair Wage Policy in Vaughan can be based on the negotiated rates in collective agreements and that there is no need to incur the expense of wage surveys. The unions offered differing views on whether the Fair Wage Policy should apply to all municipal work or whether there should be a threshold.

The unions generally believe that a prime contractor should be responsible for the compliance of sub-contractors. Most unions support proactive inspections and audits and believe that any union, contractor or contractor association, in addition to an affected worker, should be entitled to register a non-compliance complaint. The unions agree that sanctions should reflect the severity of the non-compliance, but that a bar, for a period of time, on performing municipal work should be the ultimate sanction.

Construction Employers

There are differing views among construction employers. Employers supporting a Fair Wage Policy broadly concur with the reasons cited by the unions. However, they attach particular importance to local government procurement policy providing positive support for investments in health and safety, skills training and apprenticeship. Employers that support a Fair Wage Policy believe that contractors should compete on a level playing field. No contractor should be able to secure a competitive advantage by avoiding investments in health and safety, skills training and apprenticeship. Employers that support a Fair Wage Policy also broadly agree with the unions on the design and administration of a Fair Wage Policy. One employer organization stressed the importance of recognizing that there are different remuneration models, particularly in regard to providing training, benefits, vacation and holidays.

The Ontario General Contractors Association (OGCA) supports a Provincial Fair Wage Policy and has urged the Ontario government to update its policy. However, the OGCA opposes municipal Fair Wage Policies. Merit Ontario opposes Fair Wage Policies at all levels of government.

Employers that oppose Fair Wage Policies believe that market forces will ensure that contractors pay a fair and competitive wage. At present, there is a shortage of skilled construction workers. For this reason, skilled construction workers earn a good wage and do not need the protection of a Fair Wage Policy. Employers that oppose Fair Wage Policies believe that Fair Wage Policies will add complexity to the procurement process, raise costs and foster disputes without conferring any commensurate benefits. All employers are already required to comply with the *Occupational Health and Safety Act* and, where relevant, the *Ontario College of Trades and Apprenticeship Act*. A Fair Wage Policy does not add to these obligations. Employers that oppose Fair Wage Policies dispute that non-union employers have less satisfactory health and safety performance or invest less in training.

The OGCA and Merit Ontario expressed their concern that the intent behind the advocacy of Fair Wage Policies is to restrict access to municipal projects to contractors that are bound to the building trades.

The OGCA and Merit Ontario believe that the wage package of the building trades should not be equated with the prevailing wage or a fair wage.

With respect to the administration of a Fair Wage Policy, both OGCA and Merit Ontario believe that the onus of proof should be on a complainant and that only an affected worker should be allowed to register a complaint. OGCA and Merit Ontario are concerned about contractors and unions using the complaint process to harass contractors unfairly. Employers that oppose Fair Wage Policies also oppose spot audits or inspections, in the absence of a formal complaint. The OGCA agrees that a prime contractor's obligations to comply with a Fair Wage Policy should contractually flow through to sub-contractors. However, the OGCA opposes making prime contractors responsible for their sub-contractors' compliance with a Fair Wage Policy. They argue that prime contractors do not have the right to inspect the payroll records of their sub-contractors. Both the OGCA and Merit Ontario believe that any penalties for non-compliance need to be reasonable and should take account of the severity of the non-compliance, the size of the project, and the actual harm that was done. Non-compliant contractors should be given an opportunity to fix the problem, as compliance with a Fair Wage Policy can be complicated.

RESCON stressed the importance of any Fair Wage Policy or schedules that applied to residential construction being based on norms and standards that prevail in the residential sector. RESCON emphasized that remuneration standards (including the use of piece-rates) and the organization of work (*e.g.*, the use of sub-contractors) are often markedly different in the residential sector than in non-residential construction. In RESCON's view, it would be wholly inappropriate to apply norms and standards that operate in non-residential sectors to residential construction.

RESCON also urged that procurement policies aiming to strengthen skills training, apprenticeship or occupational health and safety should be goal oriented rather than prescriptive. RESCON opposes making health and safety standards such as the Certificate of Recognition (COR) mandatory.

Vaughan Chamber of Commerce⁵

The members of the Government Relations Committee of the Vaughan Chamber of Commerce who were interviewed for this report stressed the need for a balanced approach. A balanced Fair Wage Policy would be one that prevents wages from being driven down, but at the same time does not inflate wages above the competitive and prevailing norms in the GTA. The committee members felt that while there is no clear-cut relationship between wages and health and safety performance, it is reasonable to be concerned that contractors that seek a cost advantage from substantially lower wages may also cut corners on health and safety training. In selecting contractors, the City should put considerable emphasis on their health and safety policies, practices and performance. Contractors that meet these standards should not be disadvantaged by a Fair Wage Policy. The committee members also believe that Vaughan should use productivity benchmarks to evaluate its contractors, thereby ensuring good value. Applying an updated provincial Fair Wage Policy is one option. In the absence of a Provincial Fair

⁵ At the time of preparing this report, the Vaughan Chamber of Commerce had not adopted a formal position on the proposal for a Fair Wage Policy in the City of Vaughan. These notes are based on a joint consultation with two members of the Chamber's Government Relations Committee.

Wage Policy, a York Region Policy would be preferable to a City of Vaughan policy. The committee members felt that any Fair Wage Policy should be based on surveys of prevailing wages. They supported a mix of complaint-based enforcement and auditing. The committee members felt that companies should know that there is a possibility that they will be audited. Penalties for non-compliance should include: payment of owed wages, interest on back pay, possibly fines, and possibly being barred for a period of time from doing City work. The committee members also favoured making prime contractors responsible for the compliance of their sub-contractors.

City Staff

The City currently references a requirement to comply with the provincial Fair Wage schedules in its contract documents. Contract documents also require compliance with the *Occupational, Health and Safety Act* and the *Workplace Safety and Insurance Act*. Contractors' injury records under the WSIB are taken into account when awarding work. Successful bidders also must provide a copy of their health and safety policy.

City staff suggested that it would be helpful if there were some means to ensure fair wages and good practices, as there may be a small minority of contractors whose practices fall below an acceptable standard. City staff were concerned, however, about imposing significant administrative costs on Vaughan or on the vast majority of contractors whose employment practices are acceptable.

Although there is no systematic evidence, senior City staff involved in contract administration believe that at least half (and possibly more) of construction work is undertaken by non-union contractors. Linear work, which is around 35% of total construction, is predominantly undertaken by unionized contractors. In other segments of construction, City staff believe that the share of work undertaken by unionized contractors would be less than half. However, they note that the extensive use of sub-contractors in new building construction makes it difficult to develop strong estimates.

For most types of work there is a pool of experienced and reputable contractors that have undertaken past work for the City. However, the City is seeking to improve the quality of its contractors. This applies to health and safety as well as technical performance. Large contractors and large owners have embraced a health and safety certification known as the Certificate of Recognition (COR). City staff would like to move in the direction of requiring or encouraging COR. A staff report has recommended that York Region adopt a requirement for COR certification. However, City staff recognize that currently many small and mid-sized contractors are not COR-certified and would require time to obtain that certification.

Consultant's Perspectives on Issues Raised by Stakeholders

The consultations with stakeholders raised four important issues: occupational health and safety performance, investments in training and apprenticeship, the underground economy, and preventing a 'race to the bottom'. Stakeholders have strong and contrasting views on these issues.

Occupational Health and Safety Performance

There are no studies on the relationship of Fair Wage Policies to occupational health and safety performance. There is, however, an independent, methodologically rigorous and peer-reviewed study that compares the health and safety performance of union and non-union contractors in the industrial-commercial-and-institutional (ICI) sector. The study was undertaken by the Institute for Work and Health (IWH). The IWH is an independent research centre, originally funded by the WSIB, and now funded by the Chief Prevention Officer of the Ontario Ministry of Labour. The IWH study found that, in the ICI sector, unionized construction firms reported 28% higher rates of no-lost-time accidents, but 14% lower rates of lost-time accidents.⁶ Lost-time accidents are the more important indicator as they typically entail more severe injuries and higher costs. The study suggested that the higher rate of no-lost-time accidents may have been the result of more diligent reporting by unionized contractors. This cannot be concluded with certainty. It should be noted that this study *only* applied to the ICI sector. It did not include roads work, sewer and watermain construction or parks work.

The IWH study lends support to those who argue for a positive connection between unionization and health and safety performance. The IWH is currently exploring the reasons for this difference. Although not yet established definitively, there appears to be evidence of more investment in health and safety training in the union sector of construction and a probable link between this training and superior health and safety performance.

The relevant question for this report is: does the IWH study lend support to a connection between a Fair Wage Policy and stronger health and safety performance. It is reasonable to assume that contractors that pay less than the prevailing wage, at most, meet the minimum health and safety standards set out in the *Occupational Health and Safety Act*. It is not impossible, but it is improbable that a contractor that pays less than the prevailing wage would willingly incur the additional costs associated with investments in health and safety that are above the statutory requirements. It cannot be said with absolute certainty that a Fair Wage Policy that mandates prevailing wages would necessarily have a positive impact on health and safety performance. However, a positive impact would be likely to the degree that a Fair Wage Policy filtered out non-union contractors that pay below the prevailing wage. We conclude, therefore, that there is likely to be some positive connection between a Fair Wage Policy and improved health and safety performance. It may be feasible, perhaps more appropriate, to pursue health and safety objectives directly through requirements for health and safety certifications or other evidence of greater-than-minimum standards. However, this does not detract from the conclusion that there is likely to be some positive connection between a Fair Wage Policy and improved health and safety performance. It is not, however, feasible to estimate or quantify that relationship.

While improved health and safety performance is primarily an objective that is pursued for its intrinsic value, there also may be some potential financial benefits to the City of Vaughan. The lower lost-time accident rate of contractors with superior health and safety performance should translate into

⁶ Amick, Benjamin C. III PhD; Sheilah Hogg-Johnson PhD, Desiree Latour-Villamil MS, Ron Saunders PhD, "Protecting Construction Worker Health and Safety in Ontario, Canada: Identifying a Union Safety Effect", *Journal of Occupational & Environmental Medicine*: December 2015 - Volume 57 - Issue 12 - p 1337-1342 http://journals.lww.com/joem/Citation/2015/12000/Protecting_Construction_Worker_Health_and_Safety.14.aspx

somewhat lower WSIB premiums, given the WSIB's experience rating system. This, in turn, enables those contractors to bid more competitively.

Investments in Training and Apprenticeship

The City of Vaughan has two interests in contractors' investments in training and apprenticeship. The first is that the City benefits when contractors have a more skilled work force. The second is that the City of Vaughan benefits when those of its residents who are employed in the construction industry are well-trained and therefore more likely to enjoy higher earnings and greater employment stability.

Productivity in the construction industry is determined by many factors. These include site conditions, the weather and design specifications – all of which are beyond the control of contractors. Project management systems and the scheduling of trades and supplies are also important contributors to productivity. These factors are predominantly controlled by prime contractors. At the trade contractor level, the skill and experience of the work force is important in eliminating the need for re-work caused by errors and in reducing the amount of direct supervision that is required.

There are no reliable measures of construction productivity.⁷ In the unionized sector, however, there are studies that document the training investment. A 2013 study by the Ontario Construction Secretariat found that, in unionized construction, across Ontario, there are 95 training centres run by jointly trustee labour-management training trust funds. A number of these centres are located in York Region. Across the province, the capital investment in these training centres was approximately \$260 million.⁸

The investments in training by the non-union construction industry have not been similarly documented. Merit Ontario offers supervisory training. The Pre-Apprenticeship Training Institute, which tends to serve non-union contractors, offers a range of safety and skills training. The Infrastructure Health and Safety Association serves both union and non-union contractors. There are also non-union contractors that employ apprentices. We know, therefore, that some non-union contractors provide training, although we do not know what proportion. Nevertheless, the unionized industry's investment in training appears to be greater. While there is certainly evidence of training investments on the part of non-union contractors, those investments do not appear to be on the same scale as the unionized industry's investments. There is also evidence indicating that unionized construction workers are more likely to be certified tradespersons. In general, this means that they are more likely to have completed their apprenticeship training.⁹

⁷ A BuildForce Canada webinar presentation on the issues related to measuring construction productivity can be found at: <http://www.buildforce.ca/en/video/construction-productivity-series-ep2-measuring-productivity-construction-industry>.

⁸ Ontario Construction Secretariat, *Completion Counts: Raising Apprenticeship Completion Rates in Ontario's Construction Industry* (May 2013), a report prepared by Prism Economics and Analysis.

⁹ Raykov, M., and D.W. Livingstone. 2005. "Canadian Apprenticeship and Effect of Union Membership Status: Trend Analysis 1991-2002. *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)

Does the above evidence and reasoning suggest a positive relationship between a Fair Wage Policy and increased investments in skills training and apprenticeship? The answer to this question depends, to some degree, on how a Fair Wage Policy is designed. If the policy were to apply only to direct wages (as in the former federal program), the relationship between a Fair Wage Policy and investment in training and apprenticeship would be weak or perhaps non-existent. A different conclusion, however, would arise if a Fair Wage Policy were to apply to total compensation and to include in total compensation employers' investments in training. In these circumstances, employers that invest in training would not be at a competitive disadvantage vis à vis employers that do not make these investments. We conclude, therefore, that if a Fair Wage Policy were to include investments in training as part of total compensation, then there is likely to be a positive connection between a Fair Wage Policy and these investments. Fairness to non-union employers would require that such a policy treated their expenditures on training in the same manner as unionized employers' contributions to training trust funds.

Underground Economy

Advocates of a Fair Wage Policy argue that these policies discourage underground practices. Underground practices are generally understood to mean practices which conceal income from taxation or evade contributions to EI, CPP or the WSIB that would otherwise be required. A study by the Ontario Construction Secretariat (OCS) pointed out that there are two important types of underground practices.¹⁰ The first is cash payments to workers. To be workable, a practice of paying workers in cash needs to be offset by receiving payments in cash. Otherwise the contractor has revenues, but no record of offsetting expenditures. The result is a higher corporate income tax obligation. Cash payments to contractors are impossible in the public sector, given transparency requirements. For this reason, it is highly improbable that cash payments are common on public sector projects.

The second type of underground practice consists of styling workers who are employees in the substantive sense as independent operators, *i.e.*, as self-employed sub-contractors. The OCS report noted that this practice is difficult to combat because the common law test whether an individual is an employee or a contractor is complex and must be applied on a case-by-case basis. The OCS report cited evidence that there had been a substantial increase in the proportion of construction workers whom Statistics Canada classifies as self-employed. While not proving an increase in unlawful styling of employees as sub-contractors, the data validated anecdotal claims that the practice had become more widespread. The OCS report also noted that there are significant incentives to a contractor to engage in this practice. By avoiding EI, CPP and WSIB contributions, a contractor can reduce its payroll costs by around 22% as indicated in Figure No. 1. For a worker, the attraction of being styled as an independent operator is that there are no source deductions and no T-4 tax forms issued. This provides the worker the opportunity to conceal income.

¹⁰ Ontario Construction Secretariat, *Attacking the Underground Economy in the ICI Sector of Ontario's Construction Industry*, a reported prepared by T.E. Armstrong Consulting and Prism Economics and Analysis (2004)

Figure No. 1
 Estimate of Avoided Payroll Costs
 when a Worker is Hired as a Sub-Contractor rather than as an Employee

	Employer Cost
El: Employer's Contribution	4.950%
CPP: Employer's Contribution	2.282%
WSIB Average Construction Rate in 2017	7.111%
Vacation Pay (4%)	4.000%
Statutory Holidays (10 days)	4.000%
	22.343%

In light of the substantial payroll costs that can be avoided, it is reasonable to believe that in the highly competitive construction industry there are contractors that engage in the practice of misrepresenting their workers as independent operators, when they are employees in the common sense meaning of that term.

It should not be inferred from the above discussion that all independent operators should actually be classified as employees. This is not the case. There are many legitimate independent operators in construction. However, it is also likely that there are other workers who have been improperly classified as independent operators to confer an illegitimate competitive advantage on their employer.

Would a Fair Wage Policy help to reduce the practice of improperly classifying workers as independent operators? To some degree, the scrutiny that a Fair Wage Policy entails is likely to discourage some contractors from improperly classifying their workers. However, a Fair Wage Policy that exempted independent operators would have no effect. A Fair Wage Policy that required any worker, regardless of their status (*i.e.*, employee or independent operator) to receive the specified fair wage would *partially* reduce the incentive to improperly classify workers, but only if the policy also required evidence that vacation and holiday remuneration were also being paid. An alternative strategy would be to require contractors to formally identify independent operators as sub-contractors when they tender for City projects. In this way, the City could better evaluate whether the contractor actually has the internal capacity to perform the job.

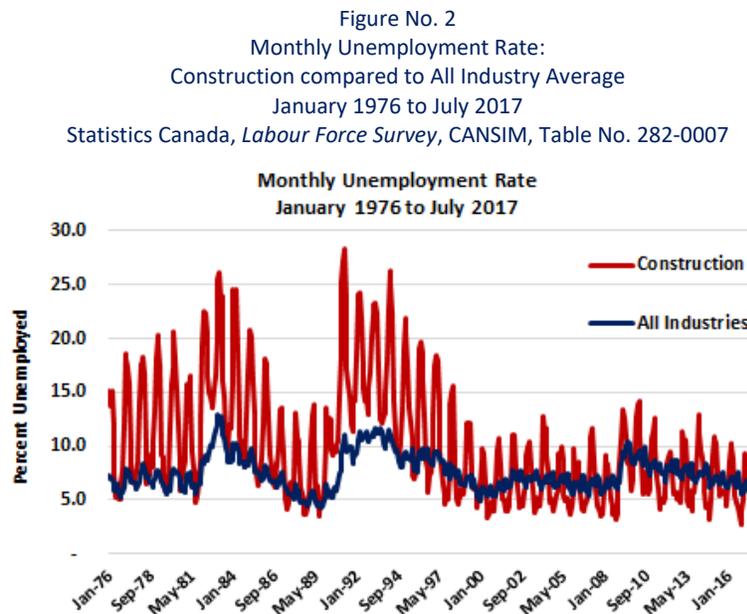
On balance, we conclude that a Fair Wage Policy could have some positive effect on discouraging underground practices through the threat of scrutiny and also if it required contractors to remunerate workers at the same rate, regardless of whether they are employees or independent operators. Requiring contractors to identify their independent operators as sub-contractors at the time they bid on projects could be a more effective deterrent.

Preventing a 'Race to the Bottom'

Advocates of Fair Wage Policies attach considerable importance to the role of these policies in discouraging the emergence of aggressive wage cutting as a competitive strategy. In essence, they fear

a ‘race to the bottom’. Opponents of Fair Wage Policies argue that competitive forces operate in the opposite direction, namely forcing employers to raise their wage rates to attract the skilled labour they need. There is validity in both views.

The construction industry is much more cyclical than many other industries. When times are good, the normal operation of the labour market can usually be relied on to maintain a prevailing wage. However, when times are not good, the number of workers seeking jobs exceeds the number of workers that contractors need to hire. In the absence of a Fair Wage Policy, some contractors may take advantage of this situation to pay their workers less than the prevailing wage. By doing so, these contractors can create the conditions that will trigger the ‘race to the bottom’ that proponents of Fair Wage Policies fear. Figure No. 2 shows that, over the last 10-15 years, the unemployment rate in construction has generally not been sufficiently high to trigger a ‘race to the bottom’. However, that was not the case in prior decades when the unemployment rate often exceeded 20%.



There is a rational basis for the concern about low-bid procurement inadvertently putting downward pressure on construction wages. The phrase ‘race to the bottom’ may overstate this pressure, but the pressure could nevertheless be real. However, the concern is applicable primarily when unemployment rates are substantially higher than we have recently seen. In that sense, a Fair Wage Policy could be understood as an ‘insurance policy’ against low-bid procurement policies unintentionally putting downward pressure on wages during an economic downturn. Severe downturns are not the norm. However, they have occurred in the past and may occur again. As a community in which the construction industry looms large, mitigating the adverse effects of a construction industry downturn may be a matter of particular importance to the City of Vaughan.

Implications for Vaughan

There is likely to be some positive connection between a Fair Wage Policy and improved health and safety performance. The connection arises from the impact of a Fair Wage Policy on filtering out contractors that achieve their competitive advantage by paying less than the prevailing rate and doing the minimum, or cutting corners, on health and safety. It is not, however, feasible to quantify the connection. It also may be appropriate to consider certification measures (such as a requirement for COR) to strengthen health and safety performance.

If a Fair Wage Policy were to include investments in training as part of total compensation, then there is likely to be a positive connection between a Fair Wage Policy and these investments. The reason for this is that it removes the competitive disadvantage that arises when one group of contractors incurs the costs of investing in training while another group of contractors avoids those costs. Fairness to non-union employers would require that such a policy treated their expenditures on training in the same manner as unionized employers' contributions to training trust funds.

A Fair Wage Policy could discourage the improper classification of workers as independent operators through the threat of scrutiny and also if it required contractors to remunerate workers at the same rate, regardless of whether they are employees or independent operators. Requiring contractors to identify their independent operators as sub-contractors at the time they bid on projects could also be an effective deterrent to improper classification.

It is appropriate to be concerned that low-bid procurement could inadvertently put downward pressure on construction wages during a period of severe unemployment. Considered from that perspective, a Fair Wage Policy can be viewed as an 'insurance policy' against this unintended consequence of low-bid procurement.

■

3. The Elements of a Fair Wage Policy

Figure No. 3 summarizes the elements that a Fair Wage Policy should contain. The balance of this chapter provides more detail on the elements.

Figure No. 3
Elements of a Fair Wage Policy

1. Fair Wage Schedules
 - a. Classifications
 - b. Definition of Pay Rates (Basic Wage or Total Compensation)
 - c. Process for Determining Fair Wage Rates
 - d. Overtime Thresholds (optional)
 2. Scope of Application
 - a. Sectors
 - b. Thresholds
 - c. Application to Independent Operators
 - d. Application to P3 Projects
 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. Proactive Audits / Inspections (optional)
 8. Consultations Process
-

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. A Fair Wage Schedule may also provide for mandatory payment of *overtime* beyond a certain threshold. Each of these terms – classifications, pay rates and overtime – needs to be defined by the Fair Wage Policy. If the Fair Wage Policy uses total compensation, the policy needs to define the components of remuneration that are included in total compensation.

2. Scope of Application

There are four considerations pertaining to the scope of application. The first is the sectors or types of

construction to which the Fair Wage Policy applies. Fair Wage Schedules are usually sector-specific. The second scope consideration is whether there should be a threshold below which the Fair Wage Policy does *not* apply. 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. Finally, the fourth consideration is whether the application of a Fair Wage Policy should be limited to the traditional procurement model in which a public authority contracts with a construction contractor to perform specified work or whether the Policy also should apply to various types of public-private partnership (P3) procurement models.

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. Fair Wage Policies may or may not hold a prime contractor responsible for the compliance of a sub-contractor.

4. Communication of Rights to Employees

Fair Wage Policies usually require the Fair Wage Schedule and the overtime entitlement (if it is part of the Fair Wage Policy) 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.

b. Fee to Register a Complaint

Some Fair Wage Policies require complainants to pay a fee when they register a complaint. This fee may be waived when the complainant is an affected employee of a contractor. The fee is refunded to the complainant if the complaint is upheld.

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

Under both the provincial Fair Wage Policy and the former federal Policy, the responsibility to investigate a complaint rests with the public authority (*i.e.*, ministry, department, agency, *etc.*) that is contracting for the construction work. The Ministry of Labour does *not* provide investigation services under the current provincial Fair Wage Policy. Public authorities contracting for construction must either undertake the investigation with their own resources (as is done in the City of Toronto) or utilize third parties (as is done in smaller municipalities).

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 original complainant is then reimbursed from these monies if they were required to pay a complaint fee. 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.

7. Proactive Audits and/or Inspections

Most Fair Wage Policies 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 may review a contractor's payroll records. Some municipalities require a contractor that has been found non-compliant to submit, for a period of time, an audit of their payroll records for work that is subsequently performed.

8. Stakeholder Consultation / Formal Consultative Committee

All public authorities that operate Fair Wage Policies undertake consultations with stakeholders. In some cases, these consultations involve establishing a formal consultative committee. In other cases, the views of stakeholders are canvassed.

Implications for Vaughan

The forthcoming updating of the Provincial Fair Wage Policy has important implications for the City of Vaughan. Although the City of Vaughan currently requires its contractors to abide by the rates in the Provincial Fair Wage Schedule, the City does not have a Fair Wage Policy. That is to say, there are no approved administrative procedures for encouraging compliance, informing employees of their rights, registering complaints, investigating those complaints, or determining what penalties, if any, should apply to non-compliant contractors. Nor has the City adopted policy on issues such as the applicability of Fair Wages to independent operators and whether there should be a threshold below which the Fair Wage Schedules do not apply. As a practical matter, these issues have not been relevant because the current Provincial Fair Wage Schedules are so dated that they are likely below the prevailing wage. However, if the Province updates its Fair Wage Policy pursuant to the *Government Contract Wages Act*, the City of Vaughan will need to adopt appropriate administrative policies and procedures.



4. Summary of Other Fair Wage Policies

This chapter briefly describes the Fair Wage Policies of the federal government, the provincial government and other municipalities in Ontario. As will be noted, the federal Fair Wage program was terminated in 2014, although the current government has indicated its intention to implement a new program. The Ontario Fair Wage Policy continues to operate. However, the Fair Wage Schedules were last updated in 1995 and, in the main, are no longer relevant as a guide to prevailing conditions. There are six municipalities that have Fair Wage Policies, although not all of these municipalities have up-to-date Fair Wage Schedules.

Federal Government

The authority for the Federal Fair Wage Program was founded in the *Fair Wages and Hours of Labour Act*. However, that legislation was repealed, effective January 1, 2014. The current government is committed to re-introducing a Fair Wage Program. The Prime Minister's mandate letter to the Minister of Employment, Workforce Development and Labour directs the minister to "work with the Minister of Public Services and Procurement and the President of the Treasury Board to implement a modern Fair Wages Policy."¹¹ To date, no steps have been announced towards implementing this policy.

Although the former policy is not necessarily an indication of the direction that the federal government will take, it may be useful to summarize some key features of that policy. The former Federal Fair Wage Policy applied only to construction projects directly undertaken by the federal government or its agencies. It did not apply to federally-funded projects in which the federal government was not a party to the contract with the constructor. The former Federal Fair Wage Policy applied only to direct wages. It did not apply to non-wage benefits. Independent operators were not covered by the former Federal Fair Wage Policy. The Fair Wage Schedules were updated every five years. The Schedules were based on the Construction Wage Survey that was administered by Statistics Canada. This survey was discontinued when the previous government ended the Federal Fair Wage program. Enforcement of the former Federal Fair Wage Policy was complaint based. Investigations were undertaken by federal Labour Standards Officers.

Provincial Government

Bill 53, the *Government Contract Wages Act* received royal assent on May 8, 2018. This legislation establishes a new framework for a provincial Fair Wage Policy. However, the legislation was not implemented prior to the recent provincial election. The new government has not indicated whether it

¹¹ <http://www.pm.gc.ca/eng/minister-employment-workforce-development-and-labour-mandate-letter>

intends to implement, modify or set aside the *Government Contract Wages Act*. Chapter Six provides a detailed summary of the *Government Contract Wages Act*.

Prior to enactment of the *Government Contract Wages Act*, the Provincial Fair Wage Policy was based on Order-in-Council (OIC) 773/95 which was adopted in 1995. The OIC set out a series of schedules that established minimum wages by classification and by region for three construction sectors. The wage schedules were not updated after 1995.

The following is a description of the Provincial Fair Wage Policy per OIC 773/95.

Scope of the Provincial Fair Wage Policy (OIC 773/95)

The Provincial Fair Wage Policy set out in OIC 773/95 applied to construction and also to contracted janitorial and security services. Prior to 1995, the policy also applied to contracted printing services, but this was repealed in 1995. In construction, the policy applies to three sectors: industrial, commercial and institutional construction (ICI), roads and sewers, and watermain construction.

The Provincial Fair Wage Policy *per* OIC 773/95 applied only to work directly undertaken by a Ministry of the Ontario government or to work undertaken by the Ontario Realty Corporation, the Ontario Transport Capital Corporation, the Ontario Clean Water Agency and the Ontario Housing Corporation. The Provincial Fair Wage Policy *per* OIC 773/95 did not apply to work undertaken by other provincial agencies (*e.g.*, the WSIB). Nor did the policy apply to construction work that was funded in whole or in part by the provincial government but was contractually undertaken by an entirely separate public authority (*e.g.*, a hospital or a college). Contracts that were jointly entered into by a municipality and the Ontario Transport Capital Corporation were covered by the policy. Contracts entered into by the Ontario Realty Corporation were only covered when they applied to government-owned buildings.

Establishing the 1995 Provincial Fair Wage Schedules:

The 1995 provincial Fair Wage Schedules were established for counties. The schedules also distinguished between urban and rural construction work. For Vaughan, the applicable schedule was the Peel and York County Schedule.

The 1995 Provincial Fair Wage Schedules were based on the prevailing union rates. In urban areas, the policy allowed for a portion of the fair wage (up to 15%) to be paid as non-statutory benefits. There was no updating procedure set out in OIC 773/95. Consequently, the rates established in 1995 were still in force in 2018 when the *Government Contract Wages Act* was enacted.

The following table compares the union wage package in 1995 with the specified fair wage rates *per* OIC 773/95 for Peel and York Counties. On average, the Fair Wage was approximately 79% of the union wage package.

Figure No. 4
 Comparison of Fair Wage Rates in Provincial Fair Wage Policy (OIC 773/95)
 And Union Wage Rates, 1995
 Union Wage Rates: Statistics Canada CANSIM Table No. 327-0003

	Construction Union Wage Rates including Selected Pay Supplements Toronto, Ontario 1995	Fair Wage for ICI Construction Peel and York Counties
Carpenter	\$34.60	\$26.47
Crane operator	\$31.69	\$26.29
Cement finisher	\$29.24	\$25.61
Electrician	\$36.69	\$27.88
Labourer	\$30.74	\$24.73
Plumber	\$36.71	\$27.77
Reinforcing steel erector	\$33.10	\$24.83
Structural steel erector	\$34.23	\$25.56
Sheet metal worker	\$35.17	\$28.32
Heavy equipment operator	\$30.11	*
Bricklayer	\$34.50	\$28.42
Painter	\$32.00	\$24.66
Plasterer	\$29.24	\$24.70
Rofer	\$32.07	\$27.04
Truck driver	\$22.31	*
Insulator	\$34.97	\$26.56

*no comparable classification

Thresholds

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.

Administration and Enforcement

Each contracting ministry of the Ontario government was responsible for administering the Fair Wage Policy, including the investigation of complaints. The Ministry of Labour did not play an investigative role, except where the Ministry of Labour itself was the body contracting for construction work. (This contrasts with the former Federal Fair Wage Program where federal Labour Standards Officers carried out investigations and issued compliance orders, where applicable.) When a municipal government or other public authority adopted or referenced the Provincial Fair Wage Policy, the same administrative principle applied, viz., the public authority that adopted or referenced the Provincial Fair Wage Policy was also responsible for administering and enforcing the policy. The Ministry of Labour, however, did

prepare a set of 'standard conditions' for contracts which, in the Ministry's view, provided for the application of the Provincial Fair Wage Policy to a contractor.

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.

The Provincial Fair Wage Policy per OIC 773/95 did not set out any inspection and administration procedures. Nor did the policy set out any penalties or sanctions for non-compliance. These were entirely the responsibility of the ministry or agency undertaking the construction work (or tendering for security or janitorial services). Discussions with Ministry of Labour staff suggest that the intended administration practice was that holdbacks permitted under the *Construction Lien Act* would be used to enforce, where necessary, payment of owed wages to workers, *per* the Fair Wage Policy.

Municipalities

Based on jurisdictional research, fewer than 2% of Ontario's municipalities have a Fair Wage Policy. Of the six municipalities with a Fair Wage Policy, five of these municipalities achieve compliance with the Policy through a complaint-based process. Only one municipality (Toronto) undertakes proactive inspections.

In all municipalities with a Fair Wage Policy, contractors are required to confirm in writing their adherence to the respective Fair Wage Policy. Complaints are received and investigated by the City. In some municipalities, a fee may be charged to the complainant. The fee is refundable if the complaint is upheld. A contractor who has been found to be non-compliant may be required to pay the costs of the investigation.

The City of Toronto established a Fair Wage Office to administer its Fair Wage Policy. The Fair Wage Office reviews a contractor's wage schedules prior to finalizing a contract, investigates complaints, and takes enforcement action when it is determined that a contractor has failed to pay its workers the prescribed hourly wage rates, vacation and holiday pay and applicable amount for fringe benefits shown in the current fair wage schedule. The Fair Wage Office also undertakes proactive inspections.

Figure No. 5a and No. 5b summarize the principal provisions of the Fair Wage Policies of the six municipalities with these policies. A more detailed description of their Fair Wage policies is provided in Appendix B.

Figure No. 5a
Key Provisions in Fair Wage Policies of Other Municipalities
Schedule, Scope, Prime Contractor Liability. Proactive Audits and Inspections

	Schedules		Scope			Prime Contractors	Proactive Enforcement
	Process to Establish Schedules	Basic Wage or Total Compensation*	Sectors	Independent Operators	Thresholds	Liability for Sub-Contractors	Proactive Inspections/Audits
Toronto	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.
Hamilton	Updated every 3 years based on union rate	Total Compensation	All Sectors	No. Records must demonstrate valid independent operator status	\$500,000	Yes	Payroll audit required for three years after 1 st offence.
Thunder Bay	Last updated 2004 based on union rates. Update under consideration.	Total Compensation	ICI only	No	\$100,000 (may be raised to \$500,000)	Yes	Payroll audit required for three years after 1 st offence.
Sudbury	1995 Provincial rates	Total Compensation	ICI only	No	\$160,000	Yes	Payroll audit required for three years after 1 st offence.
Oshawa	Applies City of Toronto Fair Wage Schedule	Total Compensation	ICI only	No	\$500,000	Yes	Payroll audit required for three years after 1 st offence.
Clarington	Updated every 3 years based on union rate	Total Compensation	ICI only	No	\$1,000,000	Yes	Payroll audit required for three years after 1 st offence.

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

Figure No. 5b
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
Toronto	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 nd Violation: may be barred for 2 years
Hamilton	Must use Complaint Form. City investigates.	Any person.	\$5,000	\$5,000 administrative fee. 2 nd Violation: may be barred for a period of time.
Thunder Bay	City initially investigates. May retain outside auditor.	Employee, contractor or sub-contractor that tendered but not a union	\$1,687.50	2 nd Violation: may be barred for a period of time.
Sudbury	City investigates.	Employee, contractor or sub-contractor that tendered but not a union	Complainant must pay cost of investigation.	2 nd Violation: may be barred for a period of time.
Oshawa	City investigates	Employee, contractor or sub-contractor that tendered but not a union	\$5,000	2 nd Violation: may be barred for a period of time.
Clarington	City investigates	Employee, contractor or sub-contractor that tendered but not a union	\$2,500	2 nd 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.

Considerations for the City of Vaughan

The options for establishing Fair Wage Schedules, should this be the decision of the City of Vaughan, are: (1) reference the schedules established under the *Government Contract Wages Act* if that legislation is implemented, (2) base the Fair Wage Schedules on GTA union rates or some proportion of those rates, (3) adopt the City of Toronto's Fair Wage Schedules, or (4) administer a survey to determine the prevailing wages for the relevant occupations and classifications in the sectors to which the policy would apply. Except for the no longer operative Federal Fair Wage Policy, the practice has been to base Fair Wage Schedules on total compensation (*i.e.*, wages plus benefits).

Thresholds below which a Fair Wage Policy does not apply are the norm, but are not universal.

All jurisdictions hold prime contractors accountable for the compliance of their sub-contractors.

Except for the City of Toronto, all jurisdictions that administer Fair Wage Policies enforce those policies on a complaint basis. They do not undertake proactive investigations. Nor do they require proactive payroll audits, except in the case of a contractor that has been found non-compliant. Small municipalities may use external resources to conduct investigations.

Most jurisdictions exempt independent operators (also termed owner-operators). However, The City of Toronto requires that independent operators be paid not less than the equivalent Fair Wage rate. The City of Hamilton requires contractors to retain documentation demonstrating that persons exempted as independent operators were legitimately so classified.

Most, but not all jurisdictions, endeavour to recover their investigation costs by levying an administrative fee on non-compliant contractors and, in some cases, by levying a refundable fee on parties that register a complaint.

Aside from administrative charges, the only sanction applied to non-compliant contractors is a bar for a period of time on tendering or sub-contracting for work.

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5. Contracted Construction in the City of Vaughan

This chapter examines data on Vaughan’s contracted construction work. The chapter estimates the effect of introducing thresholds below which a Fair Wage Policy would not apply, if one were adopted. The chapter also uses Statistics Canada data to estimate the share of contracted construction costs that is attributable to construction workers whose remuneration would be covered by a Fair Wage Policy, if such a policy were adopted. The chapter concludes by using this analysis to consider the potential implications of a Fair Wage Policy for Vaughan’s construction costs.

Distribution of Contract Work by Value and Type of Project

Figure No. 6 summarizes data provided by the City on the number and value of contracts for maintenance and new construction.

Figure No. 6
No. and Value of Contracted Construction and Maintenance Projects, 2014 – 2016
Administrative Data provided by the City of Vaughan

	No. of Projects, 2014, 2015 and 2016				
	Buildings	Linear	Other	Total	Percent
\$0 to \$100,000	63	33	457	553	73.1%
\$100,001 to \$500,000	9	29	91	129	17.0%
\$500,001 to \$1,000,000	5	5	16	26	3.4%
>\$1,000,000	5	19	9	33	4.4%
Unspecified	-	3	13	16	2.1%
Total	82	89	586	757	100.0%

	Value of Projects, 2014, 2015 and 2016				
	Buildings	Linear	Other	Total	Percent
\$0 to \$100,000	\$1,934,125	\$1,538,703	\$11,536,295	\$15,009,123	7.1%
\$100,001 to \$500,000	\$1,156,072	\$6,883,920	\$18,456,855	\$26,496,847	12.6%
\$500,001 to \$1,000,000	\$4,773,175	\$3,095,609	\$10,564,823	\$18,433,607	8.8%
>\$1,000,000	\$26,019,329	\$63,224,656	\$61,182,786	\$150,426,771	71.5%
Unspecified	n/a	n/a	n/a	n/a	n/a
Total	\$33,882,701	\$74,742,888	\$101,740,759	\$210,366,348	100.0%
Percent of Total	16.1%	35.5%	48.4%	100.0%	

Figure No. 6 is pertinent to assessing the impact of different scopes and thresholds that might be used in a Vaughan Fair Wage Policy.

Thresholds

Some Fair Wage Policies exempt projects below a certain threshold. Figure No. 7 shows the effect of adopting different thresholds, based on experience from 2014 to 2016.

Figure No. 7
 Impact of Thresholds on the Application of a Fair Wage Policy in Vaughan
 Based on Administrative Data provided by the City of Vaughan

	Percent of All Contracted Construction Work (Value) Covered (2014-2016)	Average Annual No. of Projects (2014-2016)
No Exemptions	100.0%	252
<\$100,000	92.9%	68
<\$500,000	80.3%	20
<\$1.0 Million	71.5%	11

The inference that can be drawn from Figure No. 7 is that a Fair Wage Policy that applied to projects with a value of more than \$1.0 million would cover 71.5% of Vaughan’s contracted construction work (measured in terms of total value). A threshold of \$500,000 would cover 80.3% of contracted work. The administrative burden of operating a Fair Wage Policy increases with the number of projects that are covered. Figure No. 7 indicates that, if a threshold that is lower than \$500,000 were adopted, the increase in the amount of contracted work covered would increase only moderately, while the number of projects covered, and therefore the related administrative burden, would increase more significantly.

Scope

As noted in Chapter Three, some municipalities restrict the application of their Fair Wage Policies to the ICI sector (i.e., non-residential building construction). The City of Toronto and the Provincial Policy apply their Fair Wage Policies to all construction work. If Vaughan were to adopt a Fair Wage Policy, but limit its application to the ICI sector, the data in Figure No. 6 suggest that the Fair Wage Policy would cover 16.1% of contracted construction work.

Trades Labour Share of Construction Costs

Based on Figure No. 6, over the period 2014 to 2106, the City of Vaughan awarded \$210,366,348 for contracted construction. The annual average was \$70,122,000. The purpose of the following analysis is to estimate the proportion of that expenditure represented by the wages of construction workers. The analysis proceeds in three steps. First, we use data from Statistics Canada’s input-output tables to

estimate the overall labour share of construction costs (Figure No. 8, Column 1). Second, we use Census data to estimate the proportion of labour cost that would be attributable to construction workers, thereby excluding the share that would be attributable to managerial, supervisory, technical, sales and administrative employees. The reason for this is that a Fair Wage Policy applies only to the wages of direct construction workers. (Figure No. 8, Column 2). The final step in the analysis is to apply these estimates to the data in Figure No. 6 on the average value of construction contracting by the City of Vaughan. This generates an estimate of the labour share of Vaughan’s contracted construction work. (Figure No. 8, Column 3).

The first column of Figure No. 8 summarizes estimates of the labour share of construction costs based on Statistics Canada’s Supply and Use Accounts (CANSIM Table 381-0033). In Figure No. 8, the ‘labour cost’ is the sum of (1) wages and salaries and (2) employers’ social contributions (EI, CPP, WSIB). Gross mixed income is excluded. Gross mixed income refers to proprietors’ income which is a mix of profit and remuneration for labour. ‘Total cost’ is the sum of all purchased inputs (both products and services) plus payment of wages, taxes, operating surplus and gross mixed income. The ‘labour share’ is the ratio of ‘labour cost’ to ‘total cost’.

The second column of Figure No. 8 uses the 2011 National Household Survey (‘Census’) to estimate the proportion of labour classified by Statistics Canada as ‘trades, transport and equipment operators and related occupations’. The all-sectors average has been used because it is not practical to estimate the trades labour share in each sector.

The third column of Figure No. 8 estimates the ‘trades labour share’ of ‘total construction costs’. This is derived by multiplying column 1 by column 2 (e.g., 33.1% x 69% = 23%). Estimates are rounded to the nearest integer.

Figure No. 8
 Estimates of the Trades Labour Share of Construction Costs
 Based on Statistics Canada, Input-Output Accounts (Average for 2010—2013)
 (CANSIM Table No. 381-0033)
 And 2011 National Household Survey, Estimates of Employment by Occupation and Industry

	Labour Share of Total Cost	Trades Share of Total Employment	Trades Labour Share of Total Cost
ICI Construction (Non-Residential Buildings)	33%	69%	23%
Transportation and Engineering Construction	29%	69%	20%
Other Engineering Construction	30%	69%	21%
Repair Construction	51%	69%	35%

Figure No. 8 suggests that the trades labour share of construction costs ranges from 20% to 23% on major new construction projects and 35% on repair projects. When reviewed by City officials, these estimates were judged reasonable, except for the labour share of ‘repair construction’ which was thought to be somewhat higher. Based on Figure No. 8, we can estimate the approximate portion of Vaughan’s contracted construction costs that might be affected by a Fair Wage Policy.

In Figure No. 9, it is assumed that the ‘buildings’ expenditures in Figure No. 6 under \$500,000 were predominantly for repair work. The ‘buildings’ expenditures over \$500,000 are assumed to be predominantly new construction or major renovations. For new construction, we have used the trades labour share of costs from Figure No. 8 for ‘ICI Construction’, *i.e.*, 23%. For repair construction, we have used 40% rather than the 35% in Figure No. 8. This is based on comments by City staff which suggested that 35% may be too low. For linear and other construction, we have used 20%, based on the estimate for ‘transportation and engineering construction’ in Figure No. 8. For ‘other’ construction, we have used 35%. ‘Other’ construction consists of parks work and other types of construction which are likely to have a higher trades labour share of total cost than ‘transportation and engineering construction’ or ‘ICI construction’. The inference from Figure No. 9 is that the average annual amount of contracted construction expenditures that is attributable to trades labour is around \$19.6 million. A 1.0% increase in the cost of construction labour would therefore increase construction costs by \$196,000 which would be around 0.28% of total construction costs.¹² Exempting construction jobs below \$1.0 million or below \$500,000 would reduce this cost impact. It should be stressed that these estimates are notional. They do not imply that there would necessarily be an impact on construction costs. An impact on costs would occur only if there are a material number of contractors that currently are performing City work and also paying their workers less than the prevailing wage. As noted, there is no evidence that this is the case.

Figure No. 9
Estimates of the Trades Labour Share of Vaughan’s Construction Costs

	Average Annual Value of Construction 2014-2016	Trades Labour Percent of Total Cost	Estimated Trades Labour Cost
Buildings (New Construction)	\$10,264,168	23%	\$2,360,759
Linear	\$24,914,296	20%	\$4,982,859
Other	\$33,913,586	35%	\$11,869,755
Repair Construction (Buildings)	\$1,030,066	40%	\$412,026
Total	\$70,122,116		\$19,625,399

Implications of a Fair Wage Policy for Vaughan’s Construction Costs

The impact of a Fair Wage Policy on Vaughan’s construction costs depends on two factors. The first is the wages that are currently paid by Vaughan’s contractors. The second is the impact of a Fair Wage Policy on those wages. In principle, a Fair Wage Policy aims to set minimum standards for remuneration that are commensurate with the prevailing wage. The prevailing wage is the weighted average of the wages paid by contractors that typically perform the type of work for which Vaughan contracts.¹³

¹² Labour share of contracted construction work = \$19,625,339 (Figure 9)
 1% increase in cost of labour = \$196,253
 Impact on construction costs = \$196,253 / \$70,122,116 = 0.278% rounded to 0.28%

¹³A simple average assigns each contractor an equal weight, regardless of their size. A weighted average assigns each contractor a weight that is proportionate to their share of the labour force.

If, in the main, Vaughan’s contractors currently pay the prevailing wage, then a Fair Wage Policy that is commensurate with the prevailing wage would have zero impact on construction costs. The reason for this is that contractors are already compliant with the Fair Wage Policy. It will be recalled from Chapter Three that employers that oppose a Fair Wage Policy are emphatic that market forces oblige them to pay the prevailing wage. If this is correct, then a Fair Wage Policy would not affect construction costs.

If a material number of Vaughan’s contractors currently pay less than the prevailing wage, then there would be an impact on Vaughan’s construction costs. The impact would be the amount by which those contractors need to raise their wages to meet the Fair Wage standard. However, as noted, there is no evidence that Vaughan’s contractors currently pay less than the prevailing wage.

If Vaughan were to adopt a threshold of \$1.0 million dollars below which the Fair Wage Policy did not apply, the Policy would cover approximately 10 or 11 projects. These projects would account for approximately 70% of *all* contracted construction work (*i.e.*, the total of buildings, linear, other and repair). If the threshold were set at \$500,000, the Fair Wage Policy would cover approximately 20 projects. These 20 projects would account for roughly 80% of all contracted construction work.

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6. Bill 53: *The Government Contract Wages Act*

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 new 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.

The *Government Contract Wages Act* replaces Order-in-Council 773/95 and the Provincial Fair Wage Program that was established by that OIC. However, we have been advised that the Fair Wage Schedules established by OIC 773/95 are still technically in force until they are revoked or replaced by new schedules under the *Government Contract Wages Act*.

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*,¹⁴ 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

¹⁴ 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, and the 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. In carrying out that mandate, the Act instructs the Director consider all relevant information, but specifically: (1) collective agreements, (2) Statistics Canada data, and (3) information from other government sources. The Act does not specify the relative weight that is to be given to 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 the 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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7. Options

This chapter sets out options for consideration and discusses the potential implications of these options. Six options will be described:

- Option No. 1: Status Quo: continue the current practice of referencing the Provincial Fair Wage Schedule in bid documents;
- Option No. 2: Adopt the 'Toronto Model';
- Option No. 3: Adopt a Made-in-Vaughan Fair Wage Policy;
- Option No. 4: If and when the *Government Contract Wages Act* is implemented, adopt the new Provincial Fair Wage Schedules with a Made-in-Vaughan Administrative Policy; and
- Option No. 5: If and when the *Government Contract Wages Act* is implemented, the City of Vaughan could adopt the new Provincial Fair Wage schedules and explore the possibility of arranging with the Provincial Director of Government Contract Wages and the Provincial Director of Employment Standards for administration, investigation and enforcement. The feasibility of this option is uncertain as is the potential cost that the provincial government might require for providing administration, investigation and enforcement services.

Option No. 1: Status Quo

The City's current practice is to include the following standard requirement in contracts:

"The Contractor shall pay or cause to be paid weekly/biweekly to every worker employed in the execution of the Contract, wages at not less than the following rates:

- 1) For workers employed in the execution of the Contract, who are in contractual relationship with a union, the minimum rate of wages shall be the union rate of wages in the particular district or locality in which the work is undertaken; or
- 2) For workers employed in the execution of the Contract, who are not in contractual relationship with a union, the minimum rate of wages shall be the current Fair Wage Schedules of the Labour Standards Branch, of the Ontario Department of Labour, in the particular district or locality in which the work is undertaken. Revisions made to the schedule during the course of the Contract shall apply from the effective date of such

revisions and all additional resultant costs shall be borne by the Contractor.” [Emphasis added].

For clarity, the wording of (2) above might be updated to specify the Fair Wage Schedules established by the Director of Government Contract Wages under the *Government Contract Wages Act* and applicable to the City Vaughan.

If the current practice is continued, there are a number of implications:

- New schedules under the *Government Contract Wages Act* have not been established. We have no information, at this time, on the government’s intentions. While the Fair Wage Schedules *per* OIC 773/95 may be deemed to be applicable, these Schedules do not have any practical importance because they are more than twenty years out of date.
- If the government implements the *Government Contract Wages Act*, it will likely use some procedure to identify a prevailing wage rate. This may be based on surveys, consultations and/or collective agreements.
- If there are some contractors doing work for the City of Vaughan that pay less than the prevailing wage (as identified above), there may be a need for investigation and enforcement. As noted in Chapter Six, 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. The City would therefore need to either establish its own administration, investigation and enforcement policies and procedures or enter into an agreement with the Province (if that is possible) to perform those tasks.
- The current practice appears to cover all contracted work. While the Provincial Fair Wage Policy *per* OIC 773/95 had thresholds below which the Fair Wage Schedules did not apply, there are no thresholds in the *Government Contract Wages Act*. The City may or may not wish to establish thresholds.
- There is an arguable ambiguity in the current practice pertaining to the meaning of the phrase ‘every worker employed’. It is not readily apparent whether ‘worker’ is intended to include independent operators or whether ‘employed’ is intended to restrict the application to ‘employees’. Greater clarity on the treatment of independent operators is needed. As noted in Chapter Six, it is arguable, but not certain, that the *Government Contract Wages Act* applies to independent operators.

If the current practice is continued, the City may still wish to consider measures to:

- (a) strengthen occupational health and safety performance, perhaps by adopting performance requirements or certification requirements, such as the Certificate of

Recognition (COR). City staff are currently in discussions with contractor associations about requiring COR certification.

- (b) encourage employers to invest in apprenticeships consistent with sec. 3(5) and 3(13) of the *Infrastructure for Jobs and Prosperity Act*.
- (c) discourage the improper classification of workers as independent operators, perhaps by requiring all independent operators to be identified as sub-contractors in a bid.

Option 1: Status Quo - Continue the Current Practice of Referencing the Provincial Fair Wage Schedule in Bid Documents	
Pros	Cons
<ol style="list-style-type: none"> 1. The current practice reflected industry input and has been accepted by the industry. 2. By deferring to the Province, Vaughan does not incur any costs in updating Fair Wage Schedules. 3. There will be comparable treatment of infrastructure projects within Vaughan regardless of whether they are provincial or municipal. 4. Waiting for clarification on the direction which the Province will take will better inform the City's approach in terms of next steps. 	<ol style="list-style-type: none"> 1. Vaughan does not have an administrative policy to accompany updated Fair Wage Schedules. <u>This is a significant gap that would need to be addressed.</u> 2. <u>Vaughan would need to determine whether there should be a threshold below which the Fair Wage Policy does not apply.</u> Also, Vaughan would need to determine how independent operators would be treated under the policy. There may also be a need to determine whether the policy would apply to P3 projects. 3. Although the <i>Government Contract Wages Act</i> was adopted, the new government has not indicated its intentions.

Option No. 2: Adopt the ‘Toronto Model’

The ‘Toronto model’ was described in Chapter Four. Its principal characteristics are:

- the Fair Wage Policy is administered by a Fair Wage Office;
- for construction, the union rate is deemed to be the prevailing wage and is incorporated into Fair Wage Schedules on a triennial basis;
- the Fair Wage Policy applies to all contracted work. There are no exemption thresholds;
- any stakeholder can register a complaint;
- the Fair Wage Office investigates complaints and also undertakes spot audits of employers’ payroll records as well as site inspections;
- non-compliant contractors are publicly cited and may be barred from performing City work for a period of two years.

The chief advantage of adopting the 'Toronto Model' is that it has been in place, in its current form, for a few decades. The 'Toronto Model' has been viewed by successive City Councils as a successful program. Although there was debate several years ago about the possibility of terminating the policy, in the end Council decided to introduce automatic updating of the Fair Wage Schedules. An important strength of the 'Toronto Model' is that the possibility of a proactive audit likely encourages voluntary compliance. Adopting the 'Toronto Model', including the Toronto Fair Wage Schedules, would mean that Vaughan would avoid any expenditure of resources that might otherwise be required to develop a Fair Wage Policy and Fair Wage Schedules. However, there are aspects of the 'Toronto Model' that could be problematic for the City of Vaughan:

- First: the City of Toronto's Fair Wage office employs three persons on a full-time basis. These individuals oversee administration of the Fair Wage Policy on approximately \$2.8 billion of contracting. In relation to the value of contracting, the cost of the Fair Wage Office is minor. In Vaughan, the annual value of contracting is around \$70 million. If Vaughan were to adopt a Fair Wage Policy, a more appropriate administrative model could be the approach taken by smaller municipalities, *e.g.*, Hamilton, Thunder Bay, Oshawa and Clarington. This approach relies on complaint fees and allows the City to use external investigators, where necessary.¹⁵
- Second: although there is no systematic evidence to draw on, as noted earlier, the senior City staff involved in contract management do not believe that the share of unionized contractors is predominant in most areas of contracting, except for linear work. This perception was not contradicted by our consultations. In other words, it would not appear to be appropriate to deem the union rate to be the prevailing rate;
- Third: the City of Vaughan may wish to exempt projects below a certain threshold both to simplify administration and also to avoid depleting the contractor pool that undertakes smaller jobs.

If the City of Vaughan were to establish a Fair Wage Office along the lines of the Toronto Fair Wage Office, it would require fewer resources since the volume of contracting is much smaller. While the total number of contractors and sub-contractors performing City work cannot be estimated with certainty, it is likely in the range of 300-350. This is around 10-12% of the number of contractors overseen by Toronto's Fair Wage Office.

The administration of a Vaughan Fair Wage Office would likely require one full-time non-union position. Allowing for an approximately 30% 'burden', the payroll costs would be around \$156,000. Office and

¹⁵ The municipalities that rely on complaint fees generally waive that fee when the complainant is an employee of the contractor about which the complaint is being made. Also the fee is refunded if the complaint is upheld. The cost of the investigation is then recovered by imposing an administrative charge on the non-compliant contractor. Under this approach, the municipality recovers its investigation costs through either the complaint fee or the administrative charge on the non-compliant contractor, except when the fee is waived and the contractor is found to be compliant.

sundry costs are likely to add up to \$30,000. Overall, the cost to the City of Vaughan of establishing a Fair Wage Office would therefore be \$186,000 annually. Figure No. 10 summarizes these costs.

Figure No. 10
Estimated Annual Costs of Operating a Vaughan Fair Wage Office

Item	Cost
1 Full-time Staff Person (non-union)	\$120,000
30% allowance for 'burden' (benefits, etc.)	\$36,000
Sundry administrative expenses	\$30,000
Total Costs	\$186,000

Option 2: Adopt the 'Toronto Model'	
Pros	Cons
<ol style="list-style-type: none"> The Toronto Model has proven to be workable. Successive City Councils have kept the system in place. The Toronto Model incorporates proactive audit and inspections to promote voluntary compliance. Adopting Toronto's Fair Wage Schedules would eliminate the administrative costs of developing Fair Wage rates. 	<ol style="list-style-type: none"> The Toronto Model would require an additional staffing resource to undertake proactive audits and inspections. Overall, the cost to the City of Vaughan of establishing a Fair Wage Office would be around \$186,000 annually. (Figure No. 10) Toronto's Fair Wage Policy deems the union rate to be the prevailing wage. For Vaughan, the union rate is likely to be somewhat above the prevailing wage. This would have cost implications for Vaughan as the majority of Vaughan's work (in value terms) appears to be undertaken by non-union contractors. (See discussion on page 10 in Appendix page 60). Toronto has no exemption thresholds.

Option No. 3: Adopt a Made-in-Vaughan Fair Wage Policy

A 'made-in-Vaughan' Fair Wage Policy would give the City complete control over the development of Fair Wage Schedules and the design of administration and enforcement procedures. Chapter Three discussed the elements of a Fair Wage Policy. These are:

1. Fair Wage Schedules
2. Scope of Application
3. Legal Obligation of Prime Contractors and Sub-Contractors
4. Communication of Rights to Employees

5. Investigation and Resolution of Complaints
6. Penalties or Sanctions for Non-Compliance

Developing Made-in-Vaughan Fair Wage Schedules

There are two procedures that Vaughan could use to determine its own Fair Wage Schedules: a prevailing wage survey and a percentage of the union rate.

Based on our experience in undertaking labour market studies, we estimate that the cost of using a reputable survey house to design and administer a Prevailing Wage Survey in the York Region would be approximately \$50,000 to \$60,000. This would generate a sample with a minimum of 10 observations per classification and a total sample of approximately 100 employers. To avoid biasing the sample with responses from small employers that typically do not undertake public sector work, it would be appropriate to restrict the sample to contractors that have undertaken work for at least one public sector entity in the GTA in the previous year. The statistical reliability of such a survey would be approximately +/-4%, 19 times out of 20. To achieve a confidence level of +/-2% would require a sample of approximately 250 employers, with a survey cost of \$125,000 to \$150,000. The City would need to undertake a prevailing wage survey on a triennial basis. It would also be appropriate to establish an industry advisory committee to provide guidance on the design and execution of a Prevailing Wage Survey. Industry input would improve the design of the survey and also improve response rates, as some employers will not respond to surveys unless they have been endorsed by an industry body. Arranging meetings of an advisory committee and co-ordinating survey design would require approximately two weeks of time of a senior City staff person. The implicit cost of this would be around \$4,000 to \$5,000.

An alternative to conducting Prevailing Wage Surveys is to compile the remuneration schedules in the building trade collective agreements applicable to Labour Relations Board Area 8 plus the schedules from the collective agreements of non-building trades unions whose employers undertake public sector construction work in Board Area 8. The latter would be chiefly CLAC employers. The Fair Wage Schedule would then be formulated as a percentage of the rates in the union collective agreements. Obtaining copies of the collective agreements, extracting wage information would require approximately two weeks of time of an intermediate City staff person, plus review by a senior staff person. The implicit cost of this would be around \$3,000 to \$4,000. The process of compiling wage schedules from collective agreements would be relatively straight forward as these would be supplied by employer organizations. The more challenging issue is determining the ratio of the Fair Wage Schedule to the total compensation set out in the union collective agreements. To do this objectively the City would need to administer a wage survey. While it would not be necessary to repeat this survey every three years, it would be appropriate to conduct this survey on a decennial basis to ensure that ratio was current. The costs of such a survey would be comparable to the estimates provided earlier, *i.e.*, \$125,000 to \$150,000.

Scope of Application

A Vaughan Fair Wage Policy would need to determine which types of construction are covered and whether there should be a threshold below which the Fair Wage Policy would not apply. As noted in

Chapter Four, Toronto applies its policy to all types of construction whereas some municipalities apply their policies only to ICI construction. Most Fair Wage Policies have thresholds.

Sectors: The reasons for adopting a Fair Wage Policy appear to be unrelated to the type of construction. It is not apparent why some sectors should be covered, while others are not.

Thresholds: Vaughan would need to carefully consider the appropriateness of thresholds. Critics of thresholds believe that non-compliance is more likely to occur among the smaller contractors that would undertake jobs that are often below the threshold. On the other hand, the City needs to be concerned about having a sufficient pool of contractors who will bid on small jobs. A Fair Wage Policy could reduce this pool if it excluded too many small owner-operators or partnership-based firms. Administrative simplicity is also a relevant factor. As noted earlier, a threshold of \$1.0 million would cover 71.5% of contracted work, while a threshold of \$500,000 would cover 80.3% of contracted work. The number contracts that would need to be overseen would be manageable: roughly 11 per year with a threshold of \$1.0 million and 20 per year with a threshold of \$500,000.

Legal Obligation of Prime Contractors

All Fair Wage Policies require a prime contractor to oblige its sub-contractors to comply with the policy. Many policies require notification of compliance, though not necessarily in the form of a statutory declaration. The *Occupational Health and Safety Act* and the *Workplace Safety and Insurance Act* make prime contractors responsible for their sub-contractors. From a contracting perspective, there is an intrinsic logic in making prime contractors responsible for their sub-contractors. If responsibility is diluted by sub-contracting, the City is in the unenviable position of negotiating obligations that the prime contractor can water down simply by sub-contracting.

Communication of Rights to Employees

Most Fair Wage Policies require a contractor to post the Fair Wage Schedule conspicuously so as to inform employees of their rights. Most municipalities also provide information on the Fair Wage Policy on their web sites.

Investigation and Resolution of Complaints / Penalties

There are two investigation and compliance models that have operated in Canada. The first is the City of Toronto's Fair Wage Office. The second is a complaint-based model. The strengths and drawbacks of adopting the 'Toronto model' were discussed earlier. The principal characteristics of a complaints-based model are:

- Complainants may be any contractor or sub-contractor that bid on the subject work or an employee of the contractor performing the work. Some policies also allow unions to register a complaint.
- Complainants must provide evidence that non-compliance is likely.
- Complainants must pay a fee which is approximately commensurate with the expected costs of an investigation. These fees range from \$1,687.50 to \$5,000.

The fee may be waived if the complainant is an employee. The fee is refunded if the complaint is upheld.

- The costs of an investigation (whether the complaint fee or higher) are charged to the non-compliant contractor and may be applied to the holdback permitted by the *Construction Lien Act*.
- Complaints may be investigated by a third party – usually an audit firm. Investigations consist of examining timesheets, statutorily required payroll records and pay stubs.
- Non-compliant contractors must pay the owed wages.
- A second instance of non-compliance can lead to a contractor being barred from performing work for a period of two years. There may be an appeal process to a committee of Council.
- On subsequent jobs, a non-compliant contractor may be required to submit audited confirmations of its compliance with the Fair Wage Policy for up to three years. The cost of these audited confirmations is borne by the contractor.

The primary attraction of the complaint-based model is that it requires comparatively little resourcing, but achieves compliance. The possibility that an affected stakeholder can register a complaint is a deterrent to non-compliance. Third party investigations are impartial and are based on statutorily required payroll records. The complaint fee or charges levied on the non-compliant contractor cover the cost of investigations. The burden of supplying audited confirmations of compliance only applies to contractors with a record of non-compliance.

Cost of Developing a Made-in-Vaughan Fair Wage Policy

There are three costs associated with developing a Fair Wage Policy. The first are the costs of developing Fair Wage Schedules. These costs were noted earlier. The second are the costs associated with developing the overall policy: legal definitions, scope of application, thresholds, complaint and investigation procedures, applicable fees, penalties, appeal procedures, etc. This would involve reviewing the Fair Wage Policies of other jurisdictions to determine their suitability to Vaughan. This would require the resources of senior legal, human resources, procurement and contract administration staff. Additionally, Council may wish to consult with stakeholders. Our interviews with stakeholders indicated an expectation on their part that such consultations would occur. Figure No. 11 summarizes the costs of developing a made-in Vaughan Fair Wage Policy:

Figure No. 11
Estimated Costs of Developing a Made-in-Vaughan Fair Wage Policy

	Staff Time (Days)	Cost (Avg. Daily Cost: \$700)
Policy Development		
Senior Staff Time: Legal, HR, Procurement, And Contract Administration (10 staff)	25 to 50	\$17,500 to \$35,000
Consultations with Stakeholders: Senior Staff Time	10 to 15	\$7,000 to \$10,500
Sub-Total (Policy)		\$24,500 to \$45,500
Development of Fair Wage Schedules		
Option A: Triennial Prevailing Wage Survey (cost depends on sample size and confidence level)		
Senior Staff Time - Survey Design and Consultation	5 to 10	\$2,500 to \$5,000
Option B: Decennial Prevailing Wage Survey to determine Ratio of Prevailing Wage to Union Rate (cost depends on sample size and confidence level)		
Staff Time: Compile and Analyze Collective Agreements	10 to 15	\$5,000 to \$7,500
Sub-Total (Fair Wage Schedules)		\$52,500 to \$157,500
Total Costs		\$77,000 to \$203,000

Overall, the estimated cost of developing a made-in-Vaughan Fair Wage Policy could range from \$77,000 to \$203,000.

Cost of Administering a Made-in-Vaughan Fair Wage Policy

There are two options for ongoing administration. The first option is a Vaughan Fair Wage Office which would be similar to the City of Toronto’s Fair Wage Office. As noted earlier, the annual cost of a Vaughan Fair Wage Office would be around \$186,000 (Figure No. 10).

The second administrative option is to adopt a complaint-based model similar to that which is used in other municipalities, except for the City of Toronto. In a complaint-based model, the only ongoing administrative costs are those related to investigating complaints using either internal staff or an external auditor. Investigations are relatively straight forward. Under the *Employment Standards Act*, employers are required to maintain payroll records. In most cases, a comparison of these payroll records with the Fair Wage Schedule will reveal whether the contractor complied with the Fair Wage Policy. In some cases, it may be necessary to interview the contractor and the worker to determine if the worker was properly classified. The time to conduct an investigation would likely range from 1 day to 3 days, depending on the nature and scope of the complaint (*e.g.*, number of workers affected by the complaint, period of time covered, and whether classification issues are involved.) An average of 1.5 days is a reasonable estimate of professional time required. An external investigator would likely charge around \$2,500 to \$5,000 to investigate and report. If internal staff were available, the costs would be around \$1,000 to \$1,500. Additionally, a certain amount of a senior manager’s time would be required to determine if an investigation is required, to assess the results of an investigation and to oversee whatever follow-up action may be required.

It is impossible to predict the number of complaints that would require investigation. In Toronto, there were 35 Fair Wage investigations in 2015 based on approximately \$2.8 billion of contracting value. The average annual value of Vaughan’s construction contracting is much smaller - approximately \$70.0 million per year. It is reasonable to estimate that there would be 5 or fewer complaints per year that would require investigation and follow-up. Overall, the amount of senior management and legal time required would be about one to two days *per* complaint to authorize an investigation, review the results and oversee the necessary follow-up. Figure No. 12 summarizes these costs and shows that that the expected cost range would be \$8,750 to \$35,000 per year.

Figure No. 12
 Estimated Annual Costs of Operating a Complaint-Based Administration of a Fair Wage Policy

Item	Cost
Time to investigate a complaint	1-3 days
Option A: Cost to investigate a complaint (external investigator)	\$2,500 to \$5,000
Option B: Cost to investigate a complaint (internal investigator)	\$750 to \$2,250
Senior Management and Internal Legal Staff time required	1-2 days
Cost of Senior Management and Internal Legal Staff	\$1,000 to \$2,000
Estimated No. of Complaints per Year (max. est.)	5
Investigation Costs (Range)	\$3,750 to \$25,000
Senior Staff Costs	\$5,000 to \$10,000
Total Costs assuming no Cost Recovery	\$8,750 to \$35,000

Municipalities that operate a complaint-based system require complainants to pay a fee which is refundable if the complaint is upheld. It is also the norm to waive the fee when the complainant is an employee of a contractor about whom the complaint is being made. When a complaint is upheld, the non-compliant contractor is charged an administrative fee which covers the costs of the investigation. The cost estimates in Figure No. 12 would therefore be reduced by any amount of cost recovery.

Option 3: Adopt a 'Made in Vaughan' Policy	
Pros	Cons
<p>1. A 'Made in Vaughan' Policy would be wholly reflective of local circumstances.</p>	<p>1. The resource costs to develop a 'Made in Vaughan' Policy would range from \$77,000 to \$203,000 depending on the extent of consultations and the size of the prevailing wage survey. (Figure No. 11)</p> <p>2. Ongoing administrative costs would depend on whether the 'Made in Vaughan' Policy relied on Vaughan Fair Wage Office or complaint-based model.</p> <p>The annual cost of a Vaughan Fair Wage Office would be around \$186,000. (Figure No. 10)</p> <p>The annual cost of a complaint-based model would be \$8,750 to \$35,000 less any cost recovery from complaint fees and administrative fees. (Figure No. 12)</p> <p>Subsequent costs would depend on the frequency of administering a prevailing wage survey.</p>

Option No. 4: Adopt the New Provincial Fair Wage Schedules (when they are issued) with a Made-in-Vaughan Administrative Policy

This option is similar to Option No. 3, except that in place of developing its own Fair Wage Schedules, the City of Vaughan would adopt the relevant Provincial Fair Wage Schedules.

There are three advantages to adopting the Provincial Fair Wage Schedules when those schedules are updated:

- First: using the relevant Provincial Fair Wage Schedules is already the established practice of the City of Vaughan and reflects industry consultations at the time that practice was adopted.
- Second: using the Provincial Fair Wage Schedules eliminates the cost of developing schedules. It may also reduce disputes about the Schedules.
- Third: there is an equity and fairness argument that the minimum wages rates should be the same for provincial and municipal projects that are undertaken in the City of Vaughan.

The reason to defer a decision on this option is that the province has not yet released its updated and modernized Fair Wage Policy. Vaughan may wish to delay a decision until it has this information.

There would be no need to conduct wage surveys. The costs of this option would be the development of a Fair Wage Administrative Policy which would likely draw on the provincial policy except for the

application of thresholds and the design of a complaint and investigation process. Annual costs for complaint-based administration of the policy would be under \$15,000, assuming that complaint fees and charges on non-complaint contractors are broadly commensurate with investigation costs.

Option 4: Adopt the Provincial Fair Wage Schedules with a 'Made in Vaughan' Administrative Policy	
Pros	Cons
<ol style="list-style-type: none"> 1. This is effectively a continuation of current policy with the administrative policy gaps filled in and suited to Vaughan’s needs and circumstances. 2. Vaughan would avoid the costs of developing and updating Fair Wage Schedules. 3. There will be comparable treatment of infrastructure projects within Vaughan regardless of whether they are provincial or municipal. 	<ol style="list-style-type: none"> 1. The resource costs to develop a 'Made in Vaughan' Policy would range from \$24,500 to \$45,500 depending on the extent of consultations. Because Vaughan would be using the Provincial Fair Wage Schedules, it would not incur any costs to develop these schedules. (Figure No. 11) The ongoing administrative costs would depend on whether Vaughan opted for a Fair Wage Office Model or a complaint-based model. The annual cost of a Vaughan Fair Wage Office would be around \$186,000. (Figure No. 10) 2. The annual cost of a complaint-based model would be \$8,750 to \$35,000 less any cost recovery from complaint fees and administrative fees. (Figure No. 12) 3. The Province has not yet indicated its intentions.

Option No. 5: Adopt the Provincial Fair Wage Schedules (when they are issued) but Explore Delegating Administration to the Province

This option is similar to Option No. 4, except that in place of administering the Fair Wage Schedules locally, administration would be delegated to the province. This would require an agreement between the City of Vaughan and the Province that the Director of Government Contract Wages and the Director of Employment Standards would be empowered to administer the Fair Wage Schedules on construction projects undertaken by the City of Vaughan. We have no information on whether this would be feasible.

There are two advantages to this option:

- First: using the relevant Provincial Fair Wage Schedules is already the established practice of the City of Vaughan and reflects industry consultations at the time that practice was adopted. The most recent consultations indicated that employers prefer a single Fair Wage Policy to multiple policies.

Second: there is an equity and fairness argument that the minimum wages rates should be the same for provincial and municipal projects that are undertaken in the City of Vaughan.

The potential disadvantages of this option are:

- First: it is uncertain whether the Provincial government would be willing to take on administrative, investigation and enforcement services for a municipal government even though the municipal government’s Fair Wage Policy mirrored the Provincial Policy;
- Second: the Provincial government may require the City of Vaughan to pay a fee to the Province for providing administrative, investigation and enforcement services.
- Third: under this option, the City of Vaughan could lose the ability to modify the Provincial Fair Wage Policy to better suite conditions in the City of Vaughan. This could be particularly relevant in regard to minimum thresholds and perhaps other scope-related matters;
- Fourth: by transferring administrative, investigation and enforcement responsibilities to the Provincial government, the City of Vaughan would lose control over how those functions are carried out on construction projects undertaken by the City of Vaughan.

As with Option No. 4, the principal reason to defer a decision on this option is that the province has not yet indicated its intentions.

Option 5: Adopt the Provincial Fair Wage Schedules But Explore Delegating Administrative Responsibility to the Province	
Pros	Cons
<ol style="list-style-type: none"> 1. This is effectively a continuation of current policy with the administrative policy gaps filled in. 2. There will be comparable treatment of infrastructure projects within Vaughan regardless of whether they are provincial or municipal. 	<ol style="list-style-type: none"> 1. The Province has not yet indicated its intentions. It is uncertain whether this option is feasible. 2. The Provincial government may require a fee to provide administrative, investigation and enforcement services. 3. The City of Vaughan could lose the ability to modify the Provincial Fair Wage Policy to better suit local conditions, e.g., in relation to minimum thresholds. 4. by transferring administrative, investigation and enforcement responsibilities to the Provincial government, the City of Vaughan would lose control over how those functions are carried out on construction projects undertaken by the City of Vaughan.

■

8. Conclusion

This report assessed the feasibility of adopting a Fair Wage Policy, *i.e.*, a policy that would establish minimum wage standards for contracted construction that are commensurate with the prevailing wage.

The report:

- summarized and reviewed consultations with stakeholders,
- analyzed data on contracted construction,
- described Fair Wage Policies in other jurisdictions, and
- set out six options for consideration.



Appendix A

Detailed Summary of Stakeholders' Perspectives

Unions

Reasons for Supporting a Fair Wage Policy

1. Prevent a Race to Bottom

The core reason for a Fair Wage Policy is to prevent a race to the bottom. That race can be triggered by a small number of 'bad actors' who seek a competitive advantage by paying less than the prevailing wage. They are able to do this because, except at the peak of the construction cycle, there are unemployed workers who will take whatever employment is offered. The low wage strategies of this minority of contractors undermines standards. Contractors that pay low wages do not invest in health and safety training. Nor do they invest in skills training or provide benefits to their employees.

The lowest bid principle should not be a vehicle for creating an underclass of workers. The City's goal should be to have contractors who pay a fair wage, invest in safety and skills training, and compete on the basis of productivity and quality. The City should not undermine contractors who do this by rewarding contractors who do not.

2. Support Investment in Safety

There are studies that show the importance of safety training for health and safety performance in the construction industry. Contractors that compete on the basis of lower labour costs do not invest in safety training. They also cut corners on health and safety prevention systems. By contrast, employers who pay a fair wage will be sufficiently progressive that they will also ensure that their employees have the required health and safety training. Any good construction contractor will tell you that just meeting the statutory minimum for safety training is not enough to ensure a safe workplace. You have to invest in training and invest in a health and safety management system. Contractors who pay a Fair Wage are far more likely to be doing this. In Ontario, our health and safety system is based on the 'internal responsibility system'. Trained workers are one of the keys to that system. It is important to the Mayor and City Councillors not to have a major construction accident on one of their projects.

3. Support Training and Apprenticeship

We need to train the next generation of skilled tradespersons. Apprenticeships are the key. Good employers – both union and non-union – invest in apprenticeship training. That is a real cost for these employers. Employers that pay less than the prevailing wage do not make these investments in training. It is short-sighted to reward contractors who do not invest in training with City work and thereby

penalize contractors that do make those investments. Employers that are paying a fair wage are much more likely to invest in training their workers.

Unionized construction workers and their employers make sizeable investments in skills training. On average, the construction unions that belong to the Central Ontario Building Trades spend around \$60 million per year training. By contrast, low-wage contractors almost never provide any formal skills training for their labourers. They do not have the facilities or resources to provide that training.

4. Counter Underground Practices

Contractors that pay a fair wage do not engage in underground practices. For this reason, a Fair Wage Policy helps to counteract the underground economy. A Fair Wage Policy will exclude companies that engage in underground practices. A Fair Wage Policy that requires contractors to both employ apprentices and to register their company and their apprentices with the Ontario College of Trades (OCOT) would discourage underground practices in the public sector because contractors that engage in underground practices will be disinclined to register with OCOT.

5. Protect Recent Immigrants

The City of Toronto's Fair Wage Policy was instituted more than a century ago. The principal motivation – which continues to be valid – was to prevent unscrupulous contractors from exploiting recently arrived immigrants. The GTA continues to receive waves of immigration. Many of these newcomers are unaware of their rights and unaware of prevailing labour standards. They are vulnerable to exploitation by contractors who seek a competitive advantage by paying less than the prevailing wage.

6. Support the Local Community

A high proportion of the families that reside in the City of Vaughan have family members who work in the construction industry. These families depend on contractors who pay the prevailing wage. They suffer, and the City of Vaughan suffers, when the prevailing wage is undermined. Communities need the jobs that are created by local construction projects. Contractors should hire local labour rather than bringing in lower cost labour from outside the community.

7. Encourage 'Give Back' to the Community

A Fair Wage Policy enables a municipality to leverage some "give back" to the community by giving preference to contractors that participate in programs that provide training and employment opportunities to at-risk youth. One such program is Hammerheads which is operated by the Central Ontario Building Trades. Community benefits are important. Contractors should not just do the construction work and leave. They need to create local jobs and invest in apprenticeship and training.

8. Create a 'Level Playing Field' for Competition

There are many good, non-union contractors who pay the prevailing wage, provide their employees with benefits and meet all of their training and health and safety responsibilities. These contractors also suffer when they are forced to compete with contractors who exploit unemployment to pay less than the prevailing wage. A Fair Wage Policy targets 'bad actors', not non-union contractors. Good, non-union contractors benefit just as much from a Fair Wage Policy as do the union contractors. Fair Wage Policies establish a level playing field for competition among good contractors, regardless of whether they are unionized or not. Only those contractors that pay truly sub-standard wages are adversely affected by Fair Wage Policies. This is the abuse that needs to be curtailed.

9. Obtain Good Value

Companies that invest in skills training and high standards of health and safety performance also provide the best quality delivery – on time and safely delivered.

Designing a Fair Wage Policy for the City of Vaughan

While the views expressed were substantially similar on most issues related to the design of a Fair Wage Policy, there were some differences.

Regional Policy or City Policy

While there would be merit in a York Region Fair Wage Policy, the adoption of a Fair Wage Policy by the City of Vaughan should not be held up by efforts to achieve a consensus at the regional level. The City of Vaughan should adopt a Fair Wage Policy irrespective of whether the Provincial or Federal governments update their policies.

Setting Schedules

Two unions suggested that the City of Vaughan should adopt the relevant Provincial Fair Wage Schedules when those Schedules are updated by the Province. These schedules are likely to apply to the entire GTA. Other unions suggested that the City of Vaughan should adopt the City of Toronto's schedules since the GTA is one labour market and the City of Toronto has already invested resources in developing Fair Wage Schedules. It was pointed out that the Ontario Labour Relations Board treats the GTA as a single labour market for the purpose of regulating labour relations in the construction industry.

Regardless of the benchmark that is adopted, the City of Vaughan's Fair Wage schedule should be based on total compensation, not just the direct wage. It is important to take account of vacation, health and pension benefits, and to include an allowance for these in the Fair Wage Schedule. Collective agreements for ICI and civil construction are good indicators of the prevailing wage.

Thresholds

Some unions opposed any contract value threshold below which a Fair Wage Policy would not apply. It was noted that the City of Toronto does not have a threshold. However, a majority of the unions suggested that threshold would be reasonable at least in the initial implementation phase. Those unions that suggested a threshold also stated that there would need to be clear policies against piecing large projects into smaller contracts to get around the Fair Wage Policy. It was also stated that, if there is a threshold, it would still be important to require that contractors on exempted jobs have WSIB clearance certificates and pay statutory requirements, e.g., EI, CPP and benefits under the *Employment Standards Act*. After a period of 3-5 years, it may be appropriate to reduce the threshold and therefore expand the scope of coverage of a Fair Wage Policy.

Piece Work

It was noted that piece-work is uncommon in the ICI sector and in civil construction. A Fair Wage Policy should either not allow piece-rate payment or should require that piece-rates generate at least the equivalent remuneration that would have been paid had the worker been paid regular wages.

Independent Operators

There are two types of independent operators. The first type comprises persons who supply equipment and also operate that equipment. The remuneration of these individuals is a combination of payment for labour and payment for the equipment. They should be excluded from the Fair Wage Policy. The second type of independent operator comprises persons who supply only their labour. These independent operators should be covered by a Fair Wage Policy even if they are legally treated as sub-contractors rather than employees. Their remuneration should be at least equal to the remuneration that the Fair Wage Policy specifies for equivalent employees.

Responsibility of Prime Contractors

There were some differences of opinion on the degree of obligation and liability that unions believed should apply to a prime contractor. Some unions argued that prime contractors should have an undiluted obligation to ensure compliance on the part of its sub-contractors. Penalties for non-compliance would apply equally to the prime contractor and the non-compliant sub-contractor. It was noted that a prime contractor already has overriding responsibilities under both the *Occupational Health and Safety Act* and the WSIB. It is reasonable, therefore, to require a prime contractor to take some responsibility for the performance of its sub-contractors. Other unions, however, suggested that a prime contractor should require a statutory declaration from its sub-contractors of compliance with the Fair Wage Policy and also should make reasonable efforts to ensure compliance. If these steps were taken, a prime contractor should not be liable for non-compliance on the part of its sub-contractors.

Fair Wage Office

There has to be a compliance strategy. The existence of a Fair Wage Office would be an important factor in compliance. The City of Toronto's Fair Wage Office should be the model.

Complaints and Investigation

There must be somewhere that a worker or someone else can go to complain about non-compliance. Someone needs to investigate and follow-up.

There should be a broad a definition of who is eligible to make a complaint. Any affected worker should be eligible. If there is *prima facie* evidence that their complaint may be valid, this should trigger a complete review of payroll records and direct questioning of workers. A single worker should be allowed to complain on behalf of others – similar to a 'class action'. Unions, contractors and contractor associations should have the right to make a complaint, even if they are not directly engaged in the work. However, their complaints would need to be supported by *prima facie* evidence so as to protect against abuse of this process. There should also be a time frame after which complaints cannot be made.

Audits / Verification of Compliance

There were some differences among unions on the appropriate frequency of audits. Some unions felt that proactive audits of payroll records and timesheets should be sufficiently regular to encourage voluntary compliance. Companies need to know that there is a possibility that they will be audited. Other unions felt that audits should be undertaken only when there is reason to believe a contractor has been non-compliant. Filing a collective agreement that is compliant with the Fair Wage Policy should suffice to demonstrate compliance, since the Union can be relied on to ensure that the collective agreement rates are paid.

Statutory Declarations

Statutory declarations are important. They underline that what you are asserting has legal significance and that a false statement will have legal consequences.

Penalties

It was generally agreed that there should be consequences for non-compliance, but that penalties should be scaled depending on the nature of the offence and whether it was a first or subsequent offence. Monetary penalties were not favoured, except to the degree that a surcharge might be added to owed remuneration to cover the costs of an inspection. Unions favoured a warning for a first offence. For subsequent offences, a non-compliant contractor should be suspended for a period of time from the list of eligible bidders on future work. After three offences, a contractor should be barred for 2 or 3 years from bidding on future work.

Consultation

Before finalizing a Fair Wage Policy there should be consultations with all stakeholders, including unions and employer associations. There should also be consultation before finalizing Fair Wage schedules.

Employers

There were different employer perspectives on Fair Wage Policies.

The Construction Labour Relations Association of Ontario (CLRAO), the Greater Toronto Sewer and Watermain Contractors Association (GTSWA), the Toronto Area Roadbuilders Association (TARBA) and the General Contractors Section (GSC) represent employers that employ members of the building trades unions and undertake municipal work, some or all of which, would likely be covered by a municipal Fair Wage Policy. These associations support Fair Wage Policies. In many respects, their views are similar to those expressed by the unions.

The Progressive Contractors Association of Canada (PCAC) represents employers that negotiate with the Christian Labour Association of Canada (CLAC). While supporting Fair Wage Policies in principle, the PCAC expressed concerns about the potential to use Fair Wage Policies to restrict bidding to contractors that are bound to the building trades unions, thereby excluding PCAC contractors from municipal work.

RESCON represents the labour relations interests of companies that build both high-rise and low-rise housing in the GTA.¹⁶ BILD GTA, which also represents residential builders, deferred to RESCON's views on the potential impact of a municipal Fair Wage Policy. RESCON noted that while market housing would not be covered by a municipal Fair Wage Policy, public housing projects could be covered depending on the policy's scope.¹⁷ RESCON stressed that norms and standards are different in the residential sector. RESCON therefore emphasized that any Fair Wage Policy that applies to the construction of public housing projects should be based on conditions that operate in the residential sector and should not simply mirror conditions that may apply in non-residential construction. RESCON's view of a municipal Fair Wage Policy would depend on whether it applied to public housing projects and, if so, whether the relevant norms and standards were based on the economic realities of the residential construction industry in the GTA.

¹⁶ RESCON is an umbrella organization that provides administrative services to three accredited employer associations: the Toronto Residential Construction Labour Bureau (low-rise), the Metro Toronto Apartment Builders Association (high-rise) and the Durham Residential Construction Labour Bureau. The collective agreements are with LIUNA, Local 183. RESCON's core focus is labour relations, but RESCON is also engaged in health and safety, skills training, labour supply, and policy relevant to the interests of builders (*e.g.*, Building Code, technical standards, land supply, approvals process, *etc.*).

¹⁷ In the City of Toronto, for example, the City's Fair Wage Policy does *not* apply to Toronto Community Housing. Toronto Community Housing has its own Fair Wage Policy. <https://www.torontohousing.ca/about/policies-programs/policies/hiring-fair-wages/Pages/Fair-Wage-Policy.aspx>

There is a trend to 'mixed residential use' projects in which some units are market units while other units are social housing. This could lead to some residential construction being subject to a Fair Wage Policy, depending on how that policy was defined and applied.

The Vaughan Chamber of Commerce represents both union and non-union employers. At the time of preparing this report, the Chamber had not taken a position on Fair Wage Policies. However, two members of its Government Relations Committee offered perspectives on Fair Wage Policies.

Merit Ontario and the Ontario General Contractors Association (OGCA) oppose Fair Wage Policies.

The perspective of the organizations on whether Fair Wage Policies are appropriate tends to influence their views on the design and administration of these policies.

Reasons for Supporting a Fair Wage Policy

Employer organizations that support Fair Wage Policies focus primarily on two issues: health and safety performance and investments in training and apprenticeship. While acknowledging that it is difficult to document a direct cause and effect relationship between a Fair Wage Policy and an employer's health and safety performance or investments in training and apprenticeship, they nevertheless believe that there is an important connection.

1. Occupational Health and Safety

Contacting associations that support a Fair Wage Policy believe that these policies prevent a race to the bottom which jeopardizes health and safety. They believe that contractors that compete on the basis of lower wages are more likely to cut corners on health and safety, training and the environment. By contrast, employers that pay a fair wage have a stable work force. They invest in this work force. Occupational health and safety training is an important part of this investment. Reference was also made to a study by the Institute for Work and Health which found that in the ICI sector the health and safety performance of unionized contractors was superior to that of non-union contractors.

2. Training and Apprenticeship

Contacting associations that support a Fair Wage Policy suggested that a Fair Wage Policy supports skills training in two ways. First, a company that pays a fair wage is more likely also to invest in training, especially in apprenticeship. Second, workers who receive a fair wage are less likely to drop out of their apprenticeships because of the low pay. Low wage contractors, it was suggested, avoid training costs. It was noted that unionized employers negotiate significant contributions to training trust funds. These trust funds operate sophisticated training centres and deliver both upgrade training and apprenticeship training. Low wage employers do not make these investments. It was argued that we need to strengthen the apprenticeship system. It would be a significant positive if a Fair Wage Policy could contribute to strengthening apprenticeship. The PCAC also stressed the importance of training, but cautioned that if wages are too high, employers may be economically pressured to cut back on their training investments.

3. *Underground Practices*

There were mixed views on the prevalence of underground practices in the ICI sector and in road construction. Some associations believe that underground practices are rare on public sector jobs. Other associations believe that cash payment of undocumented workers occurs. It was suggested that the most prevalent types of underground practices are styling workers as independent operators so as to avoid payment of CPP, EI and WSIB, and not paying overtime when it is required. It was argued that there is a link between Fair Wage Policies and curtailing the underground economy, although this link depends on the design of the policy. The risk of audit discourages an employer from offering lower wages that are paid in cash or paying wages at straight time when overtime is legally required. A Fair Wage Policy that required independent operators to be paid the same effective remuneration as employees would curtail the practice of styling workers who are actually employees as independent operators. It was also suggested that undocumented workers are a big part of the underground economy. By mandating a higher wage structure, a Fair Wage Policy will discourage companies from hiring undocumented workers. The PCAC, however, cautioned that if the Fair Wage Schedule were too high, some employers might be tempted to cut costs by adopting underground practices.

Reasons for Opposing a Fair Wage Policy

Employer organizations that oppose Fair Wage Policies believe that market forces operate to ensure that prevailing wages are paid and that enforcement procedures under *the Occupational Health and Safety Act*, the *Workplace Safety and Insurance Act* and the *Ontario College of Trades and Apprenticeship Act* adequately and appropriately address standards in these areas. They dispute any connections between a Fair Wage Policy and improved health and safety performance, more investment in training and apprenticeship or reductions in the underground economy.

1. *A Fair Wage Policy is Unnecessary*

Merit Ontario and the OGCA believe that market forces are sufficient to ensure that contractors pay a fair and competitive wage. Every contractor needs a trained and experienced work force to be competitive. A contractor that does not pay a competitive wage will lose its workers to other employers and will no longer be able to bid on work. Merit Ontario characterizes Fair Wage Policies as a solution in search of a problem.

Both Merit Ontario and the OGCA believe that there is a shortage of skilled construction workers. For this reason, skilled construction workers earn a good wage. They do not need the added protection of a Fair Wage Policy. Skilled construction workers are therefore different from workers who are earning the minimum wage and who may need the protection of the *Employment Standards Act*. In the construction industry, workers earn well above the minimum wage.

2. A Fair Wage Policy will increase Complexity and Costs

The OGCA believes that a municipal Fair Wage Policy will add complexity to the procurement process, raise costs and foster disputes without conferring any commensurate benefits.

3. There is No Link between a Fair Wage Policy and Health and Safety

Both OGCA and Merit Ontario dispute that there is a link between a Fair Wage Policy and improved health and safety performance. Merit Ontario believes that the main determinants of health and safety performance are company culture, good policies and a professional health and safety manager. These factors are unrelated to Fair Wage Policies. The OGCA also notes that all public sector projects are registered with the Ministry of Labour which then enforces occupational health and safety through its inspections. Merit Ontario stated that all contractors know that better trained workers also work safely. Public opinion, government agencies and market forces ensure that contractors invest in training, whether they are union or non-union. Merit Ontario disputes claims that unionized contractors have superior health and safety performance. Both Merit Ontario and the OGCA noted that the WSIB's experience rating system identifies good performers.

4. There is No Link between a Fair Wage Policy and Training

Similarly, both OGCA and Merit Ontario also reject a link between a Fair Wage Policy and investments in training and apprenticeship. OGCA notes that the provincial government's main vehicle for promoting training and apprenticeship is the Ontario College of Trades. In the compulsory trades, all contractors employ certified journeypersons and registered apprentices. In the voluntary trades, all contractors train their workers, one way or another, because they need trained workers.

5. There is No Link between a Fair Wage Policy and Suppressing Underground Practices

The OGCA and Merit Ontario also believe that underground practices are rare on public sector projects. They assert that cash payments do not occur on public sector projects. If the use of independent operators is judged to be a problem, then the City of Vaughan should make clear that they are to be treated as sub-contractors and must be identified as such in tender documents.

Open Procurement

The PCAC's primary interest in procurement matters is to have fair and open tendering regardless of union affiliation. It is of central importance to the PCAC that a Fair Wage Policy should not be used to bar some contractors from bidding on public sector work because they structure their remuneration differently from the building trades employers. The PCAC is concerned that a Fair Wage Policy that too closely replicates the remuneration model of the building trades will have the effect of barring

employers (PCAC members) who pay a fair wage, but who structure that wage differently. This concern is also shared by OGCA and Merit Ontario.

The OGCA and Merit Ontario expressed their concern that the real motivation behind Fair Wage Policies is to restrict access to municipal projects to contractors that are bound to the building trades. The OGCA noted that some building trade unions subsidize contractors bids by levying a supplementary amount on their members who are working. The OGCA asked how such practices would be reflected in a Fair Wage Policy.

Designing a Fair Wage Policy

Regional Policy or City Policy

Some employer associations favour a York Region Fair Wage Policy, although there was concern expressed by some of the associations that the effort to establish a regional policy could unduly delay the adoption of a Vaughan policy. Concern was expressed by a number of associations that a multiplicity of Fair Wage Policies would be detrimental and confusing.

Setting Schedules

Employers had different perspectives on how Vaughan should establish its Fair Wage Schedules, although all associations stressed the need for consultation.

Some employer associations favoured mirroring the City of Toronto's Fair Wage schedules or adopting those schedules with regionally appropriate modifications. The rationale for viewing the City of Toronto schedules as an appropriate benchmark is that the GTA is a single labour market. It was noted that the Ontario Labour Relations Board treats the GTA as one market (Labour Board Area 8) for the purpose of assigning bargaining rights to unions and employer associations. Other associations favoured adopting the provincial Fair Wage Schedules when those are updated. Among some employer associations, there was support for a York Region Fair Wage Policy. However, support for a Regional Policy was qualified, if the development of such a policy were likely to introduce significant delays. One association commented that efforts should be made to avoid having different policies operate within York Region.

It was generally agreed that the minimum pay rates in a Fair Wage Policy should be based on total compensation. However, the PCAC, OGCA and Merit Ontario believe strongly that any Fair Wage Policy should be sufficiently flexible to take account of different remuneration approaches. These organizations believe that it is especially important that a Fair Wage Policy should not treat the building trades model as the only acceptable model for determining total compensation. Most unionized employers contribute to various benefit and training funds. This is also how vacation and statutory holiday pay is handled. The practice with many other employers is different. These employers continue to pay regular wages when an employee is on vacation or taking time off on a statutory holiday. Some employers provide benefits and training directly to their employees. The cost of benefits and training that are provided directly cannot be calculated in the same way as when contributions are made to a trust fund. These differences make it complex to compare total compensation packages.

Both the PCAC and the OGCA noted that some building trades unions operate project targeting funds whereby a portion of the workers' basic wage is channelled into a fund which is used to support unionized contractors' bids on other work. This is not really remuneration to the worker as the worker does not receive that money. The PCAC and the OGCA felt that contributions to project targeting funds should be netted out of total compensation.

The OGCA noted that union wage contracts are the only publicly available source of information on wages. However, the OGCA cautioned against assuming that the union wage is the prevailing wage. To determine the prevailing wage requires a significant investment of resources and extensive consultations. All employer associations stressed the need for full and complete consultations.

RESCON stressed the importance of recognizing that there are distinct sectors in the construction industry. This is reflected in the *Labour Relations Act* which recognizes seven sectors.¹⁸ Unions negotiate collective agreements that are specific to these sectors. The reason for this is that economic conditions, the way that work is undertaken, and norms and standards differ across these sectors. RESCON believes that any Fair Wage Policy needs to reflect these sectoral differences. A schedule that applies to residential construction (such as public housing) must be based on conditions in the residential construction industry, not on conditions that may apply in other sectors.

Thresholds

Employer associations offered mixed views on the appropriateness of thresholds. One association noted that it is increasingly common for building trades unions to negotiate project thresholds below which a lower wage rate or lower contributions to funds apply. Without a threshold, it was suggested, small employers may not be able to bid on City jobs while large employers would be uninterested in the small jobs that these smaller contractors typically undertake. A threshold of \$1.0 million was suggested as reasonable. Other employer associations, however, expressed opposition to the notion of a threshold. In sewer and watermain work, it was suggested that there is no meaningful distinction between new construction work and maintenance. In the roads sector, contractors will undertake work of any size. One association noted that if there is a concern about the Fair Wage Schedules being too high, then this concern should apply to all projects, not just small projects.

¹⁸ The seven sectors, per sec. 126(1) of the *Labour Relations Act* are:

- 1) industrial, commercial and institutional sector,
- 2) residential sector,
- 3) sewers and watermains sector,
- 4) roads sector,
- 5) heavy engineering sector,
- 6) pipeline sector, and
- 7) electrical power systems sector.

Piece Work

In general, employer associations did not believe that piece work was common in municipal construction work. They did not see a need to develop a policy to address a practice which is rare or non-existent outside of residential construction.

Independent Operators

Employer associations generally agreed that workers who are hired as independent operators should receive the same remuneration under a Fair Wage Policy as workers who are hired as employees, provided that they are, in fact, performing essentially the same tasks.

RESCON noted that, in the residential sector, it is common for workers in some trades to be remunerated based on a piece-rate (rather than an hourly wage) and for some of those workers to be sub-contractors, rather than employees. The schedules of any Fair Wage Policy that applied to publicly procured residential construction would need to take this distinct model of work organization into account.

Responsibility of Prime Contractors

It was generally agreed that a prime contractor does not have the right to audit a sub-contractor's payroll records and that prime contractors should be entitled to rely on a sub-contractor's statutory declaration of compliance or a contractual provision requiring such compliance.

The OGCA opposes making General Contractors liable for their sub-contractors' compliance with a Fair Wage Policy. In their view, it is not the responsibility of a General Contractor to supervise a sub-contractor's payroll administration. General Contractors do not have the right to inspect payroll records. Merit Ontario noted that General Contractors are responsible for the performance of their sub-contractors on just about everything. They commented that, for this reason, General Contractors commonly use sub-contractors with whom they have a history.

Fair Wage Office

Some contractor associations endorsed the idea of a Fair Wage Office, as in the City of Toronto. Other associations felt that a Fair Wage Office would be too costly.

Complaints and Investigation

Most of the associations favoured allowing contractors, unions and employer associations to make complaints, in addition to affected workers. However, the OGCA, PCAC and Merit Ontario oppose expanding the right to make a complaint beyond the affected workers. They believe that allowing other contractors, contractor associations or unions to file a complaint is an invitation to abuse.

Both OGCA and Merit Ontario believe that the onus of proof should be on the complainant. Complaints should be investigated by the province or perhaps by a municipality, if they have the staff. Disputes could be referred to an outside arbitrator who could examine records.

Audits / Verification of Compliance

It was noted by some associations that the City of Toronto performs spot audits of payroll records to ensure compliance. Some associations support this practice. They did not see spot audits as burdensome since contractors must maintain payroll records under the *Employment Standards Act*. However, neither the OGCA nor Merit Ontario supports spot audits or inspections. They believe that spot audits are costly to administer. Merit Ontario notes that there are already inspectors from the Ministry of Labour (health and safety), the Technical Standards and Safety Authority (TSSA), the Electrical Safety Authority (ESA), as well as municipal Building Code inspectors. They suggested that the construction industry does not need more inspectors.

The OGCA and PCAC believe that there should be deemed compliance with a Fair Wage Policy when the contractor is unionized since the wage rate is enforceable by the union

Statutory Declarations

Most associations support statutory declarations of compliance by contractors and sub-contractors. The OGCA opposes statutory declarations on the grounds that they are unnecessary. The OGCA believes it is appropriate, and already current practice, to flow through to sub-contractors any obligations on a prime contractor arising from its contract with the owner.

While it was agreed that a General Contractor should be required to obtain statutory declarations of compliance from sub-contractors, none of the employer associations believed that a General Contractor should be liable for the non-compliance of its sub-contractors.

Penalties

Non-compliant contractors should be required to pay the affected workers the money they are owed. Contractor associations believe that penalties should be scaled, based on the severity of the non-compliance, the size of the project, and the actual harm that was done. Non-compliant contractors should be given an opportunity to fix the problem as compliance with a Fair Wage Policy can be complicated. Some associations believe that a subsequent offence should result in a contractor being barred for a period of time from bidding on City work.

Consultation

Before finalizing a Fair Wage Policy, there should be further consultations with all stakeholders. This would also apply to updating Fair Wage Schedules. RESCON stressed the importance of stakeholders having an opportunity to comment on the detailed provisions of a Fair Wage Policy since it is these details that often determine how the policy would affect individual stakeholders. It was suggested that a Fair Wage Policy is an important undertaking and it is important to get it right. It is also important to review the operation of a policy on a cyclical basis.

Members of the Vaughan Chamber of Commerce **Government Relations Committee**

At the time of preparing this report, the Vaughan Chamber of Commerce had not adopted a formal position on the proposal for a Fair Wage Policy in the City of Vaughan. This summary is based on a consultation with two members of the Chamber's Government Relations Committee.

Balanced Approach to Fair Wage Policy

The members of the Government Relations Committee of the Vaughan Chamber of Commerce who were interviewed for this report urged a balanced approach if the City of Vaughan adopts a Fair Wage Policy. The committee members suggested that there is a need for a level playing field. They noted that some unionized contractors believe they are disadvantaged in bidding on municipal work because they must compete with contractors that pay substantially lower wages, some of whom may be from regions of the province where wages are generally lower. At the same time, the committee members noted that it is important that a Fair Wage Policy, if it were adopted, not put non-union contractors who may pay somewhat lower wages at a disadvantage if they are fully compliant with their health and safety and other obligations.

A balanced Fair Wage Policy would be one that prevents wages from being driven down, but at the same time does not inflate wages above the competitive and prevailing norms in the GTA.

1. Health and Safety

While there is no clear-cut relationship between wages and health and safety performance, it is reasonable to be concerned that contractors that seek a cost advantage from low wages may also cut corners on health and safety training. At the same time, a company could be paying somewhat less than the union rates and still be fully compliant with its health and safety obligations. We should not disadvantage a contractor who is meeting the required standards on health and safety. In selecting contractors, the City should put considerable emphasis on their health and safety policies, practices and performance.

2. Underground Practices

The relationship between a Fair Wage Policy and underground practices is likely to be complex. On the one hand, a Fair Wage Policy may exclude contractors that compete by relying on underground practices in addition to low wages. On the other hand, if the Fair Wage schedules are too high, they may encourage cost-savings through underground practices.

3. Productivity Benchmarks

The committee members felt that the City should have benchmarks to measure and evaluate the productivity of its contractors.

Designing a Fair Wage Policy

Adopt the Provincial Policy

The preferred approach to a Fair Wage Policy, if one is adopted, would be to apply the Provincial Fair Wage Policy.

Regional Policy or City Policy

Regional schedules would foster a level playing field. Contractors would benefit from the stability that comes from knowing the expected wage standards. In the absence of a Provincial Fair Wage Policy, a York Region Policy would be preferable to a City of Vaughan policy.

Setting Schedules

A Fair Wage Policy should be based on prevailing wages which ought to be determined through surveys. Prevailing wages should be both survey based and regionally sensitive.

Thresholds

Thresholds are complex. It will be difficult to achieve a consensus. The City needs to bear in mind that larger companies generally focus on larger jobs and that it is important not to discourage smaller companies from bidding on smaller jobs.

Independent Operators

If the work that independent operators do is comparable to the work that regular employees do and if their employment circumstances are comparable to those of regular employees, then they should be covered by the Fair Wage Policy. But they must be comparable, and they often are not.

Responsibility of Prime Contractors

A General Contractor is accountable for most things on a construction site – e.g., health and safety, human rights. They should also be accountable for compliance with a Fair Wage Policy.

Complaints and Investigation

There should be a mix of complaint-based enforcement and some auditing.

Audits / Verification of Compliance

It is important that companies know that there is a possibility that they will be audited. This will encourage voluntary compliance. Also, companies should be required to provide a certified statement that they are in compliance.

Penalties

If a company that has provided a certified statement of compliance is nevertheless found to be non-compliant, there should be a clear penalty. Penalties should include: payment of owed wages, interest on back pay, possibly fines, and possibly being barred for a period of time from doing City work.

Consultation

Before finalizing a Fair Wage Policy, the City should consult with all stakeholders.

City Staff

A consultation meeting was held with senior City staff. The questions posed to City staff focused on current tendering practices, the current competitive environment for contracting, the potential implications of a Fair Wage Policy and potential steps to strengthen health and safety performance.

Current Practices and Policies:

Provincial Fair Wage Schedules

Tender documents currently require a contractor to adhere to the Provincial Fair Wage Schedule. This obligation would flow through a sub-contractor.

Health and Safety

Tender documents require compliance with the *Occupational, Health and Safety Act* and its regulations. Successful bidders must provide a copy of their health and safety policy. Before commencing work on a project, there is a meeting at which health and safety policies and practices are discussed.

Contractors must provide a WSIB clearance certificate which confirms that they are current in making their premium payments to the WSIB. Clearance certificates are valid for 60 days. Additional certificates may be required on longer projects.

A bidder's health and safety performance is factored into contract award decisions by considering a company's experience rating under the WSIB's CAD-7 program for the construction industry and the company's accident record. CAD-7 is an acronym for Council Amendment to Draft #7. CAD-7 applies to construction companies that have annual premiums of \$25,000 or more. WSIB premiums vary greatly in the construction industry depending on the trade. At the low end, electrical contracting is 3.4% of

covered payroll. At the high end, the rate for formwork and demolition is 15.75%. In general terms, virtually all construction companies with 10 or more employees would be participating in CAD-7. In some trades, CAD-7 would include companies that employ fewer than 10 workers. CAD-7 rates an employer by comparing the actual WSIB benefit costs attributable to a company's employees to the expected costs, given the premium for the company's rate group. The calculation of actual costs excludes costs related to long-latency industrial diseases that may not be directly attributable to a worker's current employer. The WSIB is currently in the process of restructuring its rate group and experience rating system. The new system, when it is introduced, will supersede CAD-7

Pre-Qualification of Contractor:

There is a pre-qualification process for some types of work. The City does not have a policy of pre-qualifying sub-contractors, although for some types of parks projects sub-contractors are pre-qualified.

Current Competitive Environment

Size of Bidding Pool

Bidding is generally quite competitive with a number of bids clustering around approximately the same amount. A high bid outlier has either misunderstood the tender specifications or is submitting a bid only for the purpose of remaining on an invited or eligible bidders' list. A low bid outlier has often misunderstood the tender specification and failed to take account of an actual cost.

For most types of work there is a pool of experienced contractors that have undertaken past work for the City.

Prevalence of Sub-Contracting

Sub-contracting is common in parks work and in new building construction and renovation. There are comparatively fewer sub-contractors on road projects, sewer and watermain projects, and maintenance projects.

Union Share of Contracted Work

Vaughan does not formally track the union status of its contractors.

City staff suggested that non-union contractors probably account for a large majority of the projects in parks work, sewer and watermain projects, the landscaping portion of road work, small-to-mid-sized renovation projects, and maintenance projects, except for HVAC work.

Unionized contractors probably account for the majority of the paving portion of road work.

It is difficult to determine the union status of contractors who perform building construction or undertake major renovation projects. On these types of projects, the City usually deals with a General

Contractor who sub-contracts most of the actual work to specialized trade contractors. The City would not be aware of the union status of a General Contractor's sub-contractors.

On small-to-mid-sized renovation projects and most maintenance projects there would be less sub-contracting. City staff believe that this work would be predominantly non-union, except for HVAC work.

Employer Size

The City does not have data on the size of its contractors (measured by number of employees). For parks work, most contractors would have more than 10 employees. For projects under \$1.0 million, contractors would tend to be smaller, but it is unclear whether they would have fewer than 10 employees. There are more owner-operators performing this type of work. Smaller companies, however, may have difficulty obtaining the bonding that the City requires.

Infrastructure for Jobs and Prosperity Act

Sec. 3(5) of the *Infrastructure for Jobs and Prosperity Act* requires that "infrastructure planning and investment should promote economic competitiveness, productivity, job creation and training opportunities". Sec. 3(6) requires that "infrastructure planning and investment should ensure that the health and safety of workers involved in the construction and maintenance of infrastructure assets is protected". Sec. 3(13) requires that "infrastructure planning and investment 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, within the meaning of section 9), improvement of public space within the community, and any specific benefits identified by the community".

At the time of preparing this report, the City had received no direction from the Province on implementing the *Infrastructure for Jobs and Prosperity Act*. There has been some discussion at the Association of Municipalities of Ontario.

Contractor Performance:

The City is seeking to improve the quality of its contractors. This applies to health and safety as well as technical performance.

General Views on Implications of a Fair Wage policy

Exceptional Circumstances ('Bad Apples')

City staff suggested that it would be helpful if there were some means to ensure fair wages and good practices, as there may be exceptional circumstances where contractors may endeavour to gain an advantage by paying below the prevailing wage and have employment practices that may fall short of an acceptable standard. This problem (informally termed the 'bad apple' problem) is not believed to be widespread. However, there is nevertheless a risk to the City's reputation. While there are no

confirmed examples of construction contractors paying below the prevailing wage or having sub-standard employment practices, there may have been such a situation in another area of contracted services. City staff were concerned, however, about imposing significant administrative costs on Vaughan or on the vast majority of good contractors simply to weed out these 'bad apples'. The goal should be procedures that promote and support high standards, but do not impose significant administrative or contracting costs.

Standardized Approach to Fair Wage Requirement on Public Projects

When the Province updates and modernizes its Fair Wage Policy, it may be appropriate for the City to continue to apply the provincial standards. In this way, the City would avoid a situation whereby some provincially-supported public projects in Vaughan would be subject to the Provincial Fair Wage policy while City projects would not be. If the Province were to apply its Fair Wage Policy to projects that used provincial funding, the situation could be even more complex. An approach that encompassed *all* public projects would be preferable.

\$1.0 Million Threshold

A threshold of \$1.0 million on City projects would exempt from a Fair Wage Policy most types of parks projects, most facilities maintenance projects, most water projects and winter maintenance of roads. Most curb and sidewalk maintenance work and all major new construction or renovation projects would be covered. Projects with a value of more than \$1.0 million would typically run for a year or somewhat longer. In recent years, the City has undertaken 9-12 projects of this magnitude.

It was noted that the City is moving towards a policy of 'bundling' jobs into larger value projects so as to attract a higher calibre of General Contractor.

Labour Share of Construction Costs

The City does not have estimates of the labour share of construction costs as few projects identify labour costs separately. Estimates derived from Statistics Canada data were reviewed.

Non-Residential Buildings: The labour share of construction costs was estimated at 26%. The City does not have sufficient information to validate this estimate.

Transportation and Engineering Construction: The labour share of construction costs was estimated at 21%. This was considered reasonable for road work and for linear work.

Repair Construction: The labour share of costs was estimated at 40%. This was considered reasonable.

Parks / Landscaping: there are not labour share estimates that can be derived from Statistics Canada data. Pricing of parks work is based on units of deliverables which include labour, equipment and materials. The City is not in a position to estimate the labour share of costs.

Administrative Costs

If broadly required, payroll audits and spot audits would impose a significant administrative cost on the City. It would likely require 2 or 3 full-time staff to perform these tasks. Third party audits of payroll records may be feasible. Perhaps this could be done at contractor expense by Vaughan's auditor. If limited to projects over \$1.0 million, this requirement would cover 70+% of tendered work. The audit costs would be very small in relation to the size of the projects.

Occupational Health and Safety

Large contractors and large owners have embraced the Certificate of Recognition (COR). The Certificate of Recognition (COR) is a nationally trademarked certification that is awarded following an audit of a company's health and safety management system. A health and safety management system (HSMS) is a framework put in place by employers to manage risks, establish controls, and minimize the incidence of injury and illness to their workers. This is accomplished through identifying, assessing, and controlling risks to workers in all workplaces. The audit will typically cover the basic elements of a health and safety management system, and will include interviews, documentation review and observation techniques. In Ontario, 19 elements of a health and safety management system are audited. Certification is awarded to companies that achieve a minimum score of 65% on each element and an overall score of 80%. In Ontario, COR is administrated by the provincially-supported Infrastructure Health and Safety Association. Public sector entities that currently or will soon require COR include: the City of Toronto, the Toronto Transit Commission, the Greater Toronto Airport Authority, Metrolinx, and Infrastructure Ontario.

City officials would like to move towards adopting COR as a contracting or pre-qualification requirement. However, many small and mid-sized contractors are not COR-certified. Imposing this requirement immediately would come up against a shortage of eligible contractors. It was noted, however, that York Region will be recognizing COR as part of its pre-qualification process for contractors.



Appendix B

Summary of Other Municipal Fair Wage Policies

City of Toronto

Policy:

<https://web.toronto.ca/business-economy/doing-business-with-the-city/understand-the-procurement-process/fair-wage-office-policy/>

Establishing Fair Wage Schedules:

The City of Toronto updates its Fair Wage Schedules every three years based on the prevailing rates. For the construction industry, the City deems the union rate to be the prevailing rate.¹⁹ The scheduled fair wage excludes certain elements of the union wage package: union dues, employer association fees, and funds dedicated to industry promotion. The scheduled fair wages 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 the scheduled fair wage lags the union rate. In general, the scheduled fair wage rate is around 95% of the total package in the collective agreements.

Scope of Policy:

Toronto's Fair Wage Policy applies to all types of construction work. The policy covers five construction sectors: ICI, roads, sewer and watermain construction, heavy construction, and utilities construction. In addition, other non-construction services such as purchase of garments, security, cleaning services, clerical etc. are covered by the City's Fair Wage Policy. Most recently the policy was applied to contracting for waste removal services when those services were privatized for the western side of the City.

Workers must receive the scheduled fair wage for their classification, even if they are hired as piece-workers. (Effectively this means that there is no piece-rate remuneration on City projects). The City 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 contractor.

¹⁹ In other industries, such as janitorial services or waste collection, the City undertakes a wage survey to determine the prevailing rate.

Thresholds

There are no thresholds or exemptions.

Administration and Enforcement

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 Fair Wage Office also administers the City's obligations to use union contractors in the nine trades where the City of Toronto is bound to one of the building trades unions.

The Fair Wage Office identifies the relevant Fair Wage Schedule that is applicable to any procurement. This schedule is then incorporated into the procurement documents (*e.g.*, an RFP).

The Fair Wage Office reviews the pay schedules of the preferred bidder on a tendered project to verify that the contractor is compliant with the Fair Wage Policy. This review occurs *before* the City enters into a formal contract with a contractor.

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

Contractors are required to make a statutory declaration concerning: (1) their use of union labour (where required by City obligations to the building trades), (2) the identity of sub-contractors, (3) the classification and wage rates of workers, and (4) agreement to abide by the City's Fair Wage Policy.

Prime contractors are responsible for the compliance of their sub-contractors.

Complaints alleging non-compliance may be made by workers, unions or other contractors. The first step when a complaint is received by the Fair Wage Office is to determine if the project is actually covered by the Fair Wage Policy. The Fair Wage Office may undertake an inspection of a contractor's payroll records, if the complaint is deemed credible. If the successful bidder radically underpriced its competitors, the Fair Wage Office might also investigate, even in the absence of a complaint. An investigation 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 its employees 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. From time to time, 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 suspended or 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 2015, the Fair Wage Office undertook 35 investigations that were related to the Fair Wage Policy. The Fair Wage Office undertook 260 site visits, although some of these were to confirm that union labour was used where this was required. Over the period 2012 to 2015, the average annual value of Fair

Wage violations (*i.e.*, the value of wages that ought to have been paid) was approximately \$215,000. An average of 101 workers received these owed wages each year. In 2015, eight contractors were cited for violations. The City's web site lists firms that have been disqualified or barred from doing City work.

City of Hamilton

Policy

<https://www.hamilton.ca/buying-selling-city/bids-tenders/fair-wage-policy-and-fair-wage-schedule-construction-contracts-1>

Establishing Fair Wage Schedules

The City of Hamilton updates its Fair Wage Schedule every three years, based on the relevant union collective agreements. Triennial updating means that in some years the scheduled fair wage lags the union rate. As of March 9, 2016 (the current posted schedule), the total hourly compensation under the Fair Wage Schedule is 75-80% of the union rate. (It should be noted, however, that for some trades, the City of Hamilton has been deemed a 'construction employer' under the *Ontario Labour Relations Act* and is therefore required to use contractors with collective agreements in those trades.)

Scope of Policy

The Fair Wage Policy applies only to construction contracts. The policy does not apply to legitimate independent operators. However, contractors must have records that document that an individual was legitimately classified as an owner-operator.

Thresholds

The Fair Wage Policy applies to construction contracts with a minimum awarded value of \$500,000, excluding residential construction.

Administration and Enforcement

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.

Formal Consultative Committee

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

Policy

http://www.thunderbay.ca/City_Government/Departments/Corporate_Services___Long_Term_Care/Financial_Services/Supply_Management/Fair_Wage_Policy.htm

Establishing Fair Wage Schedules

The Fair Wage Schedules were last updated in 2004 at which time the rates approximately mirrored the negotiated union rate for total compensation. In correspondence, the City indicated its intent to review and possibly update its schedules in 2017-18.

Scope of Policy

The City of Thunder Bay's Fair Wage Policy applies to ICI (*i.e.*, non-residential building) construction projects. The policy does not apply to road work, parks work or sewer and watermain work.

Thresholds

Projects with a value of less than \$100,000 are not covered by the Fair Wage Policy. The City also indicated in correspondence that it may increase the threshold from \$100,000 to \$500,000.

Administration and Enforcement

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

A contractor must provide the City with notification that both the contractor and any sub-contractors are compliant with the Fair Wage Policy. It is not clear from the policy if this notification must take the form of a statutory declaration. The notification is provided when the project is substantially completed, where 'substantial completion' has the same meaning as in the *Construction Lien Act*.

Prime contractors are responsible for the compliance of their sub-contractors.

Any contractor, sub-contractor or one of their employees that tendered on the project is entitled to make a non-compliance complaint. Unions and contractor associations cannot make a complaint. The fee for making a complaint is \$1,687.50 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 accounting 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 for up to two years from eligibility to perform City work. A contractor that has been found to be non-compliant, but who has not been suspended, may be required to submit an audited statement of their compliance for a period of three years. The contractor must bear this expense.

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

City of Greater Sudbury

Policy

<https://www.greatersudbury.ca/do-business/bidding-opportunities/policies-terms-and-conditions/fair-wage-policy1/fair-wage-policy/>

Establishing Fair Wage Schedules

The City of Greater Sudbury 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.

Scope of Policy

Sudbury's Fair Wage Policy applies to only ICI (*i.e.*, non-residential building) construction projects. The policy does not apply to road work, parks work or sewer and watermain work.

Thresholds

Sudbury applies its Fair Wage Policy to projects with a value of more than \$160,000.

Administration and Enforcement

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

A contractor must provide the City with notification that both the contractor and any sub-contractors are compliant with the Fair Wage Policy. It is not clear from the policy if this notification must take the form of a statutory declaration. The notification is provided when the project is substantially completed, where substantial completion has the same meaning as in the *Construction Lien Act*.

Prime contractors are responsible for the compliance of their sub-contractors.

Any contractor, sub-contractor or one of their employees that tendered on the project is entitled to make a non-compliance complaint. Unions and contractor associations cannot make a complaint. The policy provides for a fee for making a complaint, but does not specify that fee. The fee is refunded if the complaint is found to be valid. The fee may be waived if the complainant is an employee. Complaints are made to the Manager of Supplies and Services. The policy does not specify whether the investigation will be undertaken internally or whether external services will be used. If found to be non-compliant, the contractor must pay the investigation fee to the City and make up the owed wages to its employees. The City reserves the right to seek additional cost recovery for an investigation from a complainant (if the complaint is not upheld) or from a non-compliant contractor (if the complaint is upheld). The decision of the Manager of Supplies and Services is final, subject to the right of a party to lodge an appeal with the Ad Hoc Fair Wage Policy Committee.

The Ad Hoc Fair Wage Committee comprises one representative appointed by the Greater Sudbury Chamber of Commerce, one representative of a local Trade Union, to be appointed by the Sudbury and District Building and Construction Trades Council and one City Staff Member who does not work in the Supplies and Services section, to be appointed by the Chief Financial Officer and Treasurer.

A first instance of non-compliance results in a formal warning. Subsequent infractions may result in suspension for up to two years from eligibility to perform City work. A contractor that has been found to be non-compliant, but who has not been suspended, may be required to submit an audited statement of their compliance for a period of three years. The contractor must bear this expense.

City of Oshawa

Policy

<https://www.oshawa.ca/city-hall/resources/fairwagepolicy2007.pdf>

Establishing Fair Wage Schedules

The City applies the City of Toronto's Fair Wage Schedules to applicable projects.

Scope of Policy

The City of Oshawa applies its Fair Wage Policy to ICI (*i.e.*, non-residential building) construction projects. The policy does not apply to work outside the ICI sector (*e.g.*, road work, sidewalks, and sewer and watermain projects).

Thresholds

Oshawa's Fair Wage Policy applies to projects with a value of more than \$500,000.

Administration and Enforcement

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

A contractor must provide the City with notification that both the contractor and any sub-contractors are compliant with the Fair Wage Policy. It is not clear from the policy if this notification must take the form of a statutory declaration. The notification is provided when the project is substantially completed, where substantial completion has the same meaning as in the *Construction Lien Act*.

Prime contractors are responsible for the compliance of their sub-contractors.

Any contractor, sub-contractor or one of their employees that tendered on the project is entitled to make a non-compliance complaint. Unions and contractor associations cannot make a complaint. The policy provides for a fee of \$5,000 for making a complaint. The fee is refunded if the complaint is found to be valid. The fee may be waived if the complainant is an employee. Complaints are made to the Manager of Purchasing Services. The policy does not specify whether the investigation will be undertaken internally or whether external services will be used. If found to be non-compliant, the contractor must pay the investigation fee to the City and make up the owed wages to its employees. The City reserves the right to seek additional cost recovery for an investigation from a complainant (if the complaint is not upheld) or from a non-compliant contractor (if the complaint is upheld). The decision of the Manager of Purchasing Services is final.

A contractor who is found non-compliant on a second occasion may be barred from performing City work for a period of two years. A contractor that has been found to be non-compliant, but who has not been suspended, may be required to submit an audited statement of their compliance for a period of three years. The contractor must bear this expense.

Municipality of Clarington

Policy

<https://www.clarington.net/en/do-business/resources/bids-and-tenders/fair-wage-policy.pdf>

Establishing Fair Wage Schedules

Clarington developed its Fair Wage Schedules based on the unions 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.

Scope of Policy

Clarington applies its Fair Wage Policy to ICI (*i.e.*, non-residential building) construction projects. The policy does not apply to work outside the ICI sector (*e.g.*, road work, sidewalks, and sewer and watermain projects).

Thresholds

Clarington's Fair Wage Policy applies to projects with a value of more than \$100,000.

Administration and Enforcement

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

A contractor must provide the City with notification that both the contractor and any sub-contractors are compliant with the Fair Wage Policy. It is not clear from the policy if this notification must take the form of a statutory declaration. The notification is provided when the project is substantially completed, where substantial completion has the same meaning as in the *Construction Lien Act*.

Prime contractors are responsible for the compliance of their sub-contractors.

Any contractor, sub-contractor or one of their employees that tendered on the project is entitled to make a non-compliance complaint. Unions and contractor associations cannot make a complaint. The policy provides for a fee of \$2,500 for making a complaint. The fee is refunded if the complaint is found to be valid. The fee may be waived if the complainant is an employee. Complaints are made to the Manager of Purchasing Services. The policy does not specify whether the investigation will be undertaken internally or whether external services will be used. If found to be non-compliant, the contractor must pay the investigation fee to the City and make up the owed wages to its employees. The City reserves the right to seek additional cost recovery for an investigation from a complainant (if the complaint is not upheld) or from a non-compliant contractor (if the complaint is upheld). The decision of the Manager of Purchasing Services is final.

A contractor who is found non-compliant on a second occasion may be barred from performing City work for a period of two years. A contractor that has been found to be non-compliant, but who has not been suspended, may be required to submit an audited statement of their compliance for a period of three years. The contractor must bear this expense.

Other Municipalities

There are other municipalities which, like the City of Vaughan, 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”, provides for adherence to the Province’s Fair Wage Schedule for road construction projects.

