



Underground Work: Undermining the Construction Industry

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1. Introduction

The construction industry is in crisis in Ontario. The lingering effects of the severe downturn in the province's economy continue to ravage the industry. Construction activity is way down and both workers and companies are suffering:

- Average real incomes of Ontario construction workers are below the levels of the early 1980s.
- Profit margins for construction companies in the province are at or near zero.
- Non-residential construction activity is currently less than half the peaks achieved in the late 1980s and is below even the early 1980s.
- Unemployment in the industry is currently almost 20% - compared to the overall unemployment rate of less than 10%. Many discouraged workers have either left the industry or are out of the labour force.
- Activity will not stay at these low levels forever - it is forecast to increase during the second half of the 1990s and early in the next century but there are serious - and justifiable - concerns that the capacity remaining in the industry may not be sufficient to meet this demand.

The dramatic slowdown in construction has forced contractors and their workers to cut costs wherever possible in an effort to win scarce construction contracts. To a certain extent, this is healthy - it encourages economy and efficiency. However, it has also encouraged underground construction work.

The Ontario Construction Secretariat seeks to promote the organized ICI construction industry; helping find jobs and security for its members. The Secretariat believes that underground work is undermining the industry. A survey of union members reported later in the paper shows:

- 80% of members believe the organized industry is losing ground;
- underground work is significant: 26% of one trade and 40% of another worked underground; and

- the majority of the underground work is in residential renovation, but underground ICI work is significant.

Action is needed to stop this process.

Underground workers cost less to contractors and their clients because they are paid without the deductions that occur with normal employer-employee wages and salaries. This may save the worker income taxes and other deductions for Canada Pension Plan and unemployment insurance - hence, the worker is willing to work for less. Many workers are forced into accepting underground work because they are happy simply to have a job.

For the employers of underground workers, the advantages go much further than simply paying their workers lower wages. Substantial further savings accrue since they evade payments such as the Employers Health Tax, Workers Compensation, the employer share of Unemployment Insurance and CPP, and other charges that typically apply to contractors' employees. Underground work also permits unprofessional practices and poorer quality work.

In the past, underground practices were restricted to fringe players in the construction industry. Legitimate contractors abided by the rules. However, with the low volumes of construction and the severe pressures on construction costs, even many formerly legitimate contractors are engaging in underground practices, or turning a blind eye to such practices being undertaken by their subcontractors - in an effort to survive. Underground work is accelerating and it threatens to undermine the industry.

The consequences of this trend towards increasing amounts of underground construction work are already severe and will become much worse if the underground economy is allowed to continue to flourish in the construction industry. Among the negative consequences are:

- Bankruptcy for legitimate contractors who abide by the rules.
- Less work for workers and companies who abide by the laws, refuse to be involved in underground work, and thereby are penalized

by having to carry a greater burden because of those who cheat the system.

- A less professional construction industry as increasing amounts of work are undertaken by fly-by-night contractors and workers who flout the rules. Ultimately, this will show up in poorer quality construction.
- Loss of government revenue - income taxes and specific purpose taxes and charges such as Unemployment Insurance, Employers Health Tax, CPP, Workers' Compensation, etc.
- A weakening of agencies responsible for the training of new tradespeople - essential for the future for our industry.

Tackling the underground economy in construction will be tough, but the stakes are very high - both for the construction industry and the overall Ontario economy and society. We must act to address this serious problem which is undermining our industry.

2. The Underground Economy in Construction

The underground economy is not a new phenomenon - it has always been with us. There have always been people and companies willing to cheat the system by not shouldering their share of public costs. The construction industry has traditionally been one of the sectors most plagued with people working in the underground economy. In some sectors of the industry it is endemic - in residential renovation, for example, a recent survey by the Canadian Home Builders' Association indicates that over half of all small repair jobs in Ontario are undertaken on a "cash-deal" basis.ⁱ For larger renovation jobs, the underground share is smaller (16% for jobs valued over \$20,000) but it is still substantial.

The problem has gotten much worse in the past few years, and it has spread to all areas of construction. The recession, and the consequent slowdown in construction, has led to severe cost-cutting by both companies and workers - a necessary means of survival in the brutal environment faced by those in the industry. The cost-cutting, unfortunately, has extended into illegal practices which threaten the very nature of the system of construction that has evolved in Ontario. It is extremely difficult for legitimate contractors to compete with unscrupulous firms who engage

underground workers and flout the laws, regulations and responsibilities which are the basis for the operation of the industry - as well as the Ontario economy and society.

3. Official Estimates of Underground Activity Are Not Accurate

There are no reliable estimates of the volume of construction work which is done in the underground economy. By its very nature, underground work defies measurement. It is not in the interests of those engaged in underground activities to acknowledge their participation in illegal activities. But underground work is real and it is becoming an increasingly serious matter that must be addressed.

According to a recent study by Statistics Canada, there is relatively little underground work in construction:ⁱⁱ

- 9.0% in new residential construction;
- 13.9% in residential alterations and improvements (i.e. renovations); and
- Negligible amounts in non-residential construction.

These much-quoted estimates do not relate to the underground economy as most observers would define it. Statistics Canada defines underground economy as:

"the value added (returns to labour and to capital) which is left out of GDP (Gross Domestic Product) due to underground production, defined as legal economic production hidden from the authorities in order to avoid taxes and regulations".ⁱⁱⁱ

In other words, the Statistics Canada estimates of the underground economy relate to **economic activities which are not counted in Statistics Canada's estimates of GDP**. A more common definition, and the one which is used here to define underground work is:

underground work comprises sales or income which are not reported for tax or regulatory purposes.

It is these types of activities which threaten the construction industry in Ontario and it is clear to those who are knowledgeable about the industry that, under this definition, underground construction activity is much greater than the

estimates prepared by Statistics Canada - and it is growing.

4. 'Independent Contractors' - the Main Underground Threat in the ICI Construction Sector

Many observers believe that the ICI (industrial, commercial and institutional) construction sector is relatively immune from underground activity.

There are two main reasons for this view:

- ICI construction jobs tend to be larger and there is a much more extensive "paper trail" than is the case in some other types of construction (e.g. residential renovations). Because of this, the argument goes, large companies are involved and these companies have sophisticated accounting payment systems which make underground payments to employees and sub-contractors extremely difficult to hide.
- Homeowners have a very strong incentive to engage underground workers because they can evade paying the GST - and, therefore, cash-deals are a major problem in homeowner renovations.^{iv} The clients of non-residential construction do not have the same incentive to use underground workers because the GST paid on commercial buildings is deductible against income - and therefore is not paid by the consumer in the same way as it is for a homeowner.

These observations are both true. However, the apparent conclusion that underground work therefore does not occur in ICI construction is not true. It often occurs in a different form and, though it is likely less pervasive than in residential renovations, for example, it is no less damaging to legitimate contractors and workers.

Cash-deals occur in ICI construction, just as they do in residential work. Unscrupulous contractors and owners still can avoid substantial legal financial obligations by paying their workers in cash.

However, the main form which the underground economy takes in the ICI sector is engagement of "independent contractors" instead of employees by contractors and sub-contractors. A simple illustrative example demonstrates how the use of independent contractors subverts the normal employer-employee relationship - and defrauds

the government and vital agencies that serve the construction industry of much-needed revenue:

- A drywall contractor (for example) bids lower than normal to obtain a job because he/she is intending to defraud the system by engaging underground workers.
- The bid is accepted but, if normal employee/employer work arrangements are used, the contractor would lose money on the job. So, the contractor elects to go underground.
- The contractor selects workers who are willing to work as "independent contractors" - in fact, they are the same types of workers (or even the same workers) who normally would work for him, however, the payment arrangements are significantly different.
- The "independent contractors" are paid on either a piece-work or an hourly basis but are paid without the deductions that would normally apply to workers' wages - i.e. there are no deductions for income tax, CPP, Unemployment Insurance, contributions for benefits, or union dues (if applicable). The responsibility for these payments is effectively transferred from the contractor to the "independent contractor".^v Because the "independent contractors" may not declare these payments as taxable income, they are willing (or are forced by economic circumstances) to accept substantially less than the normal going wage. For example, a worker who normally might receive \$25 per hour might accept \$15-\$18 per hour when paid in this manner. Effectively, the workers' take-home pay may not be much different from the normal arrangement.
- The contractor benefits from this arrangement in two ways:
 - the wages paid to his workers are substantially less (\$15-\$18 per hour versus \$25); and
 - he incurs none of the normal employer costs: Employers Health Tax, the employers' share of Unemployment Insurance and CPP, Workers' Compensation, etc. These types of employer costs generally total in the range of roughly 20-25% of payroll.

- Clearly, an unscrupulous contractor has a great deal of room to reduce his costs (or reap abnormal profits) by engaging his workers as “independent contractors” rather than under the normal arrangements.

In using the term “independent contractor” in this brief, we must emphasize that we do not infer that legitimate independent contractors such as taxi drivers and independent truckers should be tarred with the same brush. They are independent in the true sense - they are not simply employees whose work arrangements have been changed in order to avoid paying legitimate taxes and charges. In construction, the term “independent contractor” has become synonymous with the type of activity described above. Other terms, such as “labour brokers”, have also been used to describe these types of activity but “independent contractor” is the term most used. “Labour broker” or “independent contractor” - the term used is not important. What is important is that, as a result of these practices, construction workers are not being treated as employees - they are purporting to be something they are not and, as a result, both contractors and workers are avoiding their legitimate obligations.

5. Evidence of Underground Practices

There is little hard evidence of underground practices in construction. By its nature, the use of “independent contractors” or cash-deals is not generally broadcast in order to avoid scrutiny by the various authorities involved - but it is endemic. Anecdotal evidence of its existence is abundant and the results of a survey conducted by the Ontario Construction Secretariat specifically to investigate on underground practices (presented later in this brief) confirm this.

A report prepared in 1993 by BDO Dunwoody Ward Mallette (referred to here as the “Dunwoody Report”)^{vi}, a firm of chartered accountants, provides some very useful insights into the potential savings involved in using “independent contractors” even if all income is declared by the workers - which in most cases it is not.

The major findings of the Dunwoody Report include the following:

- Four contracts were awarded to non-union contractors in Ottawa at a value of

\$23,317,000. The value of the tenders by unsuccessful unionized contractors was \$23,793,500 - a difference of \$476,500 or 2% of the total contract award.^{vii} For the purposes of the estimates prepared by Dunwoody (and summarized below), a fifth project was added - the fifth project accounts for less than 10% of the total contract award for the five projects in total. The particular interest of the Dunwoody Report was the acoustical and drywall work which formed a part of these construction contracts.

- Acoustical and drywall workers were engaged by the contractors as “independent contractors” with payments ranging from \$16-\$20 per hour or 54-68% of the union rate of \$29.15 per hour. The total subcontract billings for acoustical and drywall work on the five projects was \$487,700. The cost of wages and benefits to the acoustical and drywall workers on the five projects would have been an estimated \$724,900 if they had been engaged as normal employees (rather than “independent contractors”) - a reduction in costs to the contractors of \$237,200 because they used underground workers.

There is clearly an opportunity here for contractors to bid successfully on jobs and to obtain large excess profits by engaging underground workers. The source of these profits is the evasion of legitimate payments to governments and other agencies, and the imposition of pay cuts and increased risks onto the workers - risks that legally should be borne by the contractor.

- Dunwoody found evidence to suggest that the workers claimed “independent contractor” status for purposes of Workers’ Compensation and, as such, these premiums would not have been paid by the contractor. Personal coverage by independent contractors is optional and likely was not paid.
- The accountants reviewed payments to the acoustical and drywall workers as “independent contractors” and concluded that these resulted in a reduction in income taxes, unemployment insurance premiums, CPP contributions, Employer Health Tax and provincial sales tax of \$90,500 - simply because of the lower payments to the workers

and the extra deductions allowed because they could claim business expenses as “independent contractors”. A further \$58,100 of Workers’ Compensation premiums were “probably” not paid. The total reduction in these taxes, contributions and premiums was, therefore, \$148,600.

- Dunwoody also notes that the ability of the independent subcontractors to income split with family members (to lower taxes) and claiming more business expenses would result in even greater income tax losses than the estimates outlined above.
- In fact, if, as often happens in the case of “independent contractors” (who can effectively work underground), income was not declared for taxes, a further \$137,000 would have been lost in income taxes and CPP deductions. Adding this to the \$148,600 *reduction* in taxes, contributions and charges (see above), the total losses to government would be over \$420,000 - for the acoustical and drywall work alone.

Clearly, underground work is cheating the system of vast amounts of revenue - and exposing workers to hazards such as injuries for which Workers’ Compensation will not be available. It is also cheating legitimate contractors (both unionized and non-unionized) who play by the rules. It is creating an uneven playing field which rewards contractors with large profits - profits which are paid effectively out of the revenue that does not flow to government in taxes, and contributions to essential social services such as Unemployment Insurance, Workers’ Compensation, Canada Pension Plan, and medical care.

6. Even Among Unionized Workers, There is Underground Activity - But It is Much More Pervasive in the Non-Union Sector

To demonstrate the extent of underground activity in construction, the Secretariat sponsored a major survey of construction workers. Because the Secretariat represents the organized sector of the ICI construction industry, the survey was conducted among two unions which belong to the Secretariat. The findings relate only to these two unions which are mainly engaged in ICI construction - but the generally accepted view is

that underground work is much more prevalent in the non-unionized sector. Therefore, the results presented here may **understate** the extent of underground activity in the ICI sector - and in the construction industry as a whole..

The main findings of the survey include the following:^{viii}

- **The underground economy is significant** - the results of the survey clearly show that underground activity is larger than other analysis suggests. A large proportion of the union members who responded to the survey had worked either as an “independent contractor” or for cash or both: 26% of the first trade and 40% of the second trade.
- **There is a large pool of unemployed (and underemployed) construction workers** - less than half of the respondents had worked over 1,000 hours (i.e. roughly 20 hours per week) under their union contract during the past year. Of the remainder, 20-25% had not worked any hours under their contract at all. Thus, there is a large pool of unemployed workers who are willing to engage in underground practices.
- **Many workers are working as “independent contractors”** - 16% of the first trade and 28% of the second trade had worked as “independent contractors” during the past two years. The incidence of workers acting as “independent contractors” is much higher among those who have not worked many hours under their union contract - up to 40% of those who had not worked any hours under their union contract had been engaged as “independent contractors”.
- **Many “independent contractors” are not covered by Workers’ Compensation** - three-quarters of the first trade and 70% of the second trade who had worked as “independent contractors” were not covered by workers compensation. This clearly exposes these workers to a serious risks if they are injured on the job.
- **Many workers are doing jobs for cash or a “straight cheque”** - over one-fifth of the first trade and one-third of the second trade had worked for cash or a straight cheque (no deductions) in the past two years. The proportion of workers doing jobs for cash is much higher among

those who have not worked many hours under their union contract.

- **Most cash-deals are in residential construction** - two-thirds of the first trade and 60% of the second trade who had worked for cash had done so in the residential construction sector. Residential repair and renovation work accounted for the lion's share of cash-deals for both trades. Cash-deals are clearly less common in the ICI sector - but they still occur, especially in the repair and renovation side of the industry where jobs tend to be smaller and easier to hide from authorities. One-quarter of the first trade and 37% of the second trade, who had worked for cash, had done so in ICI construction.
- **Most union members DO NOT work underground** - while it is clear that underground work is very significant in construction, in fairness, it is important to point out that the majority of both trades (74% and 60%) do not engage in underground work, according to the survey. Many of the written responses to the survey make clear that these workers are working underground because they have little alternative. Typical responses include:
 - "people work underground because of need not greed";
 - "until we get more work, it is hard to condemn anyone. They have to live"; and
 - "the dollar rules when you are hungry".

To conclude, the survey shows clearly that, while the majority of the unionized workers do not engage in underground activity, a substantial minority do. These underground workers penalize the other workers who abide by the rules, meet their obligations and refuse to engage in underground work. The main form of underground work in ICI construction is adoption of the facade of "independent contractor" status by the worker. However, cash-deals do occur in ICI construction as well.

7. Underground Work Erodes the Foundations of the Construction Industry - and Our Society

Underground work is a substantial problem for the construction industry. Underground construction work erodes the foundations of the construction

industry but has implications for the overall economy and society because of the loss of revenue to the public institutions which occurs as a result of the non-payment of legitimate taxes, fees and charges on contractors and workers. The effects of underground construction work are very serious:

- **Erosion of base of legitimate contractors** - the use of underground workers by some contractors leads to an uneven playing field at which legitimate contractors who play by the rules effectively are shut out of the bidding for construction contracts. Because they have to pay the normal costs of employing workers and because they must pay the going wage, they cannot compete with contractors who, like those in the Dunwoody Report, avoid the legitimate charges which contractors must pay for their employees and pay lower wages to workers who may not declare the income for tax purposes. The legitimate contractors lose the contracts not because they are inefficient (in most cases they are more efficient)^x, they lose because they play by the rules established for construction contracting whereas others do not - and the rules are not adequately enforced.

This is not a union/non-union issue. It is an issue of law-abiding contractors (union or non-union) versus contractors who evade the laws. The confrontation is between legitimate (union or non-union) contractors who cannot compete with those who have lower bids because they avoid paying taxes and other obligations.

- **Poor quality construction** - the replacement of established, legitimate contractors with fly-by-night operators and workers who engage in underground work has serious ramifications for the quality of construction in the province. Underground workers are, increasingly, building the future structures on which the economy and society of the province depend. These structures are important public assets. The question must be asked whether it is desirable to have these important assets built by companies which, because they operate on the fringes of legality, build a poorer quality project. Also, some underground contractors are undercapitalized and do not have the

financial stability to carry a project through if there are unforeseen difficulties - a situation which may leave the owners without a means of getting back their funds or completing the work satisfactorily.

- **Lost income taxes** - the Dunwoody Report identified the serious loss of income tax revenues which occurs when the employee/employer relationship is replaced by the use of bogus “independent contractors”. The revenue losses stem from two sources:
 - use of deductions and income-splitting by the “independent contractors” which are not available to normal employees. This results in significantly lower taxes accruing to the government even if the “independent contractors” declare their income for tax purposes.
 - non-declaration of income for tax purposes. Many of these “independent contractors” do not declare their income for tax purposes. In these cases, of course, no income tax is paid at all.

This loss of income tax revenues is very serious in this time of concern about deficits and service cuts at all levels of government. These types of underground arrangements deprive the government of much-needed revenue when governments are slashing essential social programs in order to restore their fiscal balances.

- **Underfunding of essential social programs** - by operating as “independent contractors” instead of employees, workers and contractors avoid their obligations to contribute to programs which have been established specifically to provide necessary support to workers and their families. These programs include:
 - *Workers’ Compensation* - contractors avoid having to make contributions to WCB since it is the obligation of the “independent contractor” to provide such coverage for employees. Since there is typically only one employee (the “independent contractor” him/herself), and since WCB allows self-employed people to opt out of the Plan, essentially these workers do not need to pay into the WCB - and they risk not being covered if

they are injured. This is unfair: to legitimate contractors who must support the WCB; to workers who lose their WCB coverage; and to the WCB which loses the revenue needed to maintain its essential service to workers in Ontario.

- *Unemployment Insurance* - contractors who engage “independent contractors” do not need to provide unemployment insurance premiums, nor do the workers since they are considered to be contractors. The UIC is thereby starved of funds in much the same way as the WCB - except that both the employer and the worker avoid paying premiums in the case of UIC. This is doubly galling to the extent that many underground workers are defrauding the system by receiving UIC or welfare benefits at the same time.
 - *Canada Pension Plan* - both employers and employees avoid the CPP payments on normal income when “independent contractors” are used instead of the normal employee/employer relationship. This starves the CPP fund of needed revenue for investment to provide future pensions - and ultimately robs the workers of the financial security that they require for their retirement.
 - *Employer’ Health Tax* - as with CPP, UIC and WCB, at a time when Ontario’s health care system is under threat because of lack of funds, arrangements such as the use of “independent contractors” starve the government of needed revenue from the EHT.
- **Erosion of funding for construction industry training** - the construction industry has established an effective means of ensuring that there would be an adequate supply of skilled tradesmen to build the structures that Ontario requires. The apprenticeship programs sponsored by the construction industry have been very effective at providing the industry with highly-trained, efficient workers. The occupational health and safety forums have contributed to safety in the workplace. The pensions and benefits for unionized workers have helped to secure their financial future - while minimizing the need for government social programs to assist these

workers. The use of “independent contractors” cuts off the funding for these important activities.

Clearly, the proliferation of underground work in the construction industry is having a severe detrimental impact not only on legitimate contractors and workers, but also on the companies and individuals who purchase construction work and on the government and society in the province. The effects of these underground arrangements have been known to those in the construction industry for some time, but are less apparent to those who are not close to the industry. Underground construction work is growing and its ultimate effects will be severe - both to those in the construction industry and to the society and economy of Ontario.

Something must be done to eliminate underground work in construction.

8. Dealing with Underground Work in Construction

Underground work is itself difficult to identify and quantify and ending this practice will be difficult. It will require careful planning and determined effort because it has been allowed to become the common method of doing business in many parts of the industry. In ICI construction, it is not yet as deeply rooted as in some other sectors of construction, but it is still a very serious problem - and it demands attention if it is not to get much worse.

The survey of union members conducted by the Secretariat contained a question which asked workers what they believed would be “an effective means of reducing underground activity in the construction sector”. The answers are instructive:

- **More construction work** - almost 90% of those who responded to the survey believe that an economic recovery (and the consequent increase in construction work) would be either “extremely effective” or “quite effective” at reducing underground activity in the construction sector.

Many of these workers may be reflecting on their personal experience: “I’ve got to eat” was a common theme among those who were working underground - they could not get work any other way so they took the only

option available to support their families. These workers believe that a return to more buoyant construction activity would likely mean more opportunities for work with legitimate contractors - and they would choose this option over underground work.

This assumes, however, that legitimate contractors will be able to win the contracts. But this is open to question since those who use “independent contractors” rather than the traditional employer/employee relationship have (as demonstrated earlier in this brief) much lower costs. There is no reason to expect that they will not continue to expand their grip on construction activity unless the rules are more strictly enforced.

The Secretariat does not believe that simply waiting for an economic recovery and a return to higher levels of construction activity is an effective means of addressing the pressing concern of the underground economy in construction.

- **Compulsory certification of trades** - over three-quarters of both trades surveyed believe that compulsory certification of all construction trades would be either “extremely effective” or “quite effective” in reducing underground activity.
- **Compulsory reporting to Revenue Canada of all payments by contractors to sub-contractors** - this was the third most effective means of reducing underground activity, according to the respondents to the survey. Over 70% of both the trades this would be effective.
- **Deductions at source** - over two-thirds of both trades believe that deductions of taxes, UIC, WCB, CPP, etc. by contractors for payments to all workers would be an effective means of reducing underground work.
- **Licensing of contractors** - slightly fewer, but still almost two-thirds, of both trades believe licensing of contractors would be an effective means of reducing underground work.

9. Options to Address the Problem of Underground Work in Construction

Halting and reversing the proliferation of underground work in construction will require

actions on several fronts - coordinated to ensure that they are as effective as possible. The Secretariat stands ready to cooperate and assist with measures taken by governments and other public sector bodies to address the problem of underground construction work for the benefit of both the construction industry and Ontario society.

The Secretariat believes that firm action is required. Possible actions that might be considered are:

- **Enforcement of existing laws, regulations, collective agreements, constitutions and local union bylaws.** The underground economy in construction has been allowed to flourish despite the existence of laws and regulations prohibiting such activity. The presence of underground activities is acknowledged by most officials involved. However, it appears to be one of those “too hard” cases. Too often, industry, union and government officials appear prepared to turn a blind eye to this problem - and, in doing so, they are effectively condoning it and condemning the construction industry to ever-greater problems with underground workers as a result.

Those who break the law and cheat law-abiding workers and companies from much-needed work should be vigorously pursued and prosecuted.

- **Compulsory reporting of payments from contractors to sub-contractors.** The planned introduction of a reporting system for all contractor payments to sub-contractors by Revenue Canada will be a significant step forward in the fight against the underground economy in construction. By ensuring that all payments are reported to Revenue Canada, a paper trail will be created which will make evasion of income taxes through payments to “independent contractors” or cash-deals with workers much more difficult. However, the Secretariat has a number of concerns about the proposed system:

- *Minimize the burden on the contractors* - all efforts must be made to minimize the additional reporting burden on contractors who already face an enormous number of forms and documents which must be filed with government and other bodies.

- *Ensure the penalties are appropriate* - underground work is often regarded as a “victimless crime” between two willing partners. This is not the case - this brief has cited the enormous costs of the increasing amount of underground activity. Penalties must be appropriate to ensure that those who might engage in underground activity are deterred.
- *Ensure that reporting covers all cash-deals and “independent contractors”* - the system being designed by Revenue Canada has not yet been released for public comment, however, there are concerns that workers who may not have GST numbers (because their revenues are less than the \$30,000 limit) or Revenue Canada business numbers may fall through the cracks in the system. This would be totally unacceptable: one of the goals of the system must be to stamp out cash-deals and payments to “independent contractors” who, by their nature, are small operators and might not show up in Revenue Canada’s reporting system - but collectively their impact is substantial. The system must be designed to cover all contractor/sub-contractor payments and there must be a verifiable reference number for all payments to sub-contractors - normal employee deductions should be required from payments to all sub-contractors which do not have an appropriate number.
- *Cover all mandatory payments* - as planned, the Revenue Canada initiative appears to target those who try to evade income taxes. However, evasion of income taxes is only one of the “benefits” to those who engage in underground work - payments to UIC, WCB, CPP, EHT are also avoided. To promote maximum effectiveness for the initiative in halting the spread of underground work, and to ensure that all appropriate payments are made, there must be a tie between the Revenue Canada system and those of other important agencies. Individually, each of these agencies may find identification of illegal activities to be difficult and costly, however, sharing

information among them would make the process much more manageable.

Refusing to pursue underground workers because the costs outweigh the likely receipts should no longer be acceptable - if we are to remove this problem, vigorous coordinated action is required.

- **Compulsory certification and registration of workers.** This is an idea which has become increasingly attractive where underground workers who lack the appropriate skills steal work from those who can do the job in a professional manner. No one except the underground worker benefits from the current arrangement. Compulsory certification and registration would benefit the consumer, the construction industry and the worker:
 - *The consumer* - ensuring that the workers who build our homes, offices, stores, schools, churches and hospitals are well-trained and qualified tradespersons is the only way of guaranteeing the quality and safety of our construction projects. Quality training leads to quality products.
 - *The construction industry* - appropriate skills training, along with health and safety training, makes construction more efficient while protecting workers from the inherent dangers on the job site. Statistics clearly indicate that correspondingly more accidents occur in sectors of construction where there are the fewest formally trained workers. The Dunwoody Report illustrated that trained workers could do the job more efficiently and cost-effectively than fly-by-night operators.
 - *The worker* - certification helps to legitimize the construction trades and demonstrates to potential customers that the worker possesses the appropriate skills to do the work effectively and efficiently. In time, and with appropriate education, consumers will come to recognize the benefits of engaging workers with the appropriate skills.
- **Licensing of contractors.** The Secretariat has no interest in establishing, time-consuming bureaucratic systems which will lead to increased costs for contractors - and,

ultimately, for construction clients. However, it is another possible action to ensure compliance with the law.

Also, in a society and economy where efficiency, good quality products and safety in the workplace all appear to be justifiable goals, requirements that construction contractors meet some minimum standards of proficiency, ethics and financial stability do not seem entirely out of place. The requirements need not be onerous, however, a complaint-based system under which contractors could have their licenses revoked for incompetence or unethical behavior (including hiring of underground workers) could be beneficial to both the construction industry - and its clients.

- **Show the way with public sector construction.** Governments should be the first to recognize the dangers inherent in a continuation of the trend towards more underground work in construction. Loss of revenues both to government and other important agencies, poor quality work, more accidents on the job-site - these are all serious problems which must concern the government.

Therefore, it seems sensible that governments should be among the first to adopt practices in their own construction procurement which would ensure that underground practices cannot occur on jobsites funded by public money. It is unfair that public funds, collected from taxpayers (including construction companies and construction workers) who operate within the law, should be expended on construction projects which employ underground workers.

Governments at all levels, as well as publicly-funded organizations, must take the lead in stamping out underground work. As the clients for construction projects, governments must insist that all work is undertaken by contractors and sub-contractors who operate within the law. Severe penalties should apply to all contractors who engage "independent contractors" rather than employees and all tradespeople on publicly funded projects should have appropriate certification.

The Ontario Construction Secretariat is committed to assist the government and other organizations in

stamping out underground activity in construction. This problem cannot be allowed to continue to expand and harm the industry - and its customers. Action is urgently required and all those with an interest in the health of the construction industry, and the Ontario society and economy, must work together to eradicate underground activity from construction.

wages and met all of their legal obligations. Dunwoody estimated that the total labour costs of the employers of the “independent contractors” were 40-50 percent lower than for the unionized contractors - yet their bids were almost the same.

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- i Canadian Home Builders' Association, *Spring 1995, Pulse Survey*.
- ii Gylliane Gervais, *The Size of the Underground Economy: A Statistics Canada View*, February 1994, page 50.
- iii Gervais, page 2.
- iv The Report, *The Effect of the GST on Black Market Renovations*, prepared by Clayton Research Associates Limited for the Canadian Home Builders' Association in 1993 reported a significant increase in underground renovations due primarily to the fact that customers “hate paying the GST” (page 8).
- v The legal responsibilities are different in the case of cash-deals. With cash-deals, the contractor retains the liability for many of the charges but may avoid the payments and required deductions from workers' wages by using cash rather than a cheque - which leaves a “paper trail”.
- vi BDO Dunwoody Ward Mallette, letter to Mr. Don Guilbeault, Chairman, Ontario Acoustical & Drywall District Council, October, 1993.
- vii Subsequent to the completion of the **Dunwoody Report**, there was a minor revision to these estimates which has been incorporated in the information provided here. The revision did not affect the conclusions of the analysis.
- viii The detailed survey results are presented in a separate document: *Survey of Construction Workers Regarding Underground Activity*, prepared for the Ontario Construction Secretariat by The ARA Consulting Group Inc., October 1995.
- ix The *Dunwoody Report* illustrated the efficiency of the unionized contractors. Despite the fact that the winning contractors utilized “independent contractors”, and thereby avoided their legitimate obligations for EHT, UIC, WCB, etc., as well as paying their workers substantially less, their winning bids were only about 2 percent below the bids placed by unionized contractors who paid fair