Open Shop Construction Across Canada

In the first issue of Open Mind three years ago we examined the open shop construction industry across the country. Certainly, non-union construction was not a new phenomenon. Up to that time, most of the building across Canada had been done by non-union workers and that had not changed. What was new, however, was the emergence of open shop construction as an organized entity with associations that had been formed to provide services to non-union employees and a voice for the concerns of non-union contractors.

This development, together with changing market forces, was beginning to transform the construction industry in many areas of Canada. Has that transformation continued?

Construction can be a volatile industry subject to major cyclical fluctuations. The industry as a whole, and open shop in particular, may also be affected by politics. What has happened to the construction market and open shop contractors' share of that market since our overview of three years ago? Let's take a tour across the country.

British Columbia

B.C. has had the most robust construction market in Canada in the nineties. Fuelled by resource industry demand, tourism, residential construction, government expenditures and investment from Asia, virtually all sectors of the economy, with perhaps the exception of mining, have been growing and demanding construction services.

The open shop sector in B.C. continues to expand its market share at the expense of the Building Trade Unions, a continuation of a trend that began in the eighties. Interestingly, this growth has persisted despite concerted efforts by the NDP government to divert more work to the union sector. Through various legislative, regulatory and policy initiatives, the provincial government has sought to aid the Building Trade Unions that have always carried considerable clout within the NDP party. Not all of these maneuvers by the government have had the intended effect, quite the opposite in some instances.

A government mandated "Fair Wage Policy" for public construction was one of the first attempts to aid the union sector. This "leveling of the playing field" that the Building Trades had lobbied for appeared to change little. Open shop firms continued to win the majority of government projects, despite being bound to wage rates similar to union collective agreements.

With the Fair Wage Policy failing to deliver significant work to the union sector, the government initiated hiring preference policies for a major highway project (The Island Highway Agreement) and for B.C. Hydro construction work. This was effective in delivering jobs to union forces and funds to union coffers, but while it was effective it was not subtle. This blatant favoritism with obvious cost to the taxpayers, quickly generated noisy and vigorous opposition.

There were legal challenges, labour board hearings, advertising, lobbying, open line

shows and newspaper coverage focussed on these and related issues. Organizations like the Coalition of B.C. Businesses, the Council of Construction Associations and the B.C. Construction Forum all sprang to life, vociferously opposing the government's tactics.

Much of the opposition was spearheaded by The Independent Contractors and Businesses Association (ICBA), the province's open shop construction group. ICBA's Executive President, Phil Hochstein, says, " Although it created a lot of work and aggravation, the NDP has been a boon to the ICBA. We now have more members, more employees, more apprentices, more people enrolled in benefit and RRSP plans, and frankly, more work than we would have had had the government not stirred things up by attempting to meddle in the marketplace."

The open shop's battles with the B.C. government continue. The latest round resulting from a review of the industry lobbied for by the Building Trades on the grounds that "stability" needs to be restored to the industry, and that buyers of construction services "are not well-informed".

Perhaps the most significant event for the B.C. construction industry over the past few years was the fight between forestry giant, MacMillan Bloedel and the Building Trades Unions. Many observers consider the end of the Building Trades monopoly in the forestry plants an important turning point that will lead to the decline of union market share in industrial work.

Alberta

In contrast to the tumultuous scene in B.C., the construction business in Alberta might seem a little dull. In Alberta, the changeover from a union to a non-union industry happened more quickly and more completely than perhaps in any other jurisdiction in North America. Open shop continues to dominate the market as before in institutional, commercial and residential, and is slowly extending that lead into the industrial sector. Industry sources estimate that as much as 90% of construction work is completed by open shop forces.

The construction market over the past few years has not been as active as on the West Coast, but has shown steady improvement. An encouraging fact about the current market is its diversity and depth. In the early 1980's, Alberta construction was very much a house of cards with frenzied building of downtown highrises driven by a booming energy industry and the growth of government. Not surprisingly, that market collapsed when its main support, the oil and gas business, hit a slump.

Today, construction activity is generated from all sectors of the economy, and while the energy business is still very important to the fortunes of Alberta contractors, there is also demand for construction services from forestry, tourism, agricultural processing, warehousing and distribution, and light manufacturing.

Merit Contractors Association has flourished in this environment with steady membership growth and new records established in the number of hours worked by the employees of the member companies.

Merit's current Chairman, Don Hansen, says, "I quess we haven't had any headline-

making issues here for a few years, but that has allowed us to concentrate on improving and adding to the services we provide for our member companies and their employees. Training has been very much a focus, both through Alberta Apprenticeship and through our own courses. We also have tried to bring new programs to employees such as prescription drug discounts, mortgage discounts, group home and auto insurance, as well as ensuring that our health and welfare and group RRSP plans remain the best in the industry. Not having to mount lobbying efforts or counter union activities has allowed us to spend our time more productively in promoting open shop construction in general and in developing relationships with government officials, educators and especially purchasers of construction services."

Much of the contrast between the construction scenes in B.C. and Alberta can be attributed to the Ralph Klein government which has shown a commitment to non-interference in the marketplace. A pro-business outlook, a favourable tax regime and perhaps most importantly, a turnaround in the government's fiscal situation, have helped to create positive expectations for the Alberta economy- a province where open shop will continue to prosper.

Saskatchewan

Current conditions in the construction industry in Saskatchewan strongly reflect the facts that it is a relatively small market and one where government spending has always been a large component of annual construction volumes. The debt and deficit problem in Saskatchewan was perhaps more difficult than in any other province except Newfoundland. While the Saskatchewan government was the first province to restore a balanced budget, that has not come without cost. The additional taxes have been a brake on the economy and the reduction in capital expenditures have hit the construction industry in particular.

Brent Waldo, President of the Saskatchewan Merit Contractors Association, reports that, "Open shop is alive, well and kicking". He explains that while about 80% of construction is done open shop, and the largest players are non-union, weak markets and low volumes are a problem and everyone is, "kind of struggling".

As in B.C., the NDP government has tried to divert construction to the union sector. Most recently, this has been attempted through a preference policy called the Crown Construction Tendering Agreement. This has stirred up substantial opposition from the business community and in the press, and brought on a boycott on bidding by contractors. It is presently being challenged before the provincial labour relations board by the Merit organization. In practical terms, it has not had a very significant effect to date, as government expenditures on construction have been curtailed by deficit cutting. For most contractors, the overall lack of work opportunities is more of a concern than the pro-union bias of the government.

Manitoba

While the construction industries in other provinces may boom or slump or be the focal point of political battles, the industry in Manitoba, like the whole provincial economy, seems to remain relatively stable from year to year. This continues to be the case with the open shop doing most of the province's construction volume and

the few largest projects being the domain of the union sector.

One new development has been the establishment of a Merit Contractors Association of Manitoba. Gervin Greasly of the Winnipeg Construction Association has been instrumental in bringing a Merit organization to Manitoba and is enthusiastic about the potential. He says, "There are some 4,200 contractors in Manitoba and 90% of them do not operate with a collective agreement. There are about 23,000 tradesmen and 77% are non-union. This is a great opportunity to provide services."

Construction in Manitoba does not operate as a completely free market because wage rates are set by provincial regulation and generally follow those in union collective agreements. One Winnipeg contractor says, "These regulations are ignored about as frequently as the laws against jaywalking", but they have been influential in making most major projects union. There are some indications that the newly reelected Filmon government may review the regulation of construction wage rates. If this occurs, the market may experience more open competition.

Ontario

The Ontario construction market is the largest in the country, and here, as elsewhere, open shop has been thriving. The mix of market forces and politics that is at work in the other provinces is very much in evidence in Ontario. With a new provincial government in place, initiating policies far different from its NDP predecessor, most predict some turbulent times for the construction industry.

Many of the province's construction businesses are still adjusting to the large reduction in volumes that came with the last recession. Much of the boom in Ontario construction was centered in Metro Toronto, and it has been that area that suffered the most in the downturn. Non-union contractors, who relied on smaller and medium-sized projects for most of their work, did not see their market shrink as severely. Declining volumes have also meant increased competition, and wherever that scenario has occurred the open shop has gained market share at the expense of the union sector. Similar to the other most active construction markets in the country, Alberta and B.C., the Ontario Building Trades Unions have not been willing to make meaningful alterations to their collective agreements which would allow their unionized contractors to cope with new market conditions.

As one might expect with an NDP government in place, politics have been an issue in construction. The NDP was strongly pro-union and enacted labour legislation which reflected that. Now, with a Conservative government in place, new legislation has been introduced with a much more pro-business bias. A secret ballot vote for union certification, limitations on successor rights, and elimination of the anti-replacement worker provisions are all long overdue changes for the Ontario Labour scene. This is encouraging for non-union construction contractors, but will perhaps be counterbalanced by the new government reducing public expenditures on construction as it tries to deal with its deficit and deliver on a promised tax cut.

Harry Pellisero of the Independent Contractors Group, Ontario's open shop construction association, reports that their group is confident that they will have a role to play in formulating changes to the province's labour relations regime. He feels that 1996 will be a transition year for construction. The new political situation is going to bring changes for the better for open shop, but the government is also

looking at severe cost-cutting that will affect the whole market. As he says, "The dollars and cents for capital projects just aren't going to be there."

The Maritimes

In other parts of the country public projects may be an important part of the construction market. In many parts of Atlantic Canada they ARE the market. It is not surprising that construction in the Maritimes is greatly affected by the fortunes and policies of various levels of government and that politics can be very important to the construction business. Many observers maintain that the appearance of paving equipment on the roads of an Altantic province is the surest indicator of a coming election call.

It was politics that was instrumental in the formation of the Merit Contractors Association of Nova Scotia. A baffling court case called the Steen Decision had ruled that any general contractor with a bargaining relationship with even one union would only be permitted to hire union subcontractors. This decision had the potential to totally change how the construction business operated in Nova Scotia.

Non-union firms joined together and successfully lobbied the government to strike down the Steen Decision. In the aftermath, the contractors involved formalized their group as an open shop association and began offering benefits and other services to their employees through the new Merit organization.

Upon the reversal of the Steen decision the province's construction unions responded violently by storming the Nova Scotia Legislature and physically assaulting the Minister of Finance. Following that, they mounted an unsuccessful campaign to unseat the Provincial Premier, Mr. Savage, through the Liberal party's leadership review.

Heather Cruickshank, a founding member of the Merit Contractors Association of Nova Scotia and a sheetmetal contractor, reports, "Things are quiet now on the labour front, and our new organization is off to a good start with 60 companies as paid members and growing by one or two companies per month." As for the overall market, she acknowledges that big cutbacks in government expenditures will hurt construction in Atlantic Canada, but is not discouraged. She maintains, "We have always been coping with a difficult market. Good companies that know how to treat their customers and their employees will be busy."

Quebec

Quebec is a unique case. By provincial law, virtually all construction is done on a union basis, and all construction workers must belong to a union. Wages and conditions are set out in a provincial decree, the movement of workers from region to region within the province is closely controlled and even the summer vacation period is scheduled by regulations.

A review of the other provinces plainly shows that division of market share amongst union and non-union players is greatly influenced by the amount of government regulation in the marketplace. In Quebec, that intervention is at its most extreme. Theoretically, the industry should be totally union, but the reality is that a huge

underground market has developed. Some estimate that up to half of construction in the province is done illegally - by workers who are not union members or under rates and conditions that differ from the provincial decree.

Individuals working on construction sites are fined \$400 if they do not have their union card. Jocelyn Dumais is a contractor from the Hull region who has repeatedly run afoul of the "construction police," inspectors who enforce the regulations. He claims, "In Quebec, they have made working a crime," and he has taken his fight to the courts and expects the case to eventually reach Canada's Supreme Court. A new organization was formed three years ago called the Association For the Right To Work. Together with Jocelyn Dumais they are fighting a constitutional battle invoking the Canadian Charter of Rights provision on freedom of association. It is their goal to allow for true worker democracy in Quebec like their neighbours to the west, south and east. Their's is a dispute to watch with the next battleground set for the Quebec Court of Appeal.

Conclusion

Construction workers are the critical factor in this equation, and the emergence of open shop organizations across Canada is a response to the need to provide services such as health and welfare plans, RRSPs, training and job referral to those workers.

This tour of Open Shop construction across the country certainly confirms the trend that was identified in the first issue of Open Mind. Open shop construction continues to expand as buyers of construction increasingly realize that it is the most effective and economical method of delivering the product they require. Open Shop is developing a strong voice and increased recognition as more non-union contractors associations are formed. The services they provide continue to improve and spread across the country and gain acceptance with both workers and contractors.