ONTARIO

REPORT

of

THE ROYAL COMMISSION

on

LABOUR-MANAGEMENT RELATIONS

in the

CONSTRUCTION INDUSTRY

H. CARL GOLDENBERG, O.B.E., Q.C.
Commissioner

March, 1962

T. M. EBERLEE
Secretary

March 12, 1962

To His Honour
The Lieutenant-Governor
of the Province of Ontario.

May It Please Your Honour:

By a Commission issued under the authority of The Public Inquiries Act, Revised Statutes of Ontario, 1960, chapter 323, and in accordance with the terms of Order in Council OC—2622/61, dated 27th June, 1961, Your Honour did appoint me Your Commissioner to inquire into and to report upon the relations between labour and management in the construction industry in Ontario and such other matters as in my opinion may pertain thereto.

I have completed the inquiry and beg to submit to Your Honour the following Report.

Your obedient servant,

H. Carl Goldenberg

H. CARL GOLDENBERG,
Commissioner

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THE ORDER-IN-COUNCIL

ONTARIO
EXECUTIVE COUNCIL OFFICE

OC—2622/61

Copy of an Order-in-Council approved by His Honour the Lieutenant-Governor, dated the 27th day of June, A.D. 1961.

Upon the recommendation of the Honourable the Prime Minister, the Committee of Council advise that pursuant to The Public Inquiries Act, R.S.O. 1960, Chapter 323, Mr. H. Carl Goldenberg, Q.C., be appointed a commissioner to inquire into and to report upon the relations between labour and management in the construction industry in Ontario, and such other matters as in the opinion of the Commissioner may pertain thereto.

The Committee further advise that pursuant to the said Act the said Commissioner shall have the power of summoning any person and requiring him to give evidence on oath and produce such documents and things as he deems requisite for the full investigation of the matter into which he is appointed to examine.

Certified,

(Sgd.) J. J. YOUNG
Clerk, Executive Council.

THE ROYAL COMMISSION

(Sgd.) J. K. MacKay

PROVINCE OF ONTARIO

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom, Canada and Her Other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.

TO

H. Carl Goldenberg,
One of Our Counsel learned in the Law,

GREETING:

WHEREAS in and by Chapter 323 of The Revised Statutes of Ontario, 1960 entitled "The Public Inquiries Act," it is enacted that whenever Our Lieutenant Governor in Council deems it expedient to cause inquiry to be made concerning any matter connected with or affecting the good government of Ontario or the conduct of any part of the public business thereof or of the administration of justice therein and such inquiry is not regulated by any special law, he may, by Commission appoint one or more persons to conduct such inquiry and may confer the power of summoning any person and requiring him to give evidence on oath and to produce such documents and things as the commissioner or commissioners deem requisite for the full investigation of the matters into which he or they are appointed to examine;

AND WHEREAS Our Lieutenant Governor in Council of Our Province of Ontario deems it expedient to cause inquiry to be made concerning the matters hereinafter mentioned;

NOW KNOW YE that WE, having and reposing full trust and confidence in you the said H. CARL GOLDENBERG do hereby APPOINT you to be Our Commissioner to inquire into and to report upon the relations between labour and management in the construction industry in Ontario and such other matters as in the opinion of Our Commissioner may pertain thereto;

AND WE DO HEREBY CONFER on you Our said Commissioner the power to summon any person and require him to give evidence on oath and to produce such documents and things as you Our said Commissioner deem requisite for the full investigation of the matter into which you are appointed to examine;

TO HAVE, HOLD AND ENJOY the said office and authority of Commissioner for and during the pleasure of Our Lieutenant Governor in Council for Our Province of Ontario.

IN TESTIMONY WHEREOF We have caused these Our Letters to be made Patent, and the Great Seal of Our Province of Ontario to be hereunto affixed.

WITNESS: The Honourable John Keiller MacKay, a Companion of Our Distinguished Service Order, upon whom has been conferred Our Volunteer Officers' Decoration, One of Our Counsel learned in the Law, a Lieutenant-Colonel in Our Canadian Army Supplementary Reserve, Doctor of Civil Law, Doctor of Laws,

Lieutenant Governor of Our Province of Ontario

at Our City of Toronto in Our said Province this twenty-seventh day of June in the year of Our Lord one thousand nine hundred and sixty-one and in the tenth year of Our Reign

BY COMMAND

(Sgd.) John Yaremko,
Provincial Secretary and
Minister of Citizenship

FOREWORD

I was appointed a Royal Commissioner to inquire into labour-management relations in the construction industry in Ontario on June 27, 1961.

Following my appointment, I arranged for the preparation of a number of studies pertinent to the inquiry. Over a number of weeks I met with officials of the Government of Ontario, representatives of employers and trade unions in the construction industry, and others who were informed on matters within my terms of reference.

Public hearings opened in Toronto on October 18, 1961, and continued on October 19, 20 and 31 and on November 6 and 7. In all, thirteen briefs were submitted. I am filing herewith a transcript of the evidence and the originals of the exhibits produced.

I am grateful to Government departments, individuals and organizations for advice and information. Both the trade unions and employers' associations in the construction industry were very helpful. The Ontario Department of Labour extended its fullest co-operation to my staff and myself at all times.

I am indebted for information supplied by present and former senior officers of Government in Ontario and elsewhere: Mr. J. B. Metzler, Deputy Minister of Labour of Ontario; Professor J. Finkelman, Q.C., Chairman of the Ontario Labour Relations Board; Mr. Louis Fine, Chief Conciliation Officer of Ontario; Mr. J. F. Cauley, Vice Chairman of the Ontario Workmen's Compensation Board; Mr. G. E. Gathercole, Deputy Minister of Economics and Development of Ontario; Mr. G. V. Haythorne, Deputy Minister of Labour of Canada; Mr. Arthur MacNamara, C.M.G., former Deputy Minister of Labour of Canada; Mr. K. A. Pugh, Deputy Minister of Labour of Alberta; Mr. W. H. Sands, Deputy Minister of Labour of British Columbia; Mr. W. E. Wilson, Q.C., Deputy Minister of Labour of Manitoba; and Mr. R. E. Anderson, Deputy Minister of Labour of Nova Scotia.

For advice on particular phases of my inquiry I owe special thanks to the Most Reverend F. A. Marrocco, Auxiliary Bishop of Toronto.

To Mr. T. M. Eberlee, Secretary of the Commission, who performed his duties with the highest competence, Dr. John H. G. Crispo, Research Director, who was responsible for the preparation of valuable basic studies, and Mrs. Josephine Grimshaw, Economist of the Department of Labour, whose research experience was of great assistance to the Commission, I express my special appreciation.

I. ECONOMIC FEATURES OF THE CONSTRUCTION INDUSTRY

1. Construction and the Economy

The role of the construction industry in the Canadian economy is of major importance. In 1960 the value of new construction (building and engineering) and maintenance and repairs was nearly $6.9 billion, representing more than 19 per cent of the gross national product; the post-war high was 22 per cent in 1957. The figures for Ontario are about one-third of the national total; the value of construction in the Province was more than $2.3 billion in 1960.

Employment in the construction industry proper was estimated by the Dominion Bureau of Statistics at 418,000 in 1960, that is, 7 per cent of total employment in Canada. If persons employed on construction work by industries and firms not primarily engaged in construction are added, the figure would be increased by about 135,000. In addition, it is estimated that construction employment generates offsite employment (the production of materials, equipment and services for the industry) equal to 1.1 times the number of on-site workers. The number of persons employed in actual construction work in Ontario in 1960 was 188,000.

The following table shows the value of construction work performed in 1960 in Canada and Ontario, respectively, by principal types. It will be noted that residential construction represented more than 31 per cent of the value of all construction and almost 50 per cent of the value of building construction in Ontario. It may be estimated that Metropolitan Toronto accounts for more than a third of the total value of building construction in the Province.

VALUE OF CONSTRUCTION WORK PERFORMED IN CANADA AND ONTARIO BY PRINCIPAL TYPES OF CONSTRUCTION, 1960[1]

	CANADA		ONTARIO	
	Value	Percent of Total	Value	Percent of Total
	$ Mill	%	$ Mill	%
Total Building Construction	4,013	58.3	1,512	64.6
Residential	1,944	28.3	735	31.4
Industrial	438	6.4	181	7.7
Commercial	712	10.3	287	12.3
Institutional	613	8.9	222	9.5
Other	306	4.4	87	3.7
Total Engineering Construction	2,876	41.7	828	35.4
Marine	102	1.5	22	0.9
Road, Highway and Aerodrome	825	11.8	241	10.3
Waterworks and Sewage Systems	219	3.2	93	4.0
Dams and Irrigation	74	1.1	5	0.2
Electric Power	397	5.8	158	6.8
Railway, Telephone and Telegraph	453	6.6	137	5.9
Gas and Oil Facilities	475	6.9	66	2.8
Other	331	4.8	106	4.5
Total Construction	6,889	100.0	2,340	100.0

[1]Preliminary figures.
Source: D.B.S., Construction in Canada, 1959-61.

2. Features of Construction Employment

For an understanding of labour-management relations in the construction industry, it is necessary to consider its economic structure and the special features which differentiate it from industry in general. A study prepared for the Royal Commission on Canada's Economic Prospects points out that:[1]

> Construction activity has many unusual features which sharply distinguish it from other forms of production. It is unique in producing goods which cannot be transferred from one place to another. Therefore construction activity cannot be concentrated in any small area—although there is some concentration of construction firms—but must be as dispersed as the needs which arise for it. It is this geographical aspect which sharply differentiates construction from manufacturing. In manufacturing, the plant and the workers remain where they are while the product moves. In contrast it is the product of construction which remains a permanent feature of the landscape while the plant and workers move. In another sense construction is very similar to agriculture. It is carried on everywhere by a multitude of small units and is affected by the weather in a like manner.

The effect on the nature of employment, particularly in house-building, is described as follows by Professor John T. Dunlop, an authority on industrial relations in the industry:[2]

> Place of employment continually shifts, with no two situations identical. Jobs at any one site are usually of quite limited duration. Contractors are continuously in the process of creating or liquidating job organizations and working crews, except for a limited number of key personnel. Job opportunities vary a great deal both seasonally and geographically, and large parts of the work force are able to move about within localities and even between areas. Compared to other industries, workers in house-building tend to have less strong ties to particular employers and also less permanent attachments to work groups.

Irregularity of employment is a feature of the industry because of the nature of its products and its diverse and unstable market. Construction is subject to cyclical fluctuations with years of expansion at irregular rates followed by years of contraction and to seasonal fluctuations. Dominion Bureau of Statistics figures show for 1960 that, while total Canadian employment varied by 11.5 per cent between the low point and the peak of the year, construction employment varied by 56 per cent. Even during the construction season proper, weather conditions from time to time force a suspension of work in some of the trades.

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[1]The Royal Bank of Canada: *The Canadian Construction Industry.* (A Study prepared for the Royal Commission on Canada's Economic Prospects, 1956) p. 46.

[2]John T. Dunlop, "Labour-Management Relations", in Burnham Kelly (ed.): *Design and Production of Homes,* (New York, 1959) p. 259.

3. Contractors and Sub-Contractors

The nature of its products and the product market require a high degree of mobility and flexibility in the industry. It operates on the principle of specialization, which is reflected in the organization of construction firms by specialty trades and the parallel organization of the work force by crafts. Mr. J. J. Pigott, on behalf of the Ontario Federation of Construction Associations, described the various categories of employers and outlined operations as follows (Proceedings, pp. 484-487):

(a) General contractors who undertake the construction of large projects or parts thereof;

(b) Trade sub-contractors who may work either as sub-contractors for a general contractor, or who may be directly employed by the owner of a project;

(c) Specialty prime contractors who are usually directly employed by the owner of a project, but who may in some cases be engaged by a general contractor as a trade sub-contractor;

(d) Owners acting as contractors for their own projects.

The Commissioner: Would you say (d) is particularly applicable in the housing sector?

Mr. Pigott: I think particularly applicable is the proper expression where in larger construction the owner virtually becomes his own contractor and awards trades separately but I think this is applicable principally to the housing. . . .

All building projects, large and small, usually commence with the owner of a project consulting architects in order that plans may be made. At this stage preliminary decisions are made as to what portions of the total project are to be allotted for tender by general contractors, and what portions are to be reserved for tender by specialty prime contractors, and what portions may be reserved to be performed by the owner employing labour directly.

Each contractor, whether a general contractor or a specialty prime contractor, can only tender on those portions of the work which are advertised for tender in accordance with the drawings and specifications prepared by the architect. The successful bidder, therefore, has no control over any part of the project not covered by the contract awarded to him. Each separate contract is in effect a separate project so far as the employment of labour is concerned.

Whenever a general contractor has made a tender which has been accepted, he usually allots portions of the project to regular trade sub-contractors. For example, electrical installations are regularly performed by electrical contractors acting as sub-contractors. Also the plumbing and heating installations in buildings are almost invariably performed by special trade contractors acting as sub-contractors. In any such case the trade sub-contractor in question cannot perform work not covered by his sub-contract. Any Collective Agreement made between such a trade sub-contractor and one of the craft trade unions referred to above, can only have application to that portion of the total building project which is covered by the particular sub-contract of the trade sub-contractor.

On a large building project, the persons directly employed by the general contractor must work on the project at the same time as the employees of the various sub-contractors and specialty prime contractors. In addition to all of the above types of employers employing various tradesmen to perform their particular functions there can be found employees of material suppliers coming and going for the purpose of delivering or installing materials or appliances. For example, concrete may be purchased from a ready-mix concrete company, which company will send to the project truck drivers to deliver the ready-mix concrete; lumber must be purchased and delivered from lumber companies; similarly brick, stone, steel, and a host of other building materials, must be scheduled to be delivered at the proper time and places.

In the case of structural steel, this is usually delivered and installed or erected by the supplier of the steel, acting either as a sub-contractor of the general contractor, or as a specialty prime contractor responsible only to the owners of the project.

While the degree to which general contractors sub-contract their work varies in different branches of the industry and between different firms in the same branch, the trend has been to sub-contract almost all of the work except, perhaps, the general trades of masonry, carpentry and concrete form work. It may be estimated that in Toronto the general contractor in commercial and industrial building sub-contracts 80 per cent of the work and the house-builder almost the whole of it. On the other hand, in heavier engineering construction the contractor may himself account for 80 to 95 per cent of the work.

The sub-contracting system which predominates in the industry for economic reasons complicates its structure and its industrial relations. There are as many types of trade or specialty contractors as there are trades and in the larger centres the number is multiplied many times because of further sub-division and specialization. The Toronto Builders' Exchange lists over 100 different types of trades in its trade directory. The sub-contractors may supply only labour or only labour and equipment or may be responsible for all the labour, equipment and materials on their sub-contract. They in turn, in the mechanical trades particularly, may sub-contract part of their work. In house and apartment building it is not uncommon for sub-contractors to set up some of their own employees as sub-sub-contractors on a piece-work basis, thereby avoiding the necessity of observing certain legislation for the protection of employees.

Except in the case of very large projects, especially in heavy engineering work and highly specialized undertakings, ease of entry is a characteristic feature of the construction industry. Studies show that construction requires less capital per unit of output than almost any other industry. Accordingly, with many general contractors and large numbers of small sub-contracting firms, competition is intense. The fact that the builder supplies the materials of the trade in carpentry and masonry, the most important of the trades in home-building, means that a worker in those trades needs little more than the tools of his trade to set himself up as a contractor in residential building. In commercial and industrial construction, where the sub-contractor often has to bid on larger units and supply his own equipment and materials, he requires more

capital to commence operations and stay in business. Ease of entry is thereby reduced and intensity of competition diminished. This varies with the trades, however, and does not necessarily mean that in certain trades, such as painting, there is not as much competition in other sectors of construction as there is in housing.

The situation in residential construction has been well-described in an authoritative work, as follows:[1]

> The breakdown of functions in the industry, together with the fact that much site work still emphasizes personal skill, has created a situation in which it is extremely simple for persons to enter into the residential contracting (or sub-contracting) business. A few trades are highly mechanized, such as excavation and foundation work (and even here, much of the required machinery can be rented), but many require little more capital investment than that which must be incurred by the average journeyman for his everyday tools. This is particularly true in the finishing trades, although both the structural and mechanical trades also involve much hand labour. Since work is done mainly at the site, no plant is required, and many contractors transact business at their homes. Finally, since the volume of operations is usually small, little capital is required for materials.
>
> The residential sector of the industry, therefore, is one in which the entry and exit of firms is continually occurring. Tradesmen may shift back and forth from the status of employees during certain periods to the status of independent sub-contractors at others, as opportunities in the one or the other field appear more favourable. . . .
>
> The natural consequence of the various factors described above has been that the great majority of firms engaged in residential construction are small, financially weak, and limited in the geographic scope of their operations. These conditions are in quite sharp contrast, however, with those prevailing in commercial and industrial work, where the firms are usually large, well financed, and have the benefit of much more able managerial talent.

4. The Trade Unions

The construction industry has been described as "a group of related firms whose principal common denominator is the employment of the same labour force and bargaining with the same trade unions."[2] The peculiar features of the industry, the basic need for an available pool of skilled labour, and the unstable employment relationship account in large part for the type of construction trade unionism which has developed, the major role which it plays, and the form which collective bargaining has taken. The employment relationship of construction workers with any single contractor being generally of a temporary nature, union pressure and other reasons forced contractors to form associations for bargaining on a multi-employer basis. Because of the large number and

[1]William Haber and Harold M. Levinson: *Labour Relations and Productivity in the Building Trades.* (Bureau of Industrial Relations, University of Michigan, 1956) pp. 23-24.

[2]G. W. Bertram and S. J. Maisel: *Industrial Relations in the Construction Industry, the Northern California Experience.* (Institute of Industrial Relations, University of California, 1955) p. 3.

small size of the majority of contractors in the residential sector and their high rate of turnover, employers' associations in this sector have neither the strength nor the stability of those in non-residential building. It is in the latter area that the unions play their strong role. To the degree that they provide an experienced and skilled supply of labour and stabilize conditions in the industry by establishing uniform wage rates for all firms throughout the bargaining area, they render services, the benefits of which are admitted by the contractors. This has been set out as follows:[1]

> This method of operation [that is, production under contract based on competitive bidding] has convinced most firms in the industry that uniform wage rates extending throughout the local market are decidedly advantageous. Each contractor can submit only one bid, and is presumably ignorant of the bid prices submitted by others. A major factor in the cost of each competing contractor is the total amount of wages which he must pay. If all contractors know that their competitors must pay an identical wage rate, this removes one of the largest items from the sphere of competition, and does away with a major source of worry. In the absence of union interference in the labour market there would be little reason to expect that a single wage rate for a particular skill would emerge or prevail for any period of time. Consequently, contractor competition based partly on wage differentials would be more intense and more unstable, to the detriment of both the employers and the workers.
>
> Without a uniform rate there might be a continuous pressure on the wage scale. Successful bidders would be the contractors who had best succeeded in reducing wage rates and other economic conditions of employment below those of their competitors. Actually, there appears to be a situation in construction in which the technical organization of the competitive market itself is partly responsible for exerting a downward pressure on the bids submitted by competing contractors. Many of the devices developed by contractors to regulate the market and avoid instability seem to be related to this type of pressure. Ultimately also, the contingencies of incorrect estimating, unexpected delays because of climatic conditions, unforeseen difficulties in construction, or limited cash resources might force a successful bidder to attempt wage reduction. The building trades unions are one agency capable of enforcing minimum equal standards in wage rates and other conditions of employment in a competitive area.

To play its role effectively for the protection of its members and as a stabilizing force, the unions find that they must organize most if not all of the tradesmen in each craft in the bargaining area. The closed shop principle is a feature of bargaining agreements. In the result, the union in each trade may have monopoly control of the relative labour supply in the area. For the employers, Mr. Pigott, of the Ontario Federation of Construction Associations, described the situation as follows (Proceedings, pp. 490-491):

> These unions are contractors for the supply of labour in the construction industry. The bargaining which takes place between such a union and a prospective employer of labour in the industry, is simply an attempt to settle in advance of employment, the terms and conditions upon which the union will agree to make its members available for employment within

[1]Bertram and Maisel, op. cit., pp. 31-32.

a particular geographical area. It is merely a meeting between two different kinds of contractors, seeking to settle in advance of tendering on projects, the terms and conditions upon which labour can be purchased and made available.

We would emphasize that these employer-contractors, whether general, prime or specialty, and whether acting individually in negotiations with unions or through appropriate groupings or associations, are in competition with each other. The number of them may increase or decrease as business conditions warrant.

On the other hand the contractor for the supply of labour—the craft union—is usually the only organization of its kind in a particular geographical area which functions in this field. It is a natural monopoly—the only alternative to making a bargain with this monopolistic contractor in those areas where collective bargaining is required, either by law or by the natural force of the monopoly position which it has, is to go out of the contracting business.

The power here outlined may be used to bring about greater stability in an unstable industry, with resultant benefits to employers and workers alike. Contractors have asked that it be restrained because they allege that it is abused, with serious loss to the industry.

II. RESIDENTIAL CONSTRUCTION

The appointment of this Commission followed serious labour disturbances in the house and apartment building sector of the Toronto construction industry in 1961. The disturbances affected all other branches of construction and had been preceded by work stoppages of various kinds in 1957, 1958 and 1960. Representatives of unions submitted that exploitation of labour was the underlying cause, but the Toronto Metropolitan Home-Builders' Association attributed the difficulties to agitation by trade union leaders.

1. Builders and Sub-Contractors

Unlike the commercial and industrial sector, residential construction in Toronto has been organized by unions only to a relatively small degree. The builders, who include long-established firms and recent newcomers, are rarely direct employers. They sub-contract all or almost all of the work to trade contracting or sub-contracting firms, of which most are small and many have had little experience in business. Competition between trade contractors is intense. The situation was described as follows in the brief of the Toronto and District Trade Contractors' Council (Proceedings, pp. 297-298):

> The make-up of trade contracting firms in the residential construction industry deserves some attention in any study of the conditions:
>
> (a) As may be readily seen by the number of operating firms listed in Appendix 'A' of this brief, there are a large number of contracting firms operating in the Toronto area.
>
> (b) Most of these Companies are small firms; many have no employees and all work is done by the partners in the firms; many have one, two or three employees, and even they are sporadically employed.
>
> (c) Most firms are headed by men who graduated from the ranks of tradesmen, and are men who are or were skilled in their trades. There are almost no entrepreneurs or academically trained businessmen heading trade contracting firms.
>
> (d) There are a large number of employers of immigrant stock in the trades. These men are generally highly efficient job supervisors, diligent and hard working and, in some cases, have built up sizeable businesses.
>
> A minority of them, however, are severely handicapped by a language problem, a lack of knowledge of the fundamentals of business management.
>
> Because of this ignorance of hidden administrative expense and indirect costs, their tenders are sometimes unrealistically low in the face of extreme competition.
>
> (e) None of these contruction trades require very high capital investment to start a business; credit is fairly easy to get in this field; and collections tend to be rather slow. Thus, many trade contractors operate on minimal working capital, and are often delinquent in payment of employees' wages.

The nature of competition between trade contractors in recent years has afforded opportunities to house-builders, who are engaged in a speculative operation, to reduce contractors' prices by "shopping" the market and "peddling" bids. The boom in housing in Toronto, as elsewhere, in the 1950's, attracted to the industry many persons with no previous experience in building, some of whom have been appropriately described as "fly-by-night" and "fast buck" operators. Not unduly concerned with the quality of their product, they took advantage of the straitened circumstances and inexperience of small contracting firms, especially as the boom declined, often forcing bids to be reduced to unsound levels. The responsible builders would then be forced to bring pressure on their contractors in self-defence. In a surplus labour market, and without the constraint of collective agreements, the contractors, who are essentially contractors of labour, would seek to recoup themselves by cutting their own costs at the expense of their employees through sub-standard wages, excessively long hours of work, and disregard of safety standards, as well as by lowering the quality of the work.

In this regard the brief of the Toronto and District Trade Contractors' Council said (Proceedings, pp. 305-306):

> With the influx of smaller less efficient contractors into the field and the sharp rise in competition, prices have been driven down for the past three years despite rises in some material costs.
>
> It is not unusual for a contractor untrained in estimating, to arbitrarily lower his tenders below his competitors with the assumption that, if the competitor could make a profit, he would be content with a few dollars less.
>
> Further, the practice of "bid peddling", (i.e. deliberately probing a sub-contractor into lowering his price below his competitor's by openly revealing the latter's quotation) is becoming prevalent in the residential construction field.
>
> The chain reaction here is quite obvious on a moment's reflection. To meet the drop in prices some contractors have exploited their labour force.
>
> The speculative and competitive nature of building and the consequent acceptance of mediocre quality and workmanship to keep prices down, not only furthers possible exploitation but also deprives tradesmen of the opportunity to develop skill in their trades.
>
> Finally, it becomes obvious that, not only wage rates but also profits are being depressed. Many smaller sub-contractors earn less yearly than some of their more highly paid workmen. Hence, not only employees, but some trade contractors are being exploited by these circumstances.

2. The Labour Force

The bulk of the labour force in residential building in Toronto is composed of unskilled and semi-skilled Italian immigrants, most of whom came to Canada in the 1950's. Limited in their education and ignorant of the English language, they flocked to the construction industry, where these disadvantages are not major handicaps and where boom conditions offered employment opportunities with contractors in the unorganized house and apartment building field. There

was always, however, an excess supply of unskilled labour and the ranks continued to be swelled by the inflow of more immigrants and the entry of the younger generation into the construction labour force. As the boom declined, the labour surplus increased and the workers, unprotected by unions or a minimum wage, bid more strongly against each other for available work. In the words of Mr. J. C. Pedoni, Administrator of the Italian Immigrant Aid Society of Toronto (Proceedings, p. 165):

> The result is that, as many a contractor will gladly testify, it is an endless parade of unemployed people seeking jobs and their eagerness to work is mirrored by their request in broken English: "Me work cheap." This is one of the first sentences they learn fast. For them any pay is good to keep their family from starving.

3. Alleged Exploitation of Labour

In the foregoing circumstances, the workers in question were in no position to withstand demands made upon them by contractors who were themselves hard-pressed by builders. Such conditions are conducive to the exploitation of labour. While fear of reprisals prevented direct evidence by persons affected, allegations of exploitation were corroborated in a number of submissions. The following extracts from the Proceedings are revealing:

Mr. I. Freedman, for the Brandon Union Group, which organized some of the workers in home-building, said (pp. 8-9):

> The union was soon confronted with countless complaints.
>
> Against a background of illiteracy and quiet desperation, workers were being compelled to accept conditions—sometimes under threat of deportation—which were startlingly deplorable.
>
> Wages began to fall. But no contractor could hope to compete with the individual who was arranging the emigration of his own work force from Italy, and then providing wages in the form of board and room.
>
> The 10-hour day had become commonplace, and the 6 or 7 day week was not unusual.
>
> The Hours of Work and Vacations with Pay Act, R.S.O. 1960, c.181, was observed in the breach, rather than in performance, and overtime premiums and vacation pay had apparently not yet been heard of by most employers.
>
> Whether other statutes were being observed was questionable. Unemployment Insurance officials in Toronto had gained the collective impression that every employer in the industry had but one name—"Joe"—because that's the only name the immigrant worker, applying for insurance, could report. Statements indicating wages earned, hours worked, and deductions made were costly administrative nuisances, and were discontinued. And in all likelihood, so were Unemployment Insurance and Workmen's Compensation contributions.
>
> Safety regulations were viewed as needless expenses; and before inspectors could arrive on the site, the job had invariably been completed.
>
> A small group of workers found themselves without any pay as a result of either a bankruptcy, or an "N.S.F." cheque.

These allegations were confirmed in the brief of the Council representing some of the trade contractors in house-building. Mr. A. J. Lisanti, for the Toronto and District Trade Contractors' Council, said (pp. 303-305):

> Investigations conducted by the various Associations represented by the Council have provided much evidence to back up allegations made by the Brandon Hall Group that exploitation does exist in the residential construction field. There are certain very specific factors contributing to this unfortunate and urgent problem:
>
> (a) Lack of minimum wage legislation—In only two trades, plastering and painting, do Industrial Standard rates apply governing minimum rates and conditions of work for tradesmen.
>
> Enforcement of the Act is inadequate even in these trades and there appears to be widespread violations.
>
> (b) A minority of contractors have never paid their employees the statutory 2% vacation pay—another poorly enforced Act.
>
> When the enforcement policies of the Workmen's Compensation Board and the Unemployment Insurance Commission—both praiseworthy for the precision, efficiency and scope of their operations is compared to the enforcement facilities (and penalties for violation) of the Vacations with Pay Act and Industrial Standards Act, it becomes obvious that something must be done in this direction.
>
> (c) A large majority of employees in the residential field are immigrants. Their language problem, ignorance of their rights and the laws of the land—and their financial need to hold a steady job—make them a natural target for unscrupulous employers.
>
> (d) As was expressed in the previous section, the comparative lack of skill required in many of the construction trades, provides a ready supply of semi-skilled and unskilled labour at lower wage rates, except only in periods of peak employment.
>
> (e) Employment in construction is often transient and sporadic. Hours tend to be irregular and vary from day to day. Such circumstances are unfortunately more fertile for exploitation than more regular occupational conditions.
>
> (f) A large segment of contractors in the field are themselves immigrant stock and ex-tradesmen and some of these (though by no means a large percentage) tend to be inefficient in their business dealings and in many cases not themselves fully aware of their responsibilities as an employer.
>
> (g) As has been mentioned, the credit facility within trade contracting occupations leads many a sub-contractor to extend himself financially, and, in anticipation of tardy collections and a general lack of adequate working capital to fall seriously behind in payment of wages or issue N.S.F. cheques to his workmen.

The Commissioner: You say, Mr. Lisanti, that these examples of exploitation or the types of exploitation that you list here, you cite these as result of evidence collected by the Associations forming the Council?

Mr. Lisanti: Evidence and interviews, yes. Needless to say, in some aspects of this it is difficult to get concrete evidence, but certainly a combination of both evidence and interviews.

The Commissioner: Do you say that this exploitation is widespread?

Mr. Lisanti: I don't think we would say it is widespread. Of course, there is a problem with the definition of the word "exploitation". It is a significant minority, if it isn't widespread.

Mr. Lisanti mentioned specifically the following unfair wage practices (pp. 319, 320, 322, 323):

There is a limited occurrence within the residential construction trades of a wage practice used by some building contractors to reduce their sub-contracting costs. Sub-contractors with limited or no working capital are engaged to undertake small projects on a "labour only" basis. That is, the builder buys all the necessary materials and pays only for the labour used in the performance of the contract, either for a bulk price or on an hourly basis. The "sub-contractors" in these cases are usually partnerships of three or four individuals, all of whom work manually. Hence, the building contractor is able to eliminate payment of the sub-contractors' profit *and* any vacation pay, payroll, burden or unemployment insurance costs, in return for unusually prompt payment to the sub-contractors.

This unethical practice is, of course, very rare, but is nevertheless a significant evasion of existing fair wage legislation. . . . .

Certain abuses of fair wage practices exist in the residential construction field, including:

1. Kickback—describing the circumstances wherein the employee returns, on receipt of wages, or presents in advance a portion of his wages to the employer as a condition of employment.

This is a particularly unconscionable act on the part of the employer, since he not only deprives the employee of his fair due, but receives the money tax free (in cash) while the employee is taxed on the face amount of his wages. . . .

2. Short Payment of Hours

Many workmen complain that they are "docked" hours on receipt of wages. The claim here is that the employer has arbitrarily deducted several hours from the employee's weekly total, depriving the latter of rightful earnings. . . .

3. Interpolating Records

Here reference is made to the "double set of books" used by unfair employers to disguise payment of wages lower than fair wage rates of wages called for in collective agreements.

The process is disconcertingly simple. In his "private" payroll records, the employer enters the accurate number of hours worked and the actual rate paid per hour. In another payroll record, however, he simply divides the lawful rate per hour into the gross wages paid and enters a reduced fictitious number of hours. . . .

4. Collusion of Employer and Employee

Many employees, with the mistaken view that such an arrangement leads to permanent or more stable employment, privately agree with their employers to accept wages lower than those called for in fair wage schedules or collective agreements.

This unfortunate practice has become all too common in the residential field over the past year in connection with the collective agreements of the Brandon Hall Group. . . . .

Italian immigrants, afraid to complain to the authorities, take their complaints to their own organizations. Mr. J. C. Pedoni, Administrator of the Italian Immigrant Aid Society, in his personal presentation to the Commission, said (pp. 169-170):

Forms of Exploitation

Employers have many ways of exploiting their employees and these are the most common:

(a) marginal and below marginal wages,

(b) non-payment of wages,

(c) kick-back. Payroll registers and pay cheques show regular wages, but workers are forced to return part of their wages in cold cash, usually through a foreman or a company man,

(d) overtime. Construction workers get straight pay regardless of hours worked in a week. There is no such thing like overtime pay for them, even if they work 60 hours a week,

(e) holiday pay. A survey conducted among Italian bricklayers in 1959 revealed that nearly 50% of them did not receive holiday pay, or if someone did in the remainder 50%, it was not in the measure of 2% as per existing regulations,

(Many contractors answering my complaint on behalf of several workers maintained that the 2% was included in the weekly wages.)

(f) Individual and small contracting firms disappearing between jobs. This is the worst kind because towards the end of the working season, workers having the misfortune of being employed by them, stand to lose not only their wages but Unemployment Insurance stamps and sometimes even their tools. Landscaping and paving companies are the worst offenders,

(g) phony cheques issued by companies mentioned in point 'f'.

May I say here, Mr. Chairman, that this is based on our records.

The Commissioner: This information of exploitation that you submit is based on your records?

Mr. Pedoni: Based on our records. I may also say that I tried to get workers involved in these samples to come before the Commission to testify, but they refused because they were afraid. I was only able to get two or three. The other people I contacted personally, I went to their homes. They all agreed and all said: "Mr. Pedoni, I would like you to mention the case, but not to give my name, and I refuse to testify."

I mention at this time another point as to this fact. Last year I appeared before the Royal Commission on Safety, and the four witnesses from the Hogg's Hollow case—it was all over the newspapers—and yet before they would make their deposition they requested the Chairman to put their names in sealed envelopes to be opened only in emergency cases at the discretion of the Commission. This is to prove that even when their own safety is at stake they refuse to speak.

The Commissioner: They are afraid to speak.

Mr. Pedoni: They are afraid to speak.

The Toronto Metropolitan Home Builders' Association, while contending that "labour, in general, is satisfied with the hours of work, rates of pay and working conditions" and attributing all blame for disturbances to trade union leaders, admitted that exploitation occurs in recommending a minimum wage law as "the only possible solution" to "the exploitation of unskilled immigrant labour" (Proceedings, pp. 181, 250).

While the foregoing relates only to the situation in Toronto, other briefs alleged exploitation in Hamilton, Guelph and Kitchener (Proceedings, pp. 637, 654, 656). Mr. G. McCurdy, presenting the brief of the Ontario Provincial Council, United Brotherhood of Carpenters and Joiners of America, said (Proceedings, pp. 637-638):

> It will undoubtedly be of no little interest to the Commissioner to view some of the details of a study conducted by the Ontario Provincial Council of the Brotherhood of Carpenters at Kitchener, in the year 1959.
>
> A personal study of the Home Building Industry at Kitchener, covering a period of approximately two weeks, found me going from housing project to housing project and interviewing many of the half-trained, badly exploited workmen on housing construction there.
>
> In the majority of instances those interviewed spoke very little English, but volunteered information about their operation under sub-contracting, without too much persuasion.
>
> On at least three occasions workmen were interviewed while at work before 7.00 a.m., and when asked, in one case, "How many hours do you work?" the answer was that they worked as long as daylight would permit. In other words, they were working from sunrise to sunset.
>
> The wages ranged from 85c. per hour to $1.50 per hour. There was apparently no overtime pay being paid, and in some cases the workmen were not able to give even an approximation of what their hourly rate was. They referred to their "slice" of the money from the sub-contractor's price. Many did not know what I was talking about when they were asked if they were being paid vacation pay. They were a generally disgruntled bunch of workmen. Some mentioned they had been warned against Union affiliation.

Describing a situation in Guelph, the same brief, quoting the President of the Guelph Labour Council in August, 1960, said (Proceedings, pp. 645-655):

> They've got cement work, curbs, and gutters being done by labourers, and they are paying them anywhere from $1.00 to $1.25 per hour, which is big money. They start them off at about 6.45 a.m. and give them about 45 minutes for a dinner break, and they are through at about 6.45 at night. For this they are paid anywhere from 10½ to 11 hours, depending upon how good the boss feels—we have been to City Council twice now, once with the fact they were hiring all people from Toronto, and transporting them in every day. They had a truck-load of 26 people in a small ½-ton truck—26 men being driven all the way from Toronto, which meant these men were getting up about 4.30 in the morning, coming all the way to Guelph. After they were through at 6.45 at night, they would load them back in the truck, and go all the way back to Toronto again.

The Royal Commission on Industrial Safety, appointed after a number of tragic accidents on construction projects, in its Report to the Government of Ontario, in October, 1961, found as follows (p. 13):

> On the other hand, your Commission is concerned with a growing area of irresponsibility characterized by the "fast-buck" or "fly-by-night" builders, or the unqualified and speculative newcomers whose record demonstrates a serious lack of knowledge of safety, responsibility, and respect for legislation.
>
> The increasing intensity of competitive bidding creates and stimulates a special and unfair advantage for this irresponsible element. Decided savings may be effected by disregarding even minimum precautions against accident.
>
> The irresponsible contractor avoids stabilization through collective bargaining. His contractual identity is not constant. To preserve his special advantage he must avoid all forms of restriction required in current standards of conduct and performance.

Considering all of the foregoing, I have no hesitation in finding that there has been exploitation of workers in house and apartment building by some contractors and that the abuses were an underlying factor in recent labour disturbances. While the extent to which these abuses prevailed cannot be measured, the surplus labour market offered ample opportunity to certain builders and contractors to take advantage of the needs, the fears, and the limited experience in Canada of the immigrant labourer. That such advantage was taken by some and that these constituted a significant minority of the industry, I have no doubt. However, this does not warrant condemning the industry as a whole; a distinction should be drawn between responsible and irresponsible firms engaged in house-building.

Consideration may well be given to the fact that many of the housing projects in the construction of which some form of exploitation was practised, were undoubtedly financed with the assistance of Government funds under Federal housing legislation. In the United States, the National Housing Act prescribes prevailing wage provisions for labourers and mechanics working on the construction of multi-type dwellings for rental purposes (walk-up and elevator apartments) or on projects of 12 or more family homes, where these are financed with the assistance of the Federal Government through mortgage insurance by the Federal Housing Authority.

4. The Trade Unions

Unions have generally been less successful in organizing workers in residential building than in commercial and industrial construction. Irregularity of employment is greater in house-building because this sector is more subject to seasonal and cyclical fluctuations and the duration of its projects is generally shorter. The fact that there is less continuity of employment and more competition for jobs affects the ability of the unions to organize. On the contractors' side, the existence of a large number of small firms with a very high turnover rate makes it difficult to establish and to maintain stable organizations, such as

the smaller number of large firms in non-residential construction makes possible. Accordingly, collective bargaining through employers' associations and trade unions, which is characteristic of the commercial and industrial field, is more difficult and less effective in the residential field. The only major exception in Ontario is presented by Windsor, where the whole industry is organized and the same wages and working conditions apply in both sectors.

Insofar as they are organized, the workers in house and apartment building in Toronto, mainly immigrants, are members of the following five locals chartered directly by the international unions and commonly designated as the "Brandon Union Group":

1. Bricklayers, Masons and Plasterers International Union of America, Local 40.
2. International Hod Carriers, Building and Common Labourers Union of America, Local 811.
3. United Brotherhood of Carpenters and Joiners of America, Local 1190.
4. Operative Plasterers and Cement Masons International Association of the United States and Canada, Local 117 (Plasterers).
5. Operative Plasterers and Cement Masons International Association of the United States and Canada, Local 117-C, (Cement Masons).

Attempts to organize the immigrant workers in Toronto began late in 1955 and were continued, with varying degrees of success, by individuals, "old line" locals, new locals and independent unions. In 1958 and 1959 an estrangement began to develop between the immigrant groups and the locals belonging to the Toronto Building and Construction Trades Council because of the alleged indifference of the latter to organizing the house-building industry. In April, 1960, five Italian construction workers were killed in an accident in a tunnelling operation in Hogg's Hollow, on the northern outskirts of Toronto. This tragedy, one of several, coupled with sagging employment in the industry, dissatisfaction with the wide differential between wages in residential and non-residential building, and abuses by marginal operators, brought the discontent of the immigrants to a head. A new organizational campagn was launched and by June, 1960, the five new locals constituting the Brandon Union Group were formed outside the orbit of the Building and Construction Trades Council.

5. The Strikes of 1960 and 1961 in Toronto

To obtain recognition from the employers, the Brandon Unions took strike action at the beginning of August, 1960. The strike involved approximately 6,000 men in the five trades. By the third week of August, when the strike ended, it was stated that 115 out of a total of approximately 300 carpentry contractors and at least half of some 300 masonry contractors had signed collective agreements. Agreements were also signed between the Brandon labourers' union and the Masonry Contractors' Association and between the cement masons and many of their employers. The plasterers' participation in

the stoppage was on a sympathy basis since this union already had contracts with a number of employers.

The trade contractors associations which were formed as a result of the strike and whose members signed collective agreements with the Brandon Unions were far from representing all contractors in each trade. This is indicated in the brief of the Toronto and District Trade Contractors' Council which submitted the following estimate of the degree of organization of each of the trades in terms of the total volume of work performed (Proceedings, pp. 292-293):

Carpentry	—25% organized; 75% non-union
Concrete and drainage	—70% organized: 30% non-union
Lathing	—60% organized; 40% non-union
Plastering	—50% organized; 50% non-union
Tile and Terrazzo	—100% non-union

The Brandon Union Group in its brief estimated employment in residential construction in Metropolitan Toronto at 22,100 and membership in its five locals at 5,000 (Proceedings, p. 24).

In view of the substantial majority or large minority of contractors in each trade who continued to operate with non-union employees and to pay wages far below union rates, the contractors who had signed agreements with the Brandon Group began to encounter difficulty in meeting the wage provisions to which they had bound themselves. They claimed that they could not afford union wages and conditions in the face of strong competition from non-union, low-wage contractors, coupled with declining activity in the housing sector. It was charged, as well, that builders were deliberately discriminating against union contractors. Moreover, with employment in the industry dropping, tradesmen were willing to accept work almost anywhere at any price and union tradesmen began to take jobs with non-union contractors at wages that were well below the union rates. When the carpentry contractors, in a formal presentation to the union, pointed to the difficulties they were having in living up to the terms of their contracts and asked for downward modifications in rates and conditions, their proposals were rejected by the union. Nevertheless, many union contractors apparently proceeded to act on their own and lowered wage rates. If the unions objected, they did not avail themselves of the formal grievance procedure provided by the agreements to deal with complaints.

By the spring of 1961, the Brandon Group faced the problem not only of expanding its coverage of the residential field by further organizational efforts, but also of regaining ground that had been lost during the preceding several months. A strike was called on May 29. Ostensibly a protest against alleged violations of agreements by union contractors, and borne along on the frustration and bitterness of unfulfilled hopes, the "demonstration", as it was described by its leaders in preference to the term "strike", was also employed as an instrument for the organization of non-union workers. Pickets were installed around non-union residential projects and flying squads of Brandon Group supporters sought by various means, including coercion and intimidation, to induce tradesmen to

join the unions and non-union contractors to recognize the Brandon locals. Bitter charges and counter-charges were flung at each other by the parties, including threats of deportation against immigrant workers. Violence flared and a number of Brandon Group supporters were prosecuted. Many, but by no means most, of the apartment projects under way in the Metropolitan area were forced to shut down. Similarly, work was brought to a standstill at a number of housing sub-divisions.

There was now clear evidence of an alliance between the Brandon Group and the affiliates of the Building Trades Council, representing some 25,000 workers in the commercial and industrial field. When pickets appeared on the T.T.C. Subway, the Gardiner Expressway, Ontario Hydro and Malton Airport construction sites, members of the labourers' union walked off their jobs in sympathy and these projects were brought to a halt. Members of the Teamsters' Union observed Brandon Group picket lines, with the result that the ready-mix concrete industry was also drawn into the dispute.

Early in June, the Hon. Leslie M. Frost, then Prime Minister of Ontario, intervened in the dispute, and proposed a settlement plan involving:

i. the establishment of a special temporary arbitration board which would adjudicate the alleged violations of collective agreements;
ii. the appointment of additional inspectors to the staff of the Labour Department to investigate violations of labour standards legislation; and
iii. the appointment of a Royal Commission to inquire into labour relations in the construction industry.

This proposal did not bring the strike to a conclusion immediately, although both parties approved it in principle. Establishment of the temporary arbitration board depended on both parties signing agreements giving it jurisdiction to make final and binding orders in connection with grievances. The contractors apparently feared that they would be forced into bankruptcy if they were required to pay the full amount of wage claims. The unions, for their part, indicated that they preferred to prolong the strike in order to achieve other objectives, including the unionization of a larger segment of the housing field. By the middle of July, the unions and the contractors came to terms and the stoppage ended, although the Brandon Group maintained a measure of organizational pressure, largely through selective picketing of residential construction sites, throughout the remainder of the year.

6. Conclusion

This analysis of labour relations in residential building shows a highly unstable situation arising from the economic characteristics of the industry, a surplus labour market and opportunities for exploitation of workers by irresponsible employers, ineffective organization of employers and of employees, and inadequacies in the law. Such a situation, breeding conflict, calls for remedial measures.

III. COMMERCIAL AND INDUSTRIAL CONSTRUCTION

While there are contractors who are active in both commercial and industrial building and house and apartment construction, the two sectors of the industry are generally considered separately and should in any event be so considered with respect to labour relations. It should be made clear that allegations before the Commission of exploitation of labour in residential construction were not directed at and should in no way reflect upon the contractors engaged in commercial and industrial building here discussed.

As is generally characteristic of this sector of the industry, the unions have to all intents and purposes fully organized commercial and industrial building construction in Toronto. There are many firms which are non-union, but they account for a relatively small proportion of the total volume of construction. Bargaining takes place between the craft union and associations of employers. The General Contractors' Section of the Toronto Builders Exchange (now the Toronto Construction Association) negotiates six "General Trade Agreements" with the following seven trade unions:

The International Union of Operating Engineers, Local 793,

The International Association of Bridge, Structural and Ornamental Iron Workers, Local 721,

The International Hod Carriers, Building and Common Labourers Union of America, Local 506,

The United Brotherhood of Carpenters and Joiners of America, Local 1190,

The Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 598,

Bricklayers', Masons' and Plasterers' International Union of America, Locals 2 and 26.

A number of trade or sub-contractor associations, usually affiliated with provincial or national trade organizations, engage in collective bargaining and sign agreements with the unions having jurisdiction in their respective fields. The following unions affiliated with the Building and Construction Trades Council of Toronto and Vicinity now bargain with trade associations in the commercial and industrial section of the industry:

Asbestos Workers, Local 95,
Boilermakers, Local 128
Building Labourers, Local 506,
Electrical Workers, Local 353,
Hoisting Engineers, Local 793
Ironworkers, Local 721,
Lathers, Local 97
Marble Tile Workers, Local 31,
Marble Tile Helpers, Local 56
Millwrights,
Painters and Decorators, District Council,

Plasterers, Local 48,
Plasterers' Labourers, Local 781,
Plumbers and Pipefitters, Local 46,
Sheet Metal Workers, Local 30.

Agreements also exist between the Elevator Constructors' Local 50 and the Teamsters Local 230 and associations of some of their respective employers. These unions are not affiliated with the Council. There are, in addition, union agreements with individual firms.

Notwithstanding the inter-dependence of the trades on a construction project, the employers' associations are forced to bargain separately with each craft union. To co-ordinate bargaining with a view to concurrent rather than consecutive negotiations, the general contractors and the trade contracting associations formed the Labour Relations Association of the Toronto Construction Industry late in 1960. The contractors propose direct negotiations between the Association and the Building Trades Council, as representative of the unions, or concurrent negotiations with each union. Neither alternative has been accepted by the unions. It is significant, however, that the most recent agreements between General Contractors' Section of the Builders Exchange and the Carpenters and the Cement Masons Unions, signed in October, 1961, each contain the following clause:

> It is the stated desire and intention of the General Contractors' Section of the Toronto Builders Exchange that any negotiations for renewal of this Agreement, or revisions, will be conducted on a joint basis which will allow the parties hereto, together with all other construction trade Unions within the territorial area defined herein, to sign a master agreement for all the trades, which said Agreement can be administered by centralized authorities acting on behalf of Unions and Employers.

All but two of the international unions in the construction field are affiliated with the Building and Construction Trades Council of Toronto and Vicinity, which is chartered by the Building and Construction Trades Department of the A.F.L.—C.I.O. The individual union in each craft, however, is autonomous: it is the individual union that negotiates and signs the agreements with the General Contractors Section of the Toronto Construction Association and with the various trade associations. Considering these as "master" or "pattern" agreements, although they are not standardized, there are also what may be called "tie-in" agreements signed by the Council with general contractors who are not members of the Association. Under these such contractors agree to employ only union labour, to sub-contract only to unionized contractors, and to abide by all the terms and conditions of the "master" or "pattern" agreement.

Collective bargaining has resulted in an elaborate set of rules governing employment conditions in each trade. The fact that the negotiated union rates apply, with relatively minor exceptions, throughout the market has introduced an important stabilizing factor in that competition based on differentials in wages and other economic conditions of employment is very largely ruled out. This is in striking contrast to the situation in residential construction in Toronto.

The pattern of collective bargaining in the industrial and commercial field in the other cities of Ontario is, with some local variations, similar to that in Toronto. Windsor presents a special situation in that the unions have organized both residential and non-residential construction and the Windsor Builders' and Contractors' Exchange bargains for both sectors of the industry. The Exchange has made a strong effort to introduce multi-craft industry-wide bargaining and in 1961 carried on joint negotiations with 13 unions. However, this did not prevent 13 separate applications for conciliation and the appointment of 13 boards of conciliation, and, finally, a strike.

In their briefs to the Commission, representatives of contractors complained of some features of collective bargaining in the industry and of certain conduct and practices of the unions, relating particularly to illegal strikes and picketing, and recommended changes in Ontario's labour relations legislation. The unions, in turn, submitted criticism of the legislation. These matters are dealt with in the section of this Report on the Labour Relations Act.

IV. ENGINEERING CONSTRUCTION

In the engineering construction sector of the industry, the road builders and the sewer and watermain contractors submitted briefs to the Commission.

1. Road Building

Road builders are distinguished from general contractors in building construction because they are engaged in a highly specialized activity in which a relatively small number of firms participate. Because the number of distinct operations is much smaller than in building construction, sub-contracting is limited, much of it being for hauling and grading. Specialization takes place among the contractors themselves.

Road building is seasonal to a far greater extent than other types of construction. Active construction in Ontario is carried on for only seven or eight months of the year. The employment requirements are for unskilled workers who are trained by the contractors themselves. In order to maintain an organization, a number of key men are employed throughout the year but, with limited alternative opportunities, even the casual workers tend to have a continuing relationship with a particular employer and may work for him year after year. Another requirement of the industry is mobility and much of the work is performed in areas far from settled communities. Considering the limited duration of the season and the nature of the employment, the standard hours of work are unusually long, the current agreement in Toronto providing for 110 hours of work in any two weeks at straight time.

The organization of labour in Ontario road building is largely confined to Toronto and Windsor and to particular projects in the Province. A collective agreement was entered into in Toronto in 1957 and was subsequently renewed. Unlike the bargaining with individual unions in building construction, the organized employers in Toronto represented by the Metropolitan Toronto Road Builders Association negotiate with a Council of Trade Unions representing the operating engineers, the teamsters and the labourers. This is an example of multiple-bargaining which the contractors are seeking to establish in the commercial and industrial sector.

While the number of contractors in road building is much smaller than in building construction, the industry submitted to the Commission that it is subject to unfair competition. Most of its work is for governments—Federal, Provincial and municipal. The Federal Government includes a fair wage schedule in its contracts, as do Metropolitan Toronto and other municipalities. While Ontario Government contracts require the payment of fair wages, no schedule has been formulated. The Metropolitan Toronto Road Builders Association submitted that the Association has unsuccessfully urged the Provincial Government "to

introduce into its contracts minimum requirements pertaining to wages, hours of work and trucking rates. . . . We feel that this is a practical commonsense approach to avoid exploitation and abuse of workers in our industry. . . ." (Proceedings, p. 610). In answer to my questions, Mr. J. B. Waterhouse, of the Association, said (Proceedings, pp. 612-613):

> *The Commissioner:* What is the effect of the absence of such fair wage schedules? Does it mean you have unfair competition at the expense of substandard working wages or substandard working conditions, or don't you face that kind of a problem?
>
> *Mr. Waterhouse:* We do face it. Very much do we face it. Where you have contracts—take for example the Ontario Government—all the contracts called for is what you might say the going rate of wages, prevailing rate of wages in that area. That is a very hard question to say what is the prevailing rate of wages in a particular area. It could run anywhere from fifty cents an hour up to a dollar an hour.
>
> *The Commissioner:* Would you say that there is an element of exploitation by some of the contractors engaged in your industry?
>
> *Mr. Waterhouse:* I would think I would be forced to agree that there was.
>
> *The Commissioner:* And a fair wage schedule would help?
>
> *Mr. Waterhouse:* It certainly would help. What happens, it is a very competitive industry. The amount of construction available for the contractors has not increased in relationship to the number of contractors that have come into the business. The result is it is very competitive and with no prevailing minimum rate or no minimum rate of wages, then there is a tendency to cut wages, to get contracts, which in turn then labour is exploited, and it costs the government a lot more to inspect that type of work because they are using sub-standard labour, you might say, a very cheap type of labour.

The Ontario Provincial Council, United Brotherhood of Carpenters and Joiners of America, in its brief to the Commission, also urged that the Ontario Government adopt a fair wage schedule similar to that in Federal Government contracts (Proceedings, pp. 694-699).

2. Sewer and Watermain Construction

The sewer and watermain contractors are dependent in large part on residential building, and, more particularly, the development of new sub-divisions and commercial centres. They are, therefore, affected by the state of labour relations in house-building. Much the larger part of their work force is composed of unskilled immigrant labourers.

There is now collective bargaining in the industry in Toronto. It is conducted as in road building. The first agreement between the Metropolitan Toronto Sewer and Watermain Contractors Association and a Council of Trade Unions, representing the same three unions as in the road builders' contract, was signed in 1959. The brief submitted by the Association to the Commission suggested that its members are subject to unfair competition through the

exploitation of labour by contractors who are not parties to the agreement. It recommended that (Proceedings, pp. 754-755):

> To stop the exploitation of labour a minimum wage schedule should be adopted by areas for the whole province, and recognized by all Municipalities and private works, and more particularly made known to the fullest extent to the worker. As a basis for the preparation of this schedule we respectfully suggest the following basic rates of pay.
>
> | | |
> |---|---|
> | (a) Rural Areas | $1.25 per hour |
> | (b) Urban Areas | $1.50 per hour |
> | (c) City Areas (Pop. over 100,000) | $1.60 per hour |
>
> We feel that once a basic rate has been established as above for the "unskilled labourer" that the more skilled men, such as operators, and I am talking of in our business—pipelayers, manhole constructors and skilled labourers will soon find their own level of reward in the labour market. . . .

3. Conclusion

The submissions of the road builders and the sewer and watermain contractors point to the conclusion that, as in residential construction, labour and the responsible employers require protection in the form of minimum standards of wages and working conditions. Thus, the brief of the Ontario Federation of Construction Associations recommended (Proceedings, p. 590):

> . . . . a schedule of minimum wages and working conditions, to be observed in certain sections of the construction industry where the employees are not protected by Collective Agreements. In most areas these sections seem to be:
>
> (i) the construction of sewers and water mains;
> (ii) The building of roads;
> (iii) The building of dwelling houses including apartments.

V. THE LABOUR RELATIONS ACT

1. The Act and the Construction Industry

An analysis of the nature of the construction industry shows that it differs from other industries in certain basic respects and that these differences in large part account for its special labour relations patterns and problems. Accordingly, if there was any approach to unanimity in the views submitted to the Commission, it was on the proposition that legislation of general application, such as the Ontario Labour Relations Act, R.S.O., 1960, c. 202, is not appropriate to the requirements of the construction industry. Representatives of contractors and of trade unions agreed on this point, as appears from the following extracts from the Proceedings of the Commission:

Mr. I. Freedman, for The Brandon Union Group (pp. 52-53):

> Elsewhere in this brief it is submitted that at the root of labour strife in the construction industry lies the peculiar fluidity of employment relationships in that industry. To recapitulate, it is industrial custom that the length of employment is determined by the duration of a particular construction project, a few days in the case of a small residential project, or a number of months in the case of a large office building or sub-division. This means that both employer and employee are constantly driven to resort to the labour market, and that virtually all transactions on that market are expected to be impermanent.
>
> By contrast, in most other industries, the employment relationship, once entered upon, is conceived of as more-or-less permanent, subject always to the employer's ability to offer work, and to the employee's ability to perform it.
>
> It is not surprising, then, that legislation of general application premised upon a general view of the facts of industrial life should be unsuited in many respects to the needs of this particular industry. Nor is it surprising that the malfunction of the legislation has in turn created a situation in which many unions, frustrated in pursuing their admittedly lawful objects by legal means, have turned to extra-legal devices.

Mr. A. J. Lisanti, for The Toronto and District Trade Contractors' Council (p. 336):

> The Labour Relations Act for the Province of Ontario was never written for the Construction Industry. It encompasses and provides for the industrial shop or factory where a permanent force of employees work in one place throughout the year and for one employer over a period of years.
>
> The transient nature of employment in the construction trades and the continual movement of the construction crew from one project to another make it most difficult, and in some cases almost impossible, for unions to gain certification under the present legislation, however much the employees may desire their representation.
>
> The need for possible alteration of the certification procedure and certainly for the speeding of its machinery indicates the need for certain changes in the Act, or perhaps an entire new section to deal with the construction industry.

Mr. D. B. Archer, for The Ontario Federation of Labour (pp. 376-377):

The Labour Relations Act, continued in its present form and with present procedures, would constitute the best argument in favour of the contention that the building trades should be completely excluded from its application. In all the years of its operation, however, no real effort has been made to adapt the Act and its administration to the peculiar needs of the building industry. . . .

We also think it worth discussing whether a drastically modified bargaining and mediation procedure might serve a useful purpose in construction labour disputes. In short, we are not opposed to labour legislation drafted specifically to deal with the construction industry and accompanied by appropriate administrative procedures. No responsible trade unionist would advocate, or has ever advocated, anarchy in this or any other field of industrial relations. However, we have no more sympathy with a system of law that is largely irrelevant to the conditions it is supposed to regulate.

Mr. J. J. Pigott, for The Ontario Federation of Construction Associations (pp. 487-488):

Each type of employer concerned with any building project has a group or groups of employees who are either:

(a) represented separately from all other groups by a union, or are

(b) capable of being represented by a union separately from any other group of employees on the project.

You will observe that this is a vastly different situation from that which obtains in a manufacturing plant, where usually only one union represents all of the production employees of the manufacturer at a particular location. Hence the problems of the building contractor with respect to dealing with labour are quite different from those of the more stable manufacturing type of employer.

The building contractor has a mobile business. He employs labour in several locations which may not be known or even contemplated at the time he makes his Collective Agreements with the various craft unions. His labour force is also mobile. They move from project to project wherever their skills are required.

The size of the work force of any particular type of contractor or any building project is constantly changing. Hence, those provisions of the Ontario Labour Relations Act which deal with "an appropriate bargaining unit", which is apparently intended to be some collection of regularly employed persons engaged by a particular employer at a particular location, have little meaning in the construction industry.

and at pp. 566-567:

We now suggest that there should be a special Labour Relations Act applicable to the construction industry, so that there will be no danger that any of the provisions thereof, which are appropriate for our industry, might be found unpalatable for other types of industry, and hence fail to be adopted.

Several of the basic provisions of the present Labour Relations Act could, of course, be re-enacted with only slight modifications. . . .

All other sections of the present Act are either inapplicable to the construction industry, or require substantial modification in order to deal adequately with our problems.

An examination of the Labour Relations Act and its operation confirms the allegations that in some of its main provisions and their administration it is not appropriate to the construction industry. Like corresponding legislation in other Provinces, it was formulated against the background of operations in manufacturing, mining and transportation, rather than construction. Accordingly, for its more effective operation in the construction industry, the Act must take cognizance of the particular needs of this industry by special or exceptional provisions, but these need not form part of a new and separate construction labour code.

I recommend that special provisions governing the construction industry should be embodied in the Labour Relations Act as a separate part thereof entitled "Construction Industry: Special Provisions".

2. Ontario Labour Relations Board: Construction Industry Panel

Section 75 (3) of the Labour Relations Act authorizes the Chairman of the Ontario Labour Relations Board or, in his absence, the Vice-Chairman, to assign members of the Board to its various divisions and to change such assignment at any time. Having regard to the special characteristics of the construction industry and to the importance of reducing delays in construction industry cases, I recommend that the Act be amended to direct the Chairman to appoint a Construction Industry Panel of the Labour Relations Board which will be primarily available for cases arising from the construction industry. The Panel should not be a quasi-independent body but a panel of the Board, since, apart from special provisions to govern the construction industry as herein recommended, much of the general legislation would remain common to it and other industries.

3. Certification: The Bargaining Unit

Bargaining rights in Ontario may be established by certification under the Labour Relations Act or by voluntary agreement between employers and trade unions. These alternatives should continue to be available. In the construction industry voluntary recognition is the general rule. This is attributable in larger part to the history of collective bargaining in the industry which long ante-dates labour relations legislation. In part it is also due to the fact that the certification procedure as it stands is not generally appropriate to the industry.

The bargaining unit envisaged by the Act is a group of regularly employed persons engaged by a single employer and working at a particular location throughout the year. Construction employment does not fit this picture. It has no stability. The worker moves from job to job and from employer to employer. The duration of his employment may range from a few days to a

number of months, depending upon the size of the project. The class of craftsmen and the number employed in any particular craft will rise and fall as the job progresses. There is rarely any period of time during which the number of employees in some of the crafts on a construction project can be said to constitute a "normal work force", in the sense in which that term is used in manufacturing.

Although the workers, moving from one employer to another, may on the facts look to the group of employers rather than to the employer on any particular project as the employing unit, certification under the Labour Relations Act appears to envisage a single-employer, single-location unit. In the construction industry this means certification for the particular project. However, the nature of construction employment being as described, project certification proceedings may prove futile because the time consumed in processing the application may be equal to or even exceed the duration of the phase of construction affected by the application. A number of cases in which this has occurred were cited in briefs to the Commission.

The Labour Relations Board faced the problem of certification in the building trades early in its history. In the Frontenac Construction Case, (1946) D.L.S. 7-1277, recognizing that its decision might well establish that certification for collective bargaining purposes is inapplicable to most phases of the building construction industry, the Board nevertheless held that a unit of building construction employees temporarily employed for an indefinite period of time was not a unit appropriate for collective bargaining. This policy was changed in the Sinclair Cut Stone Case, (1950) D.L.S. 7-2123, where the Board declared that it would certify unions for units of construction employees notwithstanding the nature of the tenure of employment. In the course of its decision, the Board said:

> . . . .the question whether certification will, in a particular case, be of benefit to the employees affected or will pose difficult problems for the parties concerned is not one for the consideration of the Board. An applicant which meets the necessary requirements is entitled to certification for what it is worth. It is not the intention of the Board to endeavour to estimate the probable future value of certification.

The policy followed by the Board on bargaining units in the construction industry now includes both "project" and "area" certifications:

i. Where an application relates to the employees of an employer at the place of "residence" of the employer (whether head office or branch office), the appropriate unit is an area unit, that is, the employees on all projects of the employer in the given area will be included in the unit.

ii. Where an application relates to the employees of an employer at a place other than the residence of the employer and where the employer has not previously engaged in construction in the area in which the project is located, the appropriate unit is normally a project unit.

iii. Where the union asks for an area unit in a situation where it would only be entitled to a project unit and the employer agrees that the appropriate unit is an area unit, the Board will usually grant an area unit.

iv. Where an application relates to the employees of an employer at a place other than the residence of the employer, and where the employer has previously engaged in construction in the area in which the project presently under construction is located, the appropriate unit is an area unit.

v. Where in the situation outlined in iv. above, the union in its application asks for a project unit, the Board will usually grant a project unit certificate.

For reasons arising from the nature of construction operations, I find that project certification on anything but a long-term project may lead only to frustration and be an open invitation to unlawful action by the union. Area certification, recognizing that employees of an employer move from project to project in the area, overcomes some of the problems posed by certification for a particular project.

I recommend that area certification should be the general rule and that the Board should restrict project certification to long-range projects of a special nature, and that this policy should be set out in the legislative provisions relating to the construction industry.

To determine the appropriate time for testing union membership, the Board, in the case of manufacturing industries, has developed the "build-up principle". Where there is evidence that the work force in the plant is at a low level at the time of the application for certification and that it will be increased substantially according to a seasonal pattern or a planned hiring schedule, the Board will direct that a representation vote be held when a representative group of employees is at work. I find that this procedure is not appropriate to the facts of the construction industry.

I recommend that in construction cases the Board should not wait until a representative group of employees is at work but should issue an area certificate upon the union establishing that it has the requisite number of members among the employees in the unit at the time when the application is made, and, further, that where a union has bargaining rights, either through certification or on renewal of a collective agreement, the employer should be obliged to bargain with it even when there are no employees in the bargaining unit on the job. To provide for a situation where, as a result of a "build-up" following certification, the union may no longer represent the majority of the employees in the unit, I recommend that the Board should also be empowered to entertain at its discretion an application by construction industry employees for termination of bargaining rights at an earlier stage than that now provided for under Section 43 of the Act.

The policy of the Board in de-limiting the area to be covered by a certificate is to accept the prevailing pattern of bargaining as the yardstock. In the absence of such a pattern, it has resorted to the "in and out of" unit, that is, a unit consisting of the employees of an employer in a designated municipality and who perform work either in such municipality or in any place outside to which they may periodically be assigned with the understanding that they would normally return or look to such municipality for re-assignment. In British Columbia, where the construction industry is unionized to a high degree, certification is on

an area basis, the area being the territorial jurisdiction of the union. I am of the opinion that the Board in Ontario should continue to follow its present policy but should direct studies to be made as to appropriate area units where there is no prevailing pattern of collective bargaining.

It was submitted to the Commission by contractors and by some unions that the nature of the construction industry calls for multi-union and multi-employer bargaining. I find that the facts sustain this submission and that the law should, therefore, facilitate multi-party bargaining. Section 1 (1)(a) of the Labour Relations Act now defines a "bargaining unit" as "an employer unit or a plant unit or a sub-division of either of them". Section (5) (1) requires an application by a trade union on behalf of "employees of an employer". Although the Act recognizes the existence of multi-employer bargaining, it makes no provision for certification of multi-employer units. A first agreement on a multi-employer basis is dependent upon voluntary recognition; thereafter, however, on notice being given to bargain for renewal (section 40), recognition is made compulsory (section 41).

Legislation in other jurisdictions provides for certification of a trade union as bargaining agent for employees of more than one employer. The Federal legislation, the Industrial Relations and Disputes Investigation Act, R.S.C., 1952, c. 152, defines a bargaining unit as follows, in section 2 (3):

> For the purposes of this Act, a "unit" means a group of employees and "appropriate for collective bargaining" with reference to a unit, means a unit that is appropriate for such purposes whether it be an employer unit, craft unit, technical unit, plant unit, or any other unit and whether or not the employees therein are employed by one or more employer.

Section 7 (1) of the Act provides that a trade union claiming to have as members in good standing a majority of employees "of one or more employers" in a unit appropriate for collective bargaining may apply for certification as bargaining agent of the employees in the unit. Section 9 (3) provides that, if the unit includes employees of two or more employers, the Board shall not certify the trade union unless

(a) all employers of the said employees consent thereto, and

(b) the Board is satisfied that the trade union might be certified by it under this section as the bargaining agent of the employees in the unit of each such employer if separate applications for such purpose were made by the trade union.

Similar provisions are found in the labour relations legislation of the following provinces:

Manitoba: Labour Relations Act, R.S.M., 1954, c.132, ss. 2 (3), 7 (1), 9 (3).

British Columbia: Labour Relations Act, R.S.B.C. 1960, c.205, ss. 10 (2), 10 (3).

Nova Scotia: Trade Union Act, R.S.N.S., 1954, c.295, ss. 7 (1), 9 (3).

New Brunswick: Labour Relations Act, R.S.N.B., 1952, c.124, ss. 6 (1), 8 (3).

Newfoundland: Labour Relations Act, R.S.N., 1952, c.258, ss. 2 (3), 7 (1), 9 (3).

The Saskatchewan Trade Union Act, R.S.S., 1953 c. 259, s. 5, empowers the Labour Relations Board to determine whether the appropriate unit of employees shall be "an employer unit, craft unit, plant unit, or a sub-division thereof or some other unit". The Quebec Labour Relations Act, R.S.Q., 1941, c. 162A, s. 6, provides for certification of employers' associations.

Considering that the law should facilitate multiple bargaining in the construction industry, and noting the precedents in other legislation, I recommend that the definition of "bargaining unit" in the Labour Relations Act be amended to include in the construction industry "an employer unit or a plant unit or a subdivision of either of them or any other unit and whether or not the employees therein are employed by one or more employers", and that a trade union representing a majority in a unit consisting of the employees of two or more employers be declared eligible for certification as bargaining agent for the unit, such certification to be subject to the consent of all the employers and union entitlement to certification for each employment group.

In addition to the absence of a provision for multi-employer certification, the Ontario Act does not provide for two or more unions joining in an application for certification. Section 7 (5) of the Industrial Relations and Disputes Investigation Act reads as follows:

> Two or more trade unions claiming to have as members in good standing of the said unions a majority of employees in a unit that is appropriate for collective bargaining, may join in an application under this section and the provisions of this Act relating to an application by one union and all matters and things arising therefrom apply in respect of the said application and the said unions as if it were an application by one union.

A similar provision is found in section 5 of the Manitoba Labour Relations Act, section 10 (4) of the British Columbia Labour Relations Act, section 7 (5) of the Nova Scotia Trade Union Act, section 6 (5) of the New Brunswick Labour Relations Act, and section 7 (5) of the Newfoundland Labour Relations Act. Section 60 (1) of the Alberta Labour Act permits a joint application if the unions are of the same craft or exercising the same skills. Section 4 of the Quebec Labour Relations Act provides that "several associations of employees may join" to constitute the unit appropriate for collective bargaining.

I recommend that the Labour Relations Act be amended to provide that two or more trade unions claiming as members a majority of the employees in an appropriate unit may join in an application for certification as bargaining agent of the employees in the group.

The Ontario Act defines a "trade union" in section 1 (1)(j) as "an organization of employees formed for purposes that include the regulation of relations between employees and employers and includes a provincial, national or international trade union". In my opinion, section 2 (1)(r) of the Manitoba Labour Relations Act, which includes " a duly organized group or federation of unions in the definition of "trade union", is more appropriate to the requirements of multiple bargaining. Accordingly, I recommend that for certification of unions as bargaining agents of employees in the construction industry, the definition of "trade union" be extended to include a duly organized group, council or federation of trade unions.

4. Certification Procedures and Delays

For effective use of the certification procedure in the construction industry it is essential that applications for certification be dealt with speedily. It was the unanimous submission of trade unions to the Commission that the delays involved under the present procedures are frustrating insofar as applications by construction trades are concerned. Representatives of some employer groups concurred.

I find that a minimum time lapse of approximately 20 days is now to be normally expected for the processing of construction applications. A few are disposed of in a somewhat shorter period but in a considerable number of cases the delay has been greater, extending up to 90 days or more. A Construction Industry Panel of the Board, additional staff, and special procedures could probably reduce the minimum delay by five or six days and also reduce delays in complicated cases.

I recommend that the Labour Relations Act should declare a policy that construction industry cases be expedited, having regard to the special nature of the industry; that special provisions be made in the Rules of Procedure of the Board for the expeditious processing of such cases by the Construction Industry Panel; that Hearing Officers with the rank of Deputy Vice Chairmen be appointed and that the services of such Hearing Officers be used as far as possible to expedite proceedings; that the findings of facts by Hearing Officers be final and conclusive; and that the Panel be authorized to grant interim certification for collective bargaining without public hearings upon the report of a Hearing Officer, subject to review by the Board at the request of an interested party.

Implementation of these recommendations for expediting construction industry cases will require the appointment of competent additional staff by the Board, and a corresponding increase in its budget. In my opinion, this is essential for effective application of the Act to the industry. An adequate number of Hearing Officers and competent Examiners is particularly required if the needs of the construction industry are to be met.

5. Negotiation of Collective Agreements

In their briefs to the Commission, the trade unions were unanimous in submitting that the delays involved in the negotiation and conciliation procedures

under the Act are inappropriate to the nature of the construction industry. Their criticism is summarized in the following statement by Mr. D. B. Archer, President of the Ontario Federation of Labour (Proceedings, p. 378):

> Collective bargaining, in order to have any meaning for large segments of this industry, must be completed (for better or worse) in a matter of days or weeks. Otherwise the bargaining unit is likely to disappear before any bargain is made. Under the lengthy certification and conciliation procedures prescribed by the Act, organization and bargaining in construction is forced into a totally unrealistic pattern.

I find on the facts that, except for long-range projects, the present procedures allow for unduly long delays in terms of the requirements of collective bargaining in construction. The Act seeks to apply the same rules on delays to an industry where employment is by its nature temporary as it applies to a manufacturing plant with continuous employment. If the law does not take cognizance of the facts of a situation to which it is intended to apply, unlawful acts are likely to follow.

The Act now provides that:

i. For a first agreement, the union must, after certification, give the employer written notice of its desire to bargain (section 11). Notice to bargain for renewal of an existing agreement must be given within two months before its termination or as provided in the agreement (sections 40 (1) and (2)).

ii. Section 12 requires the parties to meet within 15 days from the giving of the notice or within such further period as the parties may agree upon.

iii. Either party may file with the Board a request that conciliation services be made available to the parties (section 13 (1) and "the Board shall grant the request" where 35 or more days have elapsed from the giving of the notice or upon the joint request of the parties or where it is satisfied that no progress in bargaining is being made, but the Board may postpone granting the request from time to time to a specified date and direct the parties to continue to bargain in the meantime (section 13 (3)).

iv. Upon the granting of the request, the Minister must forthwith appoint a conciliation officer, or, on the joint request of the parties, a mediator jointly selected (section 14). The conciliation officer endeavours to effect agreement and must report to the Minister within 14 days from his appointment (section 15 (1)), unless this period is extended by the parties or the Minister (section 15 (2)).

v. If the conciliation officer is unable to effect an agreement, the Minister gives notice in writing to the parties requesting each of them to recommend a representative on a conciliation board within five days of the receipt of the notice, and these two members are to recommend a chairman within three days of their appointment (section 16 (2)). Alternatively, the Minister may advise the parties that he does not deem it advisable to appoint a conciliation board (section 16 (b)).

vi. The conciliation board must report its findings to the Minister within 30 days after its first sitting (section 29 (1)), unless this period is extended by agreement of the parties for a further period not exceeding 90 days, except with consent of the Minister (section 29 (2)(a)), or is extended by the Minister at the request of the chairman for a period not exceeding 30 days (section 29 (2)(b)). The Minister may request the board to clarify its report and it is not deemed to have been received by him until so clarified, whereupon he must forthwith release a copy to each of the parties (section 29 (4) and (5)).

vii. No strike or lockout is permitted until seven days have elapsed after the report has been released to the parties or after the Minister has informed them that he does not deem it advisable to appoint a board (section 54 (2)).

Accordingly, if the parties fail to reach agreement, the Act fixes a minimum period of approximately four months for negotiation and conciliation, unless the Minister does not deem it advisable to appoint a conciliation board. In the latter case the minimum delay may be reduced to approximately two and a half months. I find that a minimum delay of four months is unrealistic for the construction industry: in many cases the workers affected may no longer be on the project when the delays expire, particularly if there is added to this delay, the preceding delay involved in certification. In the circumstances, except for long-range projects, the delays allowed by the law afford an opportunity to evade the obligation under section 12 of the Act that the parties "shall bargain in good faith and make every reasonable effort to make a collective agreement".

Perhaps recognizing the fact that the parties will commence serious negotiations sooner if the delays are shorter, the legislation in some jurisdictions fixes shorter delays than under the Ontario Act, although such delays may be extended with the consent of the parties:

i. In Ontario the parties are required to meet within 15 days after the notice to bargain (section 12); this compares with five days under the British Columbia Act (section 19 (a)) and ten days under the Manitoba Act (section 15 (a)). In Alberta and in Quebec the notice is notice of a meeting to commence collective bargaining and must be served, under the Alberta Act, five clear days before the date fixed (section 72 (4)), and under the Quebec legislation, eight clear days before the date fixed in the notice (section 11).

ii. Whereas in Ontario either party may ask for conciliation services if 35 days have elapsed from the giving of notice (section 13 (1)), in British Columbia the request may be made where bargaining has continued for at least ten days (section 26). Under the legislation in Alberta (section 82), Manitoba (section 16 (1)(a)), New Brunswick (section 15), Newfoundland (section 16), and Nova Scotia (section 16), and under the Federal Industrial Relations and Disputes Investigation Act (section 16), either party may request the services of a conciliation officer at any time after collective bargaining has commenced or if it has not commenced within the time prescribed by the Act.

iii. In Ontario a conciliation board is allowed 30 days to report (section 29 (1)), as compared with 10 days in British Columbia (section 38 (6)), and 14 days under the Federal Act (section 35), the Alberta Act (section 93 (1)), the Manitoba Act (section 35), the New Brunswick Act (section 34), the Newfoundland Act (section 36), and the Nova Scotia Act (section 35).

I find that for more effective bargaining in the construction industry some of the negotiation delays prescribed by the Ontario Act should be reduced. If longer delays are required to reach agreement, the parties should jointly request an extension of time. I also find, having regard to the special features of this industry, that serious bargaining would probably commence at an earlier stage, thereby reducing delays, if the conciliation board stage is eliminated from the procedure, unless a board is requested by both parties. This would admittedly be a departure from long-established practice, but, however appropriate such boards may be in other industries, I do not find that they have been particularly effective in achieving the desired ends peacefully in the construction industry.

Accordingly, I recommend with respect to the construction industry, that the parties shall be required to meet within five days from the giving of the notice of the desire to bargain, or within such further period as they may agree upon; that either party shall be entitled to request that conciliation services be made available where 21 days have elapsed from the giving of such notice; that the conciliation officer be required to report within 14 days from his appointment, unless this period is extended by agreement of the parties; that, if the conciliation officer reports that he has been unable to effect a collective agreement, the Minister shall appoint a conciliation board or a mediator only upon the joint request of the parties; and that, if a conciliation board is appointed, it shall be required to report within 14 days from the appointment of the chairman, unless the period is extended by agreement of the parties.

Under section 14 of the Act, when a request for conciliation services has been granted, the Minister is required to appoint a conciliation officer or, upon the joint request of the parties in writing, a mediator selected by them jointly. While the remuneration of the conciliation officer, and also of the conciliation board, is paid by the government, section 30 (5) provides that "the remuneration and expenses of a mediator shall be borne equally by the parties". I am of the opinion that the use of mediators should be encouraged because agreement between the parties on the selection of a mediator is in itself an indication of progress in their bargaining.

I recommend that the reasonable remuneration and expenses of a mediator should be borne by the government. I also recommend that the Act should provide that the parties may agree in writing to accept the report of a mediator or a conciliation board, as the case may be, on the matters referred to them, and that upon so doing they should be bound by the report on such matters.

For the renewal of existing agreements, section 40 of the Act requires notice of a desire to bargain by either party "within the period of two months before the agreement ceases to operate". It follows that, under present delays,

where recourse is had to conciliation, the proceedings inevitably extend beyond the expiry date of the agreement. I am of the opinion that the law should facilitate the conclusion of negotiation and conciliation in the construction industry before such date.

Under the British Columbia Act the notice must be given "within three months and not less than two months" before expiry date of the agreement (section 17). The notice period is not less than 30 and not more than 60 days under the Alberta Act (section 72 (3)), the Manitoba Act (section 13 (1)), the Saskatchewan Act (section 26 (2)), the Newfoundland Act (section 13 (1)), and the Quebec Act (section 15). In Ontario, Manitoba and Newfoundland, the Acts allow for a different period of notice if the agreement so provides.

I recommend that the Labour Relations Act be amended to require that notice to bargain for the renewal of an existing agreement or the making of a new agreement in the construction industry should be given within three months and not less than two months before the expiry date of the existing agreement.

The Commission was advised that in Metropolitan Toronto the agreements between the general contractors and the principal crafts have had the same expiration date for a long time and that this now also applies to the agreements in the various sub-trade groups. I suggest that, if the period for giving notice to bargain for the renewal of agreements is changed as recommended and the recommendations for reducing negotiation and conciliation delays are also implemented, the changes would tend to facilitate the conclusion of negotiation and conciliation proceedings in the industry at about the same time. This would be very desirable and is an end that should be aimed at.

6. Multi-Party Bargaining

The Ontario Federation of Construction Associations, in its brief to the Commission, submitted that the present system of negotiation and conciliation in the organized part of the industry, the industrial and commercial sector, is chaotic and wasteful. The case as presented deserves serious consideration. Mr. J. J. Pigott, on behalf of the Federation, said in part (Proceedings, pp. 492-504):

> *Mr. Pigott:* The division of the employees in the industry into craft unions, each of whom is completely autonomous, makes it possible for each of these unions to request that collective bargaining for a particular craft be carried on independently of the bargaining between the same employers and the other crafts. On rare occasions, in certain areas, it has been possible to persuade several of these crafts to consolidate their bargaining activities and to carry on joint negotiations with the appropriate employer groups, but generally the unions at the local level insist on separate craft bargaining.
>
> *The Commissioner:* Would they insist on that even if the employers constituted themselves a single group for bargaining purposes?
>
> *Mr. Pigott:* Yes sir. We have tried and, in fact, in the city of Toronto at the present time there is such a group which was formed within the past year, the Toronto Labour Relations Association, which includes all of the

trade contracting groups as well as general contractors. That group meets once a week to try and keep each other abreast of the development and negotiations in one trade or the other. That group has endeavoured to persuade the unions to bargain concurrently rather than consecutively without success. . . .

We propose that it be handled in whatever way seemed preferable to the unions, either separate meetings carried on concurrently or a meeting of the Building Trades Council across the table from the Employers' Association. Neither alternative to date has been acceptable to the unions. . . .

We are still striving and hope that as time goes on we may be successful in persuading the unions to adopt a different type of negotiation but whether that should come about or not if negotiations continue to be carried on separately, separate boards and separate dates on which strikes or lock-outs could become effective, the public, the employer and the union perhaps are threatened with a multiplicity of stoppages in any given bargaining year as compared with the situation where negotiations are carried on concurrently with one final date on which either there is a settlement or there is not. . . .

The conciliation process prescribed by the Ontario Labour Relations Act seems to have been designed and made appropriate for collective bargaining in industrial establishments, and it would seem to us to be necessary to apply different techniques to our industry.

It should be obvious that, taking the Toronto area as an example where we have twenty-three (23) separate craft unions, we can have twenty-three (23) separate sets of negotiations—twenty-three separate applications for conciliation—and twenty-three (23) Boards of Conciliation; all dealing with a dispute which affects construction projects in the Toronto area.

There is certainly some excuse for there being more than one set of negotiations because there are different groupings of employers, namely, general contractors and sub-contractors. But even in Toronto, where the general contractors make six collective agreements with seven crafts employed directly by general contractors, and where settlement with all seven is essential before any general contractor can intelligently plan for future work, it has not been possible to persuade the unions to co-ordinate these six separate sets of negotiations; and yet it is evident that an unsettled situation with any one of these seven crafts can paralyze the construction of any project, either because the other six crafts will join in the strike initiated by one of them because they refuse to cross a picket line, or because it is necessary to lay off the other six crafts because the project is held up by the strike on the part of one craft.

It is interesting that a similar view was submitted by the Brandon Union Group representing workers in the residential sector of the Toronto industry. Mr. I. Freedman said on its behalf (Proceedings, p. 40):

Each craft negotiates individually through the Building Trades Council with the Builders Exchange. This very method can create widespread dissatisfaction and unrest. While some trades may sign agreements, others, after exhausting conciliation procedures, may deem it

necessary to strike. It is conceivable that one craft, albeit a minority, may, by its inability to conclude an agreement, create hardships and distress for a majority of construction workers by placing picket lines on various job sites.

The element of time often adds to the confusion surrounding negotiations. With approximately 20 architectural and mechanical trades in negotiation, the convenience of a uniform expiry date in a contract becomes virtually unattainable, and negotiations themselves become an understandably wearisome process, when they take place over such a protracted period of time.

The other side of the picture was presented by Mr. D. F. Hamilton, of the Ontario Federation of Labour, in the following answers to my questions (Proceedings, pp. 393-395):

The Commissioner: Would you care to express any opinion on the recommendation for multi-party bargaining?

Mr. Archer: Well, Mr. Hamilton is a building tradesman. He has engaged in negotiations in this industry.

Mr. Hamilton: An opinion on it, I think in theory it is a good theory, because I think that this kind of negotiation would serve some very useful purposes, but the practicality of it in the existing industry as it now exists today is a most difficult one, and I would suppose that each union today, or each company, on either side of the bargaining table, would be very reluctant to give up traditional positions which they now hold as regards rates, and bargaining rights. I think the theory is a sound theory if someone has the knowledge and all the things that go with it to make it a reality. I think we would be doing a service to the community, but I don't know where we can find that kind of a person.

The Commissioner: That is, you say it would be difficult to overcome the traditions of the craft unions on the one hand and the employers on the other?

Mr. Hamilton: Yes, because in the building trades, what you have which poses problems, are the sub-contractors, and they guard their positions jealously, as I suppose each individual union guards its position, electrical contractors, the plumbing contractors and the various sub-contractors have traditional ways of doing their business, both in the collective bargaining field and in other fields, and I think this is something that would be difficult to break down. The other thing is that the unions have found it advantageous to them in the construction industry to bargain one against the other, if you like, where one got a fifteen cents an hour increase, other unions would like to maintain that kind of increase, or better it, and I think this has been advantageous to unions in the industry, and I think you would have to prove pretty conclusively by giving up these rights for this kind of bargaining, that it would be justified, or practical.

Considering the inter-dependence of the various crafts on a construction project and, having regard to the bargaining experience in Toronto and in other areas in the recent past, it is clear that a system of consecutive independent bargaining by each craft can produce disorder in the industry whenever agreements are subject to renewal. That it is the traditional system and that the

unions have found it to their advantage to bargain against each other are facts that do not in themselves justify the system. Tradition dies hard, but where continued adherence to traditional procedures may multiply and aggravate industrial disputes, the onus is on the parties to adapt their procedures to the facts imposed by the nature of the industry.

While there has been progress over the years in the direction of multi-employer bargaining and, in some areas, multi-employer and multi-craft bargaining, some of the advantages thereby gained have been offset by the inability to conclude negotiation and conciliation with all crafts at the same time. It was submitted to the Commission by the Ontario Federation of Construction Associations that the problems should be dealt with by the appointment of an Administrator, with powers such as the following (Proceedings, pp. 575-576):

Control of Collective Bargaining

> The Administrator should be given specific authority to supervise and control all collective bargaining in the industry on the area basis. This would include authority to resolve conflicting jurisdictional claims of unions, and to require that Collective Agreements be made subject to the approval of the Administrator, so that any jurisdictional clause which might be written into such Agreements could be amended on his direction where necessary. He should also have specific authority to require that the Collective Agreements for all crafts in a particular geographical area shall commence on a given date and expire on a given date.

Consolidation of Conciliation Cases

> The Administrator should have control over ali conciliation procedures which may be made applicable, with respect to disputes in this industry, with authority to set time limits on negotiations, to consolidate negotiations with respect to different crafts in a particular area, and to require that all such disputes be submitted to a single conciliation tribunal, so that failing settlement on an industry basis there would be a single report of a Conciliation Board dealing with all issues arising in all negotiations in a particular geographical area, during which the industry could be disturbed by either strikes or lockouts.

In my opinion, if the government assumed such wide powers of control of collective bargaining, the results would not be peace and order in the industry. The plan, if implemented, would create more problems than it would solve—even assuming that a qualified person agreed to become Administrator and, having agreed, would either be able to or want to retain the post for any length of time. I do not think that order of the kind required can be created by law alone.

The law, in my opinion, should assist by facilitating multiple and concurrent bargaining. To this end, I have recommended special provisions in the Labour Relations Act for the certification of bargaining units representing employees of more than one employer, for joint application for certification by two or more unions, for certification of a duly organized group or council of trade unions, and for reducing procedural delays in negotiation and conciliation, so that the

proceedings could be concluded for all crafts at about the same time. Insofar as changes in established bargaining procedures are concerned, I believe that free collective bargaining will be best preserved by negotiation and agreement between the parties, provided that each party is prepared to face the problems and to make necessary adjustments. Failing this, public opinion may, wisely or unwisely, lead to the imposition of restrictive controls.

Accordingly, I recommend that the Minister of Labour should call a joint conference of employers and trade unions in the construction industry to consider and to formulate plans for multiple bargaining, master agreements, a uniform expiration date of collective agreements in each bargaining area, and to deal with related matters. I suggest that the conference place high on its agenda a serious study of what has probably been the most successful experiment in collective bargaining in the Ontario construction industry—the multi-employer, multi-union bargaining system on the Niagara Falls and St. Lawrence Power projects of Ontario Hydro. I am aware that a joint conference was called a few years ago and presumably failed in its early stages. But, a conference of this nature should not be terminated because of initial disagreements; patience will be required and must be exercised. Careful preparatory work by a small joint committee should precede the convening of the full conference.

7. Bargaining Committee

Section 13 (4) of the Labour Relations Act allows the Board to deny a request for conciliation services "where during bargaining the trade union has not been represented by a bargaining committee". Under Section 13 (5) a bargaining committee "shall consist of employees of the employer who are in the bargaining unit" and may include "one or more officers or other representatives of the trade union". Section 13 (6) provides that "where a bargaining unit consists of not more than fifteen employees, the bargaining committee may consist of one of such employees". Presumably, where the unit consists of more than fifteen employees, at least two of them must be on the committee.

It was submitted to the Commission that the requirement of a bargaining committee, as defined, may in many instances frustrate collective bargaining in the construction industry. Employment is of a transient nature, the unit of employees is frequently very small; and, unlike the case in other industries, the workers have little protection in terms of seniority and job tenure. In these circumstances, employees of the employer find it difficult or are reluctant to serve on a committee. By the time the proceedings are concluded, they may no longer be working on the project.

I find that the objection to the requirement of a bargaining committee, as defined, in the case of negotiations in the construction industry is valid. Accordingly, I recommend that where a trade union has bargaining rights in the construction industry, either following certification or on a renewal of a collective agreement, the employer should be under an obligation to bargain with the union and the union should be entitled to request conciliation services, whether or not the bargaining committee includes employees of the employer.

8. Arbitration of Grievances

Section 33 of the Act requires all collective agreements to provide "that there will be no strikes or lock-outs so long as the agreement continues to operate". Under Section 34 (1) every agreement must provide "for the final and binding settlement by arbitration, without stoppage of work, of all differences between the parties arising from the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable". Where an agreement does not so provide, it is deemed to contain a provision set out in section 34 (2), under which, after exhausting the grievance procedure established by the agreement, either party may in writing notify the other of its desire to submit the difference to arbitration and name its appointee to the arbitration board. The other party must select its appointee within five days and both arbitrators are then called upon to select a chairman within the next five days. If the arbitrators cannot agree, the chairman is named by the Minister. The arbitration decision is binding upon the parties and, in case of non-compliance, may be filed in the Supreme Court after the expiration of fourteen days after its release or the date provided for compliance, whereupon it becomes enforceable as a judgment of the Court.

It was submitted to the Commission by the employers that the construction unions do not use the established procedure for the settlement of grievances, as required by law, resorting, instead, to the use of force in violation of the Act. With reference to the work stoppage in house-building in 1961, Mr. A. J. Lisanti, of the Toronto and District Trade Contractors' Council, said (Proceedings, pp. 311-312):

> *Mr. Lisanti:* While these contracts were still in effect, with only a few weeks to renewal, the Brandon Hall Group again called a work stoppage (term "demonstration") on May 29th, 1961. Again a segment of building was brought to a standstill, though the extent was less than the 1960 effort.
>
> This time the purpose of the strike was the correction of alleged contract violations.
>
> However, from the date of signing the contracts until the work stoppage not one grievance had ever been filed by any of the Union Locals against any contractor in any trade even though the grievance procedure, save only in the case of the concrete and drainage contractors, was accepted verbatim as proposed by the Unions.
>
> *The Commissioner:* Why would you say that the Union wouldn't use the grievance procedure?
>
> *Mr. Lisanti:* Well, the reason they gave—it may not be valid—was that the standard contractual agreement procedure involved a considerable amount of time and expense for each grievance. Primarily because the expense and time was so great, and because the violations were so great, they felt it was impossible to go through normal grievance channels.
>
> *The Commissioner:* Do you say that the delay involved made it almost useless?
>
> *Mr. Lisanti:* Well, the amount of time spent to resolve one grievance. I am merely using the argument they gave to us.

The Commissioner: What do you feel yourself?

Mr. Lisanti: I feel that certainly in the early days of the contract, if there had been a certain number of grievances against contractors the example would have prevented the spread of it. I cannot go along with the argument that because there are a lot of grievances you don't attempt to agree on them.

The Brandon Union Group admitted resort to "extra-legal measures" and Mr. I. Freedman, its counsel, explained why the grievance procedure was not used, as follows (Proceedings, pp. 10-12):

> The Union tried to find legal remedies for the grievances. . . .
>
> When the complaints came pouring into the union office, legal advice was sought and when counsel pointed out the usual procedure, the answer by the Union was to the effect that the law frustrated the possibility of an effective remedy to the Union because by the time any cure could manifest itself the job was invariably and inevitably completed. . . .
>
> When we make these statements, Mr. Commissioner, it should be borne in mind that we are talking about or putting the emphasis on the residential aspect of the construction industry, and we have in mind short-lived jobs. A few houses are being built; not 100, not 200. The owner is putting up half a dozen or less, and a painter or plasterer is employed for a number of days. If he is being underpaid or overworked and wants to take advantage of the traditional and by now classical forms of remedy—that is, arbitration or an application to the Board for leave to prosecute—by the time anything gets going, let alone a decision, his job is completed and he is no longer in the employ of the employer . . .he is no longer employed by the employer where his grievance originally arose.
>
> In each case, however, the suggested recourse in law was not an effective cure . . . grievance procedure, arbitration, or prosecution, presume a continuous relationship between employer and employee; there is none in the construction industry. The union was thus compelled to seek extra-legal measures to bring stability to the industry.

The Brandon Union Group was supported in its views on arbitration by the Ontario Federation of Labour. Mr. D. B. Archer, its President, said (Proceedings, pp. 388-389):

> Turning to the question of unlawful strikes, we think the no-strike provision of the Act demands reconsideration in relation to the realities of the building industry. We emphasize again that time is a major factor in determining whether disputes will be settled equitably. Here there is little continuous employment as in a manufacturing establishment. A strike is often the only means available to obtain a settlement—whether in grievance or contract disputes—quickly enough to be effective for the employees concerned.
>
> A case in point is the strike which led to the present inquiry. It is now known that the workers involved were striking primarily because of thousands of grievances over employer violations of existing agreements. The only alternatives were either to suffer in silence or to process countless grievances through arbitration at a cost of $150 or more per case. In the event that a worker won his point he would still face the possibility of a hollow victory. If his employer by that time had not gone bankrupt or formed a

new company, the odds are that the project would have been finished and he would not have been hired on the next one. Obviously, arbitration as described in the present Act is of little or no relevance to the construction industry.

The submission of the Ontario Federation of Construction Associations, representing commercial, industrial and engineering construction contractors, shows that it is not only in the house-building sector of the industry that the unions do not have recourse to the grievance procedure. Mr. J. J. Pigott said (Proceedings, pp. 529-530):

> *Mr. Pigott:* Whatever the nature of the incident or grievance which arises on a construction project, and despite the grievance procedure established by our Collective Agreements, there is a general tendency on the part of craft unions in the contruction industry to prefer work stoppages as the means for resolving grievances rather than using any appropriate procedures which might be available. . . .
>
> *The Commissioner:* But insofar as the unions are concerned, I have been told in the contruction industry they do not adhere to, they do not observe the grievance procedure because of the delays. I have been told that a project may be a short-lived project, a project may be close to its conclusion and if they were to follow the procedure, the project might be completed and they might be out of jobs before a final decision is reached. What do you say on that?
>
> *Mr. Pigott:* I would say that statement is not valid. There may be some strength in it with respect to small house projects that may be virtually completed but we have far too many instances of work stoppages on projects that still have a year and a half to two years to run.

In the briefs submitted by the unions it was urged that the delays involved in the selection of ad hoc arbitration boards could be avoided by the creation of a permanent arbitration board or a number of permanent regional boards, paid by the government, and which would be available for hearing grievances on short notice. Mr. I. Freedman, for the Brandon Union Group, proposed a permanent board for the following reasons (Proceedings, p. 89):

> As is well-known to this Commission, the same unhappy events which gave rise to its creation also led to the creation of the Construction Industry Arbitration Board, by Order-in-Council OC-2623/61 (approved, June 27, 1961). Upon this Board is conferred the jurisdiction of an arbitration board under section 34 of the Act, in respect of specified collective agreements. The permanence, availability, and growing familiarity with industry conditions demonstrated by this Board indicates that it may be a useful precedent for a permanent tribunal in the industry which would replace the normal ad hoc arbitration board. A permanent tribunal would greatly shorten the time lapse between the offence and the decision by obviating the delay encountered in selecting the nominees of the parties and the chairman. . . .

It has been pointed out that some unions admitted that they had resorted to "extra-legal" measures without trying to use the established grievance procedure to which they had agreed. This cannot be condoned, even if they

were right in assuming that their efforts would have been frustrated by the delays involved. Having never tried to use the arbitration procedure, their criticism cannot be based on facts.

I find that, particularly for short-term projects and those undertaken by contractors who may only be in the construction industry for a short time, the arbitration procedure prescribed by the Act is probably inappropriate because of the delays involved. I do not find, however, that permanent arbitration boards named by the Government offer the solution. A single board for the whole industry in an area such as Metropolitan Toronto would be overwhelmed with work, with a resulting backlog of cases and more delays. In my opinion, arbitration by a single arbitrator, selected by the parties in advance on the signing of the collective agreement and for its duration, would be an improvement over the present system of *ad hoc* boards.

Accordingly, I recommend that the Labour Relations Act be amended to require that all collective agreements in the construction industry shall provide for the final and binding settlement of grievances, without stoppage of work, by arbitration by an arbitrator designated as sole arbitrator in the agreement for its duration or selected from a panel of arbitrators named in the agreement, and that the arbitrator shall make his award within five days from the termination of the hearings, unless the period is extended with the consent of both parties.

9. Successor Rights

Section 11 of the Act requires the trade union, following certification, to give written notice of its desire to bargain to "the employer". The Labour Relations Board interprets this to refer "not to *any* person who may happen to be the employer of a group of employees, but to *the* employer who has been a party to the certification proceedings contemplated" by the Act (New Method Laundry and Dry Cleaners Case, 1957). This decision has been consistently followed in other cases. (Gordon Wright Electric Limited Case, 1957; Drake Hotel of Toronto Case, 1957; Dare Foods Ltd. Case, 1960; Brantford Produce Ltd. Case, 1961). Under these decisions any change in the legal entity constituting the employer destroys subsisting bargaining rights, whether they flow from certification or derive from a collective agreement with the predecessor employer. Incorporation of the business or its sale or lease to other individuals or a change in a partnership effect a change in "the employer", even though the plant, equipment, products and working force remain the same. It follows that, in the absence of legislation providing successor rights in the case of transfer of ownership of the business, the employer is in a position to terminate the bargaining rights of a trade union by unilateral action.

A number of cases were cited to the Commission where employers in the house-building branch of the construction industry evaded collective bargaining with a certified union merely by effecting a nominal change in the legal entity of the business. Company reorganizations and partnership changes are frequent,

with resultant destruction of established bargaining rights. Residential construction also presents situations where contractors embark on a number of joint projects in each of which they have different associates and the union finds it difficult at times to ascertain who is the employer on any project, since the employees may be shifted from one "employer" to another "employer" after the union has been certified.

The situation faced by the unions was described by Mr. David Lewis, Q.C., on behalf of the Ontario Provincial Council of the United Brotherhood of Carpenters and Joiners of America, as follows (Proceedings, p. 726):

> Unions and employees have time and again experienced frustration and loss of rights due to a change in the legal entity of an employer. An unincorporated firm is incorporated, or a holding company takes over the actual operation of a business, or some similar purely technical re-arrangement and change of legal entity has resulted in loss of bargaining rights, seniority rights and the like. The employees continue to work for essentially the same people, under the same supervision, have precisely the same work in the same place under the same conditions. Yet they find themselves suddenly without a union and without a collective agreement which they had had the day before. . . .

It is clear that the situation as described, and which I find to be a correct statement of the facts, is not conducive to peaceful industrial relations. The problem has been met in other jurisdictions where the law now provides that the successor employer is bound by the bargaining obligations of his predecessor. The rule in the United States is set out in the decision of the National Labour Relations Board in In Re Miller Lumber Company, (1950) 90 N.L.R.B. at p. 1361, as follows:

> The admitted facts established that the plant, property, equipment products, and working force remain virtually unaltered as a result of the sale of the business by Miller (Lumber Company) to Sallis (Lumber Industries). Where, as here, no essential attribute of the employment relationship has been changed as a result of the transfer, the certification continues with undiminished vitality to represent the will of the employees with respect to their choice of a bargaining representative, and the consequent obligation to bargain subsists notwithstanding the change in legal ownership of the business enterprise.

In Canada, six provinces have enacted legislation providing for successor rights along these lines. Section 74 of the Alberta Labour Act provides that:

> Where a business or part thereof is sold, leased or transferred, the purchaser, lessee or transferee is bound by all the proceedings under this Part before the date of sale, lease or transfer, and the proceedings continue as if no such change has occurred, and
>
> (a) if a bargaining agent was certified the certification remains in effect, and
>
> (b) if a collective agreement was in force that agreement continues to bind the purchaser, lessee or transferee to the same extent as if it had been signed by him and no changes shall be made in the agreement during its term without approval of the Board.

A similar provision is enacted in section 10a of the Quebec Labour Relations Act, section 12 (11) of the British Columbia Labour Relations Act, sections 10 (1)(d), 10 (2), 18 (1) and 18 (2) of the Manitoba Labour Relations Act, sections 21A(1) and 21A(2) of the Newfoundland Labour Relations Act, and section 28 of the Saskatchewan Trade Union Act. The provision in the Quebec Act (section 10a) is the most recent, having been enacted in 1961, and reads as follows:

> The alienation of an undertaking otherwise than by judicial sale or its operation by another, in whole or in part, shall not invalidate any certificate issued by the Board, any collective agreement or any proceeding for the securing of a certificate or for the making or carrying out of a collective agreement.
>
> The new employer, notwithstanding the division, amalgamation or changed legal structure of the undertaking, shall be bound by the certificate or collective agreement as if he were named therein and shall become *ipso facto* a party to any proceeding relating thereto, in the place and stead of the former employer.
>
> The Board may make any order deemed necessary to record the transfer of rights and obligations provided for in this section and settle any difficulty arising out of the application thereof.

The Select Committee on Labour Relations of the Ontario Legislature (1957-1958) found that Ontario should provide for successor rights on change of ownership of a business and recommended in its Report (pp. 41-42), as follows:

> It is the recommendation of the Committee that where—
>
> 1. A Trade Union has been certified as the bargaining unit for the employees of an employer, or
> 2. Where an employer has entered into a collective agreement with a union, and where in either instance the facts establish that the plant, property, equipment, products and working force remain virtually unchanged as a result of the sale or other transfer-in-law of the business of the employer, and no essential attribute of the employment relationship has been changed as a result of the sale or other transfer-in-law, the certification and consequent obligation should continue or the collective agreement should continue to be binding, as the case may be, notwithstanding the change in legal ownership of the business enterprise.

I find that it is essential to orderly industrial relations, that the law should protect acquired bargaining rights on a transfer of ownership or other change in the legal entity of a business.

Accordingly, I recommend that the Labour Relations Act should provide that where a business or part thereof is sold, leased or transferred, the purchaser, lessee or transferee shall be bound by all the proceedings before the date of sale, lease or transfer and shall become *ipso facto* a party thereto, and that the proceedings shall continue as if no such change has occurred, and that if a bargaining agent was certified the certification shall remain in effect, and if a collective agreement was in force that agreement shall continue to bind the purchaser, lessee or transferee to the same extent as if it had been signed by him.

I also recommend that consideration should be given to measures for the protection of acquired bargaining rights in situations arising from certain types of business practices which may affect such rights. Such a situation arises where a contractor, engaged on a number of projects in each of which he has a different partner, is in a position to shift employees from a project with respect to which certification has been granted to another.

10. Jurisdictional Disputes

The Ontario Federation of Construction Associations directed the attention of the Commission to jurisdictional disputes in the construction industry arising from the conflicting claims of unions to perform a particular type of work, which disputes, it alleged, usually result in work stoppages and picketing. Its brief cited instances of such stoppages and submitted that such machinery as exists for dealing with the problem is ineffective. It recommended that authority to resolve such conflicting jurisdictional claims and to amend jurisdictional clauses in agreements be conferred upon the administrator to whom it would assign the administration of a special construction industry labour relations statute. I do not believe that this offers a solution to the problem.

Jurisdictional disputes over work assignment must be related to the organization of the construction industry, which, because of product variations and the requirements of on-site production, is based on the principle of specialization. Sub-contract specialization by material or product component and the division of labour by crafts or trades are applications of this principle. Thus the craft union structure of the building trades is the counterpart to the system of specialization under which the industry operates.

In Canada, as in other countries, the crafts are organized in individual unions and craft autonomy is the general rule. These unions, operating in a labour market with an extremely high rate of turnover and, therefore, a very low degree of security of job tenure, seek to achieve more security for their members, as do business and farm organizations representing businessmen and farmers operating in an uncertain market economy. Accordingly, with the employment and income of its members dependent on the availability of their specialized work, the union in each craft seeks to protect and enlarge its task jurisdiction and thereby the employment opportunities of the craft. Its jurisdictional claims correspond in a sense to the seniority rights of workers in industrial plants.

There are a number of factors which contribute to jurisdictional conflict. Each craft being autonomous, there may be an overlapping of jurisdictional claims under the respective union constitutions and one craft may seek to be substituted for another for some particular work. Technological changes involving a change in the materials used, such as the subsitution of wood for metal, or a change in the machinery of production, may affect the boundary lines of work jurisdictions. Competition between sub-contractors, who are equally specialized, may also result in jurisdictional disputes between unions, as may work assignments by contractors which differ from the custom of the trade.

Mr. J. J. Pigott, for the Ontario Federation of Construction Associations, submitted that (Proceedings, pp. 507-508, 510, 512-513):

> These disputes can arise, and do arise, with respect to the use of new or modern materials used as substitutes for older materials. For example, the installation of aluminum windows is claimed by both the Carpenters and the Structural and Ornamental Iron Workers; the installation of acoustic ceilings brings out conflicting claims between the Lathers, the Sheet Metal Workers and the Carpenters.
>
> The hoisting of precast concrete slabs produces conflicting claims between the Common Labourers Union and the Structural Steel Workers as to who should attach the slings to the slabs being hoisted. The erection of metal office partitions, and hollow metal doors, produces conflicting claims between the Sheet Metal Workers and the Carpenters Union; the use of fibreglass for external wall insulation, or the use of cork insulation has produced conflicting claims between the Bricklayers Union, the Carpenters Union and the Asbestos Workers Union. The installation of aluminum baseboard has produced a dispute between the Carpenters and the Lathers Union. . . .
>
> The construction industry is subject to considerable change and innovation both with respect to products and materials used, new and more modern types of machinery, and new methods of performing work. Traditional craft concepts must similarly be subject to change. New crafts may be recognized as a result of such change. Where these crafts are sub-divisions of former crafts, or amalgamations of former crafts, there must be some method of adapting the pattern of trade unionism to the realities of modern methods of construction. . . .
>
> Jurisdictional disputes between one or more unions usually result in a work stoppage by one or more of the unions concerned; and where picketing accompanies such a work stoppage, it is customary for all of the other trades to refuse to work, even though their particular work assignments are not immediately affected by the strike of other trades. . . .
>
> The actual work stoppages resulting from jurisdictional disputes of various kinds constitute a serious waste in the industry, and a consequent increase in the average cost of all building projects. But far more serious than the cost of an actual work stoppage, is the cost of the threats that such work stoppages will occur, and the resulting illogical and wasteful compromises that are made in order to keep the project in operation. . . .
>
> Certainly no greater evil exists in the construction industry, than this practice of instigating a work stoppage or threat of a work stoppage, because of some jurisdictional dispute, usually beyond the control of the contractor, whose project is interrupted or subject to interruption by such conduct.

This submission, illustrated by cases of work stoppages and settlements thereby effected, was not contradicted. It points to the need for internal control and adjustments by the unions. In so far as concerns strikes to enforce the claims of one union against those of another, it is well to note that such work stoppages are prohibited by union rules. Each international union or each local affiliated with the Building and Construction Trades Department of the A.F. of L.—C.I.O. is required to incorporate in its agreements with employers

a clause prohibiting work stoppages over jurisdictional disputes while the agreements are in force. As for picketing of work assignments, the policy of the Department, declared in 1952, is that no local union or Building and Construction Trades Council of any unions affiliated shall institute or lend support to "such illegal picketing". In conformity with this policy, section 9 of the constitutional provisions on "Strikes and Pickets" of the Building and Construction Trades Council of Toronto and Vicinity, reads as follows:

> Picketing of jobs will not be permitted for settling jurisdictional disputes between affiliated Unions of the Council.

Looking at the machinery available for the voluntary settlement of such disputes, I find that if they cannot be settled at the local level in Ontario, disputes may be referred to the National Joint Board for the Settlement of Jurisdictional Disputes in Washington, D.C. This Board was created in 1948 by agreement among the Building and Construction Trades Department, A.F. of L., two general contractors' associations and eight specialty contractors' associations, after jurisdictional strikes and boycotts were declared an unfair labour practice by the Taft-Hartley Act. The Board has established a working relationship with the National Labour Relations Board and has operated with considerable success in the United States. In so far as its effectiveness in Ontario is concerned, however, Mr. Pigott said (Proceedings, p. 510):

> The current jurisdictional tribunal operates from Washington, D.C., and on several occasions when Ontario contractors have sought relief by appealing to this tribunal to solve a local jurisdictional dispute, they have encountered all of the annoying delays and frustrations which naturally arise because the tribunal operates as a merely voluntary arrangement between certain unions at the top level; because it is too far distant from the site of the actual dispute to operate effectively; because of extraordinary delays in getting the facts before such a tribunal; and because of the practice of this tribunal in making decisions which are only applicable to the particular work project upon which the dispute has arisen and do not necessarily have any precedent value with respect to a similar dispute on an adjacent work project.

In answer to my questions on this point, Mr. David Lewis, Q.C., who appeared for the Ontario Provincial Council, United Brotherhood of Carpenters and Joiners of America, said (Proceedings, pp. 735-736):

> *The Commissioner:* I would like to ask you a question. Most of the craft unions have been complaining to me about delays in the administration or the enforcement of the Labour Relations Act insofar as the construction industry is concerned.
>
> Why don't the unions have a speedier system, or method of their own for settling their own jurisdictional disputes?
>
> *Mr. Lewis:* The only answer I can give you is it's always easier to see the drawbacks in somebody else's machinery than in your own.
>
> As a matter of fact, I have heard some of the construction trade unionists express impatience with the National Joint Board, particularly

in Canada, and some of them have felt that perhaps parallel machinery should be set up in this country so that they can get quicker action.

I must say they do send their decision by telegram, Mr. Commissioner, in ninety cases out of a hundred.

The Commissioner: It was pointed out to me that that telegram is not drafted until a long period of investigation has taken place.

Mr. Lewis: Yes. There are some cases where the decision is very fast, Mr. Commissioner. If they dealt with it before, if they have, as they call, an agreement of record, or a decision of record so that the complaint or the request falls into an established niche, then their reply will come very quickly, but if it is a new problem resulting from a new development in construction, which does take place all the time, then it may be and does take longer.

I find that if the unions are concerned about the delays incurred under procedures prescribed by the Labour Relations Act, they should also be concerned about the delays under the voluntary procedure for settling jurisdictional disputes. In this case the onus is on them to reduce such delays by co-operating in the creation of appropriate machinery in Ontario. On this point, I agree with the following recommendation of the Select Committee on Labour Relations of the Ontario Legislature (Report, 1958, p. 40):

> The Committee further recommends that the parties usually concerned with jurisdictional disputes should set up suitable machinery in Ontario to resolve such disputes themselves.

While there may be problems arising from the fact that the unions in the construction industry are international, with locals and building trades councils operating under similar constitutions in both countries, and that the tasks are standardized, I find that to reduce delays and for other reasons, it would be in the best interests of employers and employees that there be established in Ontario machinery parallel to the Joint Board operating in Washington.

I recommend that the trade unions and employers' organizations in the Ontario construction industry should jointly set up their own machinery for the settlement of jurisdictional disputes along the lines of the Joint Board for the Settlement of Jurisdictional Disputes in Washington, or as may otherwise be appropriate to Ontario as a Canadian province.

It was submitted by the Ontario Federation of Construction Associations that the problem of jurisdictional disputes could more easily be dealt with under a system of multiple bargaining. I agree. That this submission is well-founded is shown by the experience under multi-employer multi-union bargaining on the Ontario Hydro projects to which I have made reference.

While it is clear that a workable method of voluntary adjustment of jurisdictional disputes, without work stoppages or threats of work stoppages, which affect innocent parties, is necessary, the law should provide for cases where voluntary adjustment cannot be effected. Thus, in the United States, under the Taft-Hartley Act, the National Labour Relations Board has authority to hear

and make determinations in cases involving disputes over jurisdiction of work after the parties have been given ten days in which to agree on a means of settlement or to reach a voluntary settlement among themselves. If the parties fail to reach agreement and to abide by a Board determination, the Board may proceed as in other unfair labour practice cases by way of a cease and desist order and petition for an injunction.

The Ontario Legislature introduced a new procedure for dealing with jurisdictional disputes by enacting sections 66 and 76 of the Labour Relations Act in 1960. Section 76 empowers the Lieutenant-Governor-in-Council to appoint one or more jurisdictional disputes commissions each composed of one or more persons. Section 66 (1) reads as follows:

> 66 (1). Upon complaint to the Board that a trade union or council of trade unions, or an officer, official or agent of a trade union or council of trade unions, was or is requiring an employer or an employers' organization to assign particular work to employees in a particular trade union or in a particular trade, craft or class rather than to employees in another trade union or in another trade, craft or class, or that an employer was or is assigning particular work to employees in a particular trade union rather than to employees in another trade union, a jurisdictional disputes commission may, after consulting any person, employers' organization, trade union or council of trade unions that in its opinion may be affected by the complaint, make such interim order with respect to the assignment of the work as it in its discretion deems proper in the circumstances, and the employer, employers' organization, trade union, council of trade unions and the officers, officials or agents of any of them shall comply with the interim order.

Section 66 (2) empowers the commission to reconsider the complaint at the request of an interested party, provided that such party has complied with the interim order. Upon reconsideration, the commission may, under section 66 (3), issue a direction with respect to the assignment of the work and the parties must comply therewith. While such direction is "final and conclusive for all purposes", subject to variation and revocation by the commission, any party affected may, within seven days, apply to the Board under section 66 (6) and,

> . . . . if the Board is satisfied that the interim order or the direction prohibits a lawful strike or lock-out, or restrains an employer, employers' organization, trade union, council of trade unions or an officer, official or agent of any of them or an employee from observing the provisions of a collective agreement relating to the assignment of work or prohibits a trade union or council of trade unions or an employer or employers' organization from bargaining collectively in respect of employees in a bargaining unit on whose behalf the trade union or council of trade unions is entitled to bargain, it may quash the interim order or the direction or it may alter the bargaining unit determined in a certificate or defined in a collective agreement as it deems proper to enable the interim order or the direction to be carried into effect in conformity with the other provisions of this Act, and the certificate or collective agreement, as the case may be, shall be deemed to have been altered in accordance with the Board's determination.

Section 66 (7) provides that where any party has failed to comply with an interim order or direction of the commission, a party may notify the Board of such non-compliance after the expiry of two days in the case of an interim order and 14 days in the case of a direction, and the Board shall thereupon file a copy of the interim order or direction in the Supreme Court, whereupon it is entered and becomes enforceable as a judgment or order of that court.

Section 66 (9) authorizes the commission to postpone inquiring into a complaint where the parties "have made an arrangement to resolve any difference between them arising from the asignment of work" until the difference has been dealt with in accordance with such arrangement.

Pursuant to this legislation, a jurisdictional disputes commission was appointed to deal with jurisdictional disputes in the construction industry. It has issued interim orders in approximately thirty cases to date and in no case has it been found necessary to enforce compliance by registering an order in the Supreme Court. This speaks for itself. I find that the commission has been meeting with success in the performance of its functions. Its jurisdiction, however, has been affected by the decision in the recent case of Canadian Pittsburgh Industries Limited *vs.* H. Orliffe *et al* (May 19, 1961), where McRuer, C.J.H.C., held that the use of the word "employees" in section 66 (1) of the Act restricts the application of the section to "those disputes that arise with respect to the assignment of work by an employer among those that are engaged on the work over which he has direction" and, accordingly, that the section does not apply "where a trade union that has no members employed under the direction of the employer complains that work is assigned to employees that in the opinion of that trade union should be done by members of the complaining trade union". The Court held that in the latter case the commission has no jurisdiction.

Commenting on this finding, Mr. Pigott, for the Ontario Federation of Construction Associations, said (Proceedings, p. 522):

> Apparently the legislation contemplates that a dispute which goes to such a tribunal [a jurisdictional disputes commission] must arise between different groups of employees working for the same employer on a project.
>
> In fact, however, these disputes frequently originate because of claims put forward by a union whose members are not at work on a project but who think they should be employed there. Thus, while the Legislature has recognized the nature of our problem we believe that it has failed to provide a really effective remedy.

Mr. Lewis, Q.C., for the United Brotherhood of Carpenters and Joiners, suggested that the word "members" be substituted for "employees" in section 66 (1), "because otherwise it just doesn't do the job that is intended to be done by that section. . . ." (Proceedings, pp. 734-735).

I have given long and careful consideration to the submissions on this point. Having regard to the underlying reason for jurisdictional claims, which lies in the instinct for self-preservation, and to the nature of the resulting disputes, I find that the restricted application of section 66 (1) may seriously limit the effectiveness of the commission's task. To enlarge its jurisdiction may create

other problems, but these are envisaged in section 66 (6) which empowers the Labour Relations Board, on a review of an order or direction of a Commission, to quash such order or direction or to "alter the bargaining unit determined in a certificate or defined in a collective agreement as it deems proper to enable the interim order or the direction to be carried into effect in conformity with the other provisions of this Act . . ."

Considering the balance of convenience in relation to the end which the Act seeks, I recommend that the word "persons" be substituted for the word "employees" in section 61 (1) of the Labour Relations Act so that a jurisdictional disputes commission may have jurisdiction to receive complaints from unions whether or not they have members in the employ of the employer or employers' organization concerned. I further recommend that the Labour Relations Act should provide that compliance with an interim order or direction of a jurisdictional disputes commission which affects a bargaining unit determined by certification or defined in a collective agreement shall be deemed not to be a contravention of the certification order or of the collective agreement.

The Select Committee on Labour Relations of the Ontario Legislature (1958) recommended "that strike action, work stoppage or picketing in connection with a jurisdictional dispute arising because of a work assignment shall be declared unlawful" (Report, p. 40). It appears to me that both strikes and picketing in connection with jurisdictional disputes are unlawful under sections 54 and 57 of the Labour Relations Act. Their prohibition, as I have pointed out, conforms with the declared policy of the Building and Construction Trades Department, A.F. of L.—C.I.O., and the constitutional provisions of the Building and Construction Trades Council of Toronto and Vicinity. Violations of the law and of this policy by work stoppages and picketing must be condemned.

I recommend that a special provision of the Labour Relations Act applying to the construction industry should expressly prohibit strikes, picketing and lock-outs in connection with a jurisdictional dispute. I further recommend that sections 66 (1) and 66 (3) of the Act should be amended to provide that, in addition to its power to make interim orders and directions on work assignments, a Jurisdictional Disputes Commission may make orders requiring any party to cease and desist from doing any act which prevents or is intended to prevent the implementation of such orders and directions, and that in the event of non-compliance with such a cease and desist order and notification thereof to the Board, the latter shall file the order in the Supreme Court, whereupon it shall be entered in the same way as a judgment of the court and be enforceable as such.

Legislation to implement the foregoing recommendation should have due regard to the rights of employees and employers in connection with a lawful strike and a lawful lock-out, respectively.

11. Enforcement

In briefs submitted to the Commission, violations of the Labour Relations Act were alleged both by contractors' organizations and by trade unions. The contractors and builders contended that the enforcement procedures under the Act are inadequate and involve undue delays, particularly in cases of unlawful

work stoppages and picketing. They recommended more control by the law of union activities and of collective bargaining and more speedy enforcement procedures before the Board and the courts.

On the evidence before me, I find that in the house-building industry, including apartment construction, both unions and management have disregarded the provisions of labour relations legislation. The unions admitted resort to "extra-legal" procedures in the work stoppage of 1961, which was accompanied by acts of coercion and intimidation. With contractors violating undertakings under their collective agreements, the unions retaliated without prior recourse to the procedures provided by law. Employers also used various means to frustrate employees who were seeking to exercise their rights. While representatives of builders and contractors complain of unduly long delays in the enforcement of the law against their employees, it is common for employers to take advantage of all possible procedural delays to thwart their employees' rights to organize and to bargain collectively.

Although both parties have shown irresponsibility in the house-building industry, it does not follow that disregard of the law by one party justifies unlawful acts by the other. Nor is there justification for the unions in commercial and industrial construction, which is highly organized, to avoid the grievance procedure and engage in illegal work stoppages and picketing while collective agreements are in force. Such conduct is irresponsible.

I find that the situation calls for some changes in the enforcement provisions of the Act. I cannot, however, accept the drastic changes suggested in some briefs which would unduly enlarge the role of the state in industrial relations without, in my opinion, achieving the desired results. Their authors apparently assume that every problem can be solved by a law and that the courts will always provide an effective remedy with minimum delay. The facts are that some problems of human relationships cannot be solved by law alone and that delays in the courts may far exceed the delays of administrative tribunals. These considerations apply to labour legislation which seeks to promote industrial peace through collective bargaining.

Considering the purpose of the Labour Relations Act and the role of the Labour Relations Board, and having regard to the nature of and reasons for violations of the Act, such as unlawful work stoppages and picketing by unions and the use of coercion, intimidation and threats by both sides, I am of the opinion that more effective enforcement should be left as far as possible to the Board and that its authority should be extended accordingly.

The Select Committee on Labour Relations of the Ontario Legislature, 1958, recommended as follows (Report, p. 37):

> It is the recommendation of the Committee that the Labour Relations Board be empowered to issue Cease and Desist orders for a failure to comply with or contravention of any provisions of the Act, or of any decision, direction, declaration or ruling made under the Act where the Labour Relations Board in its discretion sees fit to do so.

Section 65 of the Act, enacted in 1960, now authorizes the Board to inquire into complaints "that a person has been refused employment, discharged, dis-

criminated against, threatened, coerced or otherwise dealt with contrary to this Act", and to determine the action to be taken by the employer and/or trade union. If the Board is advised of non-compliance after 14 days, the Act provides that it shall file the determination in the Supreme Court, whereupon it is entered in the same way as a judgment or order of the court and enforceable as such. Section 66, also enacted in 1960, makes a similar provision with respect to an interim order or direction of a jurisdictional disputes commission.

Section 7 of the British Columbia Labour Relations Act empowers the Labour Relations Board to issue orders to employers, trade unions or others to cease doing prohibited acts and to direct that the act be rectified, and, in case of non-compliance, such orders shall be filed in the Supreme Court and become enforceable as a judgment of the court.

Section 5 of the Saskatchewan Trade Union Act empowers the Board to issue orders, inter alia, "requiring any person to refrain from violations of this Act or from engaging in any unfair labour practice". Section 10 requires that an order or decision of the Board shall be filed in the Court of Queen's Bench within 14 days, whereupon it becomes enforceable as an order of the court. Under section 11 (2), the application to the court to enforce an order of the Board may be made by the Board, by any trade union affected, or by any interested person.

I recommend that Construction Industry Special Provisions of the Labour Relations Act be enacted:

i. to confer upon the Ontario Labour Relations Board broad powers to issue Cease and Desist and Compliance Orders in all cases of violation of or failure to comply with any provisions of the Act or of any order, determination, direction, declaration or ruling made under the Act, and to order rectification of the acts or things complained of;

ii. to authorize a Hearing Officer of the Board to issue Interim Cease and Desist and Compliance Orders, subject to appeal by an interested party to the Board;

iii. to provide that in case of failure to comply with such an order within a period fixed by the Board, the order shall be filed in the office of the Supreme Court, whereupon it shall be entered in the same way as a judgment or order of the court and be enforceable as such, and that the application to the court to enforce it may be made by the Board, an employer affected, a trade union affected, or any other interested party; and

iv. to provide appropriate penalties for failure to comply with such an order of the Board and that such penalties may be imposed in addition to any remedial order issued by the court.

While I do not believe that law alone can solve all the problems of industrial relations, I am of the opinion that, if the enforcement role of the Labour Relations Board is enlarged as I have recommended and if, with the addition of necessary staff, the Board succeeds in giving effect to speedy procedures to hear complaints and to issue orders, the recommended changes will result in more orderly relations in the construction industry.

VI. THE INDUSTRIAL STANDARDS ACT

It was agreed by employers and trade unions in a number of briefs submitted to the Commission that minimum wages and working conditions prescribed by law are required for the protection of workers in the construction industry who are not protected by collective agreements. In this connection changes were suggested in the Industrial Standards Act, the Minimum Wage Act, the Hours of Work and Vacations with Pay Act, and the Government Contracts Hours and Wages Act.

The Industrial Standards Act, R.S.O., 1960, c. 186, like corresponding legislation in other provinces, provides for the adoption and enforcement of a schedule of minimum wages and maximum hours in any industry within a designated zone or zones as agreed to "by a proper and sufficient representation of employers and employees" at a conference convened under the authority of the Minister of Labour upon the petition of the parties. The legislation was enacted in 1935 to protect workers against sub-standard wages and working conditions, and responsible employers against unfair competition at the expense of labour standards. It is administered by the Industry and Labour Board, which is assisted by an advisory committee in every zone for each industry covered by a schedule.

In briefs to the Commission, representatives of trade unions and of trade contractors submitted that current schedules in the construction industry are ineffective because of lack of enforcement and recommended that effective schedules should be adopted to cover all trades. Having examined the application of the Act to the construction industry, I find that there are a number of reasons for the ineffectiveness of existing schedules and the failure to negotiate more schedules.

1. Definition of "Industry"

Pursuant to the trade practices of the industry and the organization of the unions on the basis of the autonomy of each craft, construction schedules are formulated in terms of specific trades, as in other provinces except Quebec. There are schedules for the carpentry "industry", the plastering "industry", the plumbing and pipe fitting "industry", and so on, but none for the construction industry as such. Furthermore, the schedules do not differentiate between branches of the industry, such as the commercial and industrial and the residential. They apply to the specific trade throughout the industry.

While they are set up in terms of specific trades, the schedules do not define the trades precisely. Nor does the Act provide for certification of skilled tradesmen, in contrast to the requirement imposed by the corresponding legislation in Quebec, the Collective Agreement Act. Accordingly, an employer covered by a schedule may find himself compelled to pay the skilled tradesman's

rate to semi-skilled or even unskilled employees. This may occur particularly in residential building, where the introduction of new methods and materials has led to greater specialization and the dilution of certain skills. On the other hand, in the absence of certification, except in the licensed plumbing and electrical trades, an immigrant who is a skilled tradesman but does not qualify for tests under the Apprenticeship Act because he is over 21, may have to accept sub-standard wages because he cannot prove that he is skilled.

2. Zoning

In practice, zones in the construction industry are confined to particular municipalities and the immediate surrounding urban area. The policy appears to be to take account of built-up areas or areas already scheduled for development and to avoid the inclusion of farm land so as to protect the farmer engaged in construction on his farm. Since it is in the areas which have been excluded that construction, both residential and commercial, has spread rapidly, the zones have not kept pace with urban development.

House-builders, who are mainly responsible for the establishment of new sub-divisions, work well beyond the built-up areas and compete for the home-owner's dollar with the builders operating under a schedule in the designated zone. The latter are, therefore, subject to unfair competition as a result of the policy of restricted zoning which allows the existence of a "no man's land" between zones. And yet, it is such competition at the expense of labour standards that the legislation is intended to prevent.

It is clear that zoning on the basis of localities cannot achieve the purposes of the Act, at least insofar as residential building is concerned.

3. Wage Rates

Section 7 of the Act, providing for a schedule of wages and hours, refers to "the minimum rates of wages" and "the maximum number of hours". In practice, the minimum rates in construction schedules are the top rates under collective agreements in the commercial and industrial sector, and the maximum number of hours also tends to be the same as in these agreements. This is generally the case in the other provinces with corresponding legislation, except Alberta, where the scheduled rates are 15% to 20% lower than the collective agreement rates.

I find that the extension of top commercial and industrial building rates and working conditions has deterred agreements on schedules affecting residential building which might have been negotiated on the basis of a differential between the highest rates and the scheduled rates. The schedules do not take cognizance of differences between the economics of commercial and industrial building and the economics of house-building. These differences warrant variations in construction schedules which the crafts are not prepared to accept.

4. Administration and Enforcement

The briefs submitted to the Commission agreed that the enforcement of construction schedules is weak and ineffective. There is no regular inspection. The advisory committees are without staff or funds. The Board acts only on complaints, and the penalties for violations are inadequate. These submissions are well-founded.

The effective enforcement of schedules requires adequate administrative machinery and a proper system of inspection by a staff of qualified inspectors and auditors. These are now lacking. It appears to me, however, that even with improved machinery, administration and enforcement will face problems as long as the industry is defined in terms of specific trades in zones based on localities and, in the residential sector particularly, if there is no precise definition of trades and no form of certification of skills.

Under the present system, I would not recommend that the advisory committees should be strengthened. This could lead to the development of small oligarchies in control of a trade, particularly in the smaller centres, and to abuse of power. There is possibility of abuse now. For example, since overtime work requires a permit from an advisory committee, a contractor who has been an unsuccessful bidder for a job, may be called upon as member of an advisory committee in the zone to pass upon an application for an overtime permit by the successful bidder. Other examples could be cited. The opportunity for abuse of power is far greater in the case of committees representative of individual trades in particular localities than it would be if the committee were representative of the industry or a substantial segment thereof in a larger geographic area.

5. Conclusion

Considering all of the foregoing, I find that the Industrial Standards Act as presently applied to the construction industry does not offer a solution to the problem of protecting the unorganized worker and the responsible employer in the sectors of the industry where collective bargaining is weak. The Act in effect assumes the existence of a well-developed collective bargaining structure as a condition precedent to agreement on a schedule. Where such a structure exists, a schedule, if it were properly enforced, could effectively protect the agreement. Where, however, collective bargaining is weak, the Act as presently applied deters rather than encourages agreement on schedules, and the unorganized workers remain unprotected.

For the Act to be effective in construction, major changes in the policies and practices of the Government and of unions and employers are required. These changes would involve, among other matters:

i. a realistic definition of the industry with due regard to the particular requirements of its different branches;

ii. a more precise definition of trades and a form of certification of skills;

iii. a realistic zoning policy based on regions;

iv. revision of policy with respect to the wage rates which are extended; and

v. the provision of adequate machinery for administration and enforcement.

Major changes in these respects would require agreement between representatives of employers and employees and the concurrence of the Government. Such agreement will not be easily reached.

I recommend that the matter of the application of the Industrial Standards Act to the construction industry should be reviewed by the joint conference of employers and trade unions in the industry, which I have recommended that the Minister of Labour should convene.

VII. MINIMUM WAGES AND MAXIMUM HOURS

Where the construction worker is not protected by a collective agreement or an effective industrial standards schedule, I find that such protection must be provided by a minimum wage. The facts show that both unskilled workers and tradesmen in the unorganized sectors of the industry are particularly vulnerable to competitive pressures on their hourly wage and their working conditions which may and do lead to exploitation. Considering also the transient and seasonal nature of their employment, their earnings will in many cases be sub-standard, particularly under conditions such as those recently prevailing in residential building in Metropolitan Toronto.

Under the Minimum Wage Act, R.S.O., 1960, c. 240, the Industry and Labour Board has set minimum wages only for women. The legislation, however, does not restrict it in this respect. Section 3 empowers it to establish for all employees minimum rates of wages and the maximum hours to be worked for such rates, to define any business or trade and the zone or zones to which its order is applicable, to classify employees and provide separately for any one or more classifications, and to set minimum hourly overtime rates. Ontario, Nova Scotia and Prince Edward Island are now the only provinces which have not set male minimum wages. If find that conditions in sectors of the construction industry where collective agreements do not impose restraints call for a change of policy in Ontario in respect of this industry.

In setting a minimum wage in construction, consideration must be given to the influence on earnings of the seasonal nature of the industry, loss of time caused by inclement weather, and loss of time in transferring between jobs. A minimum adequate for a worker in a manufacturing industry with a steady employment pattern will not be adequate for a construction worker who works fewer hours per week and fewer weeks per year.

The following recommendations on minimum wages were made in briefs to the Commission:

i. The Toronto Metropolitan Home Builders' Association recommended a minimum wage of $1.25 per hour for unskilled labour in the house-building industry (Proceedings, p. 208).

ii. The Ontario Provincial Council, United Brotherhood of Carpenters and Joiners of America, recommended a statutory minimum wage of $1.25 per hour for a 40-hour week (Proceedings, pp. 689-691).

iii. The Metropolitan Sewer and Watermain Contractors recommended a minimum wage schedule for each section of the industry. It recommended for unskilled labour a minimum of $1.25 per hour in rural areas, $1.50 per hour in urban areas, and $1.60 per hour in cities with over 100,000 population, for a 50-hour week (Proceedings, pp. 754, 760).

iv. The Ontario Federation of Construction Associations recommended a schedule of minimum wages and working conditions applicable to sewer and watermain work, road-building and construction of houses and apartments,

adapted in each case to the particular requirements (Proceedings, p. 590). Elaborating on this submission, Mr. J. C. Adams, Q.C., for the Association, said (Proceedings, pp. 598-599):

> *Mr. Adams:* . . . . we are thinking more of a schedule of wages for each type of craft or skill separately established for all these skills and crafts which are utilized in these three branches of the construction industry.
>
> *The Commissioner:* Are you aware of the minimum wage order in the construction industry in British Columbia?
>
> *Mr. Adams:* No.
>
> *The Commissioner:* That order fixes two rates: $2.00 for tradesmen and $1.30 for others. It does not try to differentiate between different tradesmen.
>
> *Mr. Adams:* I think that is starting at a little lower level than we contemplate.

It will be noted that the lowest rate recommended as a minimum wage for unskilled construction labour in Ontario was $1.25 per hour, and that contractors recommended rates as high as $1.60 per hour. With respect to the maximum number of hours to which the minimum rate should apply, it was submitted that the requirements of road building are different from those of other branches of construction. An exhibit filed shows that the Fair Wage Schedule in field contracts of the Municipality of Metropolitan Toronto provides for a 9-hour day and a 45-hour week for "builders labourers", while the Schedule for road building provides for 110 hours in any two-week period.

Mr. J. C. Adams, Q.C., on behalf of the Ontario Federation of Construction Associations, suggested a schedule of minimum wages "for each type of craft or skill". It appears to me that this would create serious enforcement problems. In my opinion the establishment of two rates, one for tradesmen and another for other employees, is preferable and would be easier to administer. This is the practice in British Columbia, where the Board of Industrial Relations sets minimum wages on an industry or occupation basis and issues a separate order for each industry or occupation.

British Columbia's Construction Industry Male Minimum Wage Order No. 12 (1960) sets a minimum of $2.00 per hour for tradesmen and $1.30 per hour for other employees for a 40-hour week. For work in excess of these hours overtime is paid at time and one-half of the employees' regular rate of pay. Permits are required for overtime but it is provided that hours of work shall not exceed 44 in a week. A worker is considered a tradesman if he is using the tools of the trade and doing the work normally performed by a tradesman.

In my opinion the construction minimum wage order in British Columbia takes due cognizance of the particular requirements of the industry. The wage is clearly set on a basis different from the basis underlying minimum rates under general orders. This is as it should be.

I recommend that:

i. Legislation be enacted to create a Construction Industry Wage Board, composed of an equal number of representatives of trade unions and employers in the industry and a public member as chairman, with all necessary powers to establish and enforce minimum hourly wage rates and maximum hours of work in the construction industry.

ii. Considering that the unfair practices complained of appear to have taken place principally in the Metropolitan Toronto—Greater Hamilton area and that it is in this area that immediate remedial measures are required, the Construction Industry Wage Board, as soon as possible after conducting the necessary inquiries and investigations, should determine and establish an appropriate minimum wage rate for tradesmen and an appropriate minimum wage rate for other employees and the maximum number of hours to be worked for such rates in the construction industry in the Metropolitan Toronto—Greater Hamilton area, properly zoned. The minimum wage rates and maximum hours established should be based not on the factors which have hitherto determined the rates under female minimum wage orders but on the facts and particular requirements of the construction industry in its various branches, with due regard to prevailing rates and standards in the zone, and to the effects of seasonality and inclement weather on construction work and earnings. The Board should consider the operation of the British Columbia Construction Industry Male Minimum Wage Order which fixes a minimum rate of $2.00 per hour for tradesmen and $1.30 per hour for other employees for a 40-hour week. It should also take note that the recommendations to this Commission ranged from a low of $1.25 per hour to a high of $1.60 per hour for unskilled construction labour in Metropolitan Toronto.

iii. After establishing minimum wages and maximum hours in the Metropolitan Toronto—Greater Hamilton zone, the Board should conduct the necessary inquiries and investigations for determining and establishing appropriate minimum wage rates and maximum hours in the construction industry in other parts of the Province by zones or for the Province as a whole.

iv. The Board should review its orders periodically.

v. In order that no employee should receive less than the minimum rate calculated in terms of the number of hours worked, the Board should be empowered to investigate and prohibit schemes to defeat its orders. To this end the legislation should include a provision similar to Section 7 of the Hours of Work and Vacations with Pay Act, which reads as follows:

> (1) The Board may hold an inquiry into the facts respecting any persons engaged or working in or about an industrial undertaking as members or alleged members of a partnership or association, or in the execution of any agreement or scheme of profit-sharing or co-operative or joint contract or undertaking, including the investigation of the contractual and other relations of the persons so engaged or working, as between themselves or as between them and their master or employer, and, if the Board is of opinion that the partnership, association, agreement or scheme is intended or has

the effect, either directly or indirectly, of defeating the true intent and object of this Act, the Board may make such order as it deems proper declaring any of such persons or any class or group thereof to be employers and any of such persons or any class or group thereof to be employees for the purposes of this Act.

(2) For the purposes of any such inquiry, the chairman of the Board has all the powers that may be conferred upon a commissioner under The Public Inquiries Act.

vi. For the proper performance of its functions and, particularly, for the effective enforcement of its orders, the Board should be provided with an adequate staff of qualified inspectors and auditors. This is a basic requirement. Without a satisfactory system of inspection, the law will be a dead letter insofar as some contractors are concerned and will not provide the required protection either for the workers or for the responsible employers.

vii. All employers should be required to post the orders and schedules of the Board in a conspicuous place where the employees will be able to see and read them, the posting to be in English and in the principal language of the employees, if it is other than English.

viii. To prevent exploitation of labour in the performance of Provincial Government contracts, the Government of Ontario should specify fair wages and maximum hours of work in Government contracts, as is the practice of the Government of Canada and of municipalities such as Metropolitan Toronto and the City of Toronto.

ix. The law should provide penalties which will serve as a deterrent to violations of orders governing wages and hours of work.

VIII. PROTECTION OF WAGES AND VACATIONS WITH PAY

1. Protection of Wages

The abuses in residential building to which reference has been made, such as non-payment of wages because of the disappearance of contracting firms between jobs, payment by worthless cheques, "short" payment for hours worked, "kickbacks" as a condition of employment, and violation of the law governing vacations with pay, point to the need for effective legislation for the protection of wages. I find that the Master and Servant Act, R.S.O., 1960, c. 230, and the Mechanics' Lien Act, R.S.O., 1960, c. 233, do not meet the requirements of the situation.

I have already described conditions in residential construction where almost all the work is sub-contracted: the large number of small trade contractors moving in and out of the industry, the competitive pressures, the practice of "bid peddling", the "fast buck" operators. To protect workers' wages under these conditions, and at the same time to introduce more responsibility in the industry, I am of the opinion that it is necessary to make the prime contractor or builder responsible for ensuring that wages owed by their sub-contractors have been paid in full.

Insofar as concerns companies incorporated in Ontario, the Public and Other Works Wages Act, R.S.O., 1960, c. 328, now provides that:

> Sec. 6. (1) Every company incorporated under any Act of the Legislature is liable for the payment of the wages of the foremen, workmen, labourers or teams employed in the construction of any work in Ontario done by or for the company, whether directly under the company or through the intervention of any contractor or subcontractor.
>
> (2) Nothing herein prejudices or affects the right of any person against any contractor or sub-contractor with whom he has contracted under any other Act or law in force in Ontario.

This principle is also embodied in section 10 (3) of the Workmen's Compensation Act of Ontario, R.S.O., 1960, c. 437, which provides that:

> Where a person, whether carrying on an industry included in Schedule 1 or not, in this subsection and in subsection 4 referred to as the principal, contracts with any other person, in this section referred to as the contractor, for the execution by or under the contractor of the whole or any part of any work for the principal, it is the duty of the principal to see that any sum that the contractor or any sub-contractor is liable to contribute to the accident fund is paid, and if any such principal fails to do so he is personally liable to pay it to the Board, and the Board has the like powers and is entitled to the like remedies for enforcing payment as it possesses or is entitled to in respect of an assessment.

In Saskatchewan, the Employees' Wage Act, 1961 (S.S., 1961, c. 62) makes the contractor responsible with respect to sub-contractors' wages, as follows:

Sec. 12. (1). Subject to subsection (2), where an employer who is a construction or demolition contractor contracts with any other person for the performance of the employer's work, or any part thereof, it is the duty of the employer to provide by the contract that the employees of the subcontractor shall be paid the wages to which they are entitled according to law, and if the subcontractor fails to pay such wages to his employees the employer is liable to the employees to the extent of the work performed under the contract as if the employees were employed by the employer.

(2) The Lieutenant Governor in Council may by order exclude any specified class or classes of employment from, or add any specified class or classes of employment to the classes of employment to which subsection (1) applies.

Section 17 of this Act provides for the bonding of an employer who has been convicted of failure to pay wages:

Sec. 17. Every employer convicted, under this or any other Act or under any regulation or order, of failure to pay wages to an employee shall, upon the request of the minister, forthwith furnish to the department a bond guaranteeing payment of wages to his employees or such other equivalent security for the payment of wages as is acceptable to the minister, and the employer shall maintain such bond or security for the period specified by the minister.

For the protection of workers' wages and to introduce more responsibility in the sectors of the construction industry where it is now lacking, I recommend that legislation be enacted in Ontario:

i. To make the prime contractor or builder or builder-owner or promoter or developer, as the case may be, responsible for ensuring the payment of wages by their sub-contractor and, in the event of default by the sub-contractor, to make the builder or prime contractor or builder-owner, etc., liable to the employees for the wages to which they are entitled to the extent of the work performed.

ii. To authorize the Minister of Labour to require an employer who has made default in the payment of wages to furnish a bond or equivalent security to guarantee the payment of wages to his employees.

iii. To prohibit an employer to require any employee to return to him or to accept from an employee any part of the wages paid to such employee.

iv. To require every employer to furnish to each employee on every pay-day a statement of wages in writing setting out the employee's earnings for the unit of time for which payment of wages is made, any living allowance or other payment to which the employee is entitled, and the amount of each deduction from the earnings of the employee and the purpose for which each deduction is made.

v. To require the employer to keep such records as may be prescribed by the Minister in order to facilitate inspection and enforcement of the legislation.

vi. To require the employer to post in a prominent place where his employees are engaged in their work an abstract of this legislation, as prescribed by the Minister, and any orders or regulations thereunder, in English and in the principal language of the employees, if it is other than English.

vii. To provide appropriate penalties for violation of the legislation.

viii. To prohibit an employer from discharging, threatening to discharge or discriminating against an employee for giving information on matters to which this legislation applies or testifying in investigations or proceedings under this legislation.

I recommend that the Master and Servant Act be amended by raising the amount which may be claimed for wages due and unpaid from the present maximum of $200 to a new maximum of $500 and by allowing proceedings to be taken within six months, instead of one month, after employment has ceased or after the last instalment of wages was due, whichever happened later.

I also recommend that the Mechanics' Lien Act should be reviewed in terms of modern requirements.

2. Vacations with Pay

There was general agreement in the briefs to the Commission that the provision for vacations with pay under the Hours of Work and Vacations with Pay Act, R.S.O., 1960, c. 161, is not properly enforced and that violations by contractors in residential construction are widespread. This must in large part be attributed to inadequate inspection because of the limited available inspection staff. In addition, the penalty for violation of the Act is insufficient to serve as a deterrent.

Regulation 11 (6) under the Act requires the employer in the construction industry to affix the requisite amount of vacation-with-pay credit stamps to the stamp book of an employee on June 30th in each year, if he is still employed, or, if he ceases to be employed, within ten days after he presents his stamp book to the employer. Considering that trade contractors move in and out of the industry quickly and their high ratio of bankruptcies, I am of the opinion that the requirement to purchase stamps once a year may prejudice the rights of their employees.

I recommend that the vacations with pay regulation governing the construction industry should be reviewed in terms of providing effective protection of employees' rights under the legislation.

Section 11 (2) of the Act makes an employer liable to a fine of not less than $25 for contravention of any provision of the Act or of orders or regulations under the Act, and section 12 (1) provides that, in addition to such penalty for failure to grant a vacation with pay to an employee, "the magistrate *may* order the employer to pay to the employee an amount equal to the pay he would have received for such vacation or the amount to which he would be entitled under the regulation". Such an order, if issued, must be filed by an employee in a division court to become effective.

In contrast, section 12 of the Minimum Wage Act provides for a fine of not less than $25 for a first offence and, in default of payment, imprisonment for not more than six months, and that "in every case upon conviction (the employer) *shall* be ordered to pay to the Board on behalf of the employees affected the difference between the wages actually paid and those established by the Board. . . ." Section 14 (1) of the Industrial Standards Act contains a provision along the same lines.

Accordingly, while both the fine and payment of the wages owing are mandatory on conviction for violation of a minimum wage order or for failure to pay the wage prescribed in an industrial standards schedule, only the fine is mandatory for failure to grant a vacation with pay to an employee as prescribed by law. I see no reason for this distinction. The nominal fine alone will not serve as a deterrent as far as the irresponsible employer is concerned.

I recommend that sections 12 (1) and 12 (2) of the Hours of Work and Vacations with Pay Act be amended to provide that, in addition to the penalty imposed on an employer for failure to grant a vacation with pay to an employee, the magistrate *shall* order the employer to pay to the Industry and Labour Board on behalf of the employee an amount equal to the pay he would have received for such vacation or the amount to which he would be entitled under the regulations, and that the order be enforceable in the same way as an order under section 12 of the Minimum Wage Act.

For more effective enforcement of the Hours of Work and Vacations with Pay Act, I recommend:

i. Adequate inspection by an adequate inspection staff.

ii. Posting by the employers of notices and regulations under the Act, as prescribed by the Industry and Labour Board, in a conspicuous place for the information of their employees, such posting to be in English and in the principal language of the employees, if it is other than English.

IX. REGISTRATION OF CONTRACTORS

The licensing of contractors was urged before the Commission as a necessary measure for controlling or eliminating irresponsible elements in the construction industry and for securing compliance with labour legislation and regulations. No evidence was submitted that this is required in commercial and industrial construction. The submissions were in respect of residential building where it was alleged that contractors, often financially irresponsible, fail to comply with regulations and exploit their workers. It was further alleged that enforcement of the law is rendered difficult because firms disappear quickly and many cannot be identified or located even when they are in business.

I believe that if my recommendations for the protection of wages and for proper enforcement of laws and regulations are implemented, these abuses will diminish and more responsibility will follow. If, as I recommend, the prime contractor or builder is made responsible for the wages of his sub-contractor, he will necessarily be more careful in his choice of sub-contractors. There will also be more responsibility if an employer who has defaulted in the payment of wages is required to post a bond to guarantee wages. Responsibility and compliance with the law will be further promoted if the contractor knows that an effective system of inspection has been introduced.

To meet the enforcement problem arising from the difficulty of identifying and locating many contractors in house-building, I recommend that legislation be enacted:

i. To require all builders, contractors and sub-contractors to register with the municipal authority in all municipalities in which they operate, the municipalities to be authorized to charge a fee for such registration.

ii. To require all persons to whom a building permit has been issued to report to the municipal authority the names of all contractors and sub-contractors employed on the project.

iii. To require the municipal authorities to report such registrations and other data regularly to a Central Registry in the Department of Labour for transmission to the appropriate agencies of Government.

The Royal Commission on Industrial Safety, reporting in October, 1961, found that licensing was necessary to force compliance with safety regulations and recommended "the adoption of legislation setting up a system of licensing for builders, contractors and sub-contractors in the building and construction industry", the licensing authority to be vested in the Provincial Government. If this recommendation is implemented, the system of registration which I have recommended will, of course, be unnecessary.

X. GOVERNMENT-LABOUR-MANAGEMENT CO-OPERATION

Considering the basic importance of the construction industry in the Ontario economy and the widespread effects of its operations, its welfare is a matter of general concern. Accordingly, the recommendations which I have made in this Report call for action by the Government and the co-operation of management and labour.

1. Enforcement of Labour Legislation

In recommending changes in labour legislation affecting the construction industry, I have emphasized the importance of effective enforcement. The present small inspection staff cannot possibly cope with this task. To cope with labour problems in an expanded provincial economy, the Department requires a considerably enlarged staff of qualified and properly remunerated inspectors and auditors to police the observance of labour laws and regulations, as well as additional competent personnel in such other essential services as conciliation and research. The resultant benefits in terms of improvements in industrial welfare and in labour-management relations should more than compensate for the increased expenditures that would be incurred.

2. Apprenticeship

The training of craftsmen and improving their competency are matters of importance both to workers and employers in the construction industry. The building trades constitute by far the majority of the designated trades under the Apprenticeship Act, R.S.O., 1960, c.17.

The Act has not been revised to take cognizance of developments in vocational training or of economic and industrial changes which have occurred. For example, when thousands of workers are unemployed because they have no skills or because their particular skills are no longer in demand, a regulation under the Act imposes an upper age limit of 21 for apprenticeship.

I recommend that the age limit for apprenticeship be repealed for persons with proper qualifications and that the Apprenticeship Act be reviewed in terms of present-day requirements.

3. Year-Round Employment

I have pointed to the effects of irregularity of employment due to seasonal factors on labour-management relations in the construction industry. While progress in providing winter work for the construction trades has been made in large-scale commercial and industrial building, the industry in larger part continues to be seasonal. Further progress in the direction of promoting year-round employment security for competent workers should improve industrial relations, and Government, management and labour should co-operate to this end.

Considering the current employment situation and prospective employment problems, I suggest that the Government should plan its construction programmes, as far as practicable, so as to provide the maximum amount of winter work for the construction trades. I also suggest that labour and management in the industry should seek agreement on terms which would encourage more year-round employment. This possibility should be explored by the joint conference which I have recommended that the Minister of Labour convene.

4. A Joint Labour-Management Council

If the joint conference attains a sufficient measure of success, the formation of a permanent Joint Labour-Management Council of the Construction Industry to meet periodically on matters of general concern, such as winter employment, training and other matters not directly related to collective bargaining, would produce beneficial results. Relations between the parties should improve if the leaders of each side, instead of meeting only as opponents in collective bargaining negotiations, were to meet more regularly between negotiations on other matters of mutual concern.

XI. SUMMARY OF RECOMMENDATIONS

1. The Labour Relations Act

A. Special Provisions

i. Special provisions governing the construction industry should be embodied in the Labour Relations Act as a separate part thereof entitled "Construction Industry: Special Provisions".

ii. The Act should be amended to direct the Chairman to appoint a Construction Industry Panel of the Ontario Labour Relations Board which will be primarily available for cases arising from the construction industry.

B. Certification and the Bargaining Unit

i. Area certification should be the general rule and the Board should restrict project certification to long-range projects of a special nature; this policy should be set out in the legislative provisions relating to the construction industry.

ii. In construction cases the Board should not wait until a representative group of employees is at work but should issue an area certificate upon the union establishing that it has the requisite number of members among the employees in the unit at the time when the application is made, and, further, where a union has bargaining rights, either through certification or on renewal of a collective agreement, the employer should be obliged to bargain with it even when there are no employees in the bargaining unit on the job.

iii. The Board should be empowered to entertain at its discretion an application by construction industry employees for termination of bargaining rights at an earlier stage than that now provided for under Section 43 of the Act.

iv. The definition of "bargaining unit" in the Act should be amended to include in the construction industry "an employer unit or a plant unit or a subdivision of either of them or any other unit and whether or not the employees therein are employed by one or more employers", and a trade union representing a majority in a unit consisting of the employees of two or more employers should be declared eligible for certification as bargaining agent for the unit, such certification to be subject to the consent of all the employers and union entitlement to certification for each employment group.

v. The Act should be amended to provide that two or more trade unions claiming as members a majority of the employees in an appropriate unit may join in an application for certification as bargaining agent of the employees in the group.

vi. For certification of unions as bargaining agents of employees in the construction industry, the definition of "trade union" should be extended to include a duly organized group, council or federation of trade unions.

vii. The Labour Relations Act should declare a policy that construction industry cases be expedited, having regard to the special nature of the industry; special provisions should be made in the Rules of Procedure of the Board for the expeditious processing of such cases by the Construction Industry Panel; Hearing Officers with the rank of Deputy Vice Chairmen should be appointed and the services of such Hearing Officers should be used as far as possible to expedite proceedings; the findings of facts by Hearing Officers should be final and conclusive; and the Construction Industry Panel should be authorized to grant interim certification for collective bargaining without public hearings upon the report of a Hearing Officer, subject to review by the Board at the request of an interested party.

C. Negotiation of Collective Agreements

i. With respect to the construction industry, the Act should be amended to provide that the parties shall be required to meet within five days from the giving of the notice of the desire to bargain, or within such further period as they may agree upon; that either party shall be entitled to request that conciliation services be made available where 21 days have elapsed from the giving of such notice; that the conciliation officer be required to report within 14 days from his appointment, unless this period is extended by agreement of the parties; that, if the conciliation officer reports that he has been unable to effect a collective agreement, the Minister shall appoint a conciliation board or a mediator only upon the joint request of the parties; and that, if a conciliation board is appointed, it shall be required to report within 14 days from the appointment of the chairman, unless the period is extended by agreement of the parties.

ii. The reasonable remuneration and expenses of a mediator should be borne by the Government.

iii. The Act should provide that the parties may agree in writing to accept the report of a mediator or a conciliation board, as the case may be, on the matters referred to them, and upon so doing they should be bound by the report on such matters.

iv. The Act should be amended to require that notice to bargain for the renewal of an existing agreement or the making of a new agreement in the construction industry shall be given within three months and not less than two months before the expiry date of the existing agreement.

v. Where a trade union has bargaining rights in the construction industry, either following certification or on a renewal of a collective agreement, the employer should be under an obligation to bargain with the union and the union should be entitled to request conciliation services, whether or not the bargaining committee includes employees of the employer.

D. Multiple Bargaining

The Minister of Labour should call a joint conference of employers and trade unions in the construction industry to consider and to formulate plans for multiple bargaining, master agreements, a uniform expiration date of collective agreements in each bargaining area, and to deal with related matters.

E. Arbitration of Grievances

The Labour Relations Act should be amended to require that all collective agreements in the construction industry shall provide for the final and binding settlement of grievances, without stoppage of work, by arbitration by an arbitrator designated as sole arbitrator in the agreement for its duration or selected from a panel of arbitrators named in the agreement, and the arbitrator shall make his award within five days from the termination of the hearings, unless the period is extended with the consent of both parties.

F. Successor Rights

i. The Act should provide that where a business or part thereof is sold, leased or transferred, the purchaser, lessee or transferee shall be bound by all the proceedings before the date of sale, lease or transfer and shall become *ipso facto* a party thereto, and that the proceedings shall continue as if no such change has occurred, and that if a bargaining agent was certified the certification shall remain in effect, and if a collective agreement was in force that agreement shall continue to bind the purchaser, lessee or transferee to the same extent as if it had been signed by him.

ii. Consideration should be given to measures for the protection of acquired bargaining rights in situations arising from certain types of business practices which may affect such rights, for example, where a contractor, engaged on a number of projects in each of which he has a different partner, is in a position to shift employees from a project with respect to which certification has been granted to another.

G. Jurisdictional Disputes

i. The trade unions and employers' organizations in the Ontario construction industry should jointly set up their own machinery for the settlement of jurisdictional disputes along the lines of the Joint Board for the Settlement of Jurisdictional Disputes in Washington, or as may otherwise be appropriate to Ontario as a Canadian province.

ii. The word "persons" should be substituted for the word "employees" in section 61 (1) of the Labour Relations Act so that a jurisdictional disputes commission may have jurisdiction to receive complaints from unions whether or not they have members in the employ of the employer or employers' organization concerned; and the Labour Relations Act should provide that compliance with an interim order or direction of a jurisdictional disputes commission which affects a bargaining unit determined by certification or defined in a collective agreement shall be deemed not to be a contravention of the certification order or of the collective agreement.

iii. A special provision of the Labour Relations Act applying to the construction industry should expressly prohibit strikes, picketing and lock-outs in connection with a jurisdictional dispute; and section 66 (1) and 66 (3) of the Act should be amended to provide that, in addition to its power to make interim orders and directions on work assignments, a jurisdictional disputes commission may

make orders requiring any party to cease and desist from doing any act which prevents or is intended to prevent the implementation of such orders and directions, and that in the event of non-compliance with such a cease and desist order and notification thereof to the Board, the latter shall file the order in the Supreme Court, whereupon it shall be entered in the same way as a judgment of the court and enforceable as such.

H. Enforcement

Construction Industry Special Provisions of the Labour Relations Act should be enacted:

i. To confer upon the Ontario Labour Relations Board broad powers to issue Cease and Desist and Compliance Orders in all cases of violation of or failure to comply with any provisions of the Act or of any order, determination, direction, declaration or ruling made under the Act, and to order rectification of the acts or things complained of;

ii. To authorize a Hearing Officer of the Board to issue Interim Cease and Desist and Compliance Orders, subject to appeal by an interested party to the Board;

iii. To provide that in case of failure to comply with such an order within a period fixed by the Board, the order shall be filed in the office of the Supreme Court, whereupon it shall be entered in the same way as a judgment or order of the court and be enforceable as such, and that the application to the court to enforce it may be made by the Board, an employer affected, a trade union affected, or any other interested party; and

iv. To provide appropriate penalties for failure to comply with such an order of the Board and that such penalties may be imposed in addition to any remedial order issued by the court.

2. The Industrial Standards Act

The matter of the application of the Industrial Standards Act to the construction industry should be reviewed by the joint conference of employers and trade unions in the industry, which I have recommended that the Minister of Labour should convene.

3. Minimum Wages and Maximum Hours.

i. Legislation should be enacted to create a Construction Industry Wage Board, composed of an equal number of representatives of trade unions and employers in the industry and a public member as chairman, with all necessary powers to establish and enforce minimum hourly wage rates and maximum hours of work in the construction industry.

ii. Considering that the unfair practices complained of appear to have taken place principally in the Metropolitan Toronto—Greater Hamilton area and that it is in this area that immediate remedial measures are required, the Construction Industry Wage Board, as soon as possible after conducting the

necessary inquiries and investigations, should determine and establish an appropriate minimum wage rate for tradesmen and an appropriate minimum wage rate for other employees and the maximum number of hours to be worked for such rates in the construction industry in the Metropolitan Toronto—Greater Hamilton area, properly zoned. The minimum wage rates and maximum hours established should be based not on the factors which have hitherto determined the rates under female minimum wage orders but on the facts and particular requirements of the construction industry in its various branches, with due regard to prevailing rates and standards in the zone, and to the effects of seasonality and inclement weather on construction work and earnings. The Board should consider the operation of the British Columbia Construction Industry Male Minimum Wage Order which fixes a minimum rate of $2.00 per hour for tradesmen and $1.30 per hour for other employees for a 40-hour week. It should also take note that the recommendations to this Commission ranged from a low of $1.25 per hour to a high of $1.60 per hour for unskilled construction labour in Metropolitan Toronto.

iii. After establishing minimum wages and maximum hours in the Metropolitan Toronto—Greater Hamilton zone, the Board should conduct the necessary inquiries and investigations for determining and establishing appropriate minimum wage rates and maximum hours in the construction industry in other parts of the Province by zones or for the Province as a whole.

iv. The Board should review its orders periodically.

v. In order that no employee should receive less than the minimum rate calculated in terms of the number of hours worked, the Board should be empowered to investigate and prohibit schemes to defeat its orders. To this end the legislation should include a provision similar to Section 7 of the Hours of Work and Vacations with Pay Act, which reads as follows:

> (1) The Board may hold an inquiry into the facts respecting any persons engaged or working in or about an industrial undertaking as members or alleged members of a partnership or association, or in the execution of any agreement or scheme of profit-sharing or co-operative or joint contract or undertaking, including the investigation of the contractual and other relations of the persons so engaged or working, as between themselves or as between them and their master or employer, and, if the Board is of opinion that the partnership, association, agreement or scheme is intended or has the effect, either directly or indirectly, of defeating the true intent and object of this Act, the Board may make such order as it deems proper declaring any of such persons or any class or group thereof to be employers and any of such persons or any class or group thereof to be employees for the purposes of this Act.
>
> (2) For the purposes of any such inquiry, the chairman of the Board has all the powers that may be conferred upon a commissioner under The Public Inquiries Act.

vi. The law should provide penalties which will serve as a deterrent to violations, and the Board should be provided with an adequate staff of qualified inspectors and auditors for the effective enforcement of its orders.

vii. All employers should be required to post the orders and schedules of the Board in a conspicuous place where the employees will be able to see and read them, the posting to be in English and in the principal language of the employees, if it is other than English.

viii. To prevent exploitation of labour in the performance of Provincial Government contracts, the Government of Ontario should specify fair wages and maximum hours of work in Government contracts, as is the practice of the Government of Canada and of municipalities such as Metropolitan Toronto and the City of Toronto.

4. Protection of Wages

i. Legislation should be enacted:

(a) To make the prime contractor or builder or builder-owner or promoter or developer, as the case may be, responsible for ensuring the payment of wages by their sub-contractor and, in the event of default by the sub-contractor, to make the builder or prime contractor or builder-owner, etc., liable to the employees for the wages to which they are entitled to the extent of the work performed.

(b) To authorize the Minister of Labour to require an employer who has made default in the payment of wages to furnish a bond or equivalent security to guarantee the payment of wages to his employees.

(c) To prohibit an employer to require any employee to return to him or to accept from an employee any part of the wages paid to such employee.

(d) To require every employer to furnish to each employee on every pay-day a statement of wages in writing setting out the employee's earnings for the unit of time for which payment of wages is made, any living allowance or other payment to which the employee is entitled, and the amount of each deduction from the earnings of the employee and the purpose for which each deduction is made.

(e) To require the employer to keep such records as may be prescribed by the Minister in order to facilitate inspection and enforcement of the legislation.

(f) To require the employer to post in a prominent place where his employees are engaged in their work an abstract of this legislation, as prescribed by the Minister, and any orders or regulations thereunder, in English and in the principal language of the employees, if it is other than English.

(g) To provide appropriate penalties for violation of the legislation.

(h) To prohibit an employer from discharging, threatening to discharge or discriminating against an employee for giving information on matters to which this legislation applies or testifying in investigations or proceedings under this legislation.

ii. The Master and Servant Act should be amended by raising the amount which may be claimed for wages due and unpaid from the present maximum of $200 to a new maximum of $500 and by allowing proceedings to be taken within

six months, instead of one month, after employment has ceased or after the last instalment of wages was due, whichever happened later.

iii. The Mechanics' Lien Act should be reviewed in terms of modern requirements.

5. Vacations with Pay

i. The vacations with pay regulation governing the construction industry should be reviewed in terms of providing effective protection of employees' rights under the legislation.

ii. Sections 12 (1) and 12 (2) of the Hours of Work and Vacations with Pay Act should be amended to provide that, in addition to the penalty imposed on an employer for failure to grant a vacation with pay to an employee, the magistrate *shall* order the employer to pay to the Industry and Labour Board on behalf of the employee an amount equal to the pay he would have received for such vacation or the amount to which he would be entitled under the regulations, and that such order be enforceable in the same way as an order under section 12 of the Minimum Wage Act.

iii. Inspection by an adequate inspection staff should be provided for enforcement of the Hours of Work and Vacations with Pay Act.

iv. Employers should be required to post notices and regulations under the Hours of Work and Vacations with Pay Act, as prescribed by the Industry and Labour Board, in a conspicuous place for the information of their employees, such posting to be in English and in the principal language of the employees, if it is other than English.

6. Registration of Contractors

Legislation should be enacted:

i. To require all builders, contractors and sub-contractors to register with the municipal authority in all municipalities in which they operate, the municipalities to be authorized to charge a fee for such registration.

ii. To require all persons to whom a building permit has been issued to report to the municipal authority the names of all contractors and sub-contractors employed on the project.

iii. To require the municipal authorities to report such registrations and other data regularly to a Central Registry in the Department of Labour for transmission to the appropriate agencies of Government.

7. Apprenticeship

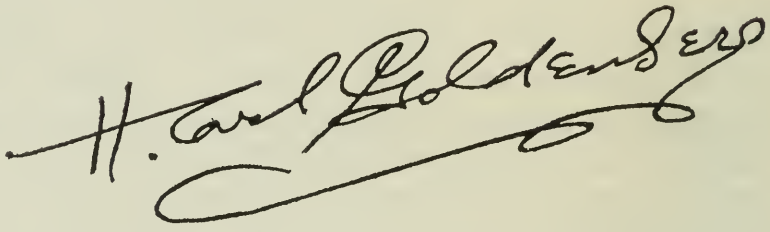
The age limit for apprenticeship should be repealed for persons with proper qualifications and the Apprenticeship Act should be reviewed in terms of present-day requirements.

8. Year-Round Employment

i. The Government should plan its construction programmes, as far as practicable, so as to provide the maximum amount of winter work for the construction trades.

ii. Labour and management in the construction industry should seek agreement on terms which would encourage more year-round employment.

The whole respectfully submitted,



H. Carl Goldenberg,
Commissioner.

Toronto, Ont.
March 12, 1962.

APPENDIX

SUBMISSIONS RECEIVED AT PUBLIC HEARINGS

Oct. 18, 1961 —Brandon Union Group.

—Mr. John C. Pedoni, Administrator, Italian Immigrant Aid Society.

Oct. 19, 1961 —Toronto Metropolitan Home Builders' Association.

—Toronto and District Trade Contractors' Council.

Oct. 20, 1961 —Provincial Building and Construction Trades Council of Ontario.

—Ontario Federation of Labour, C.L.C.

Oct. 31, 1961 —Ontario Federation of Construction Associations.

—Ontario Road Builders' Association.

—Canadian Association of Painting and Decorating Contractors, Inc.

Nov. 6, 1961—Ontario Provincial Council, United Brotherhood of Carpenters and Joiners of America.

—Metropolitan Toronto Sewer and Watermain Contractors Association.

Nov. 7, 1961—Metropolitan Hamilton House Builders' Association.

—Bricklayers' and Masons' Union, Local No. 1, Ontario (Hamilton).