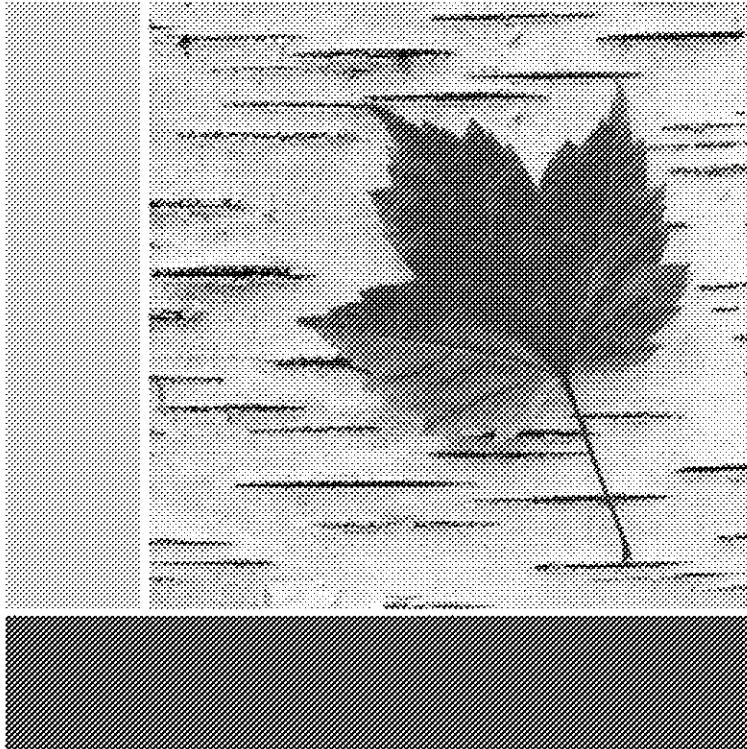


BUILDING A SAFE AND RESILIENT CANADA



**Public Safety Canada**

**Economic Sectors Vulnerable to Organized Crime:  
Commercial Construction**

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# **Economic Sectors Vulnerable to Organized Crime: Commercial Construction**

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*The views expressed herein are those of the authors and  
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## Executive Summary

Since the late 1970s, organized crime has been an emerging priority area for Canadian law-enforcement officials and policy-makers. One challenge is to seek a better understanding of the evolution of organized crime, its activities, and its effects on communities. Specifically, in certain parts of Canada, criminal organizations may be active in commercial construction. Over the past few years, media reports have claimed that commercial construction in Montreal is a hotbed of corruption. There have been allegations of intimidation, bid-rigging, inflated contracts, construction cartels, and organized criminal involvement.

The focus of this report was to perform an in-depth study of the commercial-construction sector within two Canadian jurisdictions, specifically the prevalence of, and vulnerability to, infiltration by criminal organizations. The report included a description of the Canadian construction sector, a review of criminal investigations probing organized criminality in the sector, and a review of the scholarly and grey literature, to provide an international perspective on the relationship between commercial construction and organized crime. The focus of this study was on two Canadian provinces: British Columbia and Quebec. The vulnerability assessment of the sector was guided by The Method for and Assessment of the Vulnerability of Sectors (MAVUS).

One challenge of conducting a study on organized crime is the definition. There is no consensus definition of organized crime. There are media-generated myths that often depict organized crime as large ethnic-based syndicates or outlaw motorcycle gangs. This project adopted the much broader definition found in the *Criminal Code of Canada*. This definition is consistent with that of the UN Transnational Organized Crime Convention of 2000. In the context of the construction sector, organized crime refers to conspiracies of three or more individuals involved in activities such as fraud, rigging bids, and bribing public officials.

The Canadian construction sector is a vibrant and dynamic segment of the overall economy. This sector also supports an immense labour force regulated by the provinces. Many individuals working in the sector may hold a professional or trade certification or designation, while other trades are not regulated. The construction process involves a number of design professionals, contractors, and other individuals involved in a building project. All must work together in order to complete the project. The construction industry, however, is inherently uncertain as a result of the competitive tendering process, a company's personnel issues (e.g., turnover), site production rates, and the weather.

Public commercial contracts have additional layers of complexity. Public entities are also more open to scrutiny and, as a consequence, are expected to have tighter controls to ensure the process is fair. The process, however, is sometimes challenged in terms of how public contracts were awarded. Challenges may relate to the firms receiving a contract, the motives for the selection of the particular firm (e.g., favouritism or corruption may be alleged), the nature of the project, and the project's location. The assessment of the specific vulnerabilities of the commercial construction sector to organized crime entailed an understanding of those weaknesses and opportunities within the sector that could be exploited by criminal organizations.

Previous research has identified several factors that lead to the commercial construction sector's vulnerability to organized crime. Some of these factors include the complex contractual structure, the diversity of skills required, the many project phases, the large size of many public-sector and some private-sector projects, the uniqueness and complexity of projects, the concealment of some items of work by other items, the lack of transparency in the industry, and the extent of government involvement. All of these factors contribute to an environment in which bribery and fraud can flourish and can be difficult to prevent and detect.

Hard data in the form of prosecutions demonstrating the involvement of organized crime in the Canadian construction sector is virtually non-existent. However, the analysis of the political, economic, and regulatory environment in which the commercial construction sector operates (the macro-level analysis) led us to conclude that the Canadian commercial construction sector is at moderate to high risk of corruption and organized criminal activity. The most vulnerable aspects of the construction process were found to be the procurement of services and project management. Our sources indicated that officials responsible for procurement were often uninformed with regard to the cost of construction projects. The lack of accountability and transparency in procurement policies across Canada was also noted.

Several measures to combat organized crime in commercial construction were provided. These included: a comprehensive crime control strategy; a crackdown on organized-crime-affiliated firms or contractors with organized-crime links; revocation of the license of a firm engaging in illegal practices; creation of public-benefit corporations; creation of an office of independent private-sector inspection general; prevention of labour racketeering; development of more expertise in the public sector in procurement and project management; provincial regulation enforcement and support for municipalities; application of criminal and civil sanctions; measures to prevent money laundering; and legislation that promotes competition within the sector.

# Table of Contents

Public Safety Canada .....	i
Economic Sectors Vulnerable to Organized Crime: .....	i
Commercial Construction .....	i
Acknowledgements .....	iii
Executive Summary .....	i
1. Background .....	1
2. Objectives .....	2
1. Defining Organized Crime .....	3
4. Overview of the Canadian Construction Sector .....	4
4.1 Regulation of the Commercial Construction Sector .....	5
4.2 The Commercial Construction Process .....	6
4.3 Regional Reviews on the Commercial Construction .....	7
4.3.1 Vancouver, British Columbia .....	7
4.3.2 Construction Unions in British Columbia .....	8
4.3.3 Montreal, Quebec .....	9
4.3.4 Construction Unions in Quebec .....	10
5. Organized Crime in the Construction Sector .....	11
5.1 Why the Construction Sector is Vulnerable to Organized Criminality .....	11
5.2 The Prevalence of Organized Crime and Corruption .....	16
5.3 The Nature of Organized Criminal Activities in the Construction Sector .....	19
6. Assessment of the Vulnerability of the Commercial Construction Sector .....	21
6.1 Data Sources .....	22
6.2 The Political, Economic, and Regulatory Context (Macro-Level Analysis) .....	24
6.3 Vulnerabilities in the Construction Process (Meso- and Micro-Analysis) .....	26
6.4 The Most Vulnerable Phases in the Construction Process .....	28
6.4.1 Procurement .....	28
6.4.2 Project Management .....	29
6.4.3 Less Vulnerable Phases in the Construction Process .....	29
7. Conclusion and Considerations for Policy .....	31
8. References .....	34

Appendix A Tables ..... 41  
Appendix B Figures ..... 45  
Appendix C Overview of MAVUS..... 47

# 1. Background

There is a growing concern that certain sectors of the Canadian economy may be especially vulnerable to infiltration by criminal organizations. Specifically, in certain parts of Canada, criminal organizations may be active in the commercial construction sector. In 2009, the Quebec government established a special investigation unit called Operation Hammer, composed of Sûreté du Québec, Service de police de la ville de Montréal and RCMP officers, with special budgets to look into the construction industry in general and into specific allegations (Charest 2010). The first arrests from Operation Hammer occurred several months later, and included politicians and construction-company executives (Perreux and Seguin 2011).

The Canadian Press and other news services have reported that Montreal is a hotbed of corruption in the construction industry, with allegations of intimidation, bid-rigging, inflated contracts, construction cartels, and organized criminal involvement (Banerjee 2010). It has also been alleged that a major Montreal crime family decides on the construction firms that will receive large contracts, and takes a five percent cut of the contract value from the “winning” firm. *The Montreal Gazette* (2010) has further reported that corruption in the construction sector has inflated the costs of building roads by up to 35 per cent. The president of a masonry contractor, Paul Sauve<sup>1</sup>, further alleged at a parliamentary hearing that a Quebec union is cooperating with the Hell Angels and organized crime (Parliament of Canada 2010:0925). Fintrac (2010), in its summary of news articles on organized crime and construction provides further analysis on how the Hells Angels and the Mafia allegedly infiltrated the Quebec construction industry. Following pressure from the public and the media, Premier Jean Charest initiated an inquiry into the allegations. The government also passed legislation called the Anti-Corruption Act (June 8, 2011). The Act established the Office of the Anti-Corruption Commissioner as well as provisions that expressly target the construction industry.<sup>2</sup>

Another indication of the vulnerability of the construction sector to penetration by organized crime is the finding by Statistics Canada (2011a) that the underground economy is more prevalent in this sector than in any other (Grant 2011). The size of the cash economy in the sector makes it highly attractive to fraud and money laundering, as well as to tax evasion if the criminals do not wish to sanitize the funds.<sup>3</sup>

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<sup>1</sup> At the time of writing this report, some media outlets reported that Paul Sauve has written a book called *L'Industrie de la Corruption, The Corruption Industry*, about his experiences with his own construction firm and his experiences with the Surete du Quebec.

<sup>2</sup> See Bill number 15 The anti-Corruption Act <http://www.assnat.qc.ca/en/travaux-parlementaires/projets-loi/projet-loi-15-39-2.html>

<sup>3</sup> How organized crime may impact the underground economy was raised by Stephen Easton in his review on the underground economy. See Easton, S (2001). *The size of the underground economy: A review of the estimates*. Retrieved from: <http://www.sfu.ca/~easton/Econ448W/TheUndergroundEconomy.pdf>. See also the recent work by



According to the North American Industry Classification System, commercial and institutional building construction comprises establishments primarily responsible for the construction (including new work, additions, alterations, maintenance, and repairs) of commercial and institutional buildings and related structures, such as stadiums, grain elevators, and indoor swimming pools. This industry includes establishments responsible for the on-site assembly of modular or prefabricated commercial and institutional buildings. Also included are commercial and institutional building general contractors, commercial and institutional building operative builders, commercial and institutional building design-build firms, and commercial and institutional building project construction management firms.<sup>4</sup>

The purpose of the present project is to undertake an in-depth analysis of the commercial construction sector within two Canadian jurisdictions, with a specific focus on this sector's vulnerabilities with regard to infiltration by criminal organizations. (It is important to emphasize that fraud, bid-rigging, and other corrupt practices also may be undertaken by those with no affiliation to traditional organized crime groups). Previous academic research has noted that certain economic sectors and industries may be especially vulnerable to organized crime. While research into specific sectors and industries has been conducted elsewhere, very few studies of this nature have been conducted within Canada with a view to identifying their specific vulnerabilities to organized criminality and the prevalence of organized criminal activity within these sectors.

Effective crime policy requires the systematic analysis of a problem. More than half a century ago, John Landesco, an American sociologist who studied organized crime in Chicago, persuasively made the case for research in this area when he wrote:

One reason for the failure of crusades against crime and vice is they are seldom or never based on a study of the problem. What is needed is a program that will deal with the crime problem in detail and consecutively, that is, by analyzing the crime situation into its different elements by taking up each crime situation separately and one by one working out a constructive solution (quoted in Goldstock 2004:9).

## 2. Objectives

The principal aim of this project was to perform an in-depth study of the commercial construction sector within two Canadian jurisdictions, with a specific focus on the prevalence of, and vulnerability to, infiltration by criminal organizations. A secondary goal was to identify ways in which this sector of the economy could be made more resistant to the infiltration of criminal organizations.

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Pierre Lemieux on his analysis of the underground economy and organized crime. See also the work of Lemieux, P (2007). The underground economy: Causes, extent and approaches. Montreal Economic Institute Research Paper. Retrieved from: <http://www.pierrelemieux.org/artunderground.pdf>

<sup>4</sup> <http://www.census.gov/epcd/naics02/def/ND236220.HTM>

The project objectives were addressed through a description of the Canadian construction sector, the analysis of criminal investigations probing organized criminality in the sector, and through a literature review focusing on knowledge gained from the international community.

## 1. Defining Organized Crime

There has been a lengthy debate about the definition of organized crime among scholars, law-enforcement officials, and policy analysts (Albanese 2007; Beare 1996; Gabor 2004; Gabor et al. 2010; Reuter 1983) and many media-generated myths surround the concept. In its evaluation of the Federal Strike Forces established to fight organized crime, the United States' General Accounting Office (1977:i) observed that "there is no agreement on what organized crime is and, consequently, on precisely whom or what the Government is fighting." Later in that same report, the GAO added: "Before a problem can be dealt with, it must be adequately defined. Participating Federal agencies cannot completely agree on what the term 'organized crime' encompasses" (1977:8).

In 2001-2002, Statistics Canada conducted consultations with 11 Canadian police departments in an effort to assess the feasibility of collecting data routinely on organized crime (Ogrodnick 2002). The exercise revealed that while the majority of departments adopted the *Criminal Code* definition, most of the departments supplemented that definition with that of the Criminal Intelligence Service Canada, the United Nations, or some other source. It was also noteworthy that almost half of the intelligence units had no working definition of organized crime.

Just as in the case of gangs (Wortley 2009), the definition of organized crime or criminal organization adopted will greatly influence estimates of the prevalence of the phenomenon in different economic sectors.

Section 467.1 of the *Criminal Code of Canada* does not define organized crime. Instead, it offers a definition of "criminal organization" as a proxy for organized crime. A criminal organization refers to a group, however organized, that:

- (a) is composed of three or more persons in or outside Canada; and
- (b) has as one of its main purposes or main activities the facilitation or commission of one or more serious offences that, if committed, would likely result in the direct or indirect receipt of a material benefit, including a financial benefit, by the group or by any of the persons who constitute the group.

While this definition excludes groups that form randomly for the immediate commission of a single offence, subsequent subsections of the *Code* prohibit participation in, the commission of an indictable offence for, and instructing the commission of an offence for, a criminal organization.

The *Criminal Code* definition of criminal organization—which reflects the UN Transnational Organized Crime Convention 2000 definition—is very broad, including as it does groups comprising as few as three individuals that have been formed for the purposes of generating a

material benefit. Such a definition would include many fluid networks that form to commit offences for a period of time. These entities differ markedly from traditional hierarchical criminal organizations (e.g., Italian/Sicilian Mafia groups). Thus, by adopting the *Criminal Code* definition, this study will include a focus on the activities of smaller, more transient groups in addition to traditional criminal organizations.

Blakey et al., (1978) developed a useful typology, suggesting that the concept of organized crime can be broken down into three categories:

1. Enterprise – A criminal group providing illicit goods or services on a regular basis (e.g., a drug wholesaler). Organized crime, in this sense, is a criminal business organization. It will be shown that, while there are few documented cases of organized criminal infiltration in the Canadian commercial construction sector, the cases that have come to light (e.g., R. c. Construction Exekut Inc.) would fall within this category.
2. Syndicate – A quasi-governmental organization that regulates relations between various criminal enterprises. A crime syndicate may be local, regional, national, or international in scope. It is a criminal cartel, fixing prices for illicit goods and services, allocating illegal markets and territories, settling disputes, levying taxes, and offering protection from rival criminal groups and from prosecution.
3. Venture – A criminal episode with syndicate connections (e.g., hijacking of a truck). Syndicate ties facilitate the offence by providing access to criminal resources, such as capital, skilled labour, and buyers for stolen property.

All of the above categories, including ventures, fall within the *Criminal Code* definition. While ventures are single criminal episodes, they occur within the context of, and benefit, a criminal organization.

## 4. Overview of the Canadian Construction Sector

The Canadian construction sector is a vibrant and dynamic segment of the overall economy. In May 2010, the sector contributed approximately \$71 billion (5.7 per cent) to Canada's gross domestic product (Statistics Canada 2010a). As the growth of the construction sector has slowed, the influx of the federal government's \$40-billion infrastructure stimulus fund is helping to support construction activities. Additional stimulus is being provided by the investments of provincial and municipal governments into infrastructure.

According to Statistics Canada, investment in commercial construction reached \$3.4 billion in the third quarter of 2010. During the same period, another \$3.4 billion was invested into institutional construction and a further \$1.1 billion into industrial construction projects (Statistics Canada, 2010b). The Canadian Construction Association and the Construction Sector Council (2007) forecasted that the growth in institutional and government construction (e.g., schools and hospitals), as well as commercial and apartment buildings, is expected to increase modestly until 2012. However, probably as a result of the global financial crisis, Statistics Canada (2010c) pointed out that there was a decline in permits issued for commercial and industrial projects.

The construction sector supports an immense labour force. In 2010, 480,250 people were employed in non-residential construction trades (Appendix Table A). Industry Canada (2010) has estimated that, in 2009, approximately 99.6 per cent of construction companies had fewer than 100 employees. Statistics Canada (2009) provides additional detail on the construction sector by the size of the employer (Appendix Table B). The table shows that the majority of firms (59.8 per cent) qualified as micro-businesses (fewer than five employees), *small* firms (five to 99 employees) accounted for 39.2 per cent of construction sector businesses, and just one percent of firms employed more than 100 employees. Also, the majority of businesses (54.2 per cent) are non-employers or hire contract workers rather than employees.

Consequently, the industry is fragmented and diverse. Many small family businesses operate alongside the multi-million dollar construction conglomerates, all vying for work in the commercial construction sector. The industry is also comprised of trade unions having a unique set of market requirements and contractual relationships as well as non-union contractors and workers competing for the same type of work.

## **4.1 Regulation of the Commercial Construction Sector**

The Canadian Commission on Building and Fire Codes (CCBFC), established by the National Research Council of Canada, is responsible for the development of the national model codes of Canada. These codes are established for all types of construction in Canada.

The responsibility for construction regulation in Canada, however, resides with the provinces and territories. The provinces establish regulation—building codes, fire codes, plumbing codes, and electrical codes—but the enforcement of these codes remains the responsibility of local authorities. In addition to provincial building codes, the provinces also regulate the commercial construction sector in terms of health and safety regulations, wages and labour practices (e.g., wages, benefits, conditions of work, and labour and social protections for standard and non-standard workers). Finally, the provinces and territories are also responsible for providing training and education, as well as establishing the roles and responsibilities, of tradespeople and professionals.

While the provinces have many laws in place to regulate the operations of any business (e.g., federal and provincial corporation legislation), there are no limitations on companies that can become involved in the commercial construction sector.

The provinces and territories are also responsible to regulate licensing and employment of construction workers. Many individuals working in the sector may hold a professional or trade certification or designation. The worker in construction trades must be either licensed (e.g., professional engineers), certified, or registered as an apprentice in order to work in that province. The worker may also be in a voluntary construction trade that does not require certification or

registration as an apprentice in order to work. The certifications required to work in a commercial construction trade vary across Canada and across trades.<sup>5</sup>

Commercial projects may involve government financing and financing from private developers, and may involve new construction or modifications to existing structures (e.g., expansions of warehouses). Many involve a multitude of players – the client, consultant engineers and architects, financiers, insurers, contractors, subcontractors, and workers.

## 4.2 The Commercial Construction Process

The construction process involves a number of design professionals, contractors, and other individuals involved in a building project. All of these individuals must work together in order to complete the project. The commercial construction process is illustrated in a simplified manner in Appendix A (Figure B).

The tendering or bid stage for a project is to qualify and select a successful contractor to perform the work. Typically this process is intended to secure fair competition between bidders and provide the owner with a selection of contractors willing to work according to the specified project requirements established in the bid documents.

The process starts with architects and engineers who are responsible for the design of the building, while the owner is responsible for project financing. This stage is followed by the involvement of a general contractor and subcontractors who must also interact with several other individuals, firms (e.g., suppliers, installers) and trade unions. The more complex the commercial project, the more extensive the involvement of general contractors, managers, and subcontractors. This process alone can involve 15 to 30 trade contractors all supplying labour, materials, and equipment. During the construction stage of the project, it is not unusual for the owner or operator to identify areas where the design does not meet expectations, referring these back to the design team which, in turn, instructs the general contractor/construction manager who then instructs the appropriate trade contractors. Changes to the original design have an impact on all contractors involved in terms of their pricing, labour and supplies. Change orders are probably one of the most challenging areas to the construction project in terms of additional costs and time delays (Assaf and Hejji 2006).

A characteristic of the construction industry is the high level of uncertainty faced by firms as a result of the characteristics of competitive tendering processes, personnel issues (e.g., turnover), site production rates, and environmental factors such as weather. All of these factors, alone or in combination, can create unforeseen problems for major construction projects. For example, materials needed for a particular stage of construction may arrive late, in damaged condition, be lost in a road accident or due to inadvertent mishandling on-site. Subcontractors may be

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<sup>5</sup> For more information see the Agreement on Internal Trade (AIT) at [http://www.ait-aci.ca/index\\_en.htm](http://www.ait-aci.ca/index_en.htm). See also the Red Seal Program at <http://www.red-seal.ca/w.2lc.4me@-eng.jsp?lang=eng>

delayed, perform below industry standards or go out of business during the course of a project. Labour problems may disrupt the smooth flow of work and cause unexpected or costly delays.

Construction projects, like other complex endeavours, may also exhibit many forms of human incompetence and venality. Workers may perform below acceptable standards, thus creating delays or inflating costs. Foremen, engineers and building inspectors who are supposed to guarantee the quality of the work may be preoccupied or overloaded, leading to deficiencies at various stages of a project. As in other industries, the construction industry may attract some firms of questionable integrity and honesty who will try to avoid their contractual obligations and conceal inefficient or defective performance. Such firms can be skilled at diverting funds or materials intended for one project to a different one, thus increasing their profit margins at the expense of their clients.

Publicly funded projects can have additional layers of complexity. The owners of a private project can select its design professional and contractors by competitive bid, negotiation, or any manner it chooses. However, for publicly funded construction projects, there may be a complex process for awarding a project. As a rule, construction services are generally awarded to the lowest responsible bidder through competitive bidding. Public contracts, however, may also be awarded on the basis of factors other than the best price. Preference may be given to small businesses or weight may be given to creating jobs in depressed geographic areas.

Public entities are also more open to public scrutiny and, as a consequence, are expected to have tighter controls to ensure fairness in the awarding of contracts. These controls, however, can in some cases leave the contract award process open to challenge by unsuccessful bidders. These challenges may relate to the firms receiving a contract, the motives for the selection of the particular firm (e.g., favouritism or corruption may be alleged), the nature of the project, and the project's location.

## **4.3 Regional Reviews on the Commercial Construction**

### **4.3.1 Vancouver, British Columbia**

After several years of record-level investment in commercial construction, 2011 appears to have been characterized by a downturn. In British Columbia, this has been accompanied by a steady decline in the number of individuals employed in the construction sector since 2007.<sup>6</sup> Prior to the 2010 Winter Olympics, this sector was bolstered by major transportation and institutional projects (e.g., Sea to Sky Highway, 2010 Winter Olympic Venues, the Canada Line, multiple healthcare facilities, convention and exhibition centres), but the conclusion of these projects has caused a contraction in the sector. This contraction is reflected in the decline in building permits in Greater Vancouver in both the industrial and commercial construction sectors (Appendix

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<sup>6</sup> BC Ministry Labour & Citizens' Service (2006) *BC Stats: BC's Construction Industry Since 1990 (November)*. Retrieved from: [http://www.bcstats.gov.bc.ca/data/bus\\_stat/busind/other.asp](http://www.bcstats.gov.bc.ca/data/bus_stat/busind/other.asp)

Table C). This table also shows that permits issued for commercial buildings (e.g., stores, warehouses, office buildings) are the most common, followed by permits for institutional and government construction projects, and finally those issued for industrial buildings. Non-residential permits in the Vancouver area were valued at \$1.65 billion (Appendix Table D). However, the Construction Sector Council (2010) and BTY (2009) project that commercial construction activities should return to normal growth rates in 2012.

Much of the information reviewed shows that industrial and commercial construction declined, while buildings for institutional and government construction increased. To boost the construction sector, the British Columbia government spent approximately \$14 billion on infrastructure projects for the third quarter of 2010<sup>7</sup>. Investment in non-residential building construction amounted to \$3,279 million in 2008, which represented a slight decrease from the previous year (Appendix Table E).

### **4.3.2 Construction Unions in British Columbia**

The commercial construction industry in British Columbia has both unionized and non-unionized companies. Generally speaking, unions in the construction industry operate along craft lines. Specialized trades (e.g., electrical and plumbing) would normally be contracted out and these contractors would sign agreements as to their specific responsibilities on a given project. On a site being constructed by a signatory contractor, all of the workers on the site, such as carpenters, labourers, pipefitters, boilermakers, and operating engineers, are required to belong to a building trade local. Their responsibilities on the project correspond to the trade jurisdiction of the craft.

The trade unions and the contractors establish the assignment of work among the trades by collective agreement. In the case of a lack of clarity of roles, a pre-job meeting would be held to resolve a dispute. Alternatively, unions can dispute work assignments and the respective collective agreements outline the procedures for settling trade jurisdictional disputes that cannot be resolved at the pre-job meeting.

Within Metro Vancouver, the unionized contractors are generally represented by the Construction Labour Relations Association of BC, which was established in 1969 with the objective of bringing labour relations stability and security to contractors in BC's unionized construction sector. The trade unions have been represented by the B.C. Building Trades Unions which operate as a centralized bargaining unit within the contractors' group. These organizations were formed to streamline the bargaining process and eliminate different agreements between the unions and individual contractors. However, a contractor that is not a member of the contractors' group is still left to bargain on its own with the unions, although these negotiations normally accept the agreements reached between the Construction Labour Relations Association of BC and the BC Building Trades Unions.

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<sup>7</sup> Ministry of Finance (2010) *Major Projects Inventory. A comprehensive database of major development activity in British Columbia*. (September). Province of British Columbia.

Initially the B.C. Building Trades Unions had negotiated a non-affiliation clause into their agreements which prevented non-unionized contractors and/or non-unionized workers from working on a site where they had jurisdiction. Bringing a non-unionized contractor and/or non-unionized worker onto the site would typically result in all of the unionized workers leaving the site until the issue was resolved. In the early 1980s, however, the non-unionized sector moved into the commercial construction sector in a significant way due to high interest rates and a costly settlement to avoid a labour strike. Unionized contractors could not compete with non-unionized contractors and skilled workers were resigning in large numbers from their union to obtain employment with a non-unionized contractor. At the same time, many contractors that found themselves without work closed their doors and re-opened as non-unionized contractors, after satisfying the decertification process set out in the British Columbia Labour Relations Code. In effect, the recession of the early 1980s changed the face of commercial construction in Metro Vancouver.

The trade unions and unionized contractors currently work alongside non-union workers on many projects. There are still some fully unionized sites, normally in operating unionized facilities. However, even on these sites, it is not uncommon to see non-unionized workers when the trade unions cannot supply sufficient union members to satisfy the project's labour needs.

In 2001, the BC Skills Development and Fair Wage Repeal Act, 2001 (Bill 22) removed the requirement that employers in the construction industry hire unionized workers when performing public works.

### **4.3.3 Montreal, Quebec**

In 2009, the Quebec government announced its \$42 billion infrastructure plan to upgrade, renew and maintain public infrastructure over the next five years.<sup>8</sup> The commercial and industrial construction sectors are forecast to enjoy a steady growth due to several major projects. These projects include: the \$3 billion Turcot interchange in Montreal and the extension of Autoroute 30; expansion of existing health care facilities (e.g., Centre hospitalier de l'Université de Montréal and McGill University Health Centre, Centre de recherche de hospitalier de l'Université de Montréal, Shriners Hospital for Children) and expansion of the Pratt & Whitney Mirabel Aerospace Centre). Despite these projects, Quebec has recorded a sharp decline in the number of non-residential building permits. For example, in 2010, the value of non-residential building permits was \$ 91 million for December (Appendix Table E), a significant decline from the preceding months (Statistics Canada 2011). The investment in non-residential building construction, however, increased from \$311 million in 2004 to \$3,759 million in 2008.

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<sup>8</sup> For a list of the Quebec infrastructure projects see: Infrastructure Canada at <http://www.buildingcanada-chantierscanada.gc.ca/regions/qc/isf-fsi-proj-eng.php>. See also Top 100 Canada's Biggest Infrastructure Projects at <http://top100projects.ca/>



Over the next few years, government infrastructure spending will be the biggest economic driver in Vancouver and Montreal for commercial construction projects. This should compensate for some of the decline in the commercial construction sector (Montreal 2011).

#### 4.3.4 Construction Unions in Quebec

Historically, the Quebec government has had a turbulent relationship with the construction unions. In response to the violence that took place during the building of the James Bay hydroelectric project, the Liberal government formed the Commission of Inquiry on the Exercise of Union Freedom in the Construction Industry (also known as the Cliché Commission), to conduct a comprehensive review of construction industry labour relations.<sup>9</sup> The Commission recommended giving the provincial government, as opposed to unions, total control over the supply and dispatch of construction workers to construction employers (Rose 1977). The National Assembly agreed and in 1976, passed legislation establishing the Commission de la Construction du Québec (CCQ), which provided the necessary framework to implement and enforce regulations governing construction industry employment.<sup>10</sup>

Based on this framework, Quebec is the only jurisdiction in North America which is entirely a “closed shop.” That is, the *Construction Industrial Relations Act* outlaws non-union construction and requires all construction workers in Quebec to join one of the unions and hold competency cards issued by one of those unions.<sup>11</sup> Consequently, all contractors, owners and workers in Quebec are bound by collective agreements that are negotiated by four unions representing all construction workers and by specified associations representing contractors and owners (Kauffman N.D.). The collective agreements are negotiated approximately every five years, covering four construction sectors: commercial and institutional, residential, industrial and commercial, civil engineering and road works. These collective agreements further establish minimum-wage rates and work standards. This approach makes the Quebec system unique in that these collective agreements are centrally negotiated and applied province-wide. The

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<sup>9</sup> During this period, in 1974, the Quebec Police Commission hearing into organized crime resulted in two major reports (Dutil1977 and Dionne 1977). In the first report, entitled “The Fight Against Organized Crime in Quebec,” the commission confirmed through intercepted telephone calls that several U.S. mobsters were operating between the United States and Canada. For example, the Cotroni-Violi gang in Montreal was shown to be dependent upon a New York family, and in fact acted as a subsidiary branch (Dutil1977:100). The second report called “Organized Crime and the World of Business” put forward several recommendations on how to combat organized crime (Dionne 1997).

<sup>10</sup> At the time of writing this report, the Quebec Government introduced a proposed Bill 33 that would revamp Quebec’s construction industry. The proposed changes are based on a working group that was looking into the operations of the construction industry.

<sup>11</sup> The Fédération des travailleurs et travailleuses du Québec (Quebec Federation of Labour), The Confédération des syndicats nationaux (CSN) (Confederation of National Labour Unions). The Congress of Democratic Trade Unions (French: Centrale des syndicats démocratiques or CSD), the Confederation of National Unions (Confédération des Syndicats Nationaux CSN), Conseil Provincial du Québec des Métiers de la Construction (International) and Syndicat Québécois de la Construction.

collective agreements are enforced not through a grievance procedure controlled by unions, but through a public body, the CCQ.

Finally, besides the worker being required to be a member of the union, every employer must be a member of one of the recognized employer's associations. This is enforced by the CCQ as part of its site visits (Charest 2003).

## 5. Organized Crime in the Construction Sector

### 5.1 Why the Construction Sector is Vulnerable to Organized Criminality

The New York State Organized Crime Task Force (NYSOCTF1989:56) has noted that the large concentration of racketeers in New York capable of exploiting the construction sector's vulnerabilities, along with the uncertainties produced by the industry's fragility and fragmentation, create the need for a rationalizing body. Organized-crime syndicates play this role by regulating the predatory activities of the racketeers and bringing order and predictability to the construction process. By controlling the activities of the diverse group of racketeers preying on the industry, crime syndicates ensure that contractors will only have to pay once for a particular outcome, that this amount is reasonable, and that the services paid for will be delivered on time.

Lavezzi (2008), discussing the Italian context specifically, adds that crime syndicates play the role of enforcer in relation to collusive agreements. Cartel members agree in advance which member will "win" a particular public-sector contract and submit fictitiously high bids to allow the chosen firm to prevail. This activity occurs within a broader agreement calling for the rotation of cartel firms in relation to public contracts. The crime syndicate enforces this agreement and exacts a tribute from participating firms for playing this role.

Transparency International (2006) notes that the nature of construction projects can facilitate corruption. In particular, the complex contractual structure, the diversity of skills required, the many project phases, the large size of many public-sector and some private-sector projects, the uniqueness and complexity of projects, the concealment of some items of work by other items, the lack of transparency in the industry, and the extent of government involvement all contribute to an environment in which bribery and fraud can flourish and be difficult to prevent and detect.

**Contractual structure:** Construction projects normally have a large number of participants linked together in a complex contractual structure. There may be over a thousand contractual links in a project, each link with its own unique risks and challenges. The project owner may retain one main contractor to build the entire project. The main contractor may then subcontract parts of the project to major subcontractors who, in turn, further contract parts of their work to sub-subcontractors. These sub-subcontractors will purchase equipment and materials from suppliers, and may further subcontract parts of their work.

Every contractual link provides an opportunity for someone to pay a bribe in return for the award of a contract. In relation to every contractual link, work and services are exchanged for payment. Every item of work and every payment provides an opportunity for a bribe to be paid in exchange for certifying too much work, defective work, extensions of time, or paying more expeditiously. Every contractual link also provides an opportunity for fraud (e.g., bid rigging, price fixing, or inflated claims).

**Diversity of skills:** The construction sector is highly diverse, involving a large number of different professions and trades, as well as different specialist contractors. Thus, there are varied standards of qualification, integrity, and oversight. For example, in many Canadian provinces certain trades, such as electricians, HVAC mechanics, plumbers, and sheet-metal workers are subject to compulsory licensing, meaning that those who have not served an apprenticeship and passed a series of exams cannot legally practice these trades commercially. A number of other trades, however, have no such mandatory licensing scheme and, consequently, there are fewer barriers to entry for those seeking work in these trades.

**Project phases:** Projects usually have several phases, each involving different management teams, and each requiring handovers of the completed phase to the contractors working on the following phase. Even where one principal contractor undertakes all the phases, it will normally subcontract the different phases to different subcontractors. This situation produces difficulties in control and oversight.

**Size of projects:** Some projects, such as dams, power plants, office towers, and highways can be very large in scale and cost significant amounts of money. It is easier to hide large bribes and inflated claims in larger projects. It has also been noted that such oversized contracts have a limited number of tenderers for major products, and those tenderers are often well known to both public officials and competitors (PriceWaterhouseCoopers 2010). This situation facilitates bribery and the formation of cartels.

**Uniqueness of projects:** Projects vary tremendously in content and size, and labour costs, equipment, and materials vary according to market conditions. As many projects are unique, costs are often difficult to compare. This also makes it easier to inflate costs and hide bribes.

**Complexity of projects:** The complexity of some projects may make it more difficult for people to agree on why something has gone wrong, or why costs have overrun. This situation makes it easier to blame other participants for problems and to make unjustified claims for work. It also creates a reason to pay a bribe, as decisions on cause and effect and their cost consequences can have enormous impact. Bribes and inflated claims can also be more easily hidden and blamed on other factors, such as poor design or mismanagement.

**Concealed work:** Most components in a construction project end up being concealed by other components. For example, structural steel may be concealed by concrete, brickwork may be concealed by plaster, engineering components may be concealed in casings, and roof structures may be concealed by layers of covering. Consequently, the industry is highly dependent on the certification that work has been done correctly before it is concealed. This situation provides

opportunities for fraudulent claims and the payment of bribes to individuals to certify too much work, or to approve defective work or work that has not been done.

**Lack of transparency:** Costs are often kept secret, even when public money is spent. Commercial confidentiality tends to take precedence over public interest. Therefore, publication of financial information, and the routine inspection of books and records, which could prevent or uncover irregularities, does not normally take place.

**The extent of government involvement:** There is significant government involvement in major construction projects. Many of these projects are government owned. Even private-sector projects require government approvals. The power wielded by government officials in every stage of the construction process, when combined with the structural and financial complexity of projects, makes it quite easy for unscrupulous government officials to extract large bribes from those undertaking these projects.

The New York State Organized Crime Task Force attempted to determine why organized criminality became so entrenched in New York City's construction industry (NYSOCTF 1989). The Task Force's analysis advanced the concepts of *racketeering susceptibility* and *potential*. Racketeering susceptibility refers to the capacity of an industry to be exploited through leverage over certain processes or components. Racketeering potential refers to the ease with which money can be siphoned out of an industry. This potential is facilitated by an industry in which numerous cash transactions occur.

In New York, labour unions have a great deal of leverage in large construction projects because of their monopoly over skilled and unskilled workers and because all large construction projects in the city are carried out by unionized labour. Unions determine which workers will be employed on a project, and thereby have leverage over both contractors and workers. Control over unions provides racketeers the ability to confer key benefits or to impose great costs on contractors as construction relies on the availability and reliability of the supply of competent workers. With such control, organized crime is in a position to extort payoffs and solicit bribes. The control of unions by organized crime has also been facilitated by the lack of adequate mechanisms for policing internal union affairs, at least in the U.S. (NYSOCTF 1989). This could be achieved through effective legislation or through self-regulation by union internationals. Rank-and-file who attempt to democratize unions face layoffs, blacklisting, intimidation, and violence. As many construction workers are skilled and semi-skilled workers with little formal education, the threat that they will never work in the industry again is usually a sufficient deterrent to keep them from joining dissident elements.

The industry's racketeering susceptibility is also high because it involves the coordinated activity of a number of discrete operations and processes by specialized contractors. Practically every construction task has its own union (e.g., plumbers, electricians, carpenters). Each phase of construction depends on the completion of a previous phase by a different contractor and labour union. For example, drywall installation cannot be done until electrical wiring is finished. If racketeers seize control over just one critical phase of the construction process, they can hold a project ransom. They can then extort money from the developers, who are desperate to move the project on to the next construction phase. It has been estimated that a one-day delay on a \$100-

million-dollar construction loan could cost a builder \$75,000 (NYSOCTF 1989). Delay or disruption creates other economic costs for the builder, including paying contractual penalties, paying workers who sit idle and then paying overtime costs to meet deadlines, and paying to store materials that are not being immediately used.

The racketeering potential of the construction industry is also high because it is lucrative, there are many cash transactions, and the higher costs can be easily passed on to the consumer. Huge sums of money are involved in large-scale public-sector projects. Skimming just one per cent may represent tens of millions of dollars (NYSOCTF 1989). Union pension funds may be worth hundreds of millions of dollars, creating another attractive target for racketeering in the absence of strong independent governance.

Construction projects involve a large number of financial transactions, providing many opportunities for contractors to earn money for illegal payments and for criminals to conceal those payoffs. Contractors and subcontractors must pay workers, purchase materials, and contribute to union benefit funds. All these monetary transactions provide opportunities to make payments to fictitious employees, issuing of false invoices for supplies never delivered, and for overcharging on supplies and materials (NYSOCTF 1989). Unlike other industries, no overall management is responsible for the many firms, workers, and suppliers on a site. Each company contracts with many suppliers of goods and services. The sheer size of a large construction site and the fact that much of the work is not directly visible (e.g., amount of concrete poured or electrical wire installed) may facilitate fraudulent activities.

Large-scale construction projects also provide less obvious payoffs for organized-crime figures. Many of those involved in organized crime have no legitimate employment and these projects can create fictitious jobs for income-tax purposes. Such jobs can also allow them to conceal their underworld positions. Also, construction firms can provide the means through which money obtained through illicit activities can be laundered. Large construction sites may also provide a flourishing market for illicit goods and services offered by organized crime—illicit drugs, gambling, loansharking, and stolen merchandise (NYSOCTF 1989). New York State's Task Force asserts that public-sector projects are even more ripe for corruption than private-sector projects, as the expertise (project managers, engineers) is generally lacking in the former for proper oversight of sites to ensure that work has been performed as required.

According to Malanga (2008), organized-crime figures have used control of hiring to dominate construction in New York. They can place friends in key positions and send them to construction sites, where they extort money from contractors and enforce mob discipline among union members. They can demand payoffs from people trying to get into the business and to obtain union cards. Control of hiring also gives organized-crime-connected union bosses access to pension and health-benefits funds, which they regularly fleece. New York State's Wicks Law inadvertently helps organized crime by requiring government to carve up public construction projects into at least four separate bidding packages, multiplying the number of contractors and subcontractors involved in any project and adding layers of complexity that encourage fraud, bribery, and bid rigging.

Organized crime leverages its control of construction unions in their dealings with the many contractors and subcontractors that do business in New York by creating cartels that reduce legitimate competition and drive up prices. For many years, criminally-owned or controlled companies in the city have monopolized everything from supplying concrete for construction projects to contracts for painting and drywall installation. The price of this control by organized crime adds hundreds of millions of dollars to the cost of building in the city. In one notorious case from the early 1980s, New York State was overcharged by approximately \$12 million for the concrete used to build a convention center because a mob cartel controlled the business and no legitimate firms would bid against it.

Economic conditions prevailing in the construction sector can also be a contributing factor to organized criminality. Coppotelli (2011), a former New York City prosecutor specializing in labour racketeering and the construction industry, interviewed a cooperating general contractor implicated in one of the biggest bid-rigging and kickback schemes in the history of the city's construction industry. The contractor noted that:

In 1989, the United States' real estate market crashed. From 1989 through 1991 the opportunities dried up, but the competition remained the same. The larger firms were competing for practically no work, and struggling to win enough work to stay afloat, make payroll, and maintain our standard of living. We had to do something, so some of us decided to make sure that we won what work was out there. We contacted people who worked with and for our clients, and who were responsible for procuring contracts – project consultants and managers, designers, architects, engineers, and facility managers within our potential customer base. We talked to anyone who could steer the award of a contract and we offered to give them a cut of the action. We also hedged our bets and beat up on subcontractors to kick us back about 10 per cent of their contracts, enabling us, among other things, to reduce our pricing. It was easy. Everyone was in the same boat because of the collapse. Almost no one refused.

Coppotelli notes that since October, 2008, public and private construction around the world has suffered immensely as a result of the global financial crisis. He predicts that fraud will increase sharply in the private commercial construction industry. Collusive bidding, bid-rigging, kickbacks, and billing schemes will increase significantly by necessity. There will be a resurgence of “pay to play” practices, or companies will be forced out of business. He also predicts that fraud will increase substantially on public contracts, particularly infrastructure projects. In addition, he believes that labour racketeering and organized criminal activities will rise sharply on both public and private contracts. Unscrupulous union representatives and/or criminally-controlled unions will increase their activities, allowing corrupt and/or criminally-controlled companies to violate their collective bargaining agreements, particularly their union wage rates, so that they can lower their labour costs and underbid honest competitors.

A lack of clarity of norms within the construction sector can facilitate corruption. A survey conducted by the Chartered Institute of Building in the U.K. consulted 1,404 individuals working in a variety of sectors within the construction industry (CIOB 2006). The survey found little agreement as to the nature of a corrupt practice (e.g., the difference between bribery and schmoozing), as well as the prevalence of it. Clearly, a misunderstanding as to the norms of an industry will contribute to corrupt practices.

According to PriceWaterhouseCoopers' (2010) global survey, just 17 per cent of respondents believed that the increased risk of fraud in the engineering and construction sector is due to increased opportunities for fraud, as costs are cut and gaps appear in control systems in the current economic environment. This perspective suggests that the engineering and construction sector could run the risk of reduced governance as a result of redundancies and streamlining. Due to the economic downturn, many companies have downsized or eliminated key procurement functions. For example, in order to reduce overheads, these functions are often being delegated to site managers who may be responsible for all stages of procurement. Such changes are likely to increase the opportunity for fraud.

PriceWaterhouseCoopers's global survey also found that far more respondents (72 per cent) see increased pressure and incentives to commit fraud as the most likely reason for a greater risk of fraud within their organization. These increased pressures and incentives stem from the fact that business targets have become more difficult to achieve and from fears related to job loss. Of those respondents who cited increased pressures and incentives as the most likely reason for greater risk of fraud, a significantly higher proportion of engineering and construction sector respondents, as opposed to those in other industries, attributed this to the belief that competitors are paying bribes to win contracts.

Apart from global economic conditions, Benson and Baden (1985) have made the obvious but often overlooked point that any time government raises taxes or adds regulation, the potential for official corruption increases and incentives to practice corruption are created. These government actions generate the potential for increased participation in private-sector underground markets.

## **5.2 The Prevalence of Organized Crime and Corruption**

Construction can be a highly lucrative and competitive industry. While competition is beneficial to the funder/builder and the consumer, it can lower prices and hence reduce profits of construction firms. The substantial revenues that can be earned from large projects, along with the advantages to be gained from the absence of competition, create major incentives for firms to engage in actions that limit competition. Opportunities are also created for criminal groups who may have a stake in such firms or who can seek compensation for policing arrangements that limit competition. At the same time, certain public-sector projects (e.g., restoration of government buildings) have modest profit margins of between 1.5 and 2 per cent, meaning that labour, equipment, or supply-related delays or disruptions can be very costly to the bottom line, creating major incentives to avoid such delays, regardless of the means used to achieve this objective.

Kenny (2007) has noted that the construction industry accounts for about one-third of gross capital formation. Governments have major roles as clients, regulators, and owners of construction companies. The industry is consistently ranked as one of the most corrupt; large payments to gain or alter contracts and circumvent regulations are common. The impact of corruption goes beyond bribe payments to poor-quality construction of infrastructure and low funding for maintenance.

Transparency International's (2006) Bribe Payers' Index rates public works/construction as the most corrupt sector internationally. In their Global Crime survey of 3,000 senior representatives from 54 countries, PriceWaterhouseCoopers (2010) found that 24 per cent of engineering and construction companies have experienced economic crime in the previous year.

PriceWaterhouseCoopers also found that bribery and corruption are on the increase and are more prevalent in the engineering and construction sector than in the wider business world—29 per cent of respondents reported crimes for the engineering and construction sector versus 13 per cent across all industries. The survey found that overall the three most common types of economic crimes experienced in the last 12 months in the engineering and construction sector were asset misappropriation, accounting fraud, and bribery and corruption.

PriceWaterhouseCoopers noted that the engineering and construction sector has a history of bribes being paid to those procuring or having influence over the procurement of construction works so as to either avoid competitive tendering, gain higher margins, or reduce tendering costs. The engineering and construction sector has exposure to corruption risks through large-scale contracts often in the public sector, typically involving complex supply chains and an increasingly competitive environment.

The Chartered Institute of Buildings (CIOB) in the UK conducted a survey of 1,404 respondents who worked in a variety of sectors within the industry (CIOB 2006). The survey looked at respondents' perceptions of corruption as well as their personal experiences with it. The survey found a great deal of variation in the way respondents perceived corruption, as well as in how widespread they thought it was. Many respondents have had direct experience with corruption. For example, 41 per cent had been offered a bribe on at least one occasion. Prior to this survey, the CIOB conducted an online poll in which 335 construction professionals were asked on what scale corruption exists in the UK construction industry. A total of 41 per cent thought it was "widespread," 37 per cent believed it was "occasional," 18 per cent stated that it was "rare," while 4 per cent of respondents felt it was non-existent.

On a national level, research in relation to organized crime in the construction sector has been conducted in just a limited number of countries. One foreign example of a country with a history of corruption in the public sector is that of Japan. In Japan's 30-trillion-yen (\$362 billion) construction industry, the Yakuza (organized-crime syndicates) have long played a prominent role (Tabuchi 2010). At the peak of Yakuza involvement with construction, police estimate that gangs pocketed at least two to three per cent of all construction spending in Japan. The influence of the syndicates dates back at least to Japan's extensive rebuilding after World War II, when the mob helped supply cheap labour to contractors, broke up strikes, and helped enforce labour compliance. Currently, Yakuza bosses typically pressure developers to pay "protection money" to cover construction projects or use front companies to win lucrative construction contracts. In a 2007 police survey of 3,000 construction companies in Japan, 34 per cent of respondents said they had been approached by the Yakuza with requests for payments or business in the last year. Occasionally, developers reach out to the gangs to, for example, muscle reluctant owners into selling their land.

The Italian construction industry was rocked by scandals in public-sector procurement during the early 1990s (Bologna and Del Nord 2003). Although not involved in construction, the role of the state in construction demand meant that it was one of the most heavily implicated sectors. The



scandals have prompted a major reform of public sector procurement in the Italian construction sector that is producing a profound cultural change in the industry. The system of contracting for public works had degenerated into a corrupt system based on favouritism. This situation produced a crisis in the planning and building market, excluded fair competition between the parties and transparency of procedure, falsified the true costs and created centres of power that ignored regulations.

In the United States, the President's Commission on Organized Crime (1986) noted that organized crime controlled all construction contracts over \$500,000 in New York City. The 20 or so largest contractors decided on who will get a particular contract through a process of collusive bidding. "After winning the rigged bid, an emissary of organized crime or a union official would approach the general contractor and inform him as to who his suppliers and subcontractors would be, from whom he would purchase materials, at what price those materials would be purchased and, on occasion, designating to the general contractor which union he would use..." (President's Commission on Organized Crime 1986:71-72). In concrete contracting, firms "winning" contracts were taxed at a rate of one or two per cent. In return, construction firms were guaranteed contracts and labour peace, as well as labourers who were paid less than ordinary unionized workers (Rangel, 1988). Failure to pay meant that the company was no longer in business (Owen, 2003). The rigged bidding drove up the price of all construction projects and raw materials.

A former captain in the Genovese crime family estimated that organized crime controlled 75 per cent of the construction industry in New York in the 1980s (Special to the New York Times 1988). The arrest of 62 alleged Gambino crime-family members, union officials, and construction executives in 2008 illustrates that after decades of intensive investigation by law enforcement, organized crime remains a powerful force within New York's construction industry (Malanga 2008).

An investigation in the late 1980s found that more than a dozen construction unions in New York were organized-crime-dominated or influenced. Unions were susceptible to criminal infiltration because the rank and file were generally new immigrants who were poorly educated, unsophisticated, and disempowered. Jacobs (1999) and the New York State Organized Crime Task Force (1989) found that it is hard to dislodge organized crime from control as unions in New York are all-powerful in determining which workers are employed in a particular project. Those deemed to be "troublemakers" do not obtain work in this casual and seasonal industry.

There are consequences to the involvement of criminal organizations and career offenders in the construction sector, apart from the impact on the price of projects, the violence and intimidation, and the general corrupting influence on the manner in which business is conducted. For example, Siemens paid over \$1 billion in fines in the U.S. and Germany for violating anti-bribery regulations. The CFO of Siemens estimated that the total cost of bribery to the company was around one-third of the annual profits for at least two years in succession (PriceWaterhouseCoopers 2009). In addition, there is damage to the reputation of a firm and an impact on customers, staff, and potential recruits. Other costs include legal investigation and remediation, litigation, and potential loss of government business.

PriceWaterhouseCoopers found that 55 per cent of engineering and construction sector respondents felt that the economic crimes experienced by their companies had a significant impact on employee morale, compared with 32 per cent in all industries combined. Economic crime has long-lasting impacts on business relationships and can erode trust. Success in the construction sector relies heavily on teamwork and the ability to maintain relationships with a variety of suppliers of goods and services. Therefore, the impact of fraud on businesses within the sector can be significant.

Corruption in the sector can also lead to construction projects that are unsafe when they fail to meet safety requirements as a result of fraud in building materials or the bribery of public inspectors. The failure of projects to meet health and safety standards can also lead to the illness of those using a building or complex and may be damaging to the environment as well.

### **5.3 The Nature of Organized Criminal Activities in the Construction Sector**

Corruption and racketeering in the construction sector can assume the following forms (NYSOCTF 1989; Transparency International 2006):

**Extortion:** Extortion can be broadly defined as the extraction of a monetary or other benefit through the threat or use of force. Many different forms of extortion can be found in the construction industry. All involve the use of threats for the purpose of obtaining money or other things of value (e.g., partnership in a business). One of the most common forms of extortion involves union officials extracting money from contractors using the threat of labour problems. If the contractor refuses to pay, he may face work slowdowns, disruption, sabotage, or personal harm.

A closely related phenomenon is the provision of ‘protection’ as defined by scholar Diego Gambetta (1993), who views protection racketeering as a defining characteristic of the Sicilian mafia. He describes the mafia as a cartel of “private protection firms” who, in exchange for money or favours, use violence to punish anyone who harms the interests of their clients, whether through theft, violence, fraud or competition.

In practice, it may be difficult to distinguish between a case of extortion and one of ‘private protection’, because many aspects of these phenomena are the similar. In cases where extortion of construction firms is longstanding and systematic, for example, such firms may pre-emptively approach members of a criminal organization in order to ensure their protection. While in one sense such firms are still victims, such situations tend to blur the line between victimization and collusion. ‘Protection’, however, is in many cases as much against the group offering the service itself as it is from other groups.

**Bribery:** Bribery in the construction industry may take a number of forms. They may be paid by contractors in order to obtain contracts, information, or other services to which they are not entitled, or to otherwise gain an unfair advantage. The payment may be in the form of cash, equity in a project, or a number of other forms. While bribes may be offered to those in a position to influence some phase of a construction project, they may also be solicited by those in

such positions. Both public employees and labour union officials may be in positions to influence projects in the construction sector through their control of tendering processes and the provision of labour, respectively.

Bribery may also occur between contractors and sub-contractors, or other parties, in the form of 'kickbacks', which consist of the firm awarded the contract returning a portion of its value to the party who awarded it.

Bribes are typically paid by contractors to obtain contracts, favours, and services to which they are not entitled. Bribes may take the form of cash, equity in a project, employment of a relative, or assume countless other forms. They may be solicited by government officials who control the awarding of contracts and building permits or by union officials offering contract conditions that reduce the employer's labour costs and customary employee benefits at the expense of union members (sweetheart contracts). "Grease payments" may be made to assure the delivery of goods and performance of services to which the payer is entitled.

**Theft:** Theft from construction sites in the U.S. amounts to as much as \$1 billion annually (Lambertson 2011; NYSOCTF 1989: 21-22; Thomas 1977). It can range from petty pilferage to large-scale organized theft. Because construction sites can be difficult to secure, and may be accessed by a large volume of people over the duration of a project, there are numerous potential opportunities for theft. In one case, for example, two operators of a Long Island, N.Y. pipe-supply company stole \$1 million worth of pipes from New York city's pipe yards after securing the assistance of city personnel with bribes. They then sold the pipes back to the contractors working on the city's sewer system. Effectively, the supply company owners stole the pipes from the city and then sold them back to the city.

**Fraud:** Fraud in the construction sector can assume a number of forms:

- Fraudulent billing for work not performed or materials that have not been used. For example, materials required for specific phases of a project may be overestimated, and the excess material for which the customer has been billed may be sold or diverted to other projects.
- Pension-fund fraud in which trustees bilk the fund by directly withdrawing money, making high-risk "loans" to family members or associates, and steering benefit-plan services (e.g., medical, dental) to companies that provide kickbacks to them. Contractors may also fail to make required contributions to employee-benefit funds.
- Falsifying records to gain tax and other advantages. For example, bribes can be made to appear as business expenditures that become a tax deduction. Also, personal expenses can be presented as legitimate business expenses and purported payments to fictitious employees can also be deducted. Shell corporations can be set up, cheques can be written to them and recorded as legitimate business transactions, and these funds can then be used for bribery or for personal living expenses.

**Violence and Intimidation:** Corrupt activities may be enforced by violence and intimidation. Violence is seldom necessary, but may be used against uncooperative contractors, those attempting to reform unions with ties to organized crime, and rival firms or criminal groups.

**Sabotage:** In the construction sector, sabotage refers to the intentional destruction of structures, materials, equipment, or fixtures (e.g., damaging electrical wires or plumbing). Sabotage may be committed to punish contractors or developers for poor working conditions or to deter contractors from using non-union workers. It may also be designed to create additional work or overtime. The report of the NYSOCTF presents several construction projects in which work kept being done and undone by tradespeople to ensure the project did not advance too quickly (NYSOCTF 1989:30).

**Collusive Bidding and Cartel Formation:** Collusive bidding refers to a situation in which independent firms identify their bid prices to each other prior to bidding for a contract in order to predetermine the winner of the contract. Generally speaking, the ‘winning firm’ will compensate the other firms in some manner, such as by ‘kicking back’ a portion of the contract or awarding sub-contracts to the ‘losing’ firms. Collusive bidding can be a one-off phenomenon, or may be carried out over time by a cartel, which may facilitate the rotation of winning bids through cartel members. Firms outside the cartel relationship can thus be excluded from participation in projects. Where criminal organizations are strong and well-entrenched, they may take the responsibility for cartel enforcement, in addition to participating in the cartel through ownership of, or control over, member companies.

## 6. Assessment of the Vulnerability of the Commercial Construction Sector

The assessment of the specific vulnerabilities of the commercial construction sector to organized crime entails an understanding of those weaknesses and opportunities within the sector which could be exploited by criminal organizations. The framework adopted to identify these sector vulnerabilities has been developed by Tom Vander Beken and his colleagues at Ghent University in Belgium, in partnership with the Universities of Trento, Amsterdam, Freiburg, and Cardiff (Vander Beken et al. 2005). This framework is referred to as the Method for and Assessment of the Vulnerability of Sectors (MAVUS). The development of the MAVUS system has been financed by the European Commission to implement a European methodology for the assessment of the vulnerability of economic sectors.<sup>12</sup> This approach has been used to measure the

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<sup>12</sup> For more information regarding vulnerability studies see: T. Vander Beken, M. Defruytier, A. Bucquoye and K. Verpoest, (2005) “Road map for vulnerability studies,” in T. Vander Beken, ed., *Organized crime and vulnerability of economic sectors: The European transport and music sector* Antwerp pp. 7-56. T. Vander Beken (2007) *The European water industry and crime vulnerabilities*. Antwerp-Apeldoorn, Maklu Publishers. T. Vander Beken, (2005) *Organized Crime and Vulnerability of Economic Sectors, The European Transport and Music Sector*, Antwerp: Maklu. T. Vander Beken, S. Van Daele (2008) "Legitimate businesses and crime vulnerabilities," *International Journal of Social Economics*, 35(10): 739 – 750. Hansons, Johann, et. al. (ND) *Measuring the Vulnerability of Legal Economic Sectors for Organised Crime*, Brussels: Belgian Federal Office for Scientific, Technical and Cultural Affairs (OSTC). [http://www.belspo.be/belspo/home/publ/pub\\_ostc/SoCoh/rSO0218\\_en.pdf](http://www.belspo.be/belspo/home/publ/pub_ostc/SoCoh/rSO0218_en.pdf).

vulnerability of sectors, such as waste management and road freight transport, to organized crime penetration (Daele et al. 2007, Vander Beken et al. 2004, Vander Beken 2005).

For a further understanding of the vulnerability assessment methodology for this project, please see Appendix C.

## 6.1 Data Sources

The data sources used in the vulnerability assessment include:

- **Statistics Canada, Industry Canada, and Construction Sector Council Data.** These government and industry sources provide information on the construction sector in general. For example, these sources indicate the size of the sector, the number of people employed within the sector, the size of employers within the sector, and the number of commercial building permits issued (see Appendix A).
- **Literature Review.** This review consisted of scholarly literature, commission reports, and other gray literature. For example, the report of New York State's Organized Crime Task Force was most helpful in understanding the forms of organized criminal activity committed within the construction sector, the factors contributing to the situation, and the measures recommended by the Task Force to remedy the problem.
- **Expert Advice.** Several members of the research team have previous experience in conducting research on or investigating organized crime. Some team members are internationally known and/or have specific expertise in relation to organized crime within the construction sector. This project tapped into the expertise of these individuals to gain an understanding of the vulnerabilities of the construction sector and in advancing remedies that can address these vulnerabilities.
- **Interviews.** Semi-structured interviews were conducted with government officials, law enforcement agencies, crown prosecutors and stakeholders within the construction sector. These interviews probed issues such as the prevalence of corruption within the sector, the respondent's awareness of specific criminal incidents (e.g., fraud, extortion, collusive

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A. M. Lavezzi (2008) Economic structure and vulnerability to organized crime: Evidence from Sicily, *Global Crime*, 9(3): 198-220.

[http://www.unipa.it/~lavezzi/papers/vulnerabilityCrime\\_Revision\\_04.pdf](http://www.unipa.it/~lavezzi/papers/vulnerabilityCrime_Revision_04.pdf). E. U. Savona (2006) A Study on Crime Proofing - Evaluation of Crime Risk Implications of the European Commission's Proposals Covering a Range of Policy Areas, Trento: Transcrime.

[http://transcrime.cs.unitn.it/tc/fso/publications/Final\\_Report-A\\_study\\_on\\_Crime\\_Proofing.pdf](http://transcrime.cs.unitn.it/tc/fso/publications/Final_Report-A_study_on_Crime_Proofing.pdf) E. U. Savona (2006) Initial Methodology for the Crime Proofing of New or Amended Legislation at the EU Level, *European Journal on Criminal Policy and Research*, 12(3-4): 221-228. <http://www.springerlink.com/content/e6hr255685k2835u/>

bidding, bribery), specific areas of vulnerability within the sector, the crime groups involved, the role of regulation and enforcement (or gaps in these areas), and the role played by the economy, unions, and employer organizations.

Our team approached 35 organizations/individuals for interviews. We completed interviews with six organizations (17 participants) and contacted another 29 organizations/individuals who did not respond to our requests for interviews or refused to participate. Research into organized crime and the commercial construction sector faces certain difficulties, some general and some specific to the current media exposure this issue has received, especially in the province of Quebec.

The organizations/individuals contacted for interviews included general contractors, trade contractors, union representatives, road builder/heavy construction firms, provincial prosecutors, and law-enforcement agencies.

We believe that the limited participation in the interviews was due to:

1. The high-profile media coverage of allegations of corrupt practices in the province of Quebec undoubtedly contributed to the reticence of individuals contacted to cooperate with this study. Individuals and firms in the construction sector undoubtedly feared being tainted by participating in an interview with our team.
2. Second, some individuals we contacted appeared to hold the view that Compliance Strategy Group had “disguised” interests and that the interview questions were part of larger project that was related to the anti-corruption unit, the inquiry in Quebec, or a concurrent Canada Revenue Agency investigation.
3. Furthermore, general contractors, trade contractors, mechanical/electrical contractors and road builders/heavy construction contractors did not want to participate for fear of reprisal or criticism by other contractors.
4. Finally, many of those who decided against participation in the study felt that confidentiality could not be guaranteed, despite our assurances to protect their identity. This perception was compounded by the fact that under Access to Information, Public Safety Canada released the first draft of our report.

The challenges we have faced have been encountered by others undertaking research on organized crime (e.g., Dr. Cyrille Fijnaut of Tilburg University in the Netherlands). Professor Ronald Goldstock, former Director of New York State’s Organized Crime Task Force and a member of our research team, states, in response to these difficulties:

I would have not expected anything different. With the exception of a rebel or two, people are not likely to discuss illegal activity by themselves or others except when they are compelled by court order to do so -- and even then, only when law enforcement has sufficient evidence to prosecute them for perjury or contempt for not testifying truthfully. The way that we tended to get our information for [New York State’s Organized Crime

Task Force] was through electronic surveillance, informants, and past cases. Of course, we had an enormous advantage having had police powers.

## **6.2 The Political, Economic, and Regulatory Context (Macro-Level Analysis)**

Recent data from Statistics Canada (2010c) show a decline in permits issued for commercial and industrial projects. The figures are mixed with regard to British Columbia, where recent data indicated that industrial and commercial construction has declined, while institutional and government construction has increased. The Quebec government embarked upon a major infrastructure development effort over a five-year period, beginning in 2009. This plan notwithstanding, Quebec has recorded a sharp decline in the number of non-residential building permits (Statistics Canada 2011). A more competitive economic environment is generally considered to be one in which corruption and code violations are more likely to flourish (PriceWaterhouseCoopers 2010).

The volatility of the current international economic environment does not engender great optimism in the short and medium term. The crisis within the European Union (including the possible default of several countries) and the general fiscal crisis in the United States, especially in the construction sector, will likely depress economic activity for a number of years. In Canada, the Federal Government is presently undertaking a deficit reduction exercise that is expected to cut departmental budgets by 15 per cent over the next two years. Such cuts are likely to have an adverse effect on the construction sector.

The current unstable global political environment also elevates risk to construction and other sectors. Political instability in many regions makes international cooperation, regulation, and enforcement difficult. Political turmoil, conflicts, and growing national security concerns make issues like organized crime a lower priority when nuclear proliferation and regional instability threaten the very survival of regimes and political institutions.

Returning to the Canadian construction sector, close to two-thirds of firms in the sector qualify as micro businesses and all but one per cent of the remaining firms are classified as small businesses. The majority of businesses hire contract workers rather than employees. One source noted that smaller firms working in construction are more likely to be involved in organized criminal activity, especially start-up companies needing funds for expensive machinery and equipment. Small firms may also be more prone to be used for the laundering of criminal proceeds.

Other factors thought to be associated with corrupt activities include the nature of the workforce in the industry in general, especially in more remote communities. Unskilled workers are more likely to be involved than skilled tradespeople, as they face fewer licensing requirements and fewer barriers to entry in relation to unskilled work (Transparency International 2006). Smaller communities are more susceptible to corruption due to the lower skill sets of workers and of those who oversee large construction projects.

The Canadian construction sector is fragmented and diverse. Aside from the wide variation in the size of firms, there are variations within and between provinces with regard to the unionization of contractors and workers. Regulation, too, is fragmented. It varies across provinces as that level of government is responsible for such things as building, fire, plumbing, and electrical codes. Further confounding the picture is the fact that code enforcement is the responsibility of municipalities. This, along with the fact that certifications for trades vary across Canada and across different trades, precludes the development of national standards and allows criminal entities to exploit regions with less effective code enforcement or lower standards with regard to certification.

There is also a concern with regard to the expertise of public-sector personnel working in procurement, and lack of experience in relation to commercial construction. The B.C. Construction Association has been trying to develop training for these individuals but cutbacks have proven to be a challenge.

Further contributing to the vulnerability of the construction industry is the inherent uncertainty of the construction process itself. Personnel issues, unfavourable weather, delays in obtaining materials, damaged materials, and sub-par performance by contractors are just some of the issues that can affect the progress and cost of a project. Individuals may also try to conceal defective work. These realities, coupled with frequent inexperience or preoccupation of foremen, engineers, and inspectors, create a multitude of opportunities for crime and corruption.

Further complicating the forecasting of the costs of a project is the fact that, in B.C., unionized contractors and workers may work alongside non-union workers on many projects. While some fully unionized sites remain, non-unionized workers may be brought in when available union members are insufficient for a project. As of 2001, the province no longer requires unionized labour for public-sector projects. In Quebec, all construction workers must belong to one of five major unions. In theory, this means that the cost of projects is more predictable and therefore easier to scrutinize.

Another factor contributing to the risk posed by the construction sector is the finding that the underground economy is more prevalent in this sector than in any other (Statistics Canada 2011a; Grant 2011). The size of the cash economy in the sector makes it highly attractive to fraud and money laundering.

Another factor that could be contributing to the risk of organized-crime infiltration into the commercial construction sector is the finding of very few prosecutions under Section 467 for offences in the construction sector. In the construction sector specifically, there have been very few prosecutions making use of the criminal organization provisions in addition to the charges for the predicate offence. As such, the penalties prescribed by the *Criminal Code* for criminal organizations can provide little or no marginal deterrent effect.

Thus, the overall political, economic, and regulatory context for the commercial construction sector appears to be rather favourable to the infiltration of criminal organizations as defined by the *Criminal Code*. Our assessment is a moderate to high probability of corrupt practices and



organized-crime involvement in the sector. The reasons for this assertion can be summarized as follows:

- An increasingly competitive economic environment, that may prompt more participants in the sector to engage in collusive bidding, bribery, the inflation of costs, and other illegal activities;
- An unstable global political situation that makes international cooperation, regulation, and enforcement difficult;
- The high proportion of small businesses in the construction sector that are dependent on financing from unscrupulous actors;
- The low skill sets of many workers in the industry;
- The fragmented state of regulation of the Canadian construction sector;
- The localized and inconsistent state of enforcement of violations;
- The infrequent application by prosecutors of “criminal organization” provisions in the *Criminal Code*;
- The modest expertise of public-sector personnel involved in the procurement function;
- The size and complexity of many public-sector projects, which make oversight of costs, criminal activities, and code violations a challenge;
- Problems inherent to the construction industry, such as poor weather, labour issues, and unanticipated delays, that may lead to the violation of codes, bribery, extortion, and other illegal practices.

### **6.3 Vulnerabilities in the Construction Process (Meso- and Micro-Analysis)**

This section deals with the issue of the stages of the commercial construction process most likely to be exploited by criminal organizations. The analysis was based on interviews conducted with stakeholders within the construction sector and those charged with investigating allegations of organized-crime infiltration. The analysis of problematic stages in the construction process proved to be a challenge as cooperation by many public- and private-sector agencies and organizations was limited.

Nonetheless, the 17 individuals interviewed yielded some valuable, if preliminary, insights. Before proceeding, it is important to examine the construction process. Commercial construction is a multi-organization process involving client/owners, designers, contractors, suppliers,

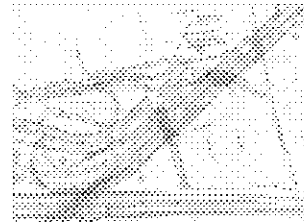
consultants, subcontractors, and labourers (both skilled and unskilled ) all working as a collaborative team for the common purpose of delivering the project within defined start and finish dates. It is also a multi-stage process that involves pre-project activities (i.e., identifying the project's need and feasibility, financing and tendering), pre-construction activities (i.e., concept and full design, procurement), construction activities (parts and manufacturing, fabrication, construction site) and post-construction activities, involving the handover of the building and the actual operation. In addition, all construction activities take place under the supervision of project managers who may work directly for the client or under contract.

The above description of the commercial construction process remains a generalized one, as commercial construction projects are highly complex, consisting of multiple, interdependent components. For example, changing the location of a fitting in a drawing may produce subsequent changes in other areas (e.g., electrical) which may, in turn, cause workers to be rescheduled from one task to another, delaying some tasks and accelerating others. A change in the design of a project may have a cascading effect. For example, a change in client specifications may produce change orders or project delay, resulting in the need for additional labourers and/or increased costs associated with overtime. The commercial construction process is summarized in Figure B.

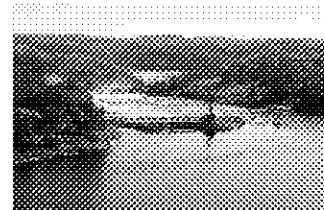
To illustrate the complexities of the commercial construction process, the following text box provides an overview of some major projects in Canada ([www.top100projects.ca](http://www.top100projects.ca)). These three examples, which are among hundreds of projects taking place in Canada, show the different types of project costs and construction periods for completion. In two examples, the Turcot Interchange and the Edmonton North Clinic, estimated costs of the project were substantially revised.

Many projects result in cost overruns. Brockmann and Girmscheid (2007) note that the “who is who” in megaproject cost overruns include the Suez Canal (1,900 per cent), the Sydney Opera House (1,600 per cent), the Boston Artery Tunnel ( 196 per cent), the Great Belt Rail Tunnel (110 per cent) and the Channel Tunnel (80 per

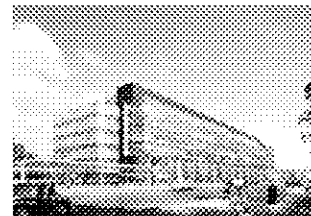
Turcot Interchange  
 Estimated Costs: \$3 Billion (original estimate was \$1.2 to \$1.5 Billion in 2007)  
 Sector: Highway  
 Location: Montreal, Quebec  
 Funding: Public  
 Start Date: 2010  
 Estimated Completion Date: 2018



Romaine Complex: A Renewable Energy Project  
 Estimated Costs: \$56.5 Billion  
 Sector: Hydroelectric  
 Location: Havre-Saint-Pierre, Quebec  
 Funding: Public  
 Start date: Mid 2009  
 Estimated Completion Date: 2020.



Edmonton Clinic North at University of Alberta  
 Estimated Costs: \$250 Million (revised to \$303 Million)  
 Sector: Health  
 Location: Edmonton, Alberta  
 Funding: Public  
 Start date: 2008  
 Estimated Completion Date: 2011/2012



cent). Furthermore, Berechman and Wu (2006) point out that of 128 highway projects carried out in Vancouver Island, 104 had some cost overruns, while out of 36 tunnels and bridge projects, carried out in the same region, 29 had cost overruns. Similarly, Flyvbjerg et al., (2002) as part of their study on estimating and forecasting the costs of public projects note that nine out of 10 transportation infrastructure projects, costs are underestimated, for rail projects, actual costs are on average 45 per cent higher than estimated, and for road projects, actual costs are on average 20 per cent higher than estimated. Flyvbjerg et al., conclude that “cost underestimation cannot be explained by error and seems to be best explained by strategic misrepresentation, i.e., lying” (2002:290). They further argue that “cost estimates used in public debates, media coverage, and decision-making for transportation infrastructure development are highly, systematically, and significantly deceptive” (2002:290). The authors note the need to build checks and balances into the development of these projects. Such activities include: increasing transparency, the use of performance specifications, explicit formulation of the regulatory regimes that apply to project development and implementation, and the involvement of private risk capital, especially for public projects.

## **6.4 The Most Vulnerable Phases in the Construction Process**

### **6.4.1 Procurement**

Both national and provincial sources in the construction industry were unanimous regarding the vulnerability of procurement functions to corruption. Interviewees stressed that many officials responsible for procurement have limited knowledge in relation to construction projects and frequently underestimate, sometimes dramatically, the eventual value of a project. In addition, where the lowest compliant bid is awarded the project (e.g., in Quebec), firms bidding on contracts are encouraged to bid even lower than the forecasted budget. Unrealistic budgets which in most cases are low may require change orders with their associated significant costs. Apart from the budget, specific standards in the Request for Proposal may be unclear.

Our national source indicated a lack of accountability and transparency in procurement policies. This source added that governments often fail to follow their own procurement policies. Additionally, there is no consistency in procurement across municipalities as there has been a tendency to deregulate this function. No support is provided by the province in relation to procurement.

Our sources in Quebec indicated that procurement policies in that province are vulnerable to organized crime and the bribery of government officials. They note the need for an independent third party to participate in the procurement process. The lack of expertise in procurement is especially evident in small communities. It is challenging, however, to find neutral third parties in small or remote towns as local engineering firms may well have worked with the construction firm or firms bidding on a project. Competition in these places is usually quite limited. There is no provincial body or agency that will help these smaller communities with commercial construction projects.

Our sources in B.C. also indicate that government officials responsible for procurement lack the requisite expertise in relation to commercial construction projects. Many of those who formerly had the expertise have retired or moved on to the private sector. In 2001, public agencies in B.C. assumed responsibility for their own procurement.

For example, the Capital Division, a division of the Treasury Board, had responsibility for capital-management policy and procedures (Capital Division 2000). The Capital Division had an oversight role on capital projects including procurement, construction, and risk management. To that end, any major project irregularities discovered by the Capital Division were presented to Treasury Board (Deloitte Consulting 2000). However, in 2002, the responsibility of capital asset management became the responsibility of each department. Capital Division policies and procedures were replaced by provincial guidelines referred to as the Capital Asset Management Framework. During the interviews, it was pointed out that this transfer of responsibilities for capital projects to the line ministries contributed to the lack of expertise in procurement and project management.

### **6.4.2 Project Management**

The interviews indicated that expertise, on a national level, is also lacking in relation to the overall management of construction projects. For example, a company bidding on a construction contract submits a low bid to increase the likelihood of receiving the contract award. However, the company may know the client and may be aware that it can submit change orders during the project to more than compensate for the low bid. After the contract is awarded, the contractor submits numerous and/or high-dollar-value change orders against the contract. The project manager, because he/she lacks the expertise or experience in managing commercial construction projects may not understand that the proposed change orders are for necessary additions to the work or to the scope of the contract and not merely to increase the contractor's profit. Our Quebec sources noted that change orders and their associated costs were a problem in that province's construction sector.

While the argument was put forward that municipalities may want to hire a third party, such as an engineering firm, to manage large construction projects, our sources have raised the concern that the relationship between engineering firms and construction companies is often so close as to create serious issues with regard to a conflict of interest.

In the past, the roles of designer, principal, and project manager were universally undertaken in-house by public-works departments but, in some jurisdictions, these functions have been entrusted to other government agencies, some of which have little or no experience in construction and are then reliant on pre-qualified consultants (who may or may not be truly independent) to provide expertise in procurement.

### **6.4.3 Less Vulnerable Phases in the Construction Process**

In contrast with procurement and overall project management, several phases of the construction process were not mentioned by our sources as being particularly vulnerable to corruption or organized-crime infiltration. These areas of lower vulnerability included the overall guardianship of the construction site, fabrication of elements (e.g., heating ventilation), the

manufacture and production of parts and materials, and the management of the post-construction phase. This last item refers to the handover of the site to the client, ensuring that the client is satisfied with all aspects of the project, and providing training to the client regarding the maintenance of the site.

While not mentioned as a key vulnerability by our respondents, it is well known that construction sites that are not properly secured provide an easy opportunity for thefts (e.g., copper pipes, power tools, tractor loaders) by organized criminal groups. For example, the LoJack Corporation (2006) pointed out that construction-equipment thieves are generally a sophisticated group that not only have a ready-made market, but also know which pieces of equipment are most in demand and will bring the highest value on the black market. In some cases, the equipment is resold to unsuspecting contractors or disassembled for resale as parts.

With regard to material production, items such as glass plants and cement building products (e.g., concrete stairs), can be expensive and require specialized equipment. Thus, this business may not be lucrative from a criminal-organization perspective; however, other material products may be counterfeit items produced by organized-crime-affiliated firms (e.g., interior panels or other products that do not necessarily require a certificate, such as electrical items).

The activities carried out in the pre-project phase, such as identifying project needs, feasibility, and financing, also seem to be less vulnerable to corruption and organized-crime involvement. This is the case as these decisions can often be made by the public sector based on some public need (e.g., a new school to meet the demands of a growing neighborhood, or the expansion of a section of a hospital). The financing is paid out of current revenues and out of the proceeds of long- and short-term loans. In some situations, government may look to the private sector for financing or invite private-sector entities to enter into long-term contractual agreements which may take the form of construction and management of public-sector infrastructure facilities by the private-sector entity. In these situations, public/private sector funding arrangements may have a low vulnerability to organized crime as that which is procured is services rather than the ownership of assets. However, without the proper policies and transparency, this area can also be susceptible to organized crime as construction companies may provide financing to politicians or financial inducements to senior government officials making decisions with the ultimate goal of influencing the procurement process.

A Quebec source indicated that smaller firms working in construction are more likely to be involved with organized-crime entities, especially the start-up companies that require funds for expensive machinery and equipment. These firms also provide opportunities to launder money. Our source indicated no clear evidence that organized crime is involved in the process, but there is much hearsay and speculation. It is thought that road construction is more vulnerable than other commercial construction given the lower skill-level of labour involved and the high cost of machinery and equipment. The major areas of concern are infrastructure projects – bridges and roads. Our source provided the example of a new contractor who arrives at the construction site with full equipment, such as cranes and bulldozers. This company was given a licence, but it is

unclear how it got the money to purchase all of the equipment. It is not uncommon to speculate that the firm may be affiliated with organized crime; however, our source notes no concrete evidence of such a connection.<sup>13</sup>

Our sources did not mention pre-construction concept and design when discussing the most vulnerable phases of commercial-construction projects. We believe these phases are less vulnerable to corruption and organized-crime infiltration as the focus is for architects and consultants (e.g., designers) to provide blue prints, plans and other technical requirements to be constructed by others. Architecture is a professional service regulated by provincial regulations and governed by a Board. Architects are legally obligated to safeguard the public health, safety, and welfare. Architects may also take on the role of project management for public projects. As these professionals are bound by comprehensive legal requirements and responsibilities for the building design, the opportunity for organized crime to influence this stage is greatly diminished.

Our sources did not draw a connection between labour issues and organized crime. Decreasing unionization in British Columbia—the construction industry in the province of Quebec is highly unionized—will lower the likelihood of labour racketeering in the sector. However, less regulation may lead to the recruitment of workers with lower skill sets, a risk factor in relation to organized-crime infiltration.

In summary, the macro-analysis of the political, economic, and regulatory environment in which the Canadian commercial construction sector operates has concluded that there is a moderate to high vulnerability of corruption and organized criminal activity within this sector. The analysis of the construction sector itself has found that the two aspects of the construction process that are most vulnerable to organized crime are procurement and project management.

## 7. Conclusion and Considerations for Policy

Criminologists have been focusing an increasing amount of attention on the penetration of various sectors of the economy by criminal organizations. In Canada, media reports have covered allegations of irregularities within the commercial construction sector, especially in the province of Quebec. Accordingly, the present project examined the vulnerability of that sector, concentrating on two provinces: Quebec and British Columbia.

Following the *Method for and Assessment of the Vulnerability of Sectors* (MAVUS) approach developed in Europe, the vulnerability assessment focused on two issues: 1) the extent to which the political, economic, and regulatory environment in Canada is favourable to organized criminal activity within the commercial construction sector; and 2) identifying those phases of

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<sup>13</sup> In response to the Government of Canada's consultation on changes to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, (<http://www.fin.gc.ca/activty/consult/pcmltfrai-rrpcfatic-eng.asp>) one of the stakeholder's interviewed is asking that the reporting requirements under the Act also include construction-equipment dealers, retailers and auction houses which would discourage criminal organizations from using shell construction businesses to launder money.

the construction process, including pre- and post-construction, that are most vulnerable to corruption and organized-crime infiltration.

This project relied on a number of data sources to generate its findings, including a review of relevant scholarly literature and technical reports from other countries, interviews with major stakeholders, and a construction-sector analysis. We encountered challenges in conducting interviews with agencies and firms in the construction sector, as well as law-enforcement officials. The limited participation in interviews by those in the construction sector was due to the fear of being tainted in some way, reprisal by other contractors, or being ensnared in an ongoing provincial inquiry (in Quebec) or Canada Revenue Agency investigation.

Hard data in the form of prosecutions demonstrating the involvement of organized crime in the Canadian construction sector is virtually non-existent. However, the analysis of the political, economic, and regulatory environment in which the commercial construction sector operates (the macro-level analysis) leads us to conclude that the Canadian commercial construction sector is at moderate to high risk of corruption and organized criminal activity. This conclusion was prompted by the following:

- An increasingly competitive economic environment, that may prompt more participants in the sector to engage in collusive bidding, bribery, the inflation of costs, and other illegal activities;
- The high proportion of small businesses in the construction sector that are dependent on financing from unscrupulous actors;
- The low skill sets of many workers in the industry and the ease of entry into the industry;
- The fragmented state of regulation of the Canadian construction sector;
- The localized and inconsistent manner in which violations are enforced;
- The infrequent application by prosecutors of “criminal organization” provisions in the *Criminal Code*;
- The low level of expertise of public-sector personnel responsible for procurement;
- The size and complexity of many public-sector projects, which make oversight of costs, criminal activities, and code violations a challenge;
- Problems inherent to the construction industry, such as poor weather, labour issues, and unanticipated delays, that may lead to the violation of codes, bribery, extortion, and other illegal practices.

The reader should bear in mind that organized crime in this report refers to the *Criminal Code* definition (i.e., three or more individuals engaged in a conspiracy to bribe officials, commit

fraud, rig bids, or engage in related illegal behaviour in the construction sector). Neither prosecutions nor sources consulted for this project demonstrated a link between major organized crime entities (e.g., the Sicilian mafia, outlaw motorcycle gangs) and illegal conduct within the commercial construction sector.

The most vulnerable aspects of the construction process were found to be the procurement of services and project management. Our sources indicated that officials responsible for procurement were often uninformed with regard to the cost of construction projects. The lack of accountability and transparency in procurement policies across Canada was also noted. Furthermore, governments often failed to follow their own procurement policies. In addition, procurement practices often vary across municipalities as there has been a tendency to deregulate this function. We were told that provincial governments lend little support to municipalities in relation to procurement.

Our sources in Quebec noted a need to involve an independent third party in the procurement process. However, it is challenging to find neutral third parties in small or remote towns as local engineering firms may well have worked with the construction firm or firms bidding on a project or are aware that they may work together in the future.

Our sources in BC also indicate that government officials responsible for procurement lack the requisite expertise in relation to commercial construction projects. Many of those who formerly had the expertise have retired or moved on to the private sector. In 2001, public agencies in B.C. assumed responsibility for their own procurement.

On the federal level, the Capital Division, a division of the Treasury Board, had the responsibility for capital-management policy and procedures. The Capital Division had an oversight role on capital projects, including procurement, construction, and risk management. However, in 2002, capital-asset management became the responsibility of each department, a change that contributed to the lack of expertise in procurement and project management.

Interviews indicated that expertise, on a national level, is also lacking in relation to the overall management of construction projects. After contracts are awarded, the contractor may submit numerous and/or high-dollar-value change orders against the contract. The project manager, because he/she often lacks the expertise or experience in managing commercial construction projects may not understand that the proposed change orders are for necessary additions to the work or to the scope of the contract and not merely to increase the contractor's profit. In the past, the roles of designer, principal, and project manager were universally undertaken in-house by public works departments but, in some jurisdictions, these functions have been entrusted to other government agencies, some of which have little or no experience in construction and are then reliant on pre-qualified consultants (who may or may not be truly independent) to provide expertise in procurement.



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## Appendix A Tables

Table A – Non Residential Construction Employment for the Years 2006-2010

Employment (Non-Residential) – Total All Trades	2006	2007	2008	2009	2010
Canada (sum of provinces)	421,580	460,790	470,900	454,100	480,250
Central Ontario	39,494	42,611	40,433	38,294	40,679
Eastern Ontario	18,694	20,211	19,190	20,154	20,270
Greater Toronto Area (GTA)	55,853	58,104	56,110	55,751	58,434
Northern Ontario	11,441	11,606	11,397	11,309	13,029
Southwest Ontario	20,073	20,849	19,172	16,405	18,321
Newfoundland and Labrador	5,786	4,800	4,879	4,843	5,734
Nova Scotia	12,287	10,897	11,532	12,524	13,811
New Brunswick	9,596	9,722	10,074	11,568	12,496
Prince Edward Island	1,713	1,713	1,813	1,987	2,085
Quebec	72,684	85,701	95,062	91,560	98,452
Ontario	145,560	153,380	146,300	141,910	150,730
Manitoba	14,440	14,954	15,285	15,353	16,188
Saskatchewan	14,422	15,516	18,507	20,024	21,493
Alberta	80,772	98,077	102,480	88,843	91,570
British Columbia	64,323	66,034	64,961	65,484	67,684

Source: Construction Sector Council (2010) Industrial, commercial and institutional investment by region



Table B Number of Employer Establishments in Canada By Employment Size Category and Sector: December 2009. Construction (NAICS 23)<sup>14</sup>

Province or Territory	Employment Size Category			
	Micro	Small	Medium	Large
Alberta	13,017	6,945	271	31
British Columbia	13,067	7,963	155	4
Manitoba	2,088	1,614	24	1
New Brunswick	1,691	1,318	21	2
Newfoundland and Labrador	979	904	11	1
Northwest Territories	82	104	7	0
Nova Scotia	2,216	1,457	23	1
Nunavut	12	45	1	0
Ontario	23,412	15,762	352	30
Prince Edward Island	380	293	3	0
Quebec	15,511	10,958	173	12
Saskatchewan	2,187	1,602	25	1
Yukon Territory	137	80	3	0
<b>Canada</b>	<b>74,779</b>	<b>49,045</b>	<b>1,069</b>	<b>83</b>
Percent Distribution	59.8	39.2	0.9	0.1

Source: Statistics Canada (2009), Canadian Business Patterns Database, (December).

<sup>14</sup> Information downloaded from Industry Canada, Canadian Industry Statistics. Retrieved from: <http://www.ic.gc.ca/cis-sic/cis-sic.nsf/IDE/cis-sic23etbe.html>

Table C: Industrial, Commercial, Institutional and Government Building Permits Issued for the Vancouver Area for the Years 2008-2010 (\$,000)

City	2008	2009	2010
<b>Industrial Building Permits</b>			
North Vancouver,	245	455	615
North Vancouver, DM	8,059	6,424	3,888
Vancouver	10,879	14,758	6,816
West Vancouver	0	0	1059
Greater Vancouver, RD	124,198	94,177	89,170
<b>Commercial Building Permits</b>			
North Vancouver, C	53,261	25,915	37,651
North Vancouver, DM	9,705	5,926	9,228
Vancouver	598,689	409,209	302,551
West Vancouver	27,482	7,501	7,990
Greater Vancouver, RD	1,710,101	971,661	1,055,690
<b>Institutional &amp; Government Building Permits</b>			
North Vancouver, C	357	12,046	52,138
North Vancouver, DM	16,959	4,069	27,751
Vancouver	157,567	66,514	144,670
West Vancouver	1,597	5,140	715
Greater Vancouver, RD	372,014	397,792	501,284

Industrial: Includes buildings used for manufacturing and processing; transportation, communication and other utilities; and agriculture, forestry, mine and mine mill buildings.

Commercial: Includes stores, warehouses, garages, office buildings, theatres, hotels, funeral parlours, beauty salons and miscellaneous commercial installations.

Institutional and Government: Includes expenditures made by the community, public and government for buildings and structures.

Source: British Columbia Ministry of Finance (2010). *Major projects inventory. A comprehensive database of major development activity in British Columbia.* (September). Province of British Columbia. . The data set was called the Building Permits for Development Regions, Regional Districts, and Communities by Type 2002-2010.

Table D: Building Permits by Non Residential for Montreal and Vancouver (in 1,000 of dollars)

2010							
	Jan	Feb	Mar	Apr	May	Jun	
Montreal	113,655	175,000	155,901	174,215	206,293	199,583	
	Jul	Aug	Sep	Oct	Nov	Dec	Total
	245,764	143,260	142,724	209,230	228,085	91,480	2,085,190
Vancouver	Jan	Feb	Mar	Apr	May	Jun	
Vancouver	94,040	88,941	118,960	114,054	184,095	102,845	
	Jul	Aug	Sep	Oct	Nov	Dec	Total
	190,835	137,825	139,707	259,093	119,373	98,622	1,648,390

Source: Statistics Canada (2010a); Construction Sector Council (2010)

Table E: Investment in Non-residential Building Construction in Montreal and Vancouver 2004-2008

	2004	2005	2006	2007	2008
	\$ millions				
Montreal	3,110.00	3,014.50	2,970.20	3,416.60	3,659.60
Vancouver	1,747.60	2,240.80	2,735.50	3,348.80	3,279.30

Source: Statistics Canada (2010a); Construction Sector Council (2010)

# Appendix B Figures

Figure A Simplified Chart of the Participants in a Building Project

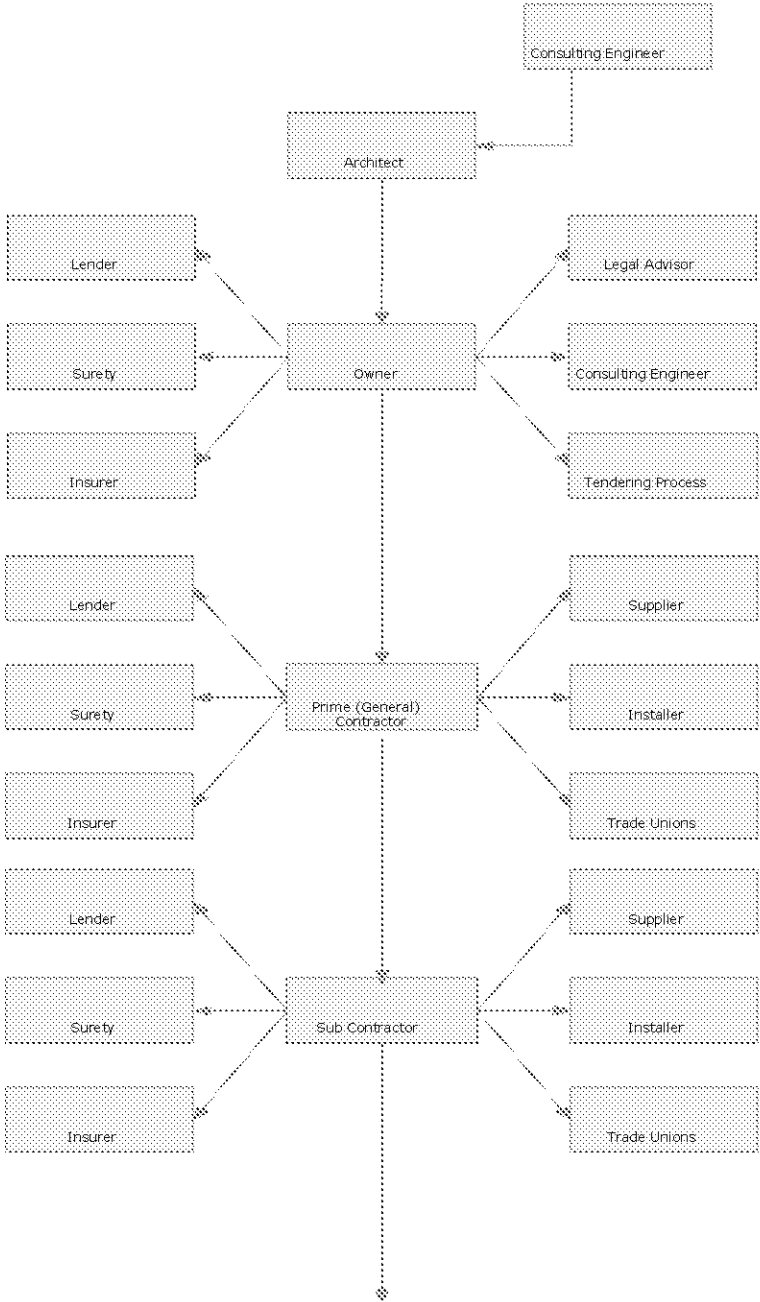
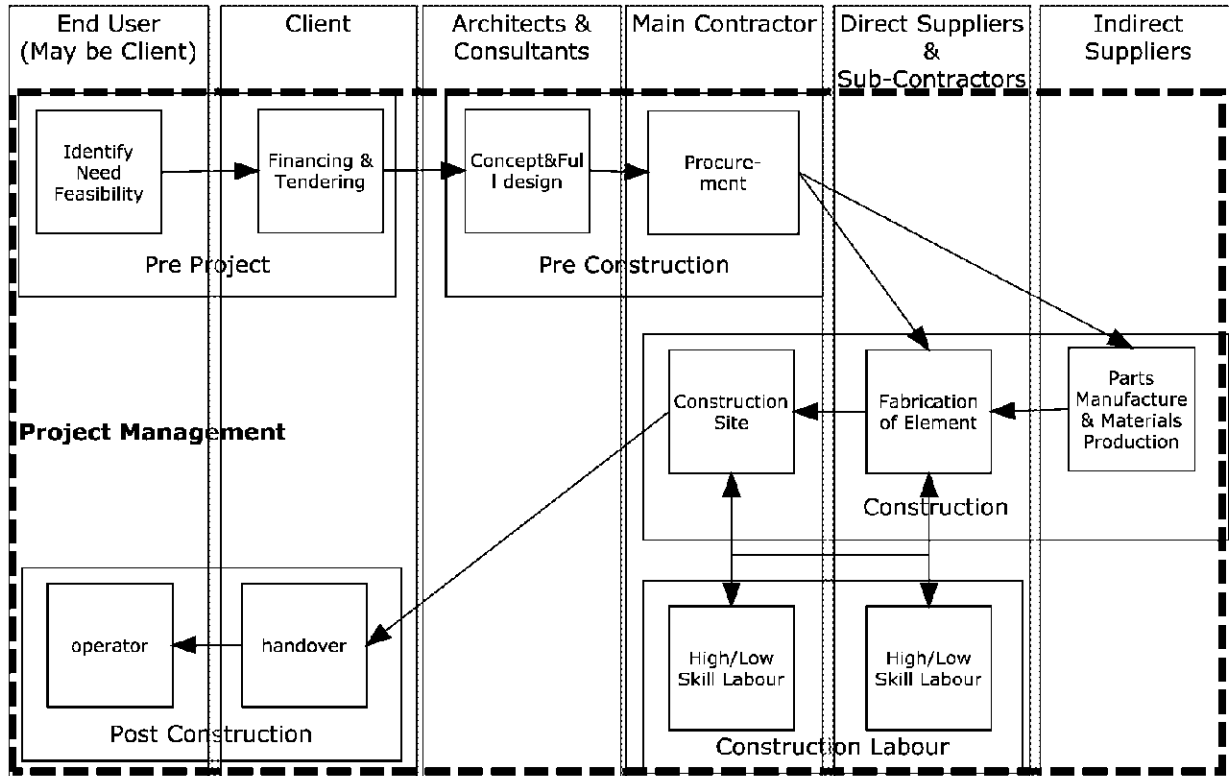


Figure B Flow Chart on the Commercial Construction Process



## Appendix C Overview of MAVUS

MAVUS involves mapping the sector and identifying the opportunities or loopholes for its exploitation by criminals. The first step in the sector analysis is defining the boundaries of the sector under consideration. The present project concerns the Canadian commercial construction sector, defined according to the North American Industry Classification System (see Section 1).

MAVUS includes analyses at the macro, meso, and micro levels.

**Macro:** At this level, an environmental scan is conducted. This involves an analysis of the broader environment through the collection and analysis of data on the external environment of the sector to determine relevant trends. Trends examined included political, economic, social, and technological developments that have influenced the sector. These trends will affect such things as regulation, competition, consumer demand, productivity, and the availability of qualified labour. The present macro-level analysis includes a focus on the more immediate external environment of the construction sector, such as the participants and their relationship with the sector.

The macro-level analysis also includes an examination of the role of other sectors on which the sector under consideration may be dependent (e.g., various suppliers of materials). These suppliers may themselves be vulnerable to organized crime. Government is also an important element, due to its role in regulating the sector. Employer and employee organizations, too, are critical in their ability to pressure government and influence regulation. Criminal groups also form part of the context in which sectors function. Depending on the type of criminal activity being concerned, firms in the sector can act as victims, facilitators of crime, or accomplices.

**Meso:** This level comprises the sector analysis, which focuses on two aspects: sector features and market features. As shown in Section 4, the commercial construction sector plays a major role in the Canadian economy. *Market features* refer to such things as barriers to entry to the sector, and to market conditions. Pricing policies, market access, and the availability of qualified labour are three factors that shape the sector's vulnerability to organized crime.

**Micro-level:** The analysis on this level focuses on the corporate culture and functioning of the organizations in the sector. Six business processes are examined: purchasing, sales, book-keeping, administration, personnel management and services operations. For example, with regard to personnel management, characteristics of the corporate culture (compliance and business ethics) affect the integrity of subcontractors and workers and whether they act as the accomplices of criminals or avail themselves of other criminal opportunities. In addition, inadequate employee screening raises the risk of employing members of criminal groups.

The MAVUS system collects and processes information on the above three levels. Then a series of indicators are used to perform the actual vulnerability assessment. In the **broad scan**, the information collected and processed on the meso and macro levels is used to assign the sector a score, on the basis of a number of indicators, in order to determine the importance of the relevant

feature to the overall vulnerability of the construction sector. In the **depth scan**, the information that is collected on the micro level is used to identify those business processes within the sector entities that produce opportunities for organized crime. Thus, each business process is assigned a score which expresses the level of vulnerability of that business process.

The broad and depth scans allow for: 1) an overall assessment of the vulnerability of the Canadian commercial construction sector using a number of key indicators; and 2) the identification of specific business processes most influential in increasing the vulnerability of the sector to organized crime.

In the present study, we provide a macro-level analysis of the political, economic, and regulatory context and trends found in the Canadian commercial construction sector, with a special emphasis on British Columbia and Quebec. We then merge the meso- and micro-level analysis into a sector analysis that focuses on those stages of the construction process most vulnerable to corruption and organized crime infiltration (a depth scan).

While rarely used, a crime script analysis would be helpful in undertaking the depth scan. These analyses explain the preconditions for organized crime infiltration and the manner in which a “typical” offence takes place within the construction industry. Script analysis not only offers a detailed, comprehensive tool for understanding how crimes are committed but provides guidance to those responsible for preventing organized crime infiltration by pointing to the many potential intervention points for law enforcement and other agencies (Cornish 1994). Ideally, crime script analyses rely on interviews with convicted persons that yield comprehensive information on offender actions and decision-making processes. Useful information can also be gained through trial transcripts and interviews with prosecutors and criminal intelligence personnel. Unfortunately, the lack of a sample of prosecutions of actors alleged to be committing offences under Section 467 of the *Criminal Code* (other than for drug-related offences) precluded the use of a script analysis in this project.



## Commercial Construction and OC

### BUILDING A SAFE AND RESILIENT CANADA

The economic and regulatory environment in which the Canadian commercial construction sector operates is at moderate to high risk of corruption and organized criminal activity.

This report is based on a literature review, interviews and a descriptive analysis of economic data from the commercial construction sector in British Columbia and Quebec. The authors state the lack of prosecutions in the Canadian court system demonstrating direct involvement of organized crime in the Canadian commercial construction sector makes it difficult to assess their prevalence in the sector. While the presence of organized criminal groups in the sector remains unknown, however, based upon an analysis of the broader political, economic and regulatory environment, the authors conclude that the commercial construction sector is at a moderate to high risk of corruption and organized criminal activity.

The study asserts that the vulnerability of the commercial construction sector is based upon a number of factors. For example, tighter competition in the sector since the 2008 recession could potentially increase the opportunities for activities such as collusive bidding or other illegal practices. The fragmented state of regulation, which is split between different levels of governmental authority, also creates risks of organized criminal activity. More broadly, the nature of large-scale commercial construction projects, and their exposure to numerous risks such as poor weather, labour market fluctuations, and supply chain risks, contributes to vulnerabilities from both unscrupulous industry insiders and external criminal organizations.

The Canadian construction sector plays a key role in the overall economy. In May 2010, the sector's contribution to Canada's gross domestic product was approximately C\$ 71 billion (5.7 per cent). The influx of the federal government's C\$ 40 billion infrastructure

stimulus fund assisted with construction sector activities during the economic downturn. Additional stimulus is being provided from infrastructure investments by provincial and municipal governments.

In 2010, more than 480,250 people were employed in non-residential construction trades. Industry Canada estimated that, in 2009, about 99.6 per cent of construction companies had fewer than 100 employees. The majority of firms (59.8 per cent) qualified as micro-businesses with fewer than five employees, small firms with 5 to 99 employees accounted for 39.2 per cent of construction sector businesses, and just one per cent of firms had more than 100 employees. The majority of businesses (54.2 per cent) hire contract workers rather than employees. The small size of many firms, and the competitiveness of the market overall, may also create opportunities for organized criminal activity where small firms are vulnerable to any disruptions which may negatively affect their operations or work schedules.

Although the Canadian Commission on Building and Fire Codes, established by the National Research Council of Canada, is responsible for the development of national model codes for Canada, responsibility for construction regulations in Canada resides with the provinces and territories. The provinces establish regulations — building, fire, plumbing, and electrical codes — while their enforcement is the responsibility of the local authorities. In addition to building codes, the provinces regulate the health and safety regulations, wages and labour practices, benefits, conditions of work, licensing and employment of workers, and the roles of tradespeople and professionals of the sector.

Generally speaking, there are no limitations on companies that can become involved in the



commercial construction sector. While in some provinces, and for some trades, individuals must hold a professional or trade certification or designation, or be registered as an apprentice to work, this is not always the case. While this lowers the barriers to entry for new firms, lack of regulation of market participants can also create opportunities for infiltration by organized crime. For example, it is possible that a new firm may enter the market, either as a general or sub-contractor, for the primary purposes of laundering capital gained through illicit activities. High initial start-up costs, such as for heavy equipment, may offer opportunities for money laundering. It is important to note, however, that the commercial construction sector is not alone in being susceptible to these vulnerabilities.

The authors identify a number of factors contributing to the vulnerability of the construction sector to organized criminal groups, with complexity being the common thread linking these factors. Large commercial construction projects are complex in almost every aspect. Multiple phases of large projects, for example, require the control and coordination of very large and diversified workforces, as well as the maintenance of supply chains from multiple suppliers. Each phase is thus exposed to numerous risks, which may come from a disruption to the supply of needed materials, labour problems, or other factors. This can make such projects vulnerable to those who can gain control over these processes by criminal means such as extortion.

The complexity of projects also makes the understanding of cost overruns more difficult. As each major project in commercial construction is frequently a 'one-off', gauging the accuracy of the estimated costs of any project becomes very difficult, and opens up the possibility of fraudulent activity. This is compounded by a current low level of expertise within the public sector in the area of acquisitions in the real estate and construction sectors.

The authors also contend that, due to this lack of expertise combined with the unique nature of many commercial construction projects, the procurement phase of such projects can be particularly vulnerable to organized criminal influence. This

influence may be exercised on those in positions to award contracts through such means as bribery, intimidation or extortion, but may also take the form of cartel-like collusive bidding among firms without the knowledge of public authorities.

While the authors found numerous examples of potential vulnerabilities in the commercial construction sector in the two jurisdictions examined (Montreal and Vancouver), there was no indication that these vulnerabilities have been exploited by criminal organizations. The authors attribute this finding to both the limitations in available data, as well as the lack of prosecutions of members of criminal organizations in this sector of the economy.

Gabor, T., Kiedrowski, J., Hicks, D., Levi, M., Goldstock, R., Melchers, R., and Stregger, E. (2011) *Economic Sectors Vulnerable to Organized Crime: Commercial Construction*. Ottawa, ON: Public Safety Canada.

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