



Campaign 2011: Challenge Leaders to define 'Opportunity'

By Chris Lorenc, BA, LL.B

Heading into this 2011 election, the challenge to the three party leaders should be to lay out their definition of 'opportunity,' to demonstrate how 'opportunity' becomes synonymous with their leadership and why Manitobans should support their leadership.

For each constituency, however, opportunity has a different meaning, sense, allocation and prioritization of its composite parts.

To an immigrant from an impoverished or strife torn country, opportunity means a substantial improvement in the quality of life. It means freedom, jobs, a home and an income that allows for personal and professional advancement.

Opportunity for a student (and by extension a concern for parents and grandparents) working his/her way through high school, technical college or university is likely measured by the availability of jobs upon graduation. 'Do I have the opportunity of pursuing a career that I have trained for in school?'

Opportunity for a 'mature' person, already in a career is perhaps defined by whether or not the place of domicile continues to offer prospects for advancement or whether those 'opportunities' exist elsewhere.

Opportunity for the aged, infirmed and those facing illness may be the peace of mind that the focus of the healthcare debate is not on the 'ideology of service delivery,' but the 'quality and timeliness' of the care itself.

Opportunity for communities and their local governments means a commitment to help fix Manitoba's ailing municipal infrastructure - the crumbling roads and lanes, the boil water orders due to failing water treatment systems and the inadequate community centers with weak recreational options for youth.

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Opportunity for business takes on yet a different meaning. Is there political and policy stability? Are labour relations harmonious? Is the tax regime competitive? Is there a stable and educated workforce? Is the location within close proximity to the markets to and from which products and services are destined? Is there an efficient transportation system to receive raw goods and export the finished product? Is there an attractive quality of life?

Manitobans should question how the leaders will position Manitoba for economic growth opportunities. Without growth there are no revenues to government with which to pay for any of our social safety net programs, our recreational or infrastructure needs and wants.

At the end of the day, association of a location with opportunity, however defined through whichever stakeholder's eyes, determines migration, growth, economic enhancement and community enrichment.

Leaders' definitions of 'opportunity' should provide a platform for political debate, for comparison of position, for assessing what opportunity elements are or should be important to Manitobans.

The Leader who pieces together the best 'opportunity' strategy, who is prepared to think more 'radically' and 'outside the box' with demonstrated intellectual logic and principle should be given the 'opportunity' to govern.

The Winnipeg Chamber of Commerce, the Manitoba Chambers of Commerce and the Manitoba Business Council have challenged the leaders to think 'Manitoba Bold.' Implicit in boldness and opportunity is the willingness to challenge status quo, to take risks, and to be accountable for results.

These are useful tests to determine if what is presented during the campaign by any of the leaders, is in fact an opportunity for you and your province.

The Manitoba Provincial Election is on Tuesday, October 4, 2011.

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EQUIPMENT RENTAL RATES — USE THEM!

The MHCA is the only publisher of equipment rental rates in Manitoba. Adjusted annually to reflect the cost of owning and operating equipment, this reference tool is published in the MHCA Annual Directory. It is there for industry use to ensure proper return on your capital investment.

Need the most current Hourly Equipment Rental rates? They are there for you to use in the 2011 MHCA Directory!

Contact Jason Rosin at 947-1379 or jason@mhca.mb.ca for any questions or to order additional copies.



Campaign 2011: Make a Deal – Get it Done!

A Balanced Approach to Funding Manitoba's Municipal Infrastructure



Campaign 2011: Make a Deal – Get it Done!

Beginning the week of September 6, 2011, the MHCA launched a Public Relations campaign for the upcoming 2011 Manitoba Provincial Election, urging candidates and party leaders to make municipal infrastructure funding a major focus during their campaign drive.

The objective is to raise the profile of the imperatives associated with funding municipal infrastructure.

It is no secret that Manitoba's municipal infrastructure deficit will reach \$13.4 billion within 10 years at current funding levels (Winnipeg at \$7.4 billion; Rural municipalities at \$6 billion).

At least two conclusions flow from the above.

The first is that Manitoba's economic health is at risk with a failing municipal infrastructure. Economists agree that infrastructure platforms our economy, which in turn generates taxation revenues to government, used to pay for our health, education and related social safety net programs. Municipalities though must join the province and focus on growing the economy – a shared responsibility to better benefit their constituents. No economy, no revenues, no programs. It is as simple as that.

And secondly, Manitoba municipalities lack the dedicated revenues streams to sustainably address the infrastructure deficit. In particular, municipalities need access to growth taxes dedicated to reinvestment in existing and new infrastructure.

Manitobans know that their municipal infrastructure is crumbling and they want clear, transparent and accountable long-term solutions.

We have sent a quick backgrounder and questionnaire outlining the importance of this issue, as well as a questionnaire to all of the candidates in Manitoba's 57 ridings for their replies. There are also three different radio spots that began on September 7th and will run until October 4th. You can hear these radio spots on CJOB throughout the month during the Morning, Noon & Afternoon drives.

Our messaging is in sync with the Manitoba Bold initiative sponsored by the Winnipeg and Manitoba Chambers, the Business Council of Manitoba and the Association of Manitoba Municipalities.

Candidates have until September 14th to submit their questionnaire, after which we will tabulate the results and release our findings on what the candidates believe in when it comes to municipal infrastructure funding.

Tour highlights infrastructure deficiencies

Lack of potable water “a quality of life issue”

August 30, 2011 – The Association of Manitoba Municipalities (AMM) wrapped up its President’s Tour of Manitoba last week with stops in Portage la Prairie and Lorette. The tour was part of the AMM’s ‘Putting Communities First’ campaign and included earlier visits to Dauphin, Gimli and Brandon.

Designed to send a strong message to all parties in the days leading up to the October 4 provincial election, the tour saw AMM President, Doug Dobrowolski, meet with elected officials, community leaders and candidates to hear the most pressing infrastructure issues across Manitoba and deliver this message to all parties: Manitoba’s communities need help.



‘What we heard in both Portage la Prairie and Lorette was consistent with the other stops on the tour – economic development is stagnating because communities are unable to provide the infrastructure necessary for housing,’ said Dobrowolski. ‘There are developers lined up ready to build the needed single-family, low-income, and seniors housing, and they are being turned away because there is no serviced land.’ This has dire results for a community like Lorette, which should be poised for growth but is instead seeing a decline in school enrollments due to lack of housing. ‘How can municipalities fund new water and sewer infrastructure for housing when they can’t even afford to repair the old lines they already have?’ asked Dobrowolski.

Provincial downloading was another recurring issue throughout the tour. The City of Portage la Prairie’s mandated regulations for water treatment and nutrient removal from wastewater is expected to cost \$25 million. The RM of Portage la Prairie is still reeling from the spring flood and not only faces serious drainage and water management issues, but is unable to provide clean drinking water to many of its citizens.

‘Throughout rural Manitoba, supplying potable water for residents is a huge issue,’ explains Dobrowolski. ‘Rural water lines need to be expanded and municipalities just do not have the money. This is not just an infrastructure issue—it is a quality of life issue.’

Currently, 70 per cent of Manitoba municipalities have passed resolutions calling on all parties to commit a portion of existing PST revenue to repairing and upgrading the infrastructure in Manitoba communities.



UPCOMING COMMITTEE MEETINGS :

Education Training & Gold Seal Program Sub committee | Tuesday, August 9 | 1:00 – 4:30

Membership | Tuesday, August 16 | 12:00 noon

Aggregate | Tuesday, September 6 | 12:00 noon

Education Training & Gold Seal Full Committee | Thursday, September 8 | 8:00am

Note: All Meetings to be held at our new office at Unit 3 -1680 Ellice Avenue

Featuring articles from two of Winnipeg's largest law firms, Thompson Dorfman Sweatman and Tapper Cuddy, each of which are engaged by many in our industry.

(Are You) Compliant in all Respects?

By Richard M. Swystun, B.Sc. (Mech. Eng.), LL.B.,
of Tapper Cuddy LLP

In the 1999 tendering case of *M.J.B. Enterprises Ltd. v. Defence Construction (1951) Ltd.*, the Supreme Court of Canada held that although the inclusion of a "privilege clause" in the terms of a call for tenders might provide the owner or tender-calling authority with a discretion to consider more than just the prices quoted in the tenders when comparing competitive bids, the owner was nevertheless obliged, on the terms of the particular tender call under examination, to accept only a "compliant" bid (i.e. one that complied with the terms and conditions of the call for tenders).

Since 1999, Canadian Courts, at several different levels, have had occasion to comment on the compliant/non-complaint bid issue in a variety of different factual circumstances. As a result of the frequency with which the issue of bid compliance has been addressed by the courts, most Canadian contractors who regularly participate in the tendering process now have at least a basic understanding that their bids must be compliant in order to be capable of acceptance by the owner – and, on the flip side, a basic understanding that, in most circumstances, the owner will not be allowed to accept a non-compliant bid to the detriment of those bidders who have submitted compliant bids.

What many contractors may not be aware of is that, over and above the obligation that they will ordinarily have to submit a bid that is, on its face, compliant with the terms of the call for tenders, and supported or accompanied by such other documents as might be required under the terms of the call for tenders (such as a Bid Bond and Consent of Surety), there may also be other, somewhat collateral, obligations imposed upon bidders by the call for tenders that must be complied with in order to preserve the eligibility of a given bid.

The extent to which such "other obligations" may impact upon the eligibility of a bid is illustrated in the case of *Admiral Roofing v. School District 57 (Board of Education)*, an October 2010 decision of the Supreme Court of British Columbia.

In the *Admiral Roofing* case, the terms of the Invitation to Tender relating to the installation of new roofing on two school district buildings required all bidders to attend a mandatory site tour of both buildings.

The precise wording of the site tour provision was as follows:

A mandatory site tour for general contractors will be held on May 14, 2009 at 8:00 a.m. beginning at South Fort George Family Resource Centre located at 1200 Lasalle Avenue and immediately followed by Central Fort George School located at 2955 Third Avenue. Agents must register their presence with the owner of the site tour stating the name of the contractor they represent. Failure to attend and register will lead to the non-acceptance of the tender by the owner.

On the date scheduled for the mandatory site tour of the two buildings, representatives of only two contractors showed up. One arrived on time and participated in the site tours of both

buildings. The other (who was Admiral Roofing's representative) arrived 15 minutes after the scheduled start time – after the site tour relating to the first building had already concluded. Admiral Roofing's representative signed the attendance sheet, and participated in the site tour of the second building, but he did not attend at the tour of the first building on the date specified for the mandatory site tour.

Later that same morning, Admiral Roofing was advised by the School District's purchasing manager that Admiral Roofing would not be allowed to present a bid to the School District because Admiral Roofing's representative had been late for the site tour. Admiral Roofing submitted a bid to the School District anyways, but its bid was returned, unopened, and the roofing contract was awarded to the other contractor who had complied with all of the terms of the Invitation to Tender (even though, as it turned out, that contractor's bid was higher than Admiral Roofing's bid).

Admiral Roofing sued the School District and sought, among other things, a declaration that its bid was materially compliant with the requirements of the Invitation to Tender and a judgment for damages arising out of the School District's alleged illegal rejection of Admiral Roofing's bid. Despite the presentation of a variety of arguments in support of Admiral Roofing's claims by counsel for Admiral Roofing, the court ultimately sided with the School District and held that Admiral Roofing's failure to attend and register for the site tour in accordance with the terms of the Invitation to Tender entitled the School District to reject Admiral Roofing's bid. In fact, the court concluded that there was not a discretion available to the School District to waive a defect of non-compliance with the mandatory site meeting clause.

In light of the decision in the *Admiral Roofing* case, contractors should take steps to ensure that they are compliant *in all respects* with the terms and conditions of any tender call that they may wish to respond to. Not only should they take steps to ensure that their completed tender document is compliant with the terms and conditions of the tender call, and supported by any required bid security, but they should also take care to ensure that they, themselves, have complied fully with all pre-conditions to tender that might be set out in the call for tenders (such as a pre-condition calling for the attendance at a mandatory site meeting). A failure to do so may result in the owner's legitimate rejection of a contractor's bid.

Richard M. Swystun is a partner with the firm of Tapper Cuddy LLP who practices primarily in the areas of construction law and civil litigation. He can be reached by phone at (204) 944-3237 and by email at rswystun@tappercuddy.com.

This article is for general informational purposes only. Its content is not intended as specific legal advice and it should not be relied on as such. The information contained in this article may not apply to or be appropriate for your situation. Any person with a specific legal question or problem should obtain the advice of a qualified lawyer.

Jobs: Engine, or Caboose?

By Peter Hall, Vice-President and Chief Economist of Export Development Canada

Nothing puts a smile on the face these days like a good month of job growth. But the frowns etching the faces of leaders and lackeys alike tell today's tale - employment numbers have not impressed, increasing the focus on this key indicator. Concern is motivating new job-creation programs in various countries as a means of kick-starting economic activity. Will the programs meet expectations?

Opinions are varied. There is broad agreement that the economy operates as a circular flow: businesses employ workers, paying them incomes that they then use to consume the products created by the businesses they work for. Consumers and businesses in turn remit taxes to governments who turn these funds into goods and services for the economy. But because the flows are circular, there is little agreement on the points where activity starts and finishes.

Advocates of job programs suggest that economies can't get going without solid job gains. There is a compelling logic to this: if companies hire more, earnings rise, boosting consumption and housing activity. Factory orders then rise, boosting production. Firms respond by investing to increase their capacity, and hiring more workers, who in turn consume more, and so on. At the same time, government revenues improve. In today's context, job-creation programs sound like the right remedy.

There's one key problem with the logic. Employment is rarely, if ever, found in the leading indicators of any country's economic activity. In fact, it most often lags behind the rest of the economy. How does it work? When activity is low, firms get more efficient and reduce prices. At a certain point, this induces growth in consumption, which eventually boosts production. But coming off a low point, firms have spare capacity, and their priority is to work this off before getting excited about new hiring.

This process is evident in macroeconomic indicators. Economic activity almost always starts rising well ahead of a downturn in unemployment rates. The flipside to this delayed hiring is the early-cycle burst in labour productivity plainly seen in recovery phases of most, if not all, OECD nations.

Initiating economic activity with a job-jolt is counter to a recovering economy's normal path, and runs the risk of



distorting or interrupting the natural realignment of activity. There's another complication: given the general state of public finances in developed nations, there are precious few that can afford the sort of elaborate program that it would take to influence aggregate growth without getting into even hotter water with the ratings agencies.

Supposing nations can scrounge up extra cash, there is an avenue that could yield positive results. Infrastructure programs have in the past provided temporary work that has created productivity-enhancing public capital - roads, bridges, port facilities and the like - ready for use in the next growth cycle. Given the well-documented infrastructure deficits in key Western nations, this activity, if wisely executed, would not distort but actually contribute to current and future economic well-being.

The bottom line? When it comes to true economic recovery, employment growth, however important, is more of a caboose than an engine. Those looking to this indicator for early solace may see a lot of boxcars go by before they are convinced that the train is really moving again.



WORKSAFELY MHCA

News Weekly

Construction Safety Excellence™

2011 VALUE ADDED SERVICES

In 2011, our COR™ safety services we will be further enhanced and directed at providing value added initiatives for our valued clients. Some initiatives improve upon existing services, while others are new in scope, intent and effect. They are summarized as follows.

Specific Action steps;

- » **COR™ Training** – All COR related training will be delivered by program staff. Other related training will be outsourced. There will be no cost increases to the current courses offerings. All COR training materials will undergo review and improvement to assure 'Construction Safety Excellence.'
- » **Weekly and Monthly Safety Communications** – We will optimize the use of the Weekly News and a reinvigorated monthly newsletter the Safety Informer to more effectively promote COR, provide timely and relevant safety information and enhance industry safety awareness.



The Safety Bulletin and the Safety Talk documents are intended to bring awareness of workplace hazards and incidents, and the measures to take to prevent recurrence. Print and review the Safety Bulletins and Safety Talks with your staff, sign-off and post on a bulletin board. These documents can then be filed and used for audit purposes (COR™ - Element #8 Training & Communications).

- » **New Company Safety Manual and Annual Safety Subscription Service** – We will develop and offer new individualized 'Company Safety Manuals' bolstered by an optional annual-monthly update subscription service. The purpose: to help companies ensure their safety program complies with the 14 COR™ Program Elements.

This service will allow firms to educate their workforce, have available the documentation required by legislation and COR™, and provide industry with program standardization. The fees for these services will be offered as follows:

- » Customized Safety Manuals complete with a 1 year safety subscription for the flat fee of \$350.00. The first year subscription fee of \$250.00 is included
- » Annual safety subscriptions will be offered at a flat fee of \$250.00

This safety service will be offered to support our clients' COR™ needs specific to safety program development and safety program maintenance. This is a voluntary service. Manual development and subscription development will be on a first come, first serve basis.

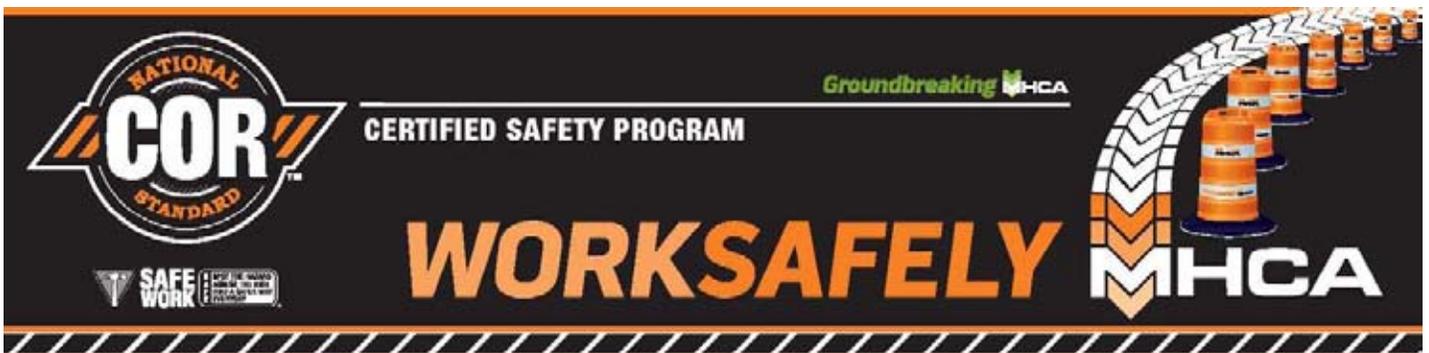
- » **Pre Third Party Audit Readiness Service** – Safety Advisors will at the client request, visit their site, assess their safety program, and assist the client prior to third party audit. This service to be provided by the program at a flat fee of \$275.00 (plus only overnight travel and accommodation expenses) The pre-audit service voluntary and is highly recommended prior to any third party external audit being conducted.

This will help ensure our client's ability to achieve and thereafter maintain COR™ certification. This service will also help ensure external auditor costs and expenses are managed /maintained at a reasonable level (see point 7). The service will prevent the deployment of auditors where a firm is not ready for their audit. Our goal is to ensure all firms obtain audit success and keep costs to a minimum.

- » **External Auditor Accreditation and Maintenance Fees** – We will establish a list of program accredited and qualified external auditors. Third party auditors will pay an annual auditor accreditation fee of \$375.00. For this fee, we will review the auditor's credentials, provide the auditor with the required audit materials, and administer general administration duties on behalf of the client and auditor. We will establish a list (not to exceed 10) of qualified auditors for firm selection and availability to rural areas.

WORKSAFELY COR™ Certificates Have Arrived!

WORKSAFELY Advisors now have new COR™ certificates to distribute to certified companies, showcasing their hard work and achievement of a successful, COR™ certified safety program! Contact your advisor today at 204-947-1379 for more information. Also, inquire about how to receive a set of site signs and COR™ banner!



WORKSAFELY MHCA

Construction Safety Excellence™

Training Schedule



Register by:

- » Email: Denine Rodrigues at safety@mhca.mb.ca
- » Fax: 204-943-2279

Cancellation Policy:

The *WORKSAFELY* policy states cancellation must be made at least two business days in advance, otherwise full course fee charge will apply.

SEPTEMBER 2011	
September 12	COR™ Leadership
September 14	COR™ Principles
September 15	COR™ Auditor
September 19	Train the Trainer
September 21	WHMIS (1/2 day AM)/ TDG (1/2 Day PM)
September 22	COR™ Auditor Refresher (1/2 day AM)
September 23	Excavating & Trenching (1/2 day AM)
September 23	Flagperson (1/2 day PM)
September 23	First Aid 1 - CPR

OCTOBER 2011	
October 3-4	COR™ Leadership
October 5	COR™ Principles
October 6-7	COR™ Auditor
October 11	Safe Work Procedures
October 12	Prime Contractor
October 13	Back Injury Prevention (1/2 day AM)
October 13	Fatigue Management (1/2 day PM)
October 14	Safety Administration (1/2 day AM)
October 14	Toolbox Talks
October 17-18	Train the Trainer
October 19	WHMIS (1/2 day AM)/ TDG (1/2 day PM)
October 20	COR™ Auditor Refresher (1/2 day AM)
October 21	Excavating & Trenching (1/2 day AM)
October 21	Flagperson (1/2 day PM)
October 21	First Aid 1 - CPR

REMINDER:
WORKSAFELY requires at least six people registered to deliver the course.

Customized training is available for your specific requirements.
 Call the *WORKSAFELY* Office at (204) 947-1379 for more information.