

Daily Commercial News

Article

Where does the truth lie in OCOT debate?

by label: LINDSEY COLE Jun 4, 2015

"The truth is a very useful tool in these conversations." — Royden Trainor, Ontario College of Trades (OCOT) director of policy and programs.



Richard Lyall, president of the Residential Construction Council of Ontario (RESCON) and Michael Sherrard, partner, Sherrard Kuzz, Employment and Labour Lawyers, recently spoke about some of the challenges the industry faces with the Ontario College of Trades and how it relates to enforcement, apprentices and compulsory trades. - Photo: LINDSEY COLE

Where the truth lies, however, may be more a matter of opinion, depending on where industry stakeholders stand on the findings released in the highly contentious Dawson report.

Trainor made this statement in response to that report, which scrutinized key areas of the College, examining the skills gap, the barriers encountered by Ontario's construction employers, how compulsory certification impacts the industry and public perception.

"We are a bit shocked and appalled — from someone positioning themselves as a researcher — that someone would make that conclusion without having even spoken with the College," Trainor says.

"The College realizes that it's not a perfect organization, but my door is open, the College's door is open. We would have loved to have spent some time with these folks to talk about their work, helping them come to accurate conclusions based on fact and that offer's still there."

Released in March and commissioned by several industry associations, the report, Modernizing Ontario's Skilled Trades Apprenticeship and Training System, wasn't meant to "diminish the role of OCOT, but to help modernize and rationalize its activities within the broader regulatory framework and to re-align its priorities within an expanded conception of the public interest," it reads.

Its release came after Tony Dean was appointed in October to conduct a year-long review of the College. He will focus on issues related to the scopes of practice, or type of work performed in a trade, and the process for determining whether certification should be compulsory or voluntary.

Those with views on both sides of the report have come out swinging, either supporting Dawson's findings, or criticizing how the report was carried out.

"We've reached a crossroads over the last six or eight months with the College having been at loggerheads with it for the last five years," Patrick McManus, stakeholder relations manager with the Ontario Sewer and Watermain Construction Association told the Daily Commercial News previously.

"What we need is reform. All these associations are doing submissions, but what we wanted out of the Dawson report was to have economic data to back up our assertions. Right now we have an actual opportunity to affect change."

But Trainor says the report shouldn't be the deciding piece for those to base their views on.

"I would not want people to rely on the Dawson report as an authoritative or accurate document, because sadly I don't think it is," Trainor says.

More certification, more problems?

One of the main assertions in the Dawson report was that OCOT "is setting a pattern of favouring restrictive regulation," which limits access for new entrants, can lead to a movement to the underground economy or to other provinces, and increases costs and waiting times.

During a recent seminar hosted by the Residential Construction Council of Ontario (RESCON), Michael Sherrard, of Sherrard Kuzz Employment and Labour Lawyers, backed up Laura Dawson's views. He pointed to findings made in the report which claimed decisions made by OCOT, especially around compulsory certification, are based on "intuition or anecdote" and are not evidence-based.

"She's (Laura) shown that there is actually an ability to collect evidence and then use the evidence to support a position. Thus far at the College, it would suggest we don't have the ability to actually bring forward evidence to support a position," he said, adding there seems to be the view of "let's just certify everybody."

"A lot of the activities of OCOT are infringing on traditional labour relations practices," added Richard Lyall, president of RESCON. "Rather than solving some problems, it's actually creating problems."

But Trainor is quick to point out what he views are gaping holes in the report.

"On the questions of whether or not a trade becomes compulsory or not, the College doesn't make that decision and anyone who reads the legislation would know that," he explains, adding these decisions go to a review panel.

He sat through the sprinkler installer hearings, for example, listening to fire protection services speak to the importance of making the trade compulsory in order to save lives.

"That's pretty damn good evidence," he states. "You might want to call it anecdotal, but I'll tell you it's authoritative."

Starting Feb. 2, 2017 the sprinkler and fire protection installer trade will be reclassified as compulsory.

"It's correct to say that certification doesn't necessarily always provide a safer work environment, if somebody is not doing everything else they ought to be doing," Trainor adds. "But I think the overwhelming evidence is that it is one of the critical elements in guaranteeing that the people are qualified to do the job."

Scoping out the scopes of practice

OCOT's scopes of practice and the role they play for various trades have been questioned by many in the industry. It's an area Trainor states Dean will be looking into.

"The College encouraged, invited, asked for the Dean review to look at those very important, critical issues, like the scopes of practice, how they're enforced and how that actually works," he adds. "The enforceable part of scopes of practice are in regulations. We rely virtually exclusively on what's in the regulation."

During his presentation, Sherrard expressed concern about the possibility of more trades becoming compulsory that have overlapping scopes of practice and what it could do to the industry.

"If the carpenters get compulsory certification (for example), nobody can touch the whole scope of practice? It's going to universally change how we're able to use labourers," he said.

"Are the scopes of practice used to help kids get through apprenticeship, or are the scopes of practice to be used to regulate and restrict who does what?"

The Dawson report also outlines scopes of practice as a potential problem. It states if Ontario proceeded with mandatory certification for construction trades, there would be a "deadweight" loss of \$75 million. The workforce would also shrink by five to six per cent.

Where does collective bargaining fit in?

When asked what role collective agreements have in enforcement at the College, Trainor was matter of fact, stating, "It has no impact whatsoever."

"If there's someone that's wiring your house, our job as a regulator and really as a safety-based organization is to ensure that they have the qualifications to do it," he adds. "Whether or not they're a part of a union or part of a collective agreement is not relevant to us. What's relevant to us is do they have the qualifications for the work they're doing when they're doing compulsory work, period."

However, Sherrard pointed out it isn't that cut and dry, adding the role of enforcement inspectors isn't clear.

"They're not paying attention, so far, to any of your jurisdictional dispute history of the OLRB (Ontario Labour Relations Board) and they're not paying attention to your collective agreements," he said.

There is also a grey area in the scopes of practice that could impact the bargaining process, Sherrard explained.

"That might be the one fly in the ointment that's really going to be problematic for us as we go into our next round of bargaining, and then when we're out on sites actually trying to comply with those scopes of practice, versus recognition clauses, versus your work jurisdiction pieces in the back of your collective agreements," Sherrard said. "Can I rely upon 50 years of

Ontario Labour Relations Board jurisprudence, of all the bargaining we've done, or is it all up for grabs?"

The saving grace?

Some decisions made by OCOT could be compared to jumping "into the water without trying to figure out how to swim," says Sherrard — but the Dean review may just be the life-preserver.

"Maybe with this Dean review, we've got at least a shot to improve it, to back up a bit," he stated.

According to Dean's April update, he and his team continue to hear from apprentices, individual tradespeople, employers, unions, training organizations and others. The write-in phase wrapped up in March with 107 submissions.

Dean said he intends to draft some sections of his report over the summer before his final recommendations are submitted in the fall.

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