

Stakeholders praise, pan new OCOT enforcement policy

by Don Wall May 29, 2017

Construction stakeholders offered mixed reviews after the Ontario College of Trades (OCOT) released its long-anticipated new Compliance and Enforcement Policy (C&E) May 18.

The policy was reviewed by Minister of Labour Kevin Flynn then approved by the OCOT board of governors and enshrines many of the principles recommended by consultant Tony Dean in November 2015 following extensive consultation with the industry.

The consultations continued after Bill 70, containing OCOT reform provisions, was approved by the Ontario legislature last December, with a new OCOT C&E committee given 180 days to prepare recommendations. In early spring, there was a further round of talks engineered by Flynn to resolve differences between compulsory and noncompulsory trades. Rifts on jobsites between the two factions had been instrumental in prompting the Dean review.

The new policy addresses C&E issues within OCOT jurisdiction, including promoting compliance with sections 2, 4 and 8 of the Ontario College of Trades and Apprenticeship Act (OCTAA) prohibiting trades from performing work outside of their scopes of practice.

When reached for comment, both Andrew Pariser, vice-chair of the Ontario Skilled Trades Alliance (OSTA), and Karen Renkema, senior manager of public affairs for the Progressive Contractors Association of Canada (PCA), offered praise for the new policy. Renkema called it "a step in the right direction" while Pariser said it was faithful to the Dean report and commented, "On first blush, this puts us in a direction that is very positive."

International Brotherhood of Electrical Workers (IBEW) Construction Council of Ontario executive chairman James Barry had an inside view of the C&E policy drafting process. He has served on the OCOT board of governors for six years and was a member of the nine-person committee drafting the policy. In a posting on an IBEW website, Barry said the new policy is "sensitive to both compulsory and noncompulsory trades."

Highlights identified by Barry are that Certificates of Qualification will be "respected and valued" — a point he said was at the heart of IBEW's concerns about Bill 70 — and that for the first time, it is directly stated that "compliance with the law is mandatory."

Barry also noted that OCOT has committed itself to enforcing the journeyman-to-apprentice ratio requirements established under the OCTAA.

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Ontario Skilled Trades Alliance

The policy contains an extensive section describing risk of harm in a compliance context, a point noted by the Ontario General Contractors Association (OGCA) director of government relations David Frame in an analysis he offered to his members. Otherwise, Frame said, the new policy is disappointing.

"With one exception the policy is so vague that it promotes the unfettered enforcement that caused it to run into conflict with the Labour Relations Board and established industry practices," Frame wrote. "It reviews the legal authorities of the college without providing a policy framework of how the authority will be enforced. It includes concepts proposed in the Dean Report including risk-based enforcement and public interest but it doesn't define them or suggest how they will apply to this policy.

"I am disappointed," Frame added in an interview with the Daily Commercial News. "We had hoped that Dean would require real changes and so far I haven't seen them."

"Public interest" was described in the report as a guiding principle "aimed at enhancing safety and protecting the public, individual tradespeople and other workers from harm." Said Frame, "Public interest, that is an extremely broad term. What is public interest in terms of enforcement, and how do they protect the public interest? They didn't even try, they just threw up the public interest...They just said, here's what we do, and this vague policy will allow us to continue what we've been doing."

Renkema and Pariser both said further development was needed to flesh out principles and enforcement practices. The policy incorporates themes developed at the four-day meeting of the compulsory and noncompulsory trades in the spring including the need for OCOT inspectors to recognize established trade practices and other trade and labour agreements. And given appeals provisions in Bill 70, OCOT inspectors will also be required to be familiar with Ontario Labour Relations Board (OLRB) dicta, Renkema noted.

"I am wondering how each individual inspector is going to be educated on all the applicable OLRB cases over the past 30 years when there has been jurisdictional disputes," said Renkema. "I am not sure that expectation is realistic."

She added, "We're looking forward to working with the college to ensure we are part of the education of the inspectorate."

Renkema was critical that there was no focus on "frivolous" complaints that had targeted PCA members among others in the past. During consultations, the OSTA, of which the PCA is a

member, had called for establishing an enforcement database that would identify enforcement irregularities, she said.

Pariser saw the new policy as broad-based, putting all sectors and trades including the non-construction sector administered by OCOT and both union and non-union trades on equal footing.

An OCOT spokesperson indicated that regular enforcement bulletins would be posted on the OCOT website for clarification of policy. Pariser said those bulletins would be important and he was also keen to see how enforcement worked in practice.

"There has got to be some support documentation or approach to how it is going to be implemented and regulated," he said. "What is going to give this document life, how are they going to breathe life into it?"

Pariser added, "Dean reported over a year ago, and so any step forward implementing Dean, especially his thoughts toward the public good, would be a positive. It is great to see it in writing but it is even better to see it in practice.

"OCOT did reach out to the stakeholders and I would encourage them to continue to do that."