

**Submission to the
Standing Committee on Justice Policy**

***RE: Bill 183 – An Act to revise and modernize
the law related to apprenticeship training
and trades qualifications and to establish
the Ontario College of Trades***

**by the
Ontario Federation of Labour
September 2009**

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The Ontario Federation of Labour welcomed the opportunity to participate in the 2007 Review of Compulsory Trades undertaken by Mr. Tim Armstrong. We agreed with the intent of the Review in so far as the province wanted to promote apprenticeship registration, completion, competence and safety, and to enhance the overall skill level of Ontario's workforce. Armstrong's Report, published in April 2008 made a variety of recommendations, among which was a suggestion to establish a trades governance body.

At the time, the Ontario Federation of Labour supported the concept, primarily as a means of ensuring that the decisions made by employers and organized labour within the trades would be implemented. However, we also knew that in order to move forward with an effective body, the lingering structural problems created by the previous Conservative government in the late 1990s must be addressed.

Unfortunately, Bill 183 fails to address the Conservative government legacy and offers a model that appears far too complicated to enhance the implementation of decisions and far too oriented on disciplining trades workers to be effective. We are concerned that the structures envisioned by Bill 183 as drafted will be: top-heavy and top-down; unaccountable; lacking a sufficient degree of expertise in the skilled trades; immediately mired in jurisdictional disputes; and bogged down in bureaucracy. As a consequence, Bill 183 will fail to establish an effective governance structure that could promote authentic trades and apprenticeship training in Ontario.

The Harris Legacy: Fragmenting the Trades

In the late 1990s, the Conservative government of former Premier Mike Harris decimated the legislation that governed trades and apprenticeship training: *the Trades Qualification and Apprenticeship Act* (TQAA). The majority of trades were removed from the TQAA and

placed under a new Act: the *Apprenticeship and Certification Act* (ACA) where they were fragmented into pieces, or skill sets.

As the Ontario Federation of Labour has consistently argued, the ACA undermines and diminishes the career potential of authentic trades by reducing and eliminating their associated benefits. The ACA fragments authentic trades by redefining skill sets as “trades” even though far less time, training and on-the-job experience is necessary to learn them. By blurring the distinction between authentic trades and skill sets, the ACA undermines high quality apprenticeship training, leaving workers with fewer skills, and less mobility

Promote the trades as a viable and preferable career choice by maintaining the mobility, versatility and wage benefits associated with certificates of qualification in authentic trades, high quality apprenticeship training, and the red seal program.

than that which is provided under authentic apprenticeship training programs. Under-skilled workers—those with recognized skill sets but without expertise in the trade as a whole—can be paid less and are more vulnerable to labour market cycles since their skills are less transferrable.

Bill 183 Must Repair the Damage

Preserve Authentic Apprenticeship Programs

Sadly, rather than correcting this situation, Bill 183 entrenches the ACA’s fragmentation of authentic trades. By replacing both the *Trades Qualification and Apprenticeship Act* (TQAA) and the *Apprenticeship and Certification Act* (ACA) and combining the classifications that existed under the respective Acts, Bill 183 permanently reclassifies fragments of trades and niche skill sets as “trades” (Bill 183, Section 9, p.53). In fact, under Bill 183, what used to be designated as a restricted “skill set” (i.e. “Water Meter Installer”) is now explicitly redefined under Bill

183 as a *bona fide* trade. Furthermore, whereas the TQAA clearly establishes that an apprenticeship program must be a minimum of two years, Bill 183 makes no such provision. As Bill 183 is presently written, any program could be classified as an apprenticeship program regardless of whether such a program takes six weeks or six years to complete and regardless of whether the program is primarily in-class or on-the-job.

Provide only one, consistent definition of journeyperson as an individual who holds a certificate of qualification, for all sections and sub-sections of Bill 183.

Within any governance structure, clearly distinguish authentic trades from licensed occupation, and amend Section 11 (Objects) to reflect this.

Distinguish authentic, high quality apprenticeship programs from the training required for certified occupations. Ensure adequate public funding for both streams.

Maintain High Standards of Qualification

We are further opposed to the provision in Bill 183 that would bestow the status of “journeyperson” onto a person who does *not* have a Certificate of Qualification but who practices as such in a voluntary trade (Bill 183, Section 60, sub-section 6, p.34), especially since this section is intended to apply to the ratio requirements in the voluntary trades.

Protect the Health and Safety of Workers and the Public

High workplace health and safety standards not only protect workers on the job, but also ensure that the public interest is protected. Promoting Health and Safety for workers and the public should be a key function of any trades governance structure, and the Ontario Federation of Labour recommends that section 11 of Bill 183 be amended to include a sub-section that reads: “To promote workplace health and safety to further protect workers and the public.”

Distinguish Between Authentic Trades and Licensed Occupations

Despite these serious shortcomings, it is not too late to amend Bill 183 to mitigate the damage inflicted on Ontario’s trades and apprenticeship system by the former Conservative government. One crucial step in this direction would be to clearly distinguish between trades and occupations, recognize the distinctiveness of their respective training requirements, and to provide designated and adequate funding to both apprenticeship programs (for authentic trades) and occupational training (for licensed occupations). This would assure high quality

and appropriate skills development for those seeking careers in either authentic trades or in occupations.

Such a step would also be in keeping with the way authentic trades are governed in other

Maintain the integrity of whole trades by eliminating, within Bill 183, the four proposed sectors or divisions.

As a fall-back, maintain only three divisions: Construction, Industrial, Service and replace "Motive Power" with a "Certified Occupations" division.

jurisdictions like Germany and Ireland. There, the governance model is comprised of equal numbers of organized labour, employers, and government representatives (who represent the public); decisions are made by consensus; and organized labour selects its own representatives for the governing bodies. Under the German and Irish model, occupations (where the worker is legally obligated to have a short-term training credential for certain skill sets) are not lumped together with authentic trades (where apprentices must acquire three, four or five years of primarily on-the-job training under the supervision of a number of journeypersons in order to get their license).

The Ontario Federation of Labour therefore recommends that section 11 of Bill 183 be amended to include a sub-section that reads: "To distinguish between authentic trades and certified occupations."

The Relevance of Sectors

Further to the points made above, we believe the distinction between authentic trades and occupations is crucial, and would be more valuable than the proposed Divisions or Sectors under Bill 183. Even Mr. Armstrong, in his report, questioned the relevance of the "traditional" sectors:

What relevance is to be attributed to the historical division of apprenticeship into four sectors – construction, industrial, motive power and services...?¹

Indeed, many members of the OFL's Apprenticeship Committee hold legitimate concern about the efficacy of further entrenching a myriad of different regulations and

¹ Armstrong, p. 99

qualifications on a single, authentic trade, simply because the trade is practiced in different settings. It should be obvious that imposing as many as four sets of qualification criteria on the same trade poses all sorts of unnecessary complications affecting everything from enforcement to apprenticeship training.

Establish a governing Board comprised of equal numbers of government, employer and organized labour representatives charged with implementing decisions made by organized labour and employers in PACs or trade boards.

Recommendations on ratios or compulsory or voluntary status should be made by the appropriate PAC, trade board or Divisional Board.

Rather than impose four categories on a single authentic trade, the Ontario Federation of Labour recommends only two: authentic trades and certified occupations. Each stream would be allocated appropriate levels of public funding and would develop training programs appropriate to each.

As a fallback position, the Ontario Federation of Labour recommends that the four divisions proposed under Bill 183 be changed to: Construction, Industrial, Services and “Certified Occupations”. Such a measure would allow for a distinction to be made between authentic trades and occupations and streamline the number of sectors. Such a measure would also necessitate a decision-making process for determining whether the skills and training requirements in question fall into the category of occupation or authentic trade.

Promoting or Undermining Authentic Apprenticeship?

If the object of the trades’ governance model proposed under Bill 183 is to promote authentic apprenticeship then based on the text of Bill 183, the Ontario Federation of Labour has some serious concerns as to whether or not the proposed structures will enhance or undermine the skills-base of Ontario’s workforce.

Bill 183 proposes three classifications of membership in the college (section 36, p.13):

1. Journeypersons (an individual who holds a certificate of qualification)²;

² The definition of journeyperson is set out in Part I of Bill 183, notwithstanding Section 60, sub-section 6.

2. Persons (individual, corporation, partnership, sole proprietorship, association or any other organization or entity)³ who employ journeypersons or who sponsor or employ apprentices;
3. Such other classes of membership as may be prescribed by a Board regulation.

Part II, sections 2 to 8 (p. 5) outlines a variety of prohibitions that together are intended to ensure that both employers and journeypersons are members of the proposed governance structure. In an effort to ensure that all employers are brought into the rubric of the proposed structure, Part II, section 7 stipulates that only employers who are members may hire journeypersons or sponsor or employ apprentices.

Consequences of Bill 183 in Compulsory Trades

For those trades designated as *compulsory* (where in theory the work cannot be undertaken at all if those engaged are not both qualified *and* members of the governance structure) such a provision makes sense. Employers cannot hire any person, other than a qualified journeyperson or authorized apprentice, to do the work. If the employer wishes to continue to undertake that work, then the employer must become a member of the governance structure, and be subject to all its fees and regulations.

Consequences of Bill 183 in Voluntary Trades

However, the situation becomes considerably more complicated when it comes to the voluntary trades. Here, many employers *voluntarily* engage licensed journeypersons and apprentices. Under Bill 183, there could be as many as 130 voluntary trades involving employers from racetracks to school boards to service agencies to bakeries. It is not at all clear whether these employers are even aware that if they wish to continue their voluntary practice of hiring licensed journeypersons, they would have to join the governance structure, pay fees and be subjected to a myriad of disciplinary procedures.

Consequences of Bill 183 in the Non-Profit and Public Sectors

Furthermore, many non-profit agencies (or even public sector employers) may find an additional set of mandatory fees creates too great a financial barrier—even if they wanted to participate in the governance structure. In cases where employers would not—or could

³The definition of person is set out in Part I of Bill 183, p.4.

not—join the governance structure, they would be legally obligated to abandon their practice of voluntarily employing journeypersons and apprentices. In fact, laying-off journeypersons and apprentices may prove to be a viable escape from the fees and the regulatory regime imposed by Bill 183. The effect of Bill 183 in the voluntary sector could very well reduce the number of employed journeypersons and the number of apprentices.

(Seen in this light, one cannot help but wonder whether the provision in Section 60⁴ to water down the definition of Journeyperson is a cynical attempt to artificially maintain the journeyperson status and retain employers' rights to hire apprentices—but at the expense of the quality of Ontario's apprenticeship training system.)

Employer Exemptions are NOT the Solutions

It has been suggested that whole swaths of employers might be exempted from the provisions of Bill 183 to avoid the contradictions we have noted in this submission. The OFL opposes blanket exemptions for employers and sees this route as flawed substitute for developing an effective, responsive, streamlined, comprehensive trades and occupations governance system in Ontario. For all intents and purposes, exempting whole swaths of employers would result in further de-regulation of the skilled trades. This will accelerate fragmentation, and erode trades and apprenticeship training.

The Crucial Role of Unions in Promoting Authentic Trades and Apprenticeship

In practice, unions would play an important role in resisting the de-skilling of workplaces and the undermining of quality apprenticeship training in the voluntary trades. Unions would likely encourage employers to join the governance structure to retain the employment of journeypersons and apprentices. *However, no such resistance would or could exist in non-union workplaces, where workers are more vulnerable, have less independence and consequently little influence with their employer.*⁵ In this context, the effect of Bill 183 could very well be a growth in the underground economy, diminished

⁴ Section 60, sub-section 6 redefines journeyperson, as an individual without a certificate of qualification working in the voluntary trades, for the purposes of *Section 60: Ratios*. Bill 183, p. 34.

⁵ This is a crucial point, and we will return to it when we discuss the importance of organized labour's right to select representatives at all levels of a trades governance structure, and the need to increase union representation throughout Ontario.

Clearly prohibit Ontario Colleges of Applied Arts and Technology from sponsoring apprentices; responsibility properly resides with the employer or joint-apprenticeship committee.

Private institutions must not sponsor apprentices.

value for certificates of qualification, reduced apprenticeship completion rates, and an overall reduction in the number of apprenticeships available.

Ultimately, further entrenching short-term skill set training as a substitute for high quality apprenticeship training will erode the value of careers in the skilled trades by reducing workers' mobility and pay, and increasing their vulnerability to trends in the labour market. Such consequences would be at odds with the Bill's stated objectives in Section 11 (p.6).

Sponsoring Apprentices: Only Employers and Joint Apprenticeship Committees

Finally, it must be understood that an apprenticeship is an employment relationship between an employer and an apprentice. Our position is in keeping with the definition of apprenticeship as being at least two years in length, of which 80 to 90 percent consists of on-the-job learning under the supervision of qualified journeypersons and only 10 to 20 percent consists of in-class lessons. This model allows apprentices to turn knowledge into real skill and expertise.

For this reason, the Ontario Federation of Labour believes that *only* employers and joint apprenticeship committees should have the right to sponsor apprentices and opposes any move that would allow Ontario colleges of Applied Arts and Technology to sponsor apprentices. If public or private colleges are allowed to sponsor apprentices, there will be a genuine risk that students would be recruited into high tuition fee-based "apprenticeship programs" that act as a revenue stream for colleges by front-loading the in-class training, and then leaving it to the program graduates to find—or not find—employment.

Eliminate the myriad of disciplinary committees and instead create a single enhanced enforcement unit clearly mandated to enforce all existing worksite codes, regulations, standards and policy and to work in cooperation with trade boards, Provincial Advisory Committees and other relevant ministries such as the Ministry of Labour.

Clearly limit and define the jurisdiction of the proposed governance structure to eliminate potential conflict between existing legislation and collective agreements.

Excessive Discipline but Not Enough Enforcement

Targeting Trades Workers

There is a myriad of disciplinary procedures outlined in Bill 183. Indeed, the text and structure of Bill 183 is nearly identical to the professional colleges designed to govern teachers, nurses, social workers, and early childhood educators. As such, Bill 183 creates conditions in which a written complaint from a member of the public is all that is required to trigger disciplinary procedures against College members.

As it is written, two-thirds of Bill 183 is devoted to disciplinary procedures while lacking the by-laws and regulations that could make the apprenticeship system better. Based on experience with the professional Colleges upon which Bill 183 is modelled, the Ontario Federation of Labour has grave concerns about the potential harassment of trades workers who will be subject not only to already existing laws, rules, codes, regulations, policies and contracts that govern worksites, but also to a new and broad array of "complaints" generated by "the public" alleging vaguely defined categories of "professional misconduct"; "incompetence" or "incapacity".

We know from the experience of teachers and nurses that too many of those governed by professional colleges are the victims of unfounded complaints. Indeed, in 2008, approximately two-thirds of all 242 complaints filed that year with the Ontario College of Teachers were either ruled frivolous, vexatious, or out of jurisdiction, or, pending investigation, were

either withdrawn, not referred, or dismissed. Those teachers who are unionized are at least fortunate in that they may avail themselves of the representation, expertise and resources (made possible by virtue of their union membership) to defend themselves should they be named in a complaint.

However, within the scope envisioned under Bill 183, we are concerned that too many skilled workers will be unnecessarily brought before the various disciplinary bodies of the proposed governance body. Those without union representation will be facing such accusations alone and unassisted, or will be forced to seek private counsel at great financial and personal expense to themselves. While systemic inequality is an ongoing concern in all Ontario workplaces, the Ontario Federation of Labour is very concerned that workers most vulnerable to systemic discrimination and inequality may also be those most often targeted for complaints. Such general inequality is compounded for those who do not have the assistance of a union throughout the process.

Ironically we also have concern—stemming from our experience with other professional colleges—that union members themselves may be singled out in the complaints process as a result of their union advocacy.

It is worth noting that any unnecessary harassment of trades workers may very well discourage people from choosing a career in the trades and again, undermine the stated objectives of Bill 183.

Disciplining Employers (Section 54) and Employees (Section 53) in the Voluntary and Compulsory Trades

Some may argue that the disciplinary procedures outlined in Bill 183 are fair because they apply equally to both employers and employees. And arguably, the provisions under Section 54 (p.32)—where the Registrar is authorized to conduct inspections to ensure compliance with Part II and other regulations—could reasonably be applied to both employers and employees.

But the consequences of this provision must be seen in the distinct contexts of the voluntary and compulsory trades.

Section 54: Voluntary Trades

For instance, in the voluntary trades, even the limited prohibitions outlined in Part II (p. 5) may turn out to be a *disincentive* for employers to participate in the governance structure. And because there is no *legal* requirement for employers to engage qualified journeypersons and take on apprentices, an employer may choose to avoid the governance structure altogether and cease the engagement of journeypersons or apprentices just to escape the minimal prohibitions in Part II of the Bill. This potentiality reinforces the concerns noted earlier, about the overall negative effects of Bill 183 on apprenticeship training in Ontario.

Section 54: Compulsory Trades

In the compulsory trades, the situation is very different. Currently, Ministry of Labour inspectors have the authority to issue on-the-spot tickets to employers, supervisors and unqualified workers who are violating training requirements, health and safety or other regulations within compulsory trades. No such provision exists under Bill 183. Consequently, we are concerned that under Section 54, the provision for enforcement is inadequate and ineffective.

Employers and Section 54: No Clear Mandate for Compliance

And while Section 54 (p.32) of Bill 183 *does* provides the Registrar with *the authority* to appoint inspectors “to determine compliance” with Part II or other relevant regulations anticipated under the Bill, there is *no mandate to actually do so*. Furthermore, the Bill is unclear on what authority—if any—the inspector will have to act if she finds a situation of non-compliance. Indeed, there is not even a provision that obligates the Registrar to report on the results of an inspection, let alone *impose consequences*.

While we can speculate that such a function is intended under Bill 183 to be within the purview of the Complaints or Discipline Committees or the forthcoming By-laws and regulations, the fact remains that this important aspect of Bill 183 remains ambiguous and does not authorize any immediate consequences for those in violation.

Workers and Section 53: All Complaints Trigger Action

By contrast, an investigation of a complaint initiated under Section 53 (p.31) *obligates* the Registrar to report on the results of the investigation (Section 59, p.33). And it is no

coincidence that in this section, the grounds cited as a trigger for an investigation are aimed *primarily at workers*. Indeed, three of four grounds listed under Section 53 (p. 31) *can only be applied to workers* who would be subject to potential restrictions—limited or prolonged—on their certificate of qualification.

Needed: Enhanced Enforcement of Existing Regulations

In his Review of Compulsory Trades, Tim Armstrong noted that far more scope is needed to ensure that employers, especially those in the compulsory trades, comply with a variety of rules, regulations, codes and standards. Most would agree there is a need for additional enforcement in the area of the underground economy and in the compulsory trades.

Indeed, this is precisely where we need additional financial and human resources, since, without adequate inspectoral staff no regulation in the world could have meaning.

Clearly and unambiguously mandate the Minister of Training, Colleges and Universities to enforce all standards, agreements and regulations associated with apprenticeship, including training agreements and training delivery agents.

In other words, Bill 183 should be focused on developing a unit that is adequately staffed, sufficiently authorized and appropriately empowered to create real consequences for employers—and workers—who are in violation of regulations and who put public and worker safety at risk.

To be effective, Armstrong argued that enhanced enforcement must:

...involve industry, labour and management in augmenting the enforcement role now performed solely by the Ministry of Labour inspectorate. The real knowledge of what is going on in the field lies with the industry participants. Their detailed and current day-to-day intelligence about field activities, effectively mobilized, could serve as an indispensable adjunct to the enforcement activities of the Ministry of Labour inspectorate.⁶

⁶ Armstrong, p. 104

This kind of enhanced enforcement unit—clearly mandated to enforce existing legal and regulatory requirements and endowed with genuine authority to create immediate consequences for those in violation—is precisely what appears to be weak or missing in the Bill 183.

Finally, with respect to Apprenticeship—a responsibility retained by the Ministry of Training, Colleges and Universities under Bill 183—we strongly recommend that the Minister be mandated to enforce all aspects of apprenticeship training agreements and training standards. Unfortunately, as Section 70 is currently worded, this function is only left to the discretion of the Minister.⁷

Effective Governance should be Bottom Up; Based on Real Expertise in the Skilled Trades

The Ontario Federation of Labour has supported the call for a more streamlined process for implementing the recommendations that come from equal numbers of organized labour and employers involved in the trades. Currently, the *Trades Qualification and Apprenticeship Act* (TQAA) provides for Provincial Advisory Committees (PACs). There is also provision within the *Apprenticeship and Certification Act* (ACA) for similar bodies known as Industry Committees. While we have noted many systemic problems rooted in the creation of the ACA, we also note that the Ministry has failed to establish Industry Committees for far too many trades designated under the ACA.

However, generally speaking, when Committees are established and comprised of equal numbers of organized labour and employers engaged in the respective trade, such bodies have more or less worked well. Unfortunately, too many useful recommendations made by these Committees on a variety of issues—including compulsory and voluntary status and ratios—have been tabled. Indeed, frustration with the existing system, among labour and employers, stems from the Ministry's failure to *implement* the Committee recommendations.

To correct this problem, we do not need additional layers of potentially bureaucratic, unaccountable structures but rather effective implementation mechanisms to ensure that any decisions made by employers and organized labour engaged in those authentic trades

⁷ Bill 183, Section 70, sub-section 1, p. 40 currently reads: “The Minister may appoint inspectors for the purposes of determining...” The OFL believes maybe the word “may” must be replaced with the word “shall”.

are not ignored. In this vision, decisions are made from the bottom-up and are based on genuine experience both on the job and within the trade.

A governing board—charged with implementing decisions made by organized labour and employers—and reflective in composition of those bodies, should be an obvious step forward and would be supported by the Ontario Federation of Labour.

Needed: Real Representation and Accountability

Ensure that organized labour—defined as the Ontario Federation of Labour and the Ontario Building Trades Council—is charged with selecting all employee representatives who participate within the governing structure, proposed under Bill 183.

Ensure that Employers organizations are charged with selecting all Employer representatives who participate within the governing structure, proposed under Bill 183.

It goes without saying that representatives must indeed be representatives—accountable to and selected by—those they represent. Without such structures of representation, there can be no meaningful exchange of ideas and viewpoints from a perspective broader than the individual worker or employer. This is especially crucial for employees.

Representatives must have independence—the ability to speak freely without an implicit or explicit threat of employer retaliation on the work site. Such conditions do not exist for non-union workers, and as a consequence, employee representatives who are not unionized may not put forward views that are seen to be in conflict with employer representatives. Indeed, our own experience to date—with Provincial Advisory Committees in which non-union employees are appointed—confirms that it is all too typical that non-union employees represent the views of the employer.

Moreover, without structures of accountability, the best that can be hoped for from non-union employees is that they represent only their own individual views. Simply put, while organized labour can generalize experience and identify trends, and while Labour can select knowledgeable and accountable representatives through its democratic structures of accountability, no similar structure or provision exists for non-unionized

Change the proposed name of the governance structure from "College of Trades" to "Ontario Trades and Occupations Standards Board" to avoid any confusion with existing professional colleges.

Eliminate duplication of jurisdiction over those already enmeshed in existing professional colleges, while maintaining the appropriate levels of public funding for high quality, accessible training and education for all authentic trades, occupations and professions.

Ensure that no provision of Bill 183 contradicts existing collective agreements or the Ontario Labour Relations Act.

workers. As a consequence there can be no such thing as a non-union employee “representative”.

Therefore, the Ontario Federation of Labour strongly recommends that within any contemplated trades governance body, organized labour—defined as the Ontario Federation of Labour and the Ontario Building Trades Council—be given the right to select employee representatives for all positions earmarked for employees.

Jurisdictional Concerns

Duplication of Governance Structures

There are a number of jurisdictional problems embedded in Bill 183 that, unless corrected, will obstruct the progress of any trades governance body.

Of course, a number of these problems are rooted in the *Apprenticeship and Certification Act* and are a function of the confusion around occupations and authentic trades. Nevertheless, it is worth reviewing some specific issues.

The most obvious is the duplication of College membership embedded in Bill 183 by virtue of the existence of professional colleges for Early Childhood Educators and Social Workers and Social Service Workers. We strongly oppose the mandatory imposition of a new governance structure on workers already enmeshed in existing Colleges. Furthermore, the fees associated with Bill 183—for both employers and employees in these sectors—are especially worrisome as many agencies already struggle financially and the workers in these categories are not typically among the province’s top income earners.

These workers should not be taxed twice to pay for multiple governance structures.

Ultimately, there is no need to import the flawed structures of existing professional colleges, originally intended to address a much different classification of employees, into the skilled trades. Especially when there are already sufficient rules, codes, regulations, policy, contracts and collective agreements governing worksites. Indeed, there is a danger that any new governance structure will become immediately bogged down pursuing jurisdictional issues that ought to be outside the mandate of a trades governing structure.

Conflicts with Collective Agreements

Most collective agreements raise the legislated floor on everything from wages, to health and safety, to joint investments in workplace training. These agreements already contain detailed processes by which employers exercise their rights in the workplace and ensure a fair course of action to resolve workplace incidents, including public complaints and

discipline. Once again, the Ontario Federation of Labour sees no reason to duplicate and create unnecessary conflict with collective agreements and recommends strongly that in the event of a conflict between legislation establishing a trades governance body and either collective agreements or collective bargaining legislation, that the latter, not the former, take precedent. To determine otherwise is an indirect attack on collective bargaining rights in this province.

All employees hired under Bill 183 as employees of a trades governance structure must be considered OPS members with full successor rights, seniority and pension benefits as OPS members currently employed within the Ministry of Training, Colleges and Universities.

The Ontario Federation of Labour strongly recommends that the layers of disciplinary procedures be restricted solely to those matters that involve explicit violations of existing provincial laws, regulations and standards and that such a process be more clearly defined to achieve these stated objectives. As we have learned from experience with existing professional colleges, jurisdictional conflicts will be inevitable unless the mandate of the governance structure is clearly limited and defined.

Finally, it should be noted that there is already a

collective agreement in place for those members of the Ontario Public Service (OPS) who presently work within the Ministry of Training, Colleges and Universities in the area of trades and apprenticeship. The Ontario Federation of Labour strongly recommends that, given the fact that Bill 183 retains Ministerial responsibility for apprenticeship, that there be no reduction in either the current number of positions or hours worked to administer and enforce apprenticeship agreements and training requirements. The OFL further recommends that all employees hired under Bill 183 as employees of a trades governance structure be considered OPS members with full successor rights, seniority and pension benefits as those currently working on apprenticeship and other relevant departments within the Ministry of Training, Colleges and Universities.

Structural Concerns

Appointments Council (Part XI)

Under Bill 183, the new governance structure is supposed to be an arms-length body and not an agent of the Crown. In the first instance, the

Mandate both Employers and Organized labour to select a minimum number of women and individuals from equity-seeking groups who have current and relevant expertise within the trades, when selecting representatives for the governance structure, proposed under Bill 183.

Lieutenant Governor in Council, on the recommendation of government, appoints the Appointments Council. The Appointments Council then appoints most other key decision-making bodies within the structure, namely: the Board; the Divisional Boards; and the Trade Boards. Furthermore, the Appointments Council will appoint the Roster of Adjudicators that will dominate the Review Panels charged with making recommendations on Ratios and Compulsory vs. Voluntary trades (Part XI, Section 63 (9), p.37). There is little accountability built in to this process and apparently no mechanism for appealing the appointments.

Moreover, the criteria assigned to these appointments do not give adequate importance to expertise in the skilled trades. While the Ontario Federation of Labour is a strong advocate for improving the numbers of women, Francophones, workers with disabilities, and

workers from racialized communities within the skilled trades, merely the existence of such characteristics cannot be the only criteria by which the selections are made to the Appointments Council. We are alarmed that it is not sufficiently clear in the selection

Extend the process of card based unionization to all Ontario workplaces and implement additional changes to make it easier for employees to secure union representation.

criteria that, first and foremost, a trades' self-governing body should be comprised at all levels of those with demonstrated expertise in the trades as either employers or journeypersons.

And while the Ontario Federation of Labour strongly recommends that a trades governance structure must allow employers and organized labour to select their own representatives and that the representatives have expertise in authentic trades, we also recommend that Bill 183 mandate both organized labour and employers to ensure that a minimum number of their selected representatives be women and members of equity seeking groups. Such a measure would integrate equity into all levels of the governance structure, would be more effective in improving diversity than simply assigning a portfolio to a staff person, as is currently proposed in Bill 183.

Finally, we re-iterate our concern that non-union employees are objectively unable to play a truly representative role, since they neither represent other workers, nor are accountable to them. We also note that our own experience in this regard demonstrates that non-union employees simply reflect the views of the employer and therefore appointing a non-union employee is tantamount to appointing another employer representative. If the government is truly interested in having representation from the widest possible layer of employees, then not only should organized labour be allowed to select their own representatives, but government should be pre-occupied with extending the breadth of unionization. And a good start in this regard would be to restore the process of card certification to all Ontario workplaces.

Governing Board (Section 13, p.7)

The concerns noted above must also be applied to the composition of the proposed governing board as set out in Bill 183. Again, to be genuinely representative and accountable, the governing board should at least be comprised of those with demonstrated expertise in the skilled trades and positions designated for employees must clearly be defined as—and be selected by—organized labour. Furthermore, we have grave concerns that under Bill 183, the so-called representatives of “the public” are expressly prohibited from having a current level of expertise by virtue of Section 13, sub-section 2 (p.7), where the concept of expertise is most unfortunately misconstrued as “bias”.

Trade Boards and Provincial Advisory Committees

In his Review of Compulsory Trades, Tim Armstrong recommended a new structure, but one that retained the integrity of the existing Advisory and Industry Committees (PACs):

The PACs focus on trade standards and they develop, with the Ministry, the training programs needed to meet those standards. Because of their trade expertise, the PAC members are uniquely qualified to perform that role. ... The proposed advisory panel’s role would be to receive the work of the PACs and consider applications for compulsory status in light of that work...⁸

For too long, recommendations on compulsory trade designation, made jointly by both organized labour and employers on Trades Provincial Advisory Committees (PACs), have been languishing: in some cases, for more than 20 years. Indeed, inaction on PAC recommendations has not been limited to the issue of compulsory trade status. Many PAC members report prolonged and ongoing frustration at the failure of the Ministry of Training, Colleges and Universities to act on a variety of recommendations made.

A governance structure that is genuinely representative, that includes accountable representation from both employers and organized labour is essential. A governing body should reflect these structures and work to implement the decisions of these bodies.

We are pleased that Bill 183 appears to mandate the creation of Trades Boards for all designated trades, but we are still concerned that these Boards will be overshadowed by the other various levels of bureaucracy—from the Divisional Boards, to the Review Panels,

⁸ Armstrong, p. 105

to the governing board, to the Executive Committee, to the myriad of Complaints, Discipline, Fitness to Practice, and Appeals Committees, and to the yet to be created Committees of the Board.

Needed: A More Streamlined Approach

Mandate the governance structure to publish a clear and transparent accounting of its financial data on an annual basis.

Revenues collected under Bill 18 should supplement, not displace, current apprenticeship funding.

Ensure that no fees are applied to appeal processes related to rulings or judgements of the governance structure; the lodging of complaints and the lodging of appeals should be treated in the same manner.

The Ontario Federation of Labour recommends a more streamlined structure in which the Trade Boards for a trade or group of trades make recommendations directly to a governing body that would be required to deliberate and act upon recommendations within a set time frame, with decisions and action plans clearly set out and available to the public. The governing body would be responsible for developing and executing an enforcement strategy for all laws and regulations governing trades and apprenticeship training.

Fees, Fines and Penalties

A special mention should be made about the fees, fines and penalties envisioned under Bill 183. Although membership fees in the proposed governance structure will be determined in the future, even a nominal fee of \$100 per member has the potential to generate a vast amount of money. According to the Armstrong Report, 2007-08 funding for in-school apprenticeship training, including seat purchases, pre-apprenticeship programs and co-op diploma programs, amounted to \$136.7 million.⁹ Of course there are other indirect costs associated with Ontario's apprenticeship system, and such costs are undoubtedly reflected in the operating expenses of Employment Ontario and in the funding assigned to Colleges of Applied Arts and Technology, not to mention the various scholarships and loans programs designed for apprentices.

⁹ Armstrong, Appendix 8, p.149.

However, assuming a ball-park figure of 500,000 potential Certificate of Qualification holders in Ontario, just for authentic trades, even a fee of \$100 could generate over \$50 million, the equivalent of the \$50 million Apprenticeship Tax Credit introduced in the 2009 Ontario budget, and over one-third of the amount currently allocated to funding apprenticeship. The Ontario Federation of Labour does not wish to see the revenue generated through the imposition of additional fees on employers and journeypersons displacing the funding currently earmarked and allocated to apprenticeship training. Given the scope of the governance structure envisioned by Bill 183, including employers and workers who are not currently certification holders, the general revenues collected through fees, fines and penalties could be quite vast—perhaps even in the hundreds of millions of dollars. The Ontario Federation of Labour calls for the utmost in transparency and accountability in the use and disbursement of all revenues collected under the auspices of Bill 183.

One additional note: while there are no fees applied to instigating any aspect of the complaints procedure, there is a fee applied to the process of appealing a decision of the Registrar where a certificate of qualification or membership in the college is refused. Workers should not be faced with an additional barrier in the event that an appeal is required and at a minimum, the Ontario Federation of Labour recommends consistency between the processes for lodging complaints and appealing decisions.

Conclusion

Of course, there is much that is unknown about Bill 183, as so much of its functionality has yet to be determined through the establishment of By-laws and regulations. However, there is enough included in Bill 183 to warrant significant amendments to ensure that it serves its paramount function of genuinely enhancing the skilled trades in Ontario, and improving authentic apprenticeship. While the Ontario Federation of Labour continues to support the notion of a trades' governance body, we urge members of the Standing Committee on Justice Policy as well as government members, to seriously consider the recommendations included in this submission:

Summary of Recommendations

1. Promote the trades as a viable and preferable career choice by maintaining the mobility, versatility and wage benefits associated with certificates of qualification in authentic trades, high quality apprenticeship training, and the red seal program.
2. Provide only one, consistent definition of journeyperson as an individual who holds a certificate of qualification, for all sections and sub-sections of Bill 183.
3. Within any governance structure, clearly distinguish authentic trades from certified occupations. Distinguish authentic, high quality apprenticeship programs from the training required for certified occupations. Ensure adequate public funding for both streams. Amend Section 11 (Objects) to add the following sub-section: “To distinguish between authentic trades and certified occupations.”
4. Maintain the integrity of whole trades by eliminating, within Bill 183, the four proposed sectors or divisions. As a fall-back, maintain only three divisions: Construction, Industrial, Service and replace “Motive Power” with a “Certified Occupations” division.
5. Ensure that no provision of Bill 183 contradicts existing collective agreements or the Ontario Labour Relations Act.
6. Ensure that organized labour—defined as the Ontario Federation of Labour and the Ontario Building Trades Council—is charged with selecting all employee representatives who participate within the governing structure, proposed under Bill 183.
7. Ensure that employers organizations are charged with selecting all employer representatives who participate within the governing structure, proposed under Bill 183.
8. Mandate both employers and organized labour to select a minimum number of women and individuals from equity-seeking groups who have current and relevant expertise within the trades, when selecting representatives for the governance structure, proposed under Bill 183.
9. Establish a governing Board comprised of equal numbers of government, employer and organized labour representatives charged with implementing decisions made by

- organized labour and employers in PACs or trade boards. Recommendations on ratios or compulsory or voluntary status should be made by the appropriate PAC, trade board or Divisional Board.
10. Eliminate the myriad of disciplinary committees and instead create a single enhanced enforcement unit clearly mandated to enforce all existing worksite codes, regulations, standards and policy and to work in cooperation with trade boards, Provincial Advisory Committees and other relevant ministries such as the Ministry of Labour. Clearly limit and define the jurisdiction of the proposed governance structure to eliminate potential conflict between existing legislation and collective agreements.
 11. Clearly and unambiguously mandate the Minister of Training, Colleges and Universities to enforce all standards, agreements and regulations associated with apprenticeship, including training agreements and training delivery agents.
 12. Amend Section 11 to include a sub-section that reads: “To promote workplace health and safety to further protect workers and the public.”
 13. Clearly prohibit Ontario Colleges of Applied Arts and Technology from sponsoring apprentices; responsibility properly resides with the employer or joint-apprenticeship committee. Private institutions must not sponsor apprentices.
 14. Mandate the governance structure to publish a clear and transparent accounting of its financial data on an annual basis; revenues collected under Bill 183 should supplement—not displace—current apprenticeship funding.
 15. Ensure that no fees are applied to appeal processes related to rulings or judgements of the governance structure; the lodging of complaints and the lodging of appeals should be treated in the same manner.
 16. Change the proposed name of the governance structure from “College of Trades” to “Ontario Trades and Occupations Standards Board” to avoid any confusion with existing professional colleges.
 17. Eliminate duplication of jurisdiction over those already enmeshed in existing professional colleges, while maintaining the appropriate levels of public funding for

high quality, accessible training and education for all authentic trades, occupations and professions.

18. Maintain and expand the current number of positions and hours worked within the Ontario Public Service among those who currently administer all requirements of the Ontario apprenticeship program. All employees hired under Bill 183 as employees of a trades governance structure must be considered OPS members with full successor rights, seniority and pension benefits as OPS members currently employed within the Ministry of Training, Colleges and Universities.
19. Extend the process of card-based unionization to all Ontario workplaces and implement additional changes to make it easier for employees to secure union representation.

Respectfully submitted,

Ontario Federation of Labour.

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