ONTARIO COLLEGE OF TRADES
ORDRE DES MÉTIERS DE L'ONTARIO

REVIEW PANEL DECISION

Trade Classification Review

Sprinkler and Fire Protection Installer

TCR2013-1 SFPI

Submitted to: Board of Governors, Ontario College of Trades

Submitted by: Bernard Fishbein, Chair, Larry Lineham (Majority) and Robert Bradford (Minority)

Date: April 23, 2014

Contents

Introduction

[1] This is a review under section 61 of the Ontario College of Trades and Apprenticeship Act, 2009, S.O. 2009, c. 22 ("the Act") of the classification of the trade of Sprinkler and Fire Protection Installer ("sprinkler fitter") and whether that trade should be reclassified as a compulsory (or mandatory – the terms are used interchangeably throughout this Decision) trade within the meaning of the Act (the "trade classification review"). The consequences of designating a trade compulsory (as opposed to voluntary) is that only certain persons may be lawfully entitled to perform the work of that trade.

[2] The application has already been subject of two previous interim decisions dated December 2, 2013 and January 9, 2014 in which this panel rejected a submission by the Ontario Skilled Trades Alliance ("the Skilled Trades Alliance") that there was a reasonable apprehension of bias in this panel, and in particular the Chair continuing to hear this trade classification review. The background of this application has been outlined in those previous interim decisions.

The Review Process

[3] Information about the Oral Consultation was provided on September 25, 2013 with the posting of the invitation for Written Submissions to the College website and, on November 15, 2013, this information was provided again to all parties who made a request to make oral submissions. As outlined in the interim decision dated December 2, 2013, the Oral Consultation originally scheduled for November 28, 2013 was adjourned. Other deadlines were established to deal with submissions about the allegation of reasonable apprehension of bias. All of these deadlines, including information about the rescheduled Oral Consultation date, were provided to the parties who made Written Submissions. The Oral Consultation was held on January 6, 2014 and dealt with both the bias allegations and the merits of this review. The bias allegations were dismissed in a decision dated January 9, 2014. This is the Decision on the merits of the review.

Submissions Received

[4] The panel received submissions in support of the reclassification of sprinkler fitter to a mandatory trade from:

(i) the Sprinkler and Fire Protection Installer Trade Board ("the Sprinkler Trade Board") which also included letters of support from the Ontario Sheet Metal Workers and Roofers Conference ("the Sheet Metal Workers") and the Millwright Regional Council of Ontario of the United Brotherhood of Carpenters and Joiners of America ("the Millwrights")

(ii) the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 853 ("UA Local 853") jointly with the Canadian Automatic Sprinkler Association ("CASA")

(iii) the Ontario Pipe Trades Council ("the Pipe Trades Council")

(iv) the Provincial Building & Construction Trades Council of Ontario

(v) the Ontario Plumbing and Steamfitting Trade Board ("the Plumbing Trade Board")

(vi) the Facilities Mechanic/Facilities Technician Trade Board ("the Facilities Trade Board")

(vii) the Ontario Association of Fire Chiefs ("the Fire Chiefs")

(viii) the Ontario Municipal Fire Prevention Officers Association ("the Fire Prevention Officers")

(ix) the Ontario Professional Fire Fighters Association ("the Firefighters")

(x) various sprinkler installation contractors (both union and non-union)

[5] Submissions were also received opposing the request or urging, at least, the review be postponed until a later time from:

(i) the Skilled Trades Alliance

(ii) the Christian Labour Association of Canada ("CLAC")

(iii) the Ontario Home Builders Association ("the Home Builders Association")

[6] With the exception of the Plumbing Trade Board, the Facilities Trade Board, the Firefighters and the Fire Prevention Officers, all parties made oral representations as well.

The Context – The Act and Trade Classification Reviews

[7] As previously noted, this is the first trade classification review under the Act.

[8] Section 11 of the Act indicates the objects of the College which include the promotion and regulation of the practice of various trades including establishing apprenticeship programs and other training programs for the trades. Specifically included in these objects are determining the appropriate journeyperson to apprentice ratios for trades ("ratio reviews") and determining whether a trade should have a compulsory certification (as opposed to voluntary) status ("trade classification reviews"). Both of these types of reviews are conducted by review panels appointed by the College. All of the ratio reviews have now been conducted – but, as noted, this is the first trade classification review. Section 61(3) enables the College by regulation to prescribe the criteria and process to be used by a review panel in determining whether a voluntary trade should be reclassified as a compulsory trade. This has been done in Ontario Regulation 458/11, section 2(6) (the "Regulation"). Paragraph 7 of section 2(6) of that Regulation lists the criteria that a review panel should use in determining whether a trade should be reclassified as a compulsory trade:

(i) The scope of practice of the trade.

(ii) How the classification or reclassification of the trade may affect the health and safety of apprentices and journeypersons working in the trade and the public who may be affected by the work.

(iii) The effect, if any, of the classification or reclassification of the trade on the environment.

(iv) The economic impact of the classification or reclassification of the trade on apprentices, journeypersons, employers and employer associations and, where applicable, on trade unions, employee associations, apprentice training providers and the public.

(v) The classification of similar trades in other jurisdictions.

(vi) The supply of, and demand for, journeypersons in the trade and in the labour market generally.

(vii) The attraction and retention of apprentices and journeypersons in the trade.

[9] Before examining these criteria in our assessment (as we are directed to do by the Regulation), we wish to also make the following observations. As should be obvious, but was noted by the panel in an interim decision in the ratio review for sheet metal workers, dated March 11, 2013, in paragraph 20:

> "A ratio review panel has no role in supervising or directing the activity of the College or the Appointments Council. We are an ad hoc panel drawn from the roster of adjudicators for a specific purpose. Once we have come to a decision as to what the ratio ought to be, we have no other function".

[10] That observation is equally true for a trade classification review panel. Notwithstanding however obvious that observation may be, many, if not most of the submissions in opposition to the request to make sprinkler fitter a mandatory trade were criticisms directed at the operation of the College itself and how it has functioned to date. In particular, there were many criticisms of the previous ratio review panel decisions and the performance of the College itself. Whether those criticisms are meritorious or not, they are misdirected at this review panel. Even if we agreed with them (and we take no position), this panel has no ability to direct the College in its internal operations (and certainly no authority to "correct" or "fix" other ratio review decisions issued after a full consultation process and submissions (both written and oral) before other panels – not this panel) and therefore we will not repeat, analyze or comment on them except only insofar as they relate to our actual function – whether to make sprinkler fitter a mandatory trade.

[11] In particular, we do not consider these criticisms of the ratio review decisions or of the College to necessarily justify simply postponing or deferring this trade classification review (or any request for trade classification review for that matter), as was suggested, until a "transparent evaluation of the ratio review process take[s] place". Again, this does not appear to us within the authority of this panel – even if we somehow thought this was a wise policy choice for the College and how it operates.

[12] Also, we observe that some objections to this application were so devoid of merit that they do require explicit rejection. In particular, the notion that the application is somehow fatally flawed because it is made by a trade board is simply wrong. Section 2(1) of the Regulation specifically envisages that the request could be made by a trade board. Equally, the suggestion that because the application was made by the Sprinkler Trade Board, the application was lacking in transparency is equally incorrect. That request by the Sprinkler Trade Board was posted by the College on its website. If the time to respond (or the length of such response) to the request was inadequate, as suggested by some (since the Sprinkler Trade Board had as much time as it wanted or needed to prepare its request – a situation we note that would be common, if not identical, in any application-based process), we simply note that no party either asked for more time or to file a lengthier submission (in fact few, if any, even reached the maximum length imposed by the College). Equally, the notion that a "minority of a Trade

Board" might have some disproportionate undue influence is misconceived. Leaving aside that in this case the decision of the Sprinkler Trade Board to initiate this review was unanimous, ultimately the determination of the review is up to the panel hearing it – not a minority or majority (slim or wide) of a trade board.

[13] Having said that, we recognize and agree that a trade classification review is of a "different order of magnitude" than a ratio review, as was strongly and repeatedly argued before us. Adjusting or "fine tuning" the ratios between apprentices and journeypersons is not the same as determining that a trade that was previously voluntary is now mandatory – in other words, it would be unlawful for anyone other than the holder of a Certificate of Qualification ("C of Q") or a registered apprentice to perform that trade. Applicants seeking to have a trade made mandatory should be fully aware of this – and their requests establishing their eligibility and compliance with the criteria should be clearly demonstrated – perhaps even more clearly than in a ratio review – as opposed to merely asserting platitudes – or risk rejection and failure – a theme that will recur throughout this Decision.

Criterion 1 – The Scope of the Trade

[14] There is no serious dispute about the scope of the trade. It is set forth in section 41 of Ontario Regulation 275/11:

> 41. (1) The scope of practice for the trade of sprinkler and fire protection installer includes the following:
>
> 1. Planning proposed installations from blueprints, sketches, specifications, standards and codes.
>
> 2. Laying out, assembling, installing, testing and maintaining high and low pressure pipeline systems for supplying water, air, foam, carbon dioxide or other materials to or for fire protection purposes.
>
> 3. Measuring, cutting, reaming, threading, soldering, bolting, screwing, welding or joining all types of piping, fittings or equipment for fire protection of a building or structure.
>
> 4. Installing clamps, brackets and hangers to support piping, fittings and equipment used in fire protection systems.
>
> 5. Testing, adjusting and maintaining pipe lines and all other equipment used in

sprinkler and fire protection systems.

6. Operating and utilizing necessary tools and equipment for the installation of sprinkler and fire protection systems. O. Reg. 275/11, s. 41(1).

(2) The scope of practice for the trade of sprinkler and fire protection installer does not include the following:

1. The manufacture of equipment or the assembly of a unit prior to delivery to a building or site.

2. The installation of electrical equipment, devices and wiring not integral or attached to fire protection systems. O. Reg. 275/11, s. 41(2).

[15] There is no dispute that with the increasing technological development and diversity of sprinkler systems, the scope of the trade is becoming more complex. There are at least 1,000 types of sprinkler heads. There are different kinds of systems – water based and wet systems, dry systems, deluge systems, pre-action systems and early suppression fast response systems. Sprinkler systems are highly regulated both by building and fire codes that are constantly being updated.

[16] Some of the opponents to the classification (e.g. the Skilled Trades Alliance and CLAC) raised concerns that the scope of the sprinkler fitter trade overlapped with other mandatory trades, and in particular plumber, and that jurisdictional issues between trades should be resolved before any application for compulsory status be considered ("[a]n application for compulsory trade certification should not be the solution to jurisdictional disputes amongst trade unions"). However, we do not think that is either a correct or an appropriate analysis.

[17] First, it is noteworthy that conflicting or overlapping jurisdictional disputes between unions is not a criterion that is listed in section 2(6) 7 of the Regulation. Second, it was not a concern raised at all by those most directly involved in such trade who might be most directly affected by the alleged overlap or jurisdictional dispute (e.g. the Pipe Trades Council, the Plumbing Trade Board, the Facilities Trade Board and to a lesser extent the Sheet Metal Workers and the Millwrights), who all supported the request. In fact, other than this hypothetical concern over jurisdictional disputes between trade unions, no one pointed to an actual or real circumstance occurring in this application. Third, if there is such overlapping, it already exists with the plumbing trade which is already a mandatory trade and has not apparently posed significant problems to date, i.e. voluntary sprinkler fitters doing work that arguably is

covered by the scope of the mandatory trade of plumber. Certainly no history of any such problems were cited to us. It is hard to see how the making of sprinkler fitter also mandatory would make such a problem (if in fact there is any problem) worse. Fourth, it does not appear that in determining whether sprinkler fitter should be mandatory or not, we have the authority to comment on or determine the scope of another mandatory trade as CLAC invited us to do (and certainly not without notice to all those with an interest in the scope of the other mandatory trade of such a possible outcome). Lastly, and perhaps most importantly, it is difficult for us to envisage the actual scenario where this problem would necessarily arise (nor was one posed or explained to us). Jurisdictional disputes between competing trade unions do not generally arise over the core or central duties of the trade but over the less central or less fundamental or ancillary duties that may overlap with other trades and which other trades may also claim. If there was a concern about competing trade unions disputing work assignments (leaving aside that such a scenario would arise regardless of whether sprinkler fitters were mandatory or not), the always and continuing available recourse for resolving such dispute is the Ontario Labour Relations Board ("the OLRB") which and has a long history and established jurisprudence of regularly dealing with such jurisdictional disputes. Certainly many, if not all, of the existing mandatory trades have not infrequently been party to jurisdictional disputes at the OLRB, not only between themselves but with other non-mandatory trades. We are unaware (nor was any example cited to us) where whether one trade was mandatory (let alone the situation where both trades are mandatory) was the sole determinative factor in the OLRB determining a work assignment in a jurisdictional dispute between competing unions (as opposed to the full array of well-established criteria that the OLRB uses to assess competing jurisdictional claims). In the end, the problem of competing jurisdictional claims (if any) does not appear to us to be the business of the College, let alone this panel.

[18] We also note that there was a suggestion by the Skilled Trades Alliance that "maintenance" was "outside the purview of this review". Clearly, maintenance is encompassed within the scope of the trade (c.f. section 41(1)2 of the Regulation).

Criterion 2 – Health and Safety

[19] Much of the submissions of the proponents of the reclassification was directed at this criterion. There can be no doubt (and no one disputed) that sprinkler systems have been and continue to be a very effective way of preventing, controlling and limiting the always serious and potentially fatal hazards of fire in buildings. No one disputed there are increasing changes to legislation and building codes to

require them, particularly with respect to accommodation for the vulnerable (seniors in retirement homes). No one questioned any of this and there is no useful purpose in reviewing all of the detail of the submissions in this regard here.

[20] Equally, there is no dispute that there have been technological advances in the variety and complexity of sprinkler systems and consequently, their installation and maintenance. There can be no dispute that if the sprinkler system is improperly installed or maintained in a building, the people within it and its contents are at risk. This is equally important (a point very forcefully made in the submissions by the Fire Chiefs, the Fire Prevention Officers and the Firefighters) for first responders where sprinkler systems have a very dramatic impact on suppressing fire effects in their early stages thereby providing first responders more time to deal with fires and greatly reduce or eliminate their hazards and often catastrophic consequences.

[21] What is less clear is that this requires the designation of the sprinkler fitter trade as mandatory. The proponents argue simply that if sprinkler systems are so effective in dealing with these dangers to body and property, then it is obvious that their proper installation and maintenance would be enhanced by making those that do that work subject to compulsory certification. We were told that the greatest risk to failure of a sprinkler and fire protection system is human error and referred to an article in the National Fire Protection Association's Journal by Dr. John R. Hall Jr. A number of the parties pointed to a number of incidents where improper installation or maintenance of sprinkler systems caused them to fail (or potentially fail had the flawed installation or maintenance not been detected before actual failure).

[22] The difficulty is, even for these few incidents, we were provided with very little specific evidence with respect to them – who installed the systems (certified sprinkler fitters, or even sprinkler fitters at all) and why they were installed defectively (a design problem, a failure to properly inspect, etc.) – most importantly how frequently any such problems occur (what percentage of the total installations of systems do these incidents actually represent?). This was pointed out by the Skilled Trades Alliance, CLAC and the Home Builders Association – that there was simply not very much evidence (if any) provided by the proponents that the existing status of sprinkler fitters (i.e. voluntary, not compulsory) has contributed in any way to making the dangers of fire or the efficacy of sprinkler systems in fire prevention any greater or any less.

[23] This lack of clear evidence of a connection has troubled us significantly. Leaving aside the question of onus – those requesting the change should convince us that there is a need for a change, which was forcefully argued by CLAC, the Skilled Trades Alliance and the Home Builders Association – there has been a lack of specific evidence connecting making the trade mandatory and the obvious danger of fires and the obvious efficacy of sprinkler systems reducing that danger. Frequently in the ratio reviews, panels when in doubt with respect to the impact of this criterion erred on the side of safety. Certainly the first responders (who have no apparent economic self-interest in who or how or at what price sprinkler systems are installed other than they function properly) have intervened to strongly support that the trade be made mandatory.

[24] This argument also begs the question of exactly what kind of evidence is necessary or sufficient to support a change under this criterion. Must we wait until there is evidence of actual death, injury, harm or loss directly attributable to faulty installations or maintenance by someone not qualified before recommending measures intended to prevent such deaths, injury, harm or loss in the first place? If so, how often, how much? Where or how could such evidence even exist or be available?

[25] As noted before, the adequacy or sufficiency of evidence is a problem and a theme that recurs throughout this trade classification review. It was the thrust of the objections of the Skilled Trades Alliance, CLAC, the Home Builders Association throughout – that the reviews were intended to be evidence-based, and the proponents of change have failed (miserably in their view) to place adequate evidence before us to justify any change. As noted before, in their view, unlike ratio reviews, this was even more fundamental to trade classification reviews – where the decision was of a greater magnitude. Quite bluntly, there is much to be said for these arguments. It may be that future trade classification review panels will reject requests where the evidence is insufficient and does not adequately meet these standards.

[26] It may be useful to comment on onus at this point as well. The opponents to the request repeatedly (if not sometimes exclusively) argued that the onus was on those proposing to make the trade mandatory and they must provide empirical evidence that making the trade mandatory met the criteria and was needed – they say the proponents had failed miserably to do so in their submissions. While we certainly do not dispute or question that the onus lies on the applicants seeking to make the trade mandatory, it is not sufficient, or perhaps more accurately, not particularly persuasive for the opponents merely to point to the onus, say it has not been met, and say nothing more. A repeated

refrain of what is tantamount to "if it ain't broke don't fix it" is in the end not all that helpful. For example, in the end, none of the opponents even presented any significant evidence that there exists any serious amount of sprinkler fitter installation that is not essentially done by those who do not already hold C of Qs or are registered apprentices (albeit under a voluntary regime). In other words, there was no evidence presented that a significant number of existing employees would be negatively impacted if the trade were made mandatory. For example, CLAC's submissions, although suggesting initially that there were hundreds of employees with no C of Q performing sprinkler installations (with no reference to where this number came from), later seem to concede that most sprinkler fitters in Ontario are already unionized and represented by UA Local 853 (even going so far as to describe it as "a monopolistic labor market"). In the recent sprinkler fitter ratio review, UA Local 853 estimated it represented at least 80-90% of the persons active in the trade. CASA and UA Local 853 estimate their market share is 70-80%.

[27] The closest any of the opponents came to anything even remotely like this was the Home Builders Association that observed that with the increased requirement of sprinkler fitters in the types of construction that its members have been doing since 2010, about 1000 systems a year had been installed without a single system failure. However, that observation was subject to the very same failings and criticisms that the Home Builders Association made of the proponents' evidence – just by way of example, we had no way of knowing whether or how many of those installations were made by sprinkler fitters specialty contractors using already certified sprinkler fitters and registered apprentices.

[28] Having said that, we equally do not wish to establish evidentiary standards that are so high they are impossible to meet. In the end, we are left to examine each case on its own merits. Though troubled by the shortcomings of the evidence here, ultimately, we are influenced both by the strong support of the request by the first responders, the Fire Chiefs, the Fire Fighters and the Fire Prevention Officers, and that when sprinkler systems are so indisputably effective in dealing with the potentially catastrophic hazards of fire, the intuitive logic of requiring those who install and maintain the increasing variety of sprinkler systems with their increasing complexity to hold a mandatory Certificate of Qualification. In fact, the Fire Chiefs said solely as a matter of public safety, sprinkler fitters should be made a mandatory trade.

[29] We are strengthened in this conclusion by the fact, repeatedly pointed out to us, that sprinkler fitter is the only mechanical trade that is not already mandatory in Ontario. Quite bluntly, it is hard to

see how any criteria, and particularly safety, that make plumbers and steam fitters, sheet metal workers, refrigeration and air conditioning mechanics a compulsory trade, does not equally apply to sprinkler fitters – or as put by the Ontario Pipe Trades Council, sprinkler fitters "are no less complicated than us".

Criterion 3 – The Environment

[30] This criterion is much like safety. We heard much evidence of the environmental havoc that both fires as well as the efforts to control them (e.g. water conservation, chemical retardants, etc.) can inflict (e.g. air pollution, etc.). That was not and could not be disputed. To the extent requiring the installation or maintenance of sprinkler systems to be done by compulsory certified tradespersons improves their effectiveness, this is arguably positive for the environment. Again, the opponents said there was not any clear or cogent evidence that there would be any impact on the environment. What no one asserted, and is clear to us, is that making the trade mandatory certainly could not have any negative impact on the environment.

Criterion 4 – Economic Impact

[31] It is noteworthy, in our view, that to the extent "the industry" can speak with one voice, it appears to support the request to make sprinkler fitters a mandatory trade – UA Local 853, the Ontario Pipe Trades Council, CASA, the Sprinkler Fitter Trade Board and various sprinkler fitter contractors (who made both written and oral submissions) all support it. As well, it is noteworthy that the employer groups (CASA and the various contractors) as well as the Sprinkler Trade Board do not represent only unionized contractors – but both union and non-union. Those that oppose the request, the Skilled Trades Alliance, CLAC and the Home Builders Association are either not directly or only marginally or indirectly involved in this industry. Although they argued that we should not treat a trade classification review like a ratio review where decisions frequently reflected compromises between stakeholders, we think that this has some significance, particularly in assessing economic impact.

[32] In the end, none of the opponents raised any serious adverse economic impacts from making sprinkler fitter a mandatory trade – other than if mandatory it would compel many sprinkler fitters to become members of the College and pay its annual fees – and CLAC pointed out that only 19 of the current 1,968 Certificate of Qualification holders (according to the Ministry of Training, Colleges and

Universities ("MTCU") data) have voluntarily obtained membership in the College – a mere 1% participation rate. CLAC argued this demonstrated little or lack of interest in reclassification of sprinkler fitter to a mandatory trade, and satisfaction with the status quo. However, Local 853 explained this by pointing out (as it candidly admitted it had advised its members) since the current C of Q holders were grandfathered, they need not pay any College membership fees, whereas if they became members of the College (and received a new College C of Q), they would then need to continue paying College membership annually thereafter in order to maintain their C of Q.

Criterion 5 – Other Jurisdictions

[33] It appears that all jurisdictions certify sprinkler fitters (i.e. recognize it as a distinct trade). It is mandatory however, only in Quebec, Manitoba, New Brunswick and Nova Scotia. We were told that making sprinkler fitter a compulsory trade is being considered in Alberta, Saskatchewan and Newfoundland – although we were not told exactly what stage that "consideration" is at. Sprinkler fitter is a "red seal" trade (certification in one province is recognized in another province) although no one explained or addressed whether that would still be true if sprinkler fitter was made compulsory in Ontario and the sprinkler fitter held his Certificate of Qualification from a voluntary province.

Criterion 6 – Supply and Demand

[34] Current MTCU data show that there are currently 1,968 journeypersons (although it is unclear how many may not be actively engaged in the trade) and 423 active apprentice sprinkler fitters. The data from BuildForce Canada (formerly the Construction Sector Council) 2013 Labour Market Information does not separately break out sprinkler fitter from the general category of steamfitters and pipefitters, but does indicate a fairly balanced market for these trades in the aggregate and that "new entrants into the labour force are expected to meet replacement demand requirements". No one really argued that making the trade mandatory would seriously disrupt supply.

Criterion 7 – Attraction and Retention

[35] Currently, apprenticeship completion rates for sprinkler fitters are high. CASA and UA 787 say that completion rates for apprentices are 80% with 95% of the apprentices who complete their apprenticeship going on to obtain their Certificate of Qualification. They argue that making sprinkler

fitter a compulsory trade will only enhance these statistics – it will give a further impetus to apprentices to register and complete their apprenticeship particularly in the non-union sector, given it will be required to practise the trade. In fact, one of the sprinkler fitter contractors who made oral representations, who was not unionized, pointed to the massive written regulations in various codes and elsewhere over sprinkler fitter installation and simply asserted that training was impossible to be done adequately at the same time as operating a business – the task of training was a big job in and of itself. To the extent the trade is made compulsory, potential sprinkler fitters will be required to take some classroom training during this apprenticeship.

[36] We also note that the journeyperson to apprentice ratio for sprinkler fitters was reduced to 1:1 in 2007 in anticipation of an increased demand for the number of people in the trade, due, inter alia, to scheduled changes to building codes requiring sprinkler systems in more buildings, and that ratio was recently confirmed in a ratio review decision dated July 10, 2013. Leaving aside that the ratio is among the lowest in the Province, that ratio appears to have been unanimously supported by the parties participating in the ratio review on many of the same criteria here.

[37] A number of the opponents to the request observed that at present there was only one Training Delivery Agent ("TDA") for sprinkler fitters located in the Greater Toronto Area and if the trade was made mandatory, there would be concern about the capacity of the TDA to train a sufficient number of people (particularly as the legislative requirements to install sprinkler systems became more widespread and enhanced likely leading to a greater demand for sprinkler fitters), to say nothing of the disruption to potential sprinkler fitters of having to relocate to the Toronto area for their training. However, CASA and UA Local 853 who operate the training centre (and will accept persons who are and who are not members of UA Local 853) pointed out that the training facility was operating at only approximately 50% of capacity and that it would have no problem meeting even a doubling of demand. In fact, in the recent ratio review, it was pointed out that the training centre has never had to turn any apprentice away because of a lack of space. Furthermore, they noted in every province that did have a TDA for sprinkler fitters, there was only one location and potential sprinkler fitters had to travel for their training.

Conclusion

[38] In the end, within the parameters of the evidence presented to us, we are prepared to

recommend that sprinkler fitters be made a compulsory trade. As expressed, we have concerns about the occasional lack of or scanty evidence with respect to the criteria from all of the proponents and particularly of any clear or direct connection between making the trade compulsory and the criteria. However, other than observing that the proponents had not produced as much evidence as they say should have been produced, opponents provided no evidence of any harm either (as opposed to their continuing tirade of criticism of the College). We are strongly influenced by the support for making the trade compulsory by the Fire Chiefs, the Fire Prevention Officers and the Firefighters, whose only interest in these proceedings is greater safety. Equally, in the end, there is the intuitive logic that if sprinkler systems are so indisputably effective in dealing with the potentially catastrophic consequences of fire, then we should ensure that those sprinkler systems are installed by only people with mandatory certification. Equally, even assuming that as a general rule mandatory trade status should only be extended to a few trades, there seems no reason why sprinkler fitters should not be when the other mechanical trades are. None of the other criteria appear to provide any obstacle to finding sprinkler fitters mandatory.

[39] Having said that, section 61(6) of the Act allows the review panel to

> set out the minimum period of time that must elapse following the report before the issue of a trade's classification as a compulsory trade or a voluntary trade may be considered again and that period of time shall be known as the period of repose.

In these circumstances, for some of the reasons outlined above, and in particular that this is the first trade classification review, and our concerns about the evidence, we find that the period of repose should be only two years. That will allow the College an opportunity to accumulate and publish data about the effects of making sprinkler fitter a mandatory trade, and the opportunity for the opponents to seek to have the trade returned to its voluntary status in the event there are significant unforeseen adverse consequences.

[40] As noted before, it was not clear to us that there is any significant number of individuals actually regularly engaged in sprinkler fitter installation who are not already C of Q holders or registered apprentices. We do know that MCTU data indicates 1,968 registered journeypersons (although that number includes an undefined number of persons who hold a C of Q but are not actively engaged in the trade). We know from the recent sprinkler fitter ratio review decision that UA Local 853, at the oral consultation approximately eight months ago, indicated it had a membership of 1,350 journeypersons

(although its written brief stated 1,967 journeyperson members). Either way, whether enormously numerically significant or not, the obvious question of "grandfathering" arises for those who may have years of actually working at the trade even though they hold no C of Q (as it was voluntary before). Although adverted to briefly as a potential issue by the Skilled Trades Alliance and CLAC, no one really addressed this question and certainly no one proposed any method or criteria for "grandfathering" anyone presently actively working in the trade without holding a C of Q or being a registered apprentice (let alone how many of those individuals actually exist). Accordingly, before this recommendation is implemented, the College should develop and promulgate criteria for "grandfathering" any such people who wish to continue working as a sprinkler fitter, and in any event, within 120 days of this Decision. We recognize what we said at the outset about our limited jurisdiction over the internal operations of the College, but this appears inherently part of our mandate to determine whether sprinkler fitter should become a compulsory trade – and quite bluntly, it appears that no one else is in a better position (or any position for that matter) to determine those criteria. Certainly that includes this panel which heard no submissions on how such grandfathering should work.

[41] Lastly, and importantly, we also wish to make clear that our decision here was close. As this is the first trade classification review, for those awaiting and watching this decision, we wish to make clear that evidence satisfying the criteria set out in the Regulation should be clear and convincing, or other requests in different circumstances might well not meet with the success of the sprinkler fitter here.

DATE: April 23, 2014

"Bernard Fishbein"
Bernard Fishbein, Chair

"Larry Lineham"
Larry Lineham

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Minority Opinion

[42] The Review Panel appointed under section 21 of the Ontario College of Trades and Apprenticeship Act, 2009, S.O. 2009, c. 22, to consider an application for reclassification of the sprinkler fitter and fire protection installer trade from a voluntary to a compulsory trade, has filed its Decision in the matter.

[43] The decision of the Review Panel is that the application is approved and the trade of sprinkler fitter and fire protection installer will be designated as a compulsory trade.

[44] This minority opinion documents the dissenting view of one of the three Review Panel members, Mr. Robert Bradford. It is submitted to the College of Trades with due respect to the majority opinion of the Chair, Mr. Bernard Fishbein, and third panel member, Mr. Larry Lineham, and also recognizing the College's procedures which formalize a panel decision with a majority opinion from two of the panel members.

[45] As the Decision notes, "our decision here was close." One the one hand, the College of Trade's review process explicitly limits review panelists to considering only information that is submitted to them or arises from oral consultations. The process also clearly defines the seven criteria on which the panel must make its decision and limits the decision to those criteria only. It is the responsibility of an applicant or proponent for reclassification of a trade to show that the change is a necessary one that satisfies the review criteria by providing factual, empirical evidence or, where none is possible, at least credible research data and forecasting information either developed or audited by a credible third party.

[46] On the other hand, review panelists are appointed, in part, for their relevant experience and knowledge. The extent to which they are permitted to, or should, use their own discretion based on their experience and knowledge in the decision-making process is not clear and open to some degree of interpretation by individual panel members.

[47] As is clearly identified in the Decision, this case was notable for its lack of factual evidence from either proponents or opponents. Although they presented a compelling case supporting compulsory certification based on anecdotal and hearsay 'evidence', proponents failed to bring forward reliable evidence that would show how the reclassification requested would address the prescribed criteria. Similarly, opponents of the application, who were more focussed on broader issues of College of Trades processes which are outside of the mandate of this panel, alluded to some negative effects they believe would result from reclassification, but they brought forward no fact-based evidence to support any of their objections.

[48] In reaching the Decision, the majority Review Panel appears to have chosen to allow a

significant degree of subjectivity in its deliberation and therein likely lies the basis for the divergence in opinion between the majority review panelists and this minority opinion. This opinion adheres more strictly to the premise that the success of an application for reclassification of a trade as compulsory or voluntary must depend on a reasonable amount of objective, fact-based evidence to support a change.

[49] The majority Decision introduces the notion of 'intuitive logic' to the decision-making process and such influence has been avoided in this minority opinion. Intuitive logic is not necessarily synonymous with fact. Intuitive logic is a slippery slope. If it is to be applied to this classification review, what are the parameters? This minority opinion adopts the premise that grey areas should be avoided where at all possible in the decision-making process and that intuitive logic opens the door to significant subjectivity.

[50] The majority Decision notes that: "We are strongly influenced by the support for making the trade compulsory by the Fire Chiefs, the Fire Prevention Officers and the Firefighters, whose only interest in these proceedings is greater safety. Equally, in the end, there is the intuitive logic…that if sprinkler systems are so indisputably effective in dealing with the potentially catastrophic consequences of fire, then we should ensure that those sprinkler systems are only installed by people with mandatory certification."

[51] The representatives of the fire prevention and firefighting communities did present a compelling and well-supported case establishing the absolute value of properly designed, installed and maintained sprinkler systems and fire protection systems in saving lives and property. These facts are accepted without reservation. However, the majority Decision is prepared to draw the 'intuitive' conclusion that if sprinklers save lives, then mandatory certification of sprinkler installers must be necessary. This minority opinion does not accept that as a logical or correct conclusion. There was virtually no evidence or information presented by proponents of the application for reclassification to support assertions that a change to compulsory certification would enhance public safety, or that the public has been put at risk by unqualified workers.

[52] Ultimately the design, installation and maintenance of sprinkler systems and fire protection systems are governed by a plethora of codes, Acts and Regulations and an enforcement regime. In terms of installation and maintenance, the contractor has the ultimate responsibility for using qualified workers to meet the codes and regulations and for ensuring that systems are installed correctly. There

was no similar demonstrable direct connection established between the safe and proper installation and operation of sprinkler and fire protection systems and whether the fitter or installer has voluntary or compulsory trade status. In other words, proponents did not support their opinion that there is a direct cause-and-effect relationship between the notions of a 'qualified worker' and a 'certified worker'. The assertion is that only a certified tradesperson is a qualified tradesperson, but proponents provided no evidence to support that opinion.

[53] The Review Panel, in its Conclusion, concludes that: "Even assuming that as a general rule mandatory trade status should only be extended to a few trades, there seems no reason why sprinkler fitters should not be when the other mechanical trades are." It is a fact that the other mechanical trades are amongst the few trades in Ontario to have compulsory trade status, but it does not necessarily follow that therefore so should the sprinkler fitters. Without information about the background and experience of compulsory certification in the other mechanical trades which might indeed be relevant to this application, the status of the other mechanical trades must be considered irrelevant.

[54] In closing its Conclusion, the majority Decision states that 'none of the other criteria appear to provide any obstacle to finding sprinkler fitters mandatory'. Again, this minority opinion takes a diametrically opposite approach to that reasoning and suggests that the fact that there do not 'appear' to be any obstacles to making the trade mandatory is not an acceptable rationale for making a change with largely unknown outcomes. Rather, it is considered that unless a good reason can be presented for making such a change then it should not be made until and unless such need can be proven. It is not sufficient to simply opine that there do not seem to be any reasons why the change should not be made. To do so is tantamount to shifting the onus to the opponent(s) of the change to demonstrate why the change should not be made and that is not in keeping with the College of Trades' review policies.

[55] The majority Decision places considerable weight on the fact that the proponents for reclassification represented a strong consensus from the sprinkler and fire protection industry. Employers and the relevant unions are jointly requesting compulsory certification for the trade and it is noted that CASA members are both union and non-union contractors. However, while labour-management consensus within the industry sector is a persuasive factor in support of the application, this sector consensus, on its own, is not sufficient for the application to succeed in the absence of reliable information addressing the seven review criteria.

[56] The Panel heard that proponents of making sprinkler fitting and fire protection installation a compulsory trade have been frustrated for many years at the lack of a process for applying for reclassification. While there is considerable empathy with their frustration it cannot be considered a relevant factor in considering whether this application succeeds based on the seven review criteria.

Decision Criteria

[57] This minority opinion takes the view that in order to succeed in an application for reclassification of a trade from voluntary to compulsory, the Review Panel must be presented with or have access to sufficient empirical and/or research-based evidence to demonstrate that the change is necessary, will have positive results within the industry sector, and that its net impact on all stakeholders identified in the review criteria is a positive one.

[58] The seven review criteria that a review panel is required to use in determining whether a trade should be reclassified as a compulsory trade are listed in Ontario Regulation 458/11, section 2(6), paragraph 7, as follows:

(i) The scope of practice of the trade.

(ii) How the classification or reclassification of the trade may affect the health and safety of apprentices and journeypersons working in the trade and the public who may be affected by the work.

(iii) The effect, if any, of the classification or reclassification of the trade on the environment.

(iv) The economic impact of the classification or reclassification of the trade on apprentices, journeypersons, employers and employer associations and, where applicable, on trade unions, employee associations, apprentice training providers and the public.

(v) The classification of similar trades in other jurisdictions.

(vi) The supply of, and demand for, journeypersons in the trade and in the labour market generally.

(vii) The attraction and retention of apprentices and journeypersons in the trade.

[59] The following sections of this minority opinion will evaluate the application for reclassification against each of the seven review criteria which, again, are considered the only criteria to be considered by the Review Panel.

Criterion 1 – Scope of practice of the trade

[60] As is accurately and thoroughly set out in the majority Decision, there is no substantive disagreement about the scope of the trade. It is clearly defined by provincial regulation and by CASA with minor variations. It is also agreed that the trade of sprinkler fitter and fire protection installer is a complex one and growing more so with the number of sprinkler head variations, types of systems and regulatory requirements. The complexity of the trade, which is established, demands that the skill level of the fitter/installer is commensurate with the complexity of the system being installed. While proponents in their submissions alluded to linkages between mandatory certification of the trade and skill levels required to competently install sprinkler and fire protection systems, no factual data or reliable evidence was presented to the Review Panel to establish such a direct relationship.

Criterion 2 – Health and Safety

[61] Proponents of the application suggested that reclassification to compulsory trade status would enhance the health and safety of workers by the training received through the apprenticeship program. Unfortunately, no statistics were available from the WSIB because sprinkler fitters are grouped in with other mechanical trades for statistical purposes. Regardless, proponents provided no reliable information or data to support their opinion that there is a positive connection between compulsory certification of the trade and enhanced worker health and safety.

[62] As noted above, public safety was a major theme of the proponents' support for compulsory certification. And again, as noted, the firefighting and fire prevention representatives presented an indisputable case establishing the absolute connection between public and first responder safety and the use of properly installed and maintained sprinkler and fire protection systems. What was not established was any connection between the proper and therefore safe installation of these systems and whether they were installed by tradespeople qualified through their certification (voluntary) or otherwise qualified through training and experience but not certified. While this might be another area where one is tempted to apply 'intuitive logic' to the decision-making process, in this case it could be faulty logic to accept that certification is the only means or a guarantee to ensure qualified installation. Even though it may well be the case, in this review process certification of a sprinkler fitter has not been shown to be a significant factor in the safe installation and/or maintenance of sprinkler and fire

protection systems by qualified persons.

Criterion 3 – The Environment

[63] Evidence was presented by proponents of the application for mandatory designation of the trade to clearly show the potential negative impacts on the environment resulting from improperly installed and/or maintained sprinkler and fire protection systems. In particular, the fire prevention and first responder proponents presented fact-based information on this subject. Proponents did not, however, present similar factual information to establish any connection between environmental impact and compulsory designation of the trade. The argument they present is the same one as is repeated through most of the criteria: that mandatory certification of the trade would provide a benefit or improvement with respect to a given criterion. However it remains an intuitive opinion and no factual evidence or data was presented to establish a direct relationship between mandatory designation and enhanced environmental stewardship.

[64] Therefore, based strictly on the factual information and data presented to the Review Panel on the application for mandatory designation of sprinkler fitters and fire protection workers, the minority view is that the net impact on the approval or rejection of the application under this criterion is neutral.

Criterion 4 – Economic Impact

[65] Very little factual or data-based information was presented to the Review Panel on the subject of the potential economic impact of compulsory certification of sprinkler fitters and fire protection installers. Such information would have been very useful in making the Review Panel's decision on this application because economic impact, either negative or positive, is a key criterion with potentially significant implications for individual tradespeople, contractors, trade unions, the public and the provincial and municipal governments.

[66] It was established that a decision to approve the application for mandatory designation would have an economic impact on journeypersons who will incur annual membership fees to the College of Trades in order to practice their trade.

[67] The majority Decision of the Review Panel concludes, in support of its approval of the

application for compulsory designation of the trade, that “In the end, none of the opponents raised any serious adverse economic impacts from making sprinkler fitter a designated trade – other than if mandatory it would compel many sprinkler fitters to become members of the College and pays its annual fees…” This conclusion carries with it the implicit and potentially significant risks of any ‘serious adverse economic impacts’ that might be realized. The fact that opponents to the application did not bring forward any reliable information about potentially negative economic impacts cannot be held to be a factor in support of the application.

[68] Given that no substantive evidence was presented to show economic impact, either positive or negative, the status quo is preferable until those impacts can be better assessed. The majority Decision references the adage that ‘If something isn’t broken, then there is no need to fix it’ and then suggests that this strategy is perhaps a bit trite and restrictive. With respect to this first application for trade classification review however, although proponents have presented a united and compelling request for compulsory designation, they have not presented any significant information or evidence to support a need for reclassification or the potential impacts of such a decision.

[69] The onus is on proponents of an application for trade classification review to clearly demonstrate the positive economic impact, or at least an acceptable negative or neutral economic impact, in support of their application. The decision not to approve an application for mandatory designation does not demand that opponents to such an application demonstrate unacceptable negative impacts of mandatory designation. Proponents could have presented information either to show economic benefits from mandatory designation or to address potential adverse economic benefits with respect to any or all of the various stakeholders identified in the review criteria. No substantial evidence was presented to address either correlation and therefore it is difficult to make any informed decisions on the application based on the criterion of economic impact.

[70] In addressing impacts on stakeholders it is particularly unfortunate that proponents did not speak to the issue of ‘grandfathering’, other than to acknowledge that some nature of grandfathering provision is contemplated. It is not sufficient to simply assert that how tradespeople without a Certificate of Qualification will be accommodated, if at all, will be determined at some point after compulsory certification is granted. At the least, proponents might have set out the principles on which they recommend and agree that grandfathering rules be developed.

Criterion 5 – Other Jurisdictions

[71] The majority Decision accurately documents the evidence received about the mandatory or voluntary designation of sprinkle fitters in other Canadian jurisdictions. The Canadian experience is a mixed one and no information was provided to demonstrate any correlation between mandatory certification of the trade and related positive or negative impacts.

Criterion 6 – Supply and Demand

[72] As is accurately documented in the majority Decision, current apprenticeship completion rates for sprinkler fitters are high, with a proportionately high percentage of those completing their apprenticeship going on to obtain their Certificate of Qualification on a voluntary basis. This indicates that, to the extent that apprentices are attracted to the trade and enter the apprenticeship system, those in the system will almost all seek their Certificate of Qualification even though there is no compulsion to do so.

[73] Labour forecasting data presented indicates an adequate supply of sprinkler fitters in the near to mid-term. However, there was no substantive information presented by either proponents or opponents to the application for compulsory designation addressing the potential impact, either positive or negative, of such designation on the future supply of sprinkler fitters needed to meet the demonstrated demand in the near to mid-term.

[74] No information was presented to address whether granting of compulsory certification would have an impact on the current supply/demand balance which is apparently stable and suitable in the context of the limited supply and demand data presented to the Review Panel. CASA stated that provincial legislation mandating increased use of sprinklers in seniors' facilities and the residential sector will significantly increase the demand for sprinkler fitters and fire protection installers. Having noted that, what impact would designating the trade as a compulsory one have on meeting the increased demand?

Criterion 7 – Attraction and Retention

[75] It is presumed that if compulsory designation was approved for sprinkler fitters, intake numbers

in the formal apprenticeship system would increase, although no information was presented to the Review Panel to address how many tradespeople currently working as sprinkler fitters would have to enter the apprenticeship system to gain certification, although from information that was provided about union membership, apprenticeship levels and CASA members' strong market share, it would appear there are relatively few. Nor was there any information presented addressing generally how compulsory designation might otherwise affect current intake levels and the decisions of potential entrants to the trade. This and other information such as how compulsory certification might impact apprentice retention levels when apprenticeship changes from voluntary to mandatory, even if it were some credible forecasting or survey data, would have been very useful in reviewing the application with respect to the criterion.

Conclusion

[76] In conclusion, this minority opinion holds that in an application for reclassification from a voluntary trade to a compulsory one the onus is on the proponent(s) to demonstrate factually and objectively that the change is a necessary one and that it satisfies the seven review criteria.

[77] Proponents of this application have failed to provide adequate information about impacts or why reclassification is necessary. Not only is such reliable and factual evidence lacking in the application and the subsequent oral submissions, it is virtually non-existent with respect to any of the seven review criteria and therefore the application cannot succeed.

[78] In particular, proponents did not establish the linkages, if any, between compulsory certification of the trade and training, health and safety or any of the other review criteria. Such linkages were asserted as if they were fact, but there was no reliable evidence brought forward to support the assertions. Establishing such linkages is considered fundamental to demonstrating a need for reclassification as a compulsory trade.

[79] Section 61(6) of the Act allows the review panel to: "set out the minimum period of time that must elapse following the report before the issue of a trade's classification as a compulsory trade or a voluntary trade may be considered again and that period of time shall be known as the period of repose." The majority Decision recommends the period of repose be only two years in this case and this minority opinion is in agreement. As noted throughout, this opinion rejecting the application for

reclassification is based on the lack of substantiating evidence in the proponents' submissions and it is agreed that two years should provide the College with "an opportunity to accumulate and publish data about the effects of making sprinkler fitter a mandatory trade…" However, while the majority Decision takes the view that the application should be approved and could be reversed in two years if adverse consequences were experienced, practically such a reversal of the decision would be virtually impossible once the change was made. It is far more prudent to delay such a significant change until such a time as its necessity can be established and its potential impacts are better understood.

DATE: April 23, 2014

"Robert Bradford"
Robert Bradford

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