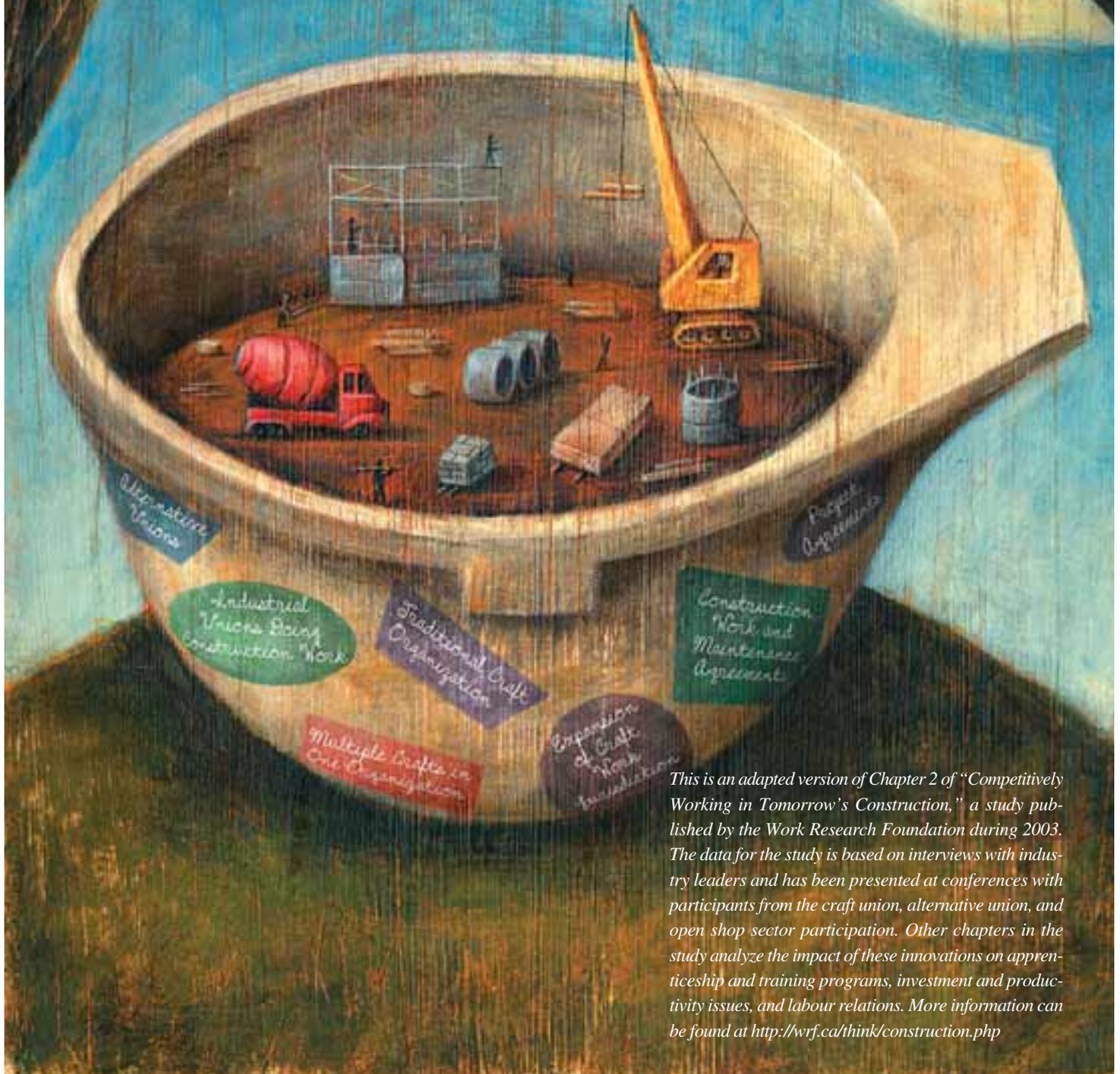


# SEVEN CATEGORIES OF INNOVATION

RESEARCHER RAY PENNINGS EXAMINES CHANGES IN INDUSTRIAL CONSTRUCTION AND ITS NEW LABOUR MODELS.

ILLUSTRATION BY STEVE ADAMS



*This is an adapted version of Chapter 2 of "Competitively Working in Tomorrow's Construction," a study published by the Work Research Foundation during 2003. The data for the study is based on interviews with industry leaders and has been presented at conferences with participants from the craft union, alternative union, and open shop sector participation. Other chapters in the study analyze the impact of these innovations on apprenticeship and training programs, investment and productivity issues, and labour relations. More information can be found at <http://wrf.ca/think/construction.php>*

**I**T IS GENERALLY ACKNOWLEDGED that alternative union organization and the open shop sector, particularly in Western Canada, has developed a growing niche in industrial construction markets for the better part of two decades. However, it is also evident that some craft unions were also implementing innovations in work organization. Are these innovations a prelude to even more fundamental changes in the organizational infrastructure affecting the organization of construction work? Only time will tell. However, their impacts on everything from apprenticeship programs, worker mobility, and who gets on a job-site do suggest that these are trends we should pay attention to.

There is no Canada-wide third-party data measuring the scope of such innovations, so it is difficult to back-up any characterization of the extent of these changes. The establishment of a seven-category framework within which we could try to analyze the scope of innovations is admittedly arbitrary. Yet it is helpful in understanding how organizations are attempting to work around certain legal and established organizational ways of doing things. To that end, we examine seven categories of labour organization.



## Traditional Craft Organization

The craft model of organization as developed during the past century includes several defining features:

Unions are made up of workers belonging to the occupational group for which they are named (e.g., plumbers belong to the Plumbers union; boilermakers to the Boilermakers union, etc.).

The work that is predominantly done by this occupational group is that which has historically been understood to be part of that craft. Over time, the assignment of work has been fairly precisely defined, and the distinctions between the crafts generally understood.

There is an alignment between the relevant apprenticeship and training programs and guidelines and the work completed by the trade. The work is done under the provisions of a collective agreement specific to the trade that is negotiated on a multi-employer provincial or regional basis.

**In some cases, owners might be relying increasingly on in-house construction crews, particularly as new construction relies increasingly on technical expertise related to specific equipment that is more efficiently accomplished with in-house crews than with outside construction suppliers.**

Few would argue that craft unions have played an historic role in cultivating a sense of craft identity and pride of workmanship associated with their trade. The status that has been achieved and the articulation of standards of craftsmanship are a legacy of this system and an important feature even today. Craft unions have played a significant role in recruiting and creating status for their particular trade, an important feature easily overlooked.

## Multiple Crafts in One Organization

It would appear that various craft unions are including members from other craft unions in their membership. This may be a consequence of the reorganization of work on the employer side. Whereas the division between general and trade contractor was once a very clear line, in some niches those distinctions are changing. The projects being taken on by trade contractors often do not fit as neatly within the jurisdictional lines of the dominant trade and often require a limited number of ancillary tradesman to complete the task. In fact, several of our interviewees agreed that a term such as cluster contractors would be a more accurate description of many of the specialty contractors who do work in industrial construction.

Many of these contractors began with a single trade and were appropriately certified and became part of the bargaining structures associated with that trade. As they began to require the services of other trades, usually in a relatively small proportion to their dominant trade, they simply hired employees with the appropriate tickets and em-

ployed them without the involvement of the second (or third and fourth) craft union provisions. Instead, all employees are treated under the terms and conditions of the original union to which the firm was certified, and the labour relations complexities that otherwise might come from the involvement of several unions within one firm are avoided. The original craft union benefits by the inclusion of additional members, the contractor avoids the transaction costs associated with multiple agreements, and the employees have work they otherwise might not have, so everyone benefits from this arrangement.

The challenge, however, comes when an increasing number of these arrangements develop over time and various craft unions end up with several trades within their membership. The provision of training and craft-specific representation is obviously compromised, and some of the emerging issues do pose challenges for inter-union relationships.

Although the focus has not been entirely within the industrial sector, the decisions by certain locals affiliated with the Labourers and the Carpenters to apply for representation rights for trades other than those they have historically represented are an obvious and public example of this trend. However, anecdotally, there are numerous examples, albeit on a much smaller and lower profile scale, which are indicative of this trend.



## Expansion of Craft Work Jurisdiction

Various examples were also cited where it was not the inclusion of additional trades but the taking on of work that historically has been associated with different trades that was tried. In one plant shutdown, tenders were arranged in such a way that more work was given to particular trade contractors in a conscious attempt to improve productivity, to the exclusion of other trade contractors that would ordinarily have been involved in some aspect of the project. The development of the Construction Craft Worker apprenticeship in Ontario and various multi-skilling initiatives are also examples of innovations cited that are based on workers in



specific trades taking on assignments that historically were assigned to other trades.



## Construction Work and Maintenance Agreements

The line between construction and maintenance work, while definable legally, has long been fuzzy in practice. Many larger industrial owners have an in-house construction crew typically represented by the industrial union that represents their production workers. In many cases, job security language negotiated by these unions ensures that the in-house craft workers have the first opportunity to complete any construction work before a tender for an outside contractor is issued. This is a long-standing practice, and, particularly in given sectors, the understanding that certain work belongs to certain unions is well established, regardless of whether that fits within the niceties of labour relations definitions and conditions for construction.

The feedback regarding this practice was mixed and varied widely by sector and region. Some examples were cited indicating that owners might be relying increasingly on in-house construction crews, particularly as new construction relies increasingly on technical expertise related to specific equipment that is more efficiently accomplished with in-house crews than with outside construction suppliers.

## Industrial Unions Doing Construction Work



There is a well-established history and precedent for industrial unions completing construction projects under existing collective agreements they have with project owners. However, in recent years, industrial unions have entered into the construction sector in new bargaining arrangements, albeit with legal twists that make the arrangements less than straightforward.

Several interviewees mentioned the possibility that unions that do not have a history of construction representation might be interested in entering this area. Some of the examples involved fabrication work, which has not been the exclusive purview of construction unions. However, there is some evidence



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that the process of tendering and allocating this work is changing, and more industrial unions are becoming involved in the sector.

The involvement of industrial unions was discussed more in the context of a prospective possibility than present reality. (We might also add that there were very different undertones regarding the desirability or likelihood of this development.) However, its potential significance does merit exploration.

The discussion was prompted by a 2002 decision of the Ontario Labour Relations Board that has been interpreted by some that a potentially significant rethinking of jurisprudence may be developing in Ontario. The decision noted (in paragraph 37) that: "there is no requirement under the Act that construction employees be represented by construction industry trade unions, nor is there any requirement that collective agreements that cover construction employees fall under the construction industry provisions. The Board concludes, therefore, that there is no obligation that the CEP be a trade union within the meaning of section 126 in order to represent these employees by way of a voluntary recognition agreement. There is, similarly, no need that the collective agreement conform to the Board area and sector requirements because the agreement does not purport to be a voluntary recognition agreement in the ICI sector."

The import of this is the possibility that the limited field of unions entitled to represent workers in the construction sector in Ontario, which the jurisprudence to date has restricted to the craft unions and CLAC by virtue of a grand-fathering exception in Section 158(4), may be opened up to any union making an application. It is interesting to note that when the Nova Scotia Labour Relations Board ruled in 2000 that representation in the construction sector of that province was restricted to only "one (1) or more of fourteen (14) international skilled trade or craft trade unions all with headquarters in Washington, D.C, that cumulatively, had the trade jurisdiction to perform all of the work defined by the phrase 'construction industry'" and denied the CLAC certification in that province on the grounds that "it did not have the requisite history of construction practices" in Nova Scotia, it relied heavily on the Ontario jurisprudence in its reasoning.



What is clearly established is that although we have an industrial construction infrastructure which is predicated on a craft model of organization, the front-line reality is that industrial construction is actually organized in a manner that often works around the system and its premises.

Of course, establishing the legal possibility for the entrance of industrial unions into the construction sector does not mean that they would intend to expand their operations and compete within that sector. In fact, representatives of three industrial unions contacted for this study, whose members presently do construction work under maintenance agreements, all insisted that expansion into the construction sector was not on their agenda, even if the legal possibility of doing so opened up. Nonetheless, these legal developments and their possible implications were noted in more than one interview.



### Alternative Unions

The existence of unions operating in the construction sector who market themselves as an alternative to the craft union model, highlighting the benefits of wall-to-wall certification, have been a feature of the construction industry for some time. The impact and extent of these unions vary significantly by jurisdiction and subsector. The presence of alternative unions has not been without controversy; however, particularly in Western Canada, these unions have had an increased presence and impact.

The legal provisions under which wall-to-wall unions are certified and represent workers in a system that generally assumes craft organization varies by jurisdiction, although the jurisprudence has been well developed, especially in jurisdictions from Ontario westward. CLAC is the most significant of these alternative unions, but there are several others which represent workers in different jurisdictions.

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## Project Agreements

Most jurisdictions have provisions by which special agreements can be negotiated outside of the normal multi-employer craft bargaining process for specific projects. The details of these provisions vary by region, but typically they contain more favourable wage and scheduling provisions, a no-strike/no-lockout guarantee for the duration of the project (which often overlaps a provincial negotiating cycle), and provisions by which all workers on a project will be covered by a contract and pay dues while on the project, although firms not certified cannot be certified during their work on the project.

## Open Shop

The variations on the craft model described to date all involve unionized workers, and, hence, it is not surprising that these variations are described using labour relations jargon. And, given that much industrial construction work continues to take place within a unionized environment, this is understandable.



However, this survey would not be complete without acknowledging the growing segment of the industry using open shop non-union labour. The most prominent open shop associations are Merit Contractors Association of Alberta and the Independent Business and Contractors Association of British Columbia. These employer organizations work together to deliver health and benefit programs, retirement benefits, training, and referral services which, in the organized sector, are generally provided by a union.

Our purpose in differentiating these seven categories of innovation on the craft model – each of which derives from specific examples cited to us during our interview process – is not to establish a template that either predicts or prescribes what will unfold in this sector. In fact, while these distinctions make sense in developing a framework for discussion, anyone stepping onto a specific job site will soon realize that the innovations as they are occurring do not neatly fit into these defined categories. A single project may include a combination of innovations.

What is clearly established by these cate-

gories is that although we have an industrial construction infrastructure – labour relations presumptions; safety, apprenticeship, and training systems; and labour market institutions, on both the management and labour side – which are predicated on a craft model of organization, the front-line reality is that industrial construction is actually organized in a manner that often works around the system and its premises.

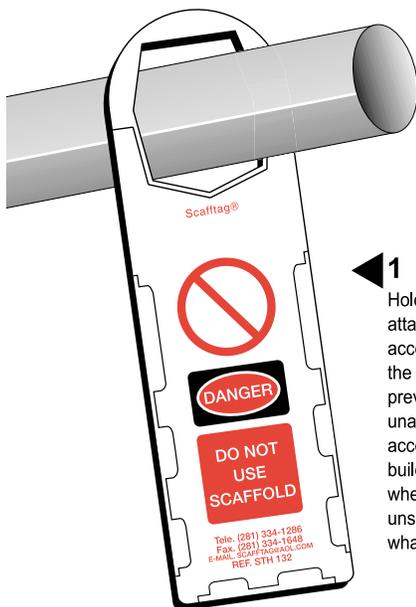
Taken in isolation, any one of these categories might be viewed as an exception, explainable by local conditions and circumstance. Viewed cumulatively, however, it is our contention that the nature of how work is organized in construction has changed dramatically and this is another reason we need broader discussions concerning how individual components such as apprentice and skill training, Labour Board policies or scope of work provisions in construction contracts need to change in light of our new “work organization” realities. □

*Ray Pennings is the Chair of the Centre for Industrial Relations Innovation at the Work Research Foundation, an economic think-tank based in Toronto.*



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