



March 13, 2015

Sent via E-mail (tonydean@deanreview.com)

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Dear Mr. Dean:

Re: Ontario College of Trades Consultation Review

On behalf of the Ontario Skilled Trades Alliance (the “OSTA”) we provide the following written submissions to your independent review of the Ontario College of Trades (the “College”).

On October 23, 2014, the Honourable Reza Moridi, Minister of Training, Colleges and Universities appointed you for one year to review the processes the College follows when assessing the classification or reclassification of a trade as compulsory or voluntary, issues related to scopes of practice (“SoPs”) for the trades, enforcement, establishment of apprenticeship programs and what consideration, if any, should be given to prior Ontario Labour Relations Board decisions on jurisdictional and work assignment disputes.

Ontario Skilled Trades Alliance

Founded in 2011, the OSTA is and has been an informal coalition formed to deliver to government and affiliated parties a consensus opinion of employers on matters relating to the skilled trades, including the College. The OSTA represents over 130,000 tradespeople employed by nearly 8,000 employers. The 130,000 tradespeople are employed in various industry sectors across the entire province of Ontario, both in unionized and non-union environments.

Many OSTA members will also be submitting separate comments on the questions posed in the Consultation Guide, which provide further detail on some of the more general arguments provided in this submission.

As an interested party in the development and protection of the skilled trades industry, the OSTA intends to address a number of the questions posed in the Consultation Guide, as well as provide general responses and comments within the scope of your Terms of Reference.

Introduction

Our submissions address questions from each of the following four major areas highlighted in the Consultation Guide:

- Public Interest in the Review;
- Issues Related to Scopes of Practice;
- Classification or Reclassification of Trades as Compulsory or Voluntary; and
- Decisions of the Ontario Labour Relations Board.

We have spent a considerable amount of time digesting your Review Consultation Guide and thank-you in advance for the thought provoking questions you have provided.

We support your objective of identifying opportunities to clarify and improve the College's policies, processes and/or criteria related to the College's decision making to date. Respectfully, our member companies' experiences with the College thus far illustrate an overt bias, and a serious misalignment with our understanding of the objects and functions under the Ontario College of Trades Apprenticeship Act ("*OCTAA*").

Ontario College of Trades

The College is established under the *OCTAA*. The *OCTAA* and its Regulations set out the legislative and regulatory framework for skilled trades in Ontario.

The College's mandate is to act as a professional regulatory body. Section 10 of the *OCTAA* provides the College has a duty to serve and protect the public interest in carrying out its objects and functions.

Subsection 11(1) of the *OCTAA* is of particular importance as it defines the objects of the College in achieving its mandate. The full list of objectives outlined in subsection 11(1) is as follows:

1. To establish the scope of practice for trades.
2. To regulate the practice of trades.
3. To govern the members of the College.
4. To develop, establish and maintain qualifications for membership in the College.
5. To issue certificates of qualification and statements of membership to members of the College and renew, amend, suspend, cancel, revoke or reinstate those certificates and statements as appropriate.

6. To promote the practice of trades.
7. To establish apprenticeship programs and other training programs for trades including training standards, curriculum standards and examinations.
8. To maintain a public register of its members.
9. To determine appropriate journeyman to apprentice ratios for trades subject to ratios.
10. To determine whether a trade should have compulsory certification status.
11. To receive and investigate complaints against members of the College and to deal with issues of discipline, misconduct, incompetency and incapacity.
12. To address compliance issues in respect of matters within the jurisdiction of the College.
13. To provide for the ongoing education of members of the College.
14. To work with other governments in Canada and the Minister with respect to the interprovincial standards program for apprenticeship and with respect to qualifications required for trades.
15. To conduct research in relation to trades.
16. To perform such additional functions as may be prescribed by a Lieutenant Governor's regulation. 2009, c. 22, s. 11(1).

As noted above, the College has a duty to serve and protect the public interest in carrying out its objects and its functions. We submit this critical public interest duty has been lost and remains invisible in the College's current processes. College decisions appear to be made, admittedly, without objective evidence to support outcomes; the negative effect of this is compounded by the fact that under the existing model, stakeholders do not have the ability to provide input on the effectiveness or fairness of the decision making processes. In addition, College enforcement activities illustrate a lack of regard for existing regulatory agencies and the duplication and/or a waste of resources this results in. We hope this Review Process will provide effective recommendations to address these gaps and misalignments.

Unfortunately, it appears that the College has also been caught in processes modeled on the adjudicative process of an adversarial labour relations model. Respectfully, we submit that these processes have become too controlled and/or influenced by professionals too self-vested in the outcomes, as opposed to focused on the protection of the public interest.

You will find throughout our submissions we acknowledge the importance of the historical OLRB jurisprudence as it relates to jurisdictional disputes between unionized construction trades. However, the reality is that the construction industry, and general industry to that extent, has a much broader labour profile and the College must take all perspectives into account regardless of labour affiliation or lack thereof.

We do not support the College continuing to rely upon the adjudicative model borrowed from the OLRB for all of its processes. We request consideration of a model built on research, evidence, expertise and consultative processes, as opposed to one based on adjudication. This could be modeled on portions of the current Health Professions Regulatory Advisory Council (“HPRAC”) in the Health Professions sector in the Province of Ontario.

Furthermore, in the public’s view, the College may appear to be self-interested as it makes decisions which further increase the number of compulsory skilled trades. In effect, its own decisions are resulting in the expansion of its scope.

As a solution, we submit for your consideration, the establishment of an Advisory Council, fully independent from the College, that could serve as an independent source of evidence-informed advice. This Council could enable the provision of background literature reviews, jurisdictional reviews and jurisprudential reviews as a foundation upon which consultations are conducted, culminating in advisory advice to the Minister on whether a trade should become compulsory or not. Again, we believe the HPRAC model can provide helpful guidance in this regard.

With the foregoing in mind, the questions posed in the Consultation Guide will now be addressed.

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THE PUBLIC INTEREST IN THIS REVIEW

Under the *OCTAA*, the College has a duty to serve and protect the public interest.

As noted in the Consultation Guide, the privilege of self-regulation granted to the trades comes with the responsibility of putting the interests of the public ahead of the interests of the trades.

In fulfilling this responsibility, it is important to consider the identity of the “public” and to determine the meaning of the “public interest”.

1. What do you understand by public interest?

An administrative body tasked with acting in the public interest is not a new concept. There are a number of professional regulatory bodies which regulate professions that are critical to our society’s well-being. This is done by enforcing standards of professionalism in order to protect the public consumer, while ensuring open, fair and unbiased access to those desiring to participate in the regulated occupation.

Given this role, it is vital that a professional regulatory body begin by operating in accordance with standards that focus on transparency and consistency. The public is entitled to know the standards a professional is expected to adhere to, and the standards the public can expect to benefit from. In order to accomplish this, standards must be clearly defined. Further, there must be access to a fair, transparent and effective complaints mechanism when skilled tradespeople fail to meet these standards.

Similarly, tradespeople and/or applicants (apprentices), are entitled to understand clear pathways to certification, and once certified, practice the trade in accordance with rules and responsibilities by governing their behavior accordingly. On the other hand, consumers of trades want a balance to be struck that results in accessible and affordable construction services throughout the province.

It is important to note that public interest is served by giving consumers confidence (as noted above) in the tradespeople they hire, but not providing mis-leading information regarding the ability of the college to practically check and enforce quality of work, business practices, structural integrity etc. Further, we are concerned that the College continues to provide mis-information to consumers, to the detriment of many gifted individuals practicing in the voluntary trades. Consumers should not be led to believe that the college's enforcement arm has the ability to police quality of work, or bad business practices by contractors or those working in the trades. It is essential that as part of this review that the current advertising practices of the College are examined under the lens of the public interest, considering whether the College is providing consumers an artificial sense of confidence in those that are members of the College.

By placing its focus on training and promoting trades, the College could effectively serve the public interest while providing new entrants to the trades with coordinated information. This information is necessary in order to navigate the interwoven systems currently in place in Ontario. By playing this co-ordinating role, the College could have incredible value to our province.

We respectfully submit inherent to public interest is a required level of public confidence in the self-regulating body. It is essential those tasked with operating the regulatory body are not personally vested in their agenda. For example, while it is acknowledged a professional regulatory body should act in a financially responsible manner, it should not be tasked with duties that allow it to increase its own revenue base by expanding its compulsory jurisdiction over additional skilled trades. This represents an inherent conflict that we submit must be dealt with by your review.

Further, it must be noted that the public interest includes the efficient and cost-effective fulfillment of the College's mandate. The waste or duplication of resources is clearly contrary to the public interest, no matter how that interest is defined. More will be provided later in our submissions on these principles of duplication, overregulation, and waste. By way of brief example, it is our view that consideration should be given to relying on experienced Ministry of Labour forces for enforcement activities, as opposed to the current silo-like forces utilized by the College.

We submit that the College could play a coordinating role or, at minimum, an educational role with respect to the applicable, but overlapping regulatory agencies. We suggest the development of an electronic portal that members of the public (i.e. consumers, applicants, tradespeople and employers) and the College can access to easily navigate the maze of regulatory bodies in order to most efficiently address their issue(s). In the past, the province of Ontario has benefitted from various parts of the government knocking down silos to improve communication and coordination between the individual ministries of the government. The College presents the same opportunity. This can be accomplished through the development of a user friendly portal that provides users with a map of where to go dependent upon their need and/or query.

It is also important to note the College, by definition, will have a direct impact on compulsory trades, but also an indirect impact on voluntary trades (members and non-

members). There are no other colleges like this. Less duplicative regulation and red-tape is a theme of all political parties and, by definition, seems to be in the public interest.

Related to this is the fact that all other colleges and almost all laws are reactive in nature. (i.e.: they only get involved after a complaint is made). However, the College – through enforcement- is actively looking for issues, instead of responding to public concerns. We respectfully submit that a reduction in red tape and proactive enforcement, with a system that focusses on the concerns of the public by responding to complaints, would be in the public’s best interest – as opposed to the current system that purports to seek out opportunities to enforce. This could also be accomplished through spot audits and or regulatory driven self-audits when necessary (i.e. see recent *Employment Standards Act* amendments).

Finally, we might suggest positive consideration to the College acquiring much of the ‘apprenticeship’ function from the Ontario Ministry of Training, Colleges and Universities as well, if we were able to experience a more independent, fair and transparent operation of the College. This could include registration of apprentices at a local level, acting as the local community liaison to work with employers and apprentices, scheduling and holding the exams and most importantly acting as a ‘one-stop’ portal for all those interested in getting into the trades by providing a road-map to the trades. Further this portal could also be the one place where all skilled trades promotion entities are featured. The current shared system approach between MTCU and the College is not working for tradespeople, nor their employers. The College could fulfill this function within its mandate of promotion and training.

2. *Who should the College serve? Who is “the public” in the public interest and what groups make up the public?*

The *OCTAA* does not explicitly include a definition of ‘public interest’ or any list of topics to be considered in advancing the public interest. It simply states the College “has a duty to serve and protect the public interest in carrying out its objects and its functions under this Act”.¹

In its absence, we submit the term “public interest” imports discretion to consider, and a duty to appropriately balance, a wide range of factors in reaching the best available conclusion that is consistent with the mandate of the *OCTAA*. A similar approach to defining the public interest is aptly described by the License Appeal Tribunal under the *Cemeteries Act*:

Where “public interest” must be determined under a particular statute, the term’s meaning is determined by the context, objects, and purposes of the statute in which the term is found and means the best possible

¹ Section 10 of *OCTAA*

accommodation of all interests contemplated by that statute, whether or not those interests are individually represented at a hearing under that statute.

It is not simply advancing an objective that is found to serve the public interest. It is also advancing such an objective with the best possible method, after a consideration of the countervailing and sometimes contradictory interests of the public as a whole. A model that blindly pursues the interest of one segment of the public, without appropriately considering the other stakeholders, is destined to become plagued by ineffective and inconsistent results.

Using this approach, the objects of the College are set out in Section 11 of the *OCTAA*. Based on its objectives, we submit the overall mandate of the College may be described as ensuring consumers in Ontario are able to retain quality services at affordable rates. In order to fulfill this mandate, it is important that skilled tradespeople are able to access Training Delivery Agents that assist in their efficient education and training from start to finish.

Given the definition of the public interest under the *OCTAA*, our view is that there are three fundamental groups which comprise the ‘public’:

1. the consumers of a good or service provided by a tradesperson, including those who come into contact with the good or service, in any manner, without necessarily having purchased it;
2. the tradespersons, or those aspiring to become a tradesperson; and
3. the employers and contractors who engage in the services of tradespersons.

Consumer interests must come above those of the other groups identified. These interests typically lie in areas such as access to a safe and quality product at an affordable price, their own protection, the protection of the workers, and the protection of the environment. Underlying these interests is a desire to have a level of trust in the product and/or service received.

The interests of tradespersons generally include access to adequate and cost-effective training, desirable work opportunities, choice of appropriate training to fulfill their chosen vocation, and a safe working environment. Tradespeople also want public awareness of their importance to the Ontario economy.. We submit the College, refocused, can assist in the public’s perception of the importance of the trades to the Ontario economy through the promotion of professional careers in the trades and the requisite dignity associated with a career in the trades.

Missing from the College’s current focus are initiatives aimed at addressing potential tradespeople from the new immigrant workforce, the potential tradespeople who have not found success in our current high school education system, and those with English proficiency challenges – all of whom have great potential if the College was to re-focus. A re-focused College could assist in the development of strategies to support these populations in making a successful career transition into the trades. The College could

also assist employers in developing a means to reduce the amount of apprentices who do not make it through to completion (i.e. 9th year first year apprentices). This may even mitigate the growing underground economy of tradespeople acting in a compulsory trade who feel the system has failed them and believe they have no other place to turn. All of the foregoing will positively assist the Ontario consumers who seek to rely on qualified tradespeople.

Similarly, a tradesperson's interest as it relates to the College is to have its regulatory body promote the interests of the trades as a whole, regardless of classification status, including the facilitation of industry growth - not the preference of one trade over another. On the other hand, employers and contractors are primarily concerned with their ability to provide a quality and cost competitive product to consumers via access to a safe, skilled, and available workforce. Importantly, employers take great interest in not only satisfied customers, but a satisfied trades' workforce; the right tools need to be available to employers to ensure this is the case.

Regardless of these differing interests, however, it is of fundamental importance to appreciate that the public interest as stipulated by the *OCTAA* cannot be met without, as a starting point, access to sufficiently skilled trades at volumes aligned with demands. This necessitates providing access to appropriate Training Delivery Agents ("TDAs") with strategies to address barriers to entering and successfully completing apprenticeships. We need a conscious assessment of a means to open up and expand the current TDA system. Without this training and access to employment markets, consumers will at some point, if not already, be unable to access high quality and affordable products and/or services.

3. *How should the College make decisions in the public interest where different segments of the public may have opposing interests?*

We submit the decisions of the College must always adhere to its legislated mandate and objectives. Where different segments of the public may have opposing views the "risk of harm" lens must always reflect the greatest priority. The process to reach such an assessment must be open, transparent and accessible to the public.

The much needed transparency in the processes could be assisted by providing answers to the following questions:

- (i) The Application - What is contained within an application from a Trade Board and why is it not shared with the broader stakeholder community to assist with informing their responses to the application vis a vis the review panel process?
- (ii) Scope of the Trade - Is the suggested scope of trade defined within the application? If so, it should be shared with all stakeholders in order for them to respond appropriately to the question of compulsory certification for a specific trade, or skill set of a specific trade.

- (iii) Notification of Application - Why are industry stakeholders not notified of the initiation of the review when the application is approved by the Trade Board? An early heads up would allow all affected industry participants to have ample time to prepare submissions to the review panel. The College should also notify all participants acting as skilled workers in the specific trade under review - both CofQ members and non-CofQ members - as a compulsory certification decision could drastically affect their livelihood.

Transparent and open processes contribute to the users' confidence in the outcomes.

We must therefore also strive to base decisions of the College on independent and objective evidence. The process must never be sacrificed for expediency. There is no doubt that with a broad definition of the public interest, differing views will arise on a variety of aspects within the College's mandate. As will be discussed in greater detail below, it is our view that the Health Professions Regulatory Advisory Council ("HPRAC") model provides an effective method for ensuring adequate consideration of all relevant stakeholder input – arising from independent, objective, and evidence-based resolution of opposing interests. We believe this model has the potential to assist in the design of process for both SoP reviews, ratio reviews and trade classification reviews.

Where certain interests of the public are outside the mandate of the College, it must be sure not to act in a manner which interferes with other institutions which serve the public interest as well.

4. Is the College currently protecting the public interest?

No. Respectfully, we do not believe the College has, to date, adequately protected the public interest. This is perhaps largely due to a lack of direction or definition. In our view, it appears the College's current structure and approach to its statutory mandate involves both a misdirection and duplication of public resources.

Our experience thus far, as it relates to the College's protection of the public interest, has been disappointing. The College has focused its resources, at least from our perspective, on enforcement, ratio reviews and a compulsory certification decisions with little or no evidentiary support for its findings. none of this suggests a focus on public interest as opposed to the self-interest of unionized trades.

The College thankfully has taken a step back to adjust the lens through which its work is accomplished. Training and the promotion of the trades has to get to the forefront of the College.

Another significant consideration related to the public interest, which is not being adequately addressed by the College or by MTCU, is access to training. Proper administration of and accessibility to Training Delivery Agents ("TDAs") is required to ensure adequate supply of qualified tradespersons to meet the needs of consumers. This is one of the most significant interests for those trying to enter a trade in Ontario. Not surprisingly, this is also a concern of the consumer public. Further, access to training is

directly connected to one of the objects of the College laid out in section 11(1) of the *OCTAA*, promoting the practice of trades. If individuals trying to enter trades are faced with barriers to entry, and do not have a clear indication of the path required to achieve certification in a trade, this objective is unnecessarily encumbered.

At present, our experience has seen special interests time and time again take over administration of TDAs. Only to allow their own special interests to creep into the processes as opposed to the focus remaining on those tradespeople seeking education, experience and ultimately licensing. This does not serve the public interest.

That is why, in our view, the College should set the training standards for TDAs. TDAs should be opened up to Ontario Colleges and coordinated by the Ministry. This could better ensure access to the training, devoid of special interests, as well as effective and accountable oversight, devoid of special interests, all of which would best serve the public interest.

5. How should the College advance the public interest?

We submit the College should advance the public interest by: focusing on training and promotion of the trades; avoiding the duplication of government services; and undertaking thorough consideration of the broader economic impact of the College's decisions. These considerations will not only increase effectiveness and efficiency in the delivery of services that protect the public, but will also avoid the addition of unnecessary costs on consumers and taxpayers generally. In particular:

Avoid the Duplication of Government Services

We submit the public interest is not served by duplicating regulatory regimes or enforcement mechanisms that are already in existence for the express purpose of protecting the public interest. For example, having inspectors/officers from the College, the OLRB and the Ministry of Labour ("MOL") who perform largely the same function or significant overlap in functions. Such duplication creates overregulation, conflict and a waste of scarce public resources.

Further, it leads to inevitable conflict in both the processes and decisions among the various regimes, requiring yet further public resources (such as the courts) in order to resolve those conflicts. These inconsistencies lead to the elimination of predictability and certainty in the regulation of the trades, from both a consumer, an employer and tradesperson perspective, and ultimately lead to a loss of confidence in the trades by the general public. As currently framed, while many of the College's enforcement mechanisms are in place to protect the public, they result in significant duplication with other governmental bodies already tasked with the same duty. For example:

Ministry of Labour

Well before the introduction of the College, the MOL was – and continues to be – responsible for the regulation of workplaces and trade activities. Its overall objective is to advance safe and fair working conditions for workers. The expertise of the MOL spans from employment standards to health and safety standards. A statutory duty of the MOL in fulfilling its mandate includes the enforcement of a number of pieces of legislation.

The MOL has developed and implemented strategies to prevent workplace injuries and to set standards for health and safety training. In achieving its objective, the MOL works with a number of specialized associations, agencies, boards and commissions, including but not limited to:

- Grievance Settlement Board;
- Office of the Employer Advisor;
- Office of the Worker Advisor;
- Ontario Labour Relations Board;
- Pay Equity Commission;
- Workplace Safety and Insurance Appeals Tribunal;
- Workplace Safety and Insurance Board;

With respect to the health and safety of tradespeople, Safe At Work Ontario is the MOL's current strategy to protect workers' health and safety on the job. It not only enforces the *Occupational Health and Safety Act* ("OHSA"), but has also undertaken great initiatives to introduce the majority of recommendations found in the Expert Advisory Panel on Occupational Health and Safety.

This raises the question: with a body of health and safety inspectors trained and familiar with Ontario workplaces, could we not benefit from expanding their responsibilities as opposed to creating additional and/or maintaining current College inspectors?

It is our respectful submission the public interest will be best served by collapsing the inspection function of the College into the MOL. This will allow the MOL to continue to provide the public with effective results, produced by well-established and experienced inspectors. MOL inspectors have experience in the specific industries in which they operate and are trained to take a holistic approach to enforcement; one that considers all relevant factors. This understanding of how legislation interacts with realities on the ground provides an effective and invaluable resource. Leveraging this existing experience will not only serve and protect the public interest, but will do so in a cost-effective manner by avoiding costs associated with knowledge transfer and training.

Ontario Labour Relations Board

This quasi-judicial arm of the Ontario Ministry of Labour, identifies itself as “an independent, quasi-judicial tribunal mandated to mediate and adjudicate a variety of employment and labour relations-related matters under a number of Ontario statutes’. It hears applications for cases involving the *Employment Standards Act*, *OHSA*, and *Labour Relations Act* – most commonly involving unfair labour practices, unsafe workplaces, fair representation cases, and construction industry grievances.

(http://en.wikipedia.org/wiki/Ontario_Labour_Relations_Board)

Ministry of Municipal Affairs and Housing

Ontario’s *Building Code Act*, 1992, and the Building Code are administered by the Ministry of Municipal Affairs and Housing, which governs the construction, renovation, change of use and demolition of buildings.

Under the *Building Code Act*, and the Building Code, Ontario is tasked with creating and maintaining policies and laws to promote safe, healthy and accessible buildings in Ontario. The Ministry of Municipal Affairs and Housing has also stated it is “responsible for ensuring an effective and efficient building regulatory system that supports the economy with respect to new construction, renovations and change of use to buildings.” [Emphasis added]

The *Building Code Act* and the Building Code are already enforced by local enforcement bodies, including municipalities. For example, a municipality issues building permits and enforces compliance through inspections and, if necessary, issuing orders (*e.g.* a stop work order or an order to comply). Under this regime, building inspectors are already tasked with ensuring contractors are performing competent and quality work. Further, Ontario is responsible for developing and enforcing a system for certain building practitioners to demonstrate their qualifications in their field of practice, which includes: (1) training, (2) examinations to qualify building practitioners, and (3) the registry of qualified building practitioners.

(<http://www.mah.gov.on.ca/Page10805.aspx>)

Ontario Building Officials

The OBOA promotes the construction of safer and more sustainable and accessible buildings in Ontario. It supports Ontario building officials in ensuring a safer and a more sustainable and accessible Ontario by delivering training and certification, promoting uniform code application, working with industry partners, providing a voice to policymakers, and advancing the profession.

(<http://www.oboa.on.ca/aboutus/>)

Further, the OBOA provides training opportunities for members in a more decentralized fashion than the province as a whole (Ministry of Municipal Affairs and Housing: Ontario Building Code: Qualification and Registration:

(<http://www.mah.gov.on.ca/Page8591.aspx>)

It also offers certification that acts as an enhancement to the Ministry of Municipal Affairs and Housing qualification examination requirements:

(<http://www.oboa.on.ca/certification/>)

Ministry of Consumer Services

Many rights of a consumer, and specifically those enforced by the Ministry of Consumer Services, are set out by the *Consumer Protection Act* (the “CPA”). It governs most of the more common consumer transactions in the marketplace and home, including the contracting for a service performed by a tradesperson.

Relevant to our purposes, it is illegal for a business or individual to give a consumer false information about itself or the product or service it offers. The CPA provides that it is an unfair practice for a person to make a false, misleading or deceptive representation. This includes a representation that:

- The person who is to supply the goods or services has sponsorship, approval, status, affiliation or connection the person does not have.
- The goods or services are of a particular standard, quality, grade, style or model, if they are not.
- A service, part, replacement or repair is needed or advisable, if it is not.

Ontario Motor Vehicle Industry Council (OMVIC)

The Ontario Motor Vehicle Industry Council (OMVIC) enforces the *Motor Vehicle Dealers Act*, which regulates and provides licenses for motor vehicle dealers and salespersons. In making its determination to license an applicant, the Registrar must be satisfied that the applicant “will carry on business in accordance with law and with honesty and integrity”. It has been said that “the Act in its regulation of motor vehicle dealers and salespersons is designed to protect the public interest which includes providing a safe

marketplace for consumers”.² To that end, “the Registrar must determine, based on the information made available in the application process, whether an applicant exhibited past conduct which offers reasonable grounds for a belief that the applicant will carry on business in accordance with the law and with honesty and integrity.”³

Further, a registered motor vehicle dealer may also have its license revoked. The Tribunal has stated the “law, honesty and integrity” requirements are “important to the public interest in that consumers rely on the honesty and integrity of salespersons and dealers in making their expenditures on automobiles [...]”.⁴

Ontario One Call

This is a call centre for anyone who wants to perform excavation/digging in order to avoid damaging underground infrastructure such as gas, water, sewer, phone, and electrical lines. It provides assessment of proposed site(s) and registration services for underground infrastructure owners to facilitate checks of excavation sites.

Ontarians who excavate without checking for infrastructure first and then damage infrastructure are legally liable for any damage they cause.

(<http://www.on1call.com/about-us/>)

Technical Standards and Safety Authority (“TSSA”)

The TSSA is a not-for-profit, self-funded (by fees to clients) regulator enforcing the *Technical Safety Standards Act* and its Regulations. It delivers public safety services on behalf of the government of Ontario in four key sectors:

- boilers, pressure vessels, and operating engineers;
- elevating devices, amusement devices and ski lifts;
- fuels; and,
- upholstered and stuffed articles.

The TSSA informs and educates end-users and industry participants regarding better safety practices and issues, new codes, regulations and requirements, and seeks to influence user behaviour. It also examines and certifies trades people, registers plants and equipment, and licenses devices, sites and contractors. Further, the TSSA reviews the design of new technology, new installations, alterations and modifications to existing equipment and plants. Finally the TSSA inspects/audits trades people, contractors, plants, equipment and

² 7432 v. Registrar, Motor Vehicle Dealers Act 2002, 2012 CanLII 77022 (ON LAT)

³ *Ibid.*

⁴ Umair Gilani Syed Muhammed & Imperial Fine Cars Inc. v. Registrar, Motor Vehicle Dealers Act 2002, 2013 CanLII 11904 (ON LAT)

sites for compliance with codes and regulations, and monitor developing safety related trends or issues.

(<https://www.tssa.org/regulated/about/profile.aspx>)

RenoMark

RenoMark is a voluntary certification association for renovators. It offers members educational updates on building codes, municipal requirements, and health and safety regulations. Further, it provides reputational assurance similar to those offered by licensed realtors, and also provides protections for consumers against grey-market “under the table” and “cash only” deals as well as warranties and after-sales service.

(<http://www.renomark.ca/>)

Canadian Standards Association (“CSA”)

Is a not-for-profit standards association with standards in 57 areas – it publishes standards and provides training and advisory services. It also provides safety and interoperability standards across its mandate. The CSA is accredited by the Standards Council of Canada

Further, the CSA is a division of CSA Group which also includes [CSA International](#), a global certification and testing organization, and [OnSpeX](#), a provider of consumer product evaluation services.

(http://en.wikipedia.org/wiki/Canadian_Standards_Association)

Professional Engineers of Ontario (“PEO”)

The PEO is a self-regulating body that governs Ontario's 73,000 professional engineers, and sets standards for and regulates engineering practice in the province. It has a provincial statutory mandate via the *Professional Engineers Act* to certify and maintain education of professional engineer. The PEO requires compliance with a Code of Ethics designed to put the public first.

(http://en.wikipedia.org/wiki/Professional_Engineers_Ontario)

Ontario Association of Architects (“OAA”)

This is a self-regulating body that governs Ontario's 5,200+ architectural professionals and students. Its statutory mandate is contained in the *Architects Act*. To be licensed as an architect, an individual must meet the education requirement, gain a minimum of two years practical experience, pass extensive examinations, and attend the OAA Admission Course.

Following licensure all architects must participate in the OAA Continuing Education Program.

(<http://www.oaa.on.ca/the%20oaa/about%20the%20oaa>)

Electrical Safety Authority (“ESA”)

The ESA is an administrative authority, an independent, not-for-profit corporation acting on behalf of the Government of Ontario with specific responsibilities for electrical safety. As part of its mandate, ESA administers regulation in four areas: the Ontario Electrical Safety Code; licensing of Electrical Contractors and Master Electricians, electricity distribution system safety; and electrical product safety. The ESA also administers the Appeals Regulation.

The ESA’s activities include:

- Identifying and targeting leading causes of electrical risk;
- Raising awareness, educating, and training in electrical safety;
- Ensuring compliance with regulations; and
- Investigating fatalities, injuries and fire losses associated with electricity.

(<http://www.esasafe.com/about-esa/role/>)

Tarion Warranty Corporation

Tarion is a private corporation which was established in 1976 to protect the rights of new home buyers and regulate new home builders. Tarion administers the [*Ontario New Home Warranties Plan Act*](#), which outlines the warranty protection that new home purchasers are entitled to in Ontario.

Tarion's mandate is to:

- License new home builders and vendors;
- Ensure builders/vendors abide by the *Ontario New Home Warranties Plan Act*;
- Help educate new home buyers about their warranty rights;
- Protect consumers when builders fail to fulfil their warranty obligations;
- Resolve disputes about warranty coverage;
- Investigate illegal building practices; and
- Promote high standards of new home construction.

(<http://www.tarion.com/About-Tarion/Pages/default.aspx>)

The Canadian Welding Bureau (“CWB”)

The CWB is a Canada-wide body which requires all welders that construct any structural steel component that will be used by the public or used temporarily, to construct these components for the public to be tested, certified and ticketed and provided with cards on a regular basis. They are supported by the industry that pay a yearly fee plus recertification of welders on a 3 year cycle,

(<http://eng.cwbgroup.org/ContactUs/Pages/TheCWBGGroup.aspx>)

Better Business Bureau

This is a non-profit organization founded in the interest of increasing marketplace trust in the United States and Canada. It provides a reputational assessment service for consumers and accreditation for businesses that pledge to adhere to its code of business practices. Importantly from a public interest perspective, it handles customer disputes with businesses

(http://en.wikipedia.org/wiki/Better_Business_Bureau)

Economic Impact

Finally, the economics of supply and demand impact the public interest. Shrinking or restricting the available supply of qualified tradespeople will lead to increased cost of services. Hence, we submit the public interest is not served by creating unnecessary restrictions on who may or may not provide the broadly described scopes of practice of a skilled trades service. The public interest balance to be struck necessitates narrowing what may or may not be done (i.e. tasks) by a particular trade in the context of what risks harm to the public.

We submit that the College must also clearly delineate between the “right to title” concept for the purposes of training and clear pathways to licensing, and “right to practice” concept to protect the public from harm. Balanced appropriately, these concepts will improve access to affordable services throughout the province while allowing for consideration of the entire system safety nets. These are the considerations that ought to lead to an appropriate balance in the overall supply and demand equation.

ISSUES RELATED TO SCOPES OF PRACTICE

A Scope of Practice (SoP) is a description of the work of a trade. Each of the 156 trades has its own SoP, which are set out in regulations for each of the four sectors made under the *OCTAA*: Construction, Industrial, Motive Power, and Service.

The Consultation Guide correctly points out that the process of reviewing and amending existing SoPs, or drafting SoPs for any trade that may be prescribed in the future, will be a challenging endeavour as there is no common approach to the concept, structure and format of SoPs. However, taking a look at SoPs as they currently stand, although there is no uniformity, the system will not be impossible to fix.

Given the fundamental importance SoPs plays in the College's mandate, it is essential to clearly outline the activities properly contained in a SoP. It is for this reason, the OSTA submits the process of classifying trades as compulsory or voluntary should remain on hold until issues related to SoPs, including the processes for reviewing SoPs, have been resolved.

Components of a SoP

- 6. *What impact do SoPs in regulation have on your daily work activities or on the way you conduct business/what aspects of a SoP are important to the work of your trade? Please explain.***

The current SoPs are not helpful or relevant. They are overly broad and are out of touch with present workplace practices that have evolved and continue to evolve.

Further, in current form, the SoPs do not assist the College in providing a basis for apprenticeship training, compliance and enforcement, nor will they assist a review panel in carrying out its function.

- 7. *Do you agree with the suggestion that trades may have core elements as well as peripheral elements?***

Yes.

- 8. *What should be the key elements of a SoP? In particular, should the SoP for a trade list all the tasks, activities or functions in which an apprentice should be trained, only those that are unique to the trade, or only those that may pose a risk of harm to the public, tradespeople, or other workers on the job? Please explain.***

A trade's "key" or "core" elements are tasks that should be performed only by that trade. A task that should only be performed by members of a particular trade to the exclusion of others where that task:

- Poses a risk of harm to the public, tradespeople, or other workers; and
- That risk cannot be ameliorated by any other existing regime.

In other words, it is only those aspects of a given trade that involve a risk of harm to the public interest, for which there is not currently an existing regime in place to protect that interest, that should constitute the key elements of a given trade. These aspects should be narrowly defined.

However, these core elements of a trade's SoP should also be accompanied by "peripheral" elements the trade performs. Together, the core and peripheral elements of a trade will comprise the range of tasks and activities that are normally performed by that trade.

On the other hand, an element of a trade that is shared with another trade should be a peripheral element of *each* of those trades. If a task or function is not listed in the core or periphery elements of any trades, that task or function may be performed by any trade. This is critical for the purposes of apprenticeship and entry into the trade from a pure skills development process, but not an ongoing enforcement process.

9. *How should a review or change in a SoP be carried out?*

As should be the case with all functions of the College, it is essential the process for a review or change in a SoP be carried out openly, transparently and with due consideration to the views of all relevant stakeholders. Further, because of the current lack of conformity in SoPs across trades, the interwoven and overlapping nature of many of the SoP's and the reliance which will be placed on these by the College, **a systematic review of all SoPs across trades at one time is essential**. In terms of the result of the process, carrying out a review of the SoP's must result in:

- Clear demarcation regarding what is a fundamental or "core" element of that trade, as well as what is "peripheral" to the trade in each SoP;
- Consistency in the application of the SoP; and
- Consistency in the form of the SoP.

The question remains, how is this to be accomplished?

As discussed in the introduction to this submission, the OSTA submits the answer lies in the establishment of an Advisory Council, which operates arms' length from the College, and provides independent and evidence-based advice. This Advisory Council can provide relevant background research regarding SoPs that will facilitate informative input from interested stakeholders, all of which will culminate in a full review of all SoP's at once and finally a recommendation to the Minister. In our view, the structure of the HPRAC provides a valuable starting point for developing this model.⁵

⁵ This HPRAC Model is discussed in greater detail below, as it also forms the basis of our recommendation in question #20 regarding the process for classification or reclassification of trades as compulsory or voluntary.

Below is a process, which in our view, will best achieve the mandate of the College, including producing results which best serve the public interest.

At the outset, it is important to note the present situation in Ontario already involves necessary overlap in the jurisdiction of the trades. That is, while some work is performed exclusively by one trade, there are many other tasks and functions which are commonly performed by two or more trades. Whether you look at overlaps between:

- barbers versus stylists;
- automotive service technicians versus transmission technicians; or
- construction millwrights versus pipefitters or even the ironworkers.

Participants in these trades that have overlap, for the most part, have figured out solutions. Further, consumers have come to recognize and rely on these solutions. Whether these solutions have been developed through the formal structures available through the OLRB or other means; predictability and reliability remain paramount. We propose a process such as the following:

i. The Forum: Scope of Practice Advisory Council

Reviews or changes to SoPs should be initiated as soon as possible once an independent Advisory Council is formed to do the full review.

In order to best serve the public interest (the 3 fundamental groups identified above) it is imperative the process involves a function in which research on pertinent issues is conducted and shared, and interested parties can make submissions on SoP's of interest. The Advisory Council, after considering relevant research and submissions, is to make a recommendation to the Minister.

ii. Consultation Phase

Once the full review has been initiated independent research conducted by the Council will be released as well as an invitation for submissions from interested parties.

Interested parties may make written submissions to the Advisory Council concerning what ought to be in a trade's SoP (both core and peripheral elements) as well as what should not be in the SoP for that trade.

These submissions should be backed with evidence and research concerning what the current SoPs are in the field and why either the preservation or alteration of them will result in an outcome which best serves the public interest.

iii. Oral submissions from interested parties

Following the review of the written submissions, the interested parties that made written submissions will have the opportunity to expand upon their arguments with oral submissions. This will also provide the Advisory Council an opportunity to seek clarification on these submissions as well as challenge them, if necessary.

iv. Consideration

After hearing from all interested parties, the Advisory Council will take time to consider submissions, both oral and written, as well as the evidence and research that was presented to it.

Should the Council require more information before releasing its recommendation to the Minister on the SoP of a trade, it can request this from any party it sees fit.

v. Recommendation of the Advisory Council

A recommendation will be made to the Minister regarding the Council's views on the course of action for the creation or amendment of the SoP's that will best serve the public interest. This recommendation is not binding on the Minister. The Minister will have the discretion to decide whether to act on it.

vii. Ongoing Review

Following the creation/review of all the SoP's, there should be in place a review committee to deal with ongoing changes in practices including technological change.

Multiple Uses of an SoP

SoPs at present suffer from a lack of consistency in both format and content. A consensus must be reached on their use. Thereafter, a process needs to be undertaken to amend their format and content in a consistent manner with an eye to the intended use of SoPs.

We submit that this provides the College with an opportunity to delineate between the "right to title" concept for the purposes of training and clear pathways to licensing, and the "right to practice" concept to protect the public from harm. Balanced appropriately, revised SoPs could improve access to those seeking to be licensed while still providing adequate protection to all consumers.

10. *Can or should the existing SoP provisions support the College's diverse functions (e.g. apprenticeship training, enforcement, classification reviews)? Please explain.*

As noted above, the current form of SoPs are not helpful or relevant. As long as the SoPs remain overly broad and out of touch with workplace practices, they will not assist the College in providing effective assistance for its diverse functions.

In order for existing SoP provisions to support the diverse functions of the College, they must include: a clear demarcation regarding what is a "key" or "core" aspect of the trade, a method for consistent application of the SoP, and consistent form across all SoPs.

11. *Should the entire SoP for a compulsory trade be enforceable or be subject to enforcement? Please explain.*

This depends upon how the SoPs are structured. If an SoP contains all of the tasks customarily performed by members of a particular trade (and not simply those that are core to the trade and may create the risk of harm to the public that cannot be mitigated by another existing regulatory regime) then no, the entire SoP of a trade should not be subject to enforcement.

12. *Could the College benefit from a distinct list of compulsory activities that may pose a risk of harm to the public, tradespeople, or other workers on the job? Please explain.*

Yes. However, as discussed above, this distinct list should be kept to a list of key activities of a trade that may pose a risk of harm to the public *and* are not currently ameliorated under existing regulatory regimes. This will ensure the key activities of each trade are narrowly defined in such a manner as to not cause practical difficulties in implementation as well as the potential for duplication of government resources.

Overlap Between SoPs

13. *What is your understanding of what an overlap between SoPs is?*

An overlap between SoPs exists when multiple trades routinely perform the same task. In these cases, individuals trained in or identifying as a worker within either trade feels properly trained to perform the task safely, efficiently, and with an appropriate level of skill.

In their current form, the overlap between SoPs do not reflect the true activities performed in the construction industry, and instead, exist more out of coincidence than design. Ideally, the SoPs would reflect the true core and peripheral activities of a trade, and thereby illustrate where multiple trades have the jurisdiction to perform the same work.

14. Do overlaps between SoPs in regulation have an impact on your daily work or on the way you conduct business? Please explain.

To the extent that they are acknowledged on a primarily unionized construction site, overlaps between SoPs create inefficiencies, confusion and conflict. The primary impact is in the conflict created when multiple trades claim the same work. In some cases, the parties proceed to a costly and time consuming jurisdictional dispute at the OLRB. In others, parties will resort to unlawful labour stoppages or other forms of pressuring an employer to meet their demands for the work.

In these cases, the trade claiming the work will routinely refer to the existing SoP as a justification for their action. Confusion is created when an inspector or other external observer is called upon to evaluate the work being performed. Currently, the inspector is unable to understand the different considerations that exist when addressing an overlap between SoPs or an overlap that inferentially exists as a result of past practice, different training, various organizations of labour on a job site or adherence to prior OLRB decisions.

15. Does the application of the third legal interpretation principle on overlapping SoPs pose a risk of harm to the public, tradespeople, or other workers on the job? Please explain. If so, what can and should be done about it?

Viewed through the appropriate lens, the third legal interpretation principle on overlapping SoPs does not pose a risk of harm to the public, tradespeople or other workers on the job. Through other regulation including the *OHS*A and enforcement by agencies such as the Electrical Safety Authority, core tasks that pose harm, particularly physical harm, are addressed and dealt with. The core tasks that fall within this category do not overlap with voluntary trades. Instead, the overlap exists in non-core and non-unique activities which do not present the same risks.

When one considers economic harm or harm to efficient practices, altering the current third legal interpretation principle would create a level of harm that does not currently exist. This new harm would arise because restricting the ability to perform work that would otherwise fall within multiple trades would create conflict, inefficiencies and would be counter to the public interest previously described in these submissions.

CLASSIFICATION OR RECLASSIFICATION OF TRADES AS COMPULSORY OR VOLUNTARY

As noted above, it is the position of the OSTA the process of classification or reclassification of trades ought to be kept on hold until all issues related to SoPs and the review process for SoPs has been resolved in practice. This is due to the fundamental role SoPs play in the classification of trades.

With this in mind, the OSTA remains keen to provide input on how the current process for classification or reclassification of trades as compulsory or voluntary can be improved upon.

Compulsory Certification

16. *What makes a compulsory trade compulsory and what makes a voluntary trade voluntary?*

As discussed above, where a key task performed by a trade creates the potential for harm to the public, and this harm cannot be ameliorated by an existing regulatory regime, this will form part of the consideration as to whether that trade should be classified as compulsory or voluntary.

Trades involving activities with no potential harm to the public, or activities with the potential for harm that is adequately monitored by an existing regime, should be classified as voluntary trades.

17. *Is the current classification of trades as either compulsory or voluntary aligned with the College's duty to serve and protect the public interest?*

No.

Please consider the current HPRAC process wherein the Applicant must demonstrate that reclassification of an act as compulsory must demonstrate that:

- (i) the act (i.e. task) involves a risk of harm to the public; and
- (ii) its reclassification to compulsory will necessarily result in a decrease of harm to the public.

We respectfully submit that the Applicant must, in the future, bear the onus of providing evidence based support to persuade the Advisory Council that a reclassification will positively address these two principles, failing which such an application should be denied.

- 18. *Is it reasonable to assume that there may be elements in the SoP for a trade that are inherently hazardous or that may pose a risk of harm to the public, tradespeople, or other workers on the job?***

Yes. This is a question that may lend credence to looking at the controlled acts health professions approach. However, again it is only when an Applicant can demonstrate the existence of such a risk, but as well, that the reclassification to compulsory will clearly reduce the risk inherent within the task and/or a part of the SoP before a trade ought to be reclassified to a compulsory trade.

- 19. *Could compulsory certification be limited to either the core elements of a trade or those tasks, activities, or functions that may pose a risk of harm to the public, tradespeople, or other workers on the job? What kind of impact would these approaches have on your daily work or on the way you conduct business?***

See answer to question 16 above.

- 20. *Should the College continue to rely on an adjudicative review panel approach (i.e., the Ontario Labour Relations Board model) or should a different model be considered? Please explain.***

No.

We believe there are issues with the process at present that allows a trade board to trigger the re-classification process with no other filters and/or input. No matter which model you recommend, we expect that the majority of submissions will first ask that relevant and necessary research will be made available in the process. While addressed in another portion of our submissions, we would be remiss not to add also that the current criteria do not seem to appropriately set out what needs to be considered in either the future ratio reviews or the reclassification processes.

Furthermore, it is important to note that many are sceptical that any process for trade classification reviews or ratio reviews (even if amended from its current form) that remain within the current governance system of the College will not provide for the fairness, transparency and unbiased decision making that is required, but currently lacking, and visibly criticized.

Unfortunately the College itself, through its Board of Directors, and more specifically its Executive Committee, has the unilateral ability to affect the implementation, grandfathering, training and many other crucial elements of the trade classification process. At present the Board of Directors retains the unilateral discretion to approve and implement the results of both ratio reviews and trade classification reviews. We respectfully submit that this governance issue (or flaw) of the College, in and of itself, is just one reason that an truly independent body, without bias, should be created. This independent body, at a minimum could fulfill the full role of providing the Minister advice

on both ratio and classification changes, as well as implementation plans. We suggest many of the foregoing issues at the College could be avoided by leaving it to the Minister to make final decisions following the receipt and review of recommendations from a Council.

You will no doubt have had the adjudicative comments of Chair Fishbein, Chair of [Group C – 14: Plumber and Steamfitter](#) ratio review played back to you now time and time again. He expressed his concerns regarding the lack of robust research **available to the decision-making review panels in this Panel’s report:**

“PHCC commissioned a "policy paper" from William R. Lorimer, Director of Policy and Research of the Canadian Centre for Policy Studies for its submissions to us in this ratio review. That study equally concluded that it could find no "available data or existing research" to support the proposition that a "higher ratio results in better workplace health and safety records". However it is not clear to us whether the lack of data or research proves such a connection exists or does not exist - only that there has been no conclusive data yet gathered or conclusive study yet done.” (Page 6)

As has become the trend in many of these ratio reviews, there is little hard data yet collected to definitively answer most of the criteria we are directed to by the regulation. As well, even if the data were more fulsome, as many pointed out, we are dealing with projections and forecasts into the future which even at the best of times are not foolproof. As a result many of the parties are left to advance what is essentially their own reasonable speculation about both the present and the future. Although we question the bona fides of no one, it should equally surprise no one that such speculation is frequently shaped by the parties' own perceived interests and agenda.” (Page 16)

Chair Fishbein also includes similar comments in the [Group D – 18: Electrician: construction and maintenance and Electrician: domestic and rural](#) ratio review report:

“As has become the trend in many of these ratio reviews, there is little hard data yet collected to definitively answer most of the criteria we are directed to by the Regulation. As well, even if the data were more fulsome, as many pointed out, we are dealing with projections and forecasts into the future which even at the best of times are not foolproof. As a result, many of the parties are left to advance what is essentially their own reasonable speculation about both the present and the future. Although we question the bona **fides of no one, it should equally surprise no one that such** speculation is frequently shaped by the parties' own perceived interests and agendas.” (Page 24)

In our view, the Health Professions Regulatory Advisory Council (“HPRAC”) provides a viable and effective solution to the foregoing criticisms of the current College resources and processes. The processes and resources found within the existing Health Professions

Regulatory Advisory Council Model (the “HPRAC Model”) has significant merit.⁶ This is a model founded on advancement of the public interest, and one in which the decision making process is thorough, transparent, flexible and evidence-based.⁷

The HPRAC is independent of the Health Colleges, and we respectfully submit the public interest would be best served by the establishment of a similarly situated independent (outside the College) council.

The HPRAC Model

The HPRAC was established under the *Regulated Health Professions Act*⁸ (“RHPA”) with a statutory duty to advise the Minister of Health and Long-Term Care on regulatory matters including whether unregulated health professions should be regulated.

In turn, the Minister of Health and Long-Term Care relies on recommendations from the HPRAC as an independent source of evidence-informed advice in the formulation of policy in relation to health professional regulation in Ontario.⁹

Under the HPRAC Model, a health profession requesting regulation under the *RHPA* will be assessed using a two-part assessment as the means by which it will decide to recommend a health profession for regulation:

In the first part of the assessment, the HPRAC will determine whether the applicant meets a “risk of harm threshold” in order to be considered for regulation under the *RHPA*. The second part of the assessment the HPRAC will determine whether it should recommend regulating a profession that it has determined to pose a risk of harm to the public. This involves a consideration of whether regulation is the most appropriate course of action or whether another risk mitigation approach would result in a better outcome.

This two-part assessment process is informed by a broad-based stakeholder consultation in which interested parties can raise issues and concerns with the potential regulation or non-regulation of a health profession. This consultation process includes not only input from interested stakeholders but also:

- (i) a consultation guide is provided to stakeholders;
- (ii) interviews to identify stakeholder interests as well as gather information on the issues related to regulation;
- (iii) research conducted covering literature reviews; jurisdictional reviews; jurisprudence reviews; and

⁶ An outline of this Model can be found in: Regulation of New Health Profession under the Regulated Health Professions Act (RHPA), 1991, Criteria and Process, HPRAC

⁷ Paramedicine in Ontario: Consideration of the Application for the Regulation of Paramedics under the Regulated Health Professions Act, 1991, at p. 56

⁸ S.O. 1991, C.18

⁹ *Ibid* at page 1.

(iv) the potential for further submissions from experts.

HRPAC's criteria and process examines whether the applicant meets the risk of harm threshold and whether it is otherwise in the public interest that the profession be regulated under *RHPA*.

In our view, this model provides a viable process for the classification of a trade as compulsory or voluntary and further to be mirrored in the legislated ratio review process

Independent Oversight Body or Function of the College?

At the outset, it is important to consider whether an adaptation of the HPRAC Model to the College will result in an oversight body that is independent from the College, the Minister and the Ministry, or one which forms part of the functions of the College.

In our view, this model will prove most effective, if it functions independent of the College.

This will still leave the College with critical functions aligned with its mandate and objects to:

- (i) regulate the practice of trades (i.e. standards, licensing, etc.).
- (ii) govern the members (tradespeople) of the College.
- (iii) develop, establish and maintain qualifications for membership in the College.
- (iv) issue certificates of qualification and statements of membership to members of the College and renew, amend, suspend, cancel, revoke or reinstate those certificates and statements as appropriate.
- (v) promote the practice of trades.
- (vi) establish apprenticeship programs and other training programs for trades including training standards, curriculum standards and examinations.
- (vii) maintain a public register of its members.
- (viii) receive and investigate complaints against members of the College and to deal with issues of discipline, misconduct, incompetency and incapacity.
- (ix) address compliance issues in respect of matters within the jurisdiction of the College.
- (x) provide for the ongoing education of members of the College.

The Skilled Trades Professional Regulatory Advisory Committee

With fundamental aspects of regulation in the scope of activities carried out by the College, the OSTA proposes the creation of a Skilled Trades Professional Regulatory Advisory Committee (“SPRAC”). Similar to the process contained in the HPRAC Model, the sole function of the SPRAC would be to undertake sufficient research to enable evidence-based recommendations to the Minister on whether a trade warrants compulsory certification status, as well as provide research and advice on the SoP review and ratio reviews. In our view, the most viable process for this determination is as follows.

i. Minister Requests Trade Classification Review

Minister requests SPRAC undertake a review of a trade’s classification as compulsory or voluntary.

ii. Research / Formulation of Submission Guidelines Phase

Following the receipt of the Minister’s referral, SPRAC will begin research into whether the trade in question warrants compulsory certification. Timelines and other process management issues will also be addressed.

In addition, SPRAC will conduct independent research during this phase. As in the HPRAC Model, three important factors will be researched:

- Literature
 - Relevant and helpful reports / Peer-reviewed articles
- Jurisdiction
 - Treatment of trade in other jurisdictions (Canada, US, Globally)
 - Consistency with Ontario’s obligations under the *Labour Mobility Act*, the Agreement on Internal Trade, or the Red Seal Program.
- Jurisprudence
 - Provides insight into legal issues that may arise in regards to classification of a trade as compulsory
 - OLRB jurisdictional dispute decisions, perhaps similar decisions from other provincial boards

Through this research, the SPRAC will develop a Submission Guidelines Document. The Submission Guideline Document will pose specific questions to aid the development of stakeholder proposals. These questions may relate to whether: there is a demonstrated public interest in the trade being classified as compulsory; whether elements of the trade present a risk of harm to public safety; and whether there are regimes currently in existence to address any potential risks to the public.

The results in the areas of research listed above, the Submission Guideline Document and the expected timelines for the process will be posted on the SPRAC website.

iii. Broad-based Consultation Phase

At this stage, SPRAC will notify stakeholders it is accepting submissions on the issue of the trade's compulsory certification. Responses from certain stakeholders may be specifically requested, and submissions from stakeholders whose input was not specifically requested from will also be considered.

Interested parties may include:

- Tradespeople
- Employers
- Unions/contractors associations
- General public

Similar to the HPRAC Model, this phase will also involve "Key Informant Interviews" in order to identify further interests and concerns of stakeholders as well as collect relevant and first-hand knowledge from stakeholders on questions posed in the consultation guideline document.

iv. Two-phase evaluation process

Similar to the HPRAC Model, the decision as to whether a trade should be classified as compulsory should be considered in a two-step process.

Phase One

The first phase will serve a gatekeeping function, focused on whether or not the trade in question poses a risk of harm to the public. In order to establish certain elements of a trade's SoP pose a risk of harm to the public it must be shown, through research and evidence, that there is a substantial risk of physical or mental harm to members of the public that could result from improper practice of a trade. If harm to the public is not established, the review will not continue to the second phase and the trade will be classified as voluntary.

Phase Two

If a risk of harm to the public is established in phase one, the review will then continue to the second phase. In this phase, a fundamental consideration must be whether any potential harm is already ameliorated by an existing regulatory regime.¹⁰ If existing regimes are in

¹⁰ Existing regulatory regimes are also considered by the HPRAC Model: Paramedicine in Ontario: Consideration of the Application for the Regulation of Paramedics under the Regulated Health Professions Act, 1991 Volume 1 at p 25; The Health Profession Assistant: Consideration of the Dental Assistant Application for Regulation Volume 1 at p 28

place to protect the public, this should weigh heavily in favour of classification of the trade as voluntary. This is in order to avoid the duplication of government services while still protecting the public.

Further, as is the case with the second phase of the HPRAC Model, additional considerations may also be considered in this phase including the economic impact of classification of the trade as compulsory, the adequacy of training delivery agents in place to ensure sufficient supply of qualified tradespeople in the event the trade is classified as compulsory, the impact on both CofQ and non-CofQ holders in the trade currently employed, and the impact on the trade system in Ontario generally.

Result

The underlying purpose of this two-phase process must be to not disturb the current classification of trades as voluntary, unless it can be shown through research and evidence that a compulsory certification is the only determination that will protect the public. A method founded on concerns and interests other than this will not only fail to protect the public interest, but will do so in an ineffective and costly manner as it will lead to regulation where none is required.

v. Consultation with Experts

Should the SPRAC deem it necessary, at this phase, it may choose to consult with experts or hold focus groups to obtain information it considers necessary to complete the review of the Minister's referral. Persons or organizations with identified expertise may be invited, at the discretion of the SPRAC, to make presentations, reports or submissions. Summaries of these sessions will be posted on the SPRAC website.

vi. Recommendation to the Minister

Once all evidence and stakeholder submissions have been considered. The SPRAC will issue a report to the Minister for consideration. Recommendations will be advisory only and the Minister will not be bound to accept the advice of the SPRAC. The release of the report and any follow-up action are at the discretion of the Minister. Should the SPRAC's advice be accepted, the Ministry will be responsible for implementation.

21. *How should expert opinion be obtained?*

The HPRAC Model also provides helpful guidance on how a regulatory body can obtain expert evidence. Under the HPRAC Model, expert evidence is obtained through both: key informant interviews; and external advisors.

As indicated above, key informant interviews have been recommended during the consultation phase of the SPRAC Model. In addition to identifying stakeholder interests and information gathering, key informant interviews can provide relevant and first-hand knowledge from stakeholders on questions related to the classification of a trade.

Next, the SPRAC Model should also utilize external advisors where needed. For instance, the HPRAC will commonly rely on external consultants as specialized expertise is frequently required. The same is true regarding the regulation of skilled trades.

However, it must be noted at the outset, under the *RHPA*, council is authorized to “engage experts or professional advisors to assist it”. This language is not included in the *OCTAA*.

In the HPRAC Model, in order to ensure external advisors are appropriately selected, certain criteria are considered to measure the capacity of external consultants: conflicts of interest; body of knowledge; credibility with stakeholders; technical competence; capacity; board experience; competitive rates; understanding of the public policy process; commitment to the public interest; communication skills; a foundation in Ontario; and vendors of records.¹¹

In our submission, similar approaches to those utilized in the HPRAC model could be utilized/adapted to the SPRAC as a method for obtaining expert evidence.

22. *Are the current criteria for trade classification reviews set out in O. Reg. 458/11 consistent with the public interest? Please explain.*

No. We submit that the test must be simplified, while at the same time met only with the provision of sufficient evidence-based information.

At present, the lack of evidence based support is one of largest gaps in the College’s process. This was highlighted in the Sprinkler and Fire Protection Installer Review, where a clear concern regarding the quality of evidence was expressed:¹²

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

¹¹ Health Professions Regulatory Advisory Council: Annual Report: April 1, 2006- March 31, 2007. at pp 7-9

¹² Trade Classification Review: Sprinkler and Fire Protection Installer, Decision: TCR2013-1 SFPI, April 23, 2014, at paras 22 and 23

in any way to making the dangers of fire or the efficacy of sprinkler systems in fire prevention any greater or any less.

...

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.

In addition to concerns regarding the quality of the evidence provided, it is our view that the seven criteria do not in fact focus on the protection of the public interest. The public interest could be better protected by reducing the seven criteria down to a two-step assessment, similar to that relied upon by HPRAC.

We submit the provision of evidence will provide further support for the lack of relevance of the current seven criteria to the protection of the public interest.

23. *Are the criteria specific, clear, and measurable enough to inform you of what data and evidence are needed to meet those criteria?*

See answer to question 22 above.

24. *Are the existing criteria the right criteria?*

No. As noted above, the seven criteria do not adequately focus on the protection of the public interest. The two-step assessment utilized by the HPRAC provides a more appropriate method of protecting the public interest.¹³

This is due to the fact the two-step process the HPRAC utilizes in determining whether to regulate a health profession is designed based on consideration of the public interest. This

¹³ Regulation of a New Health Profession under the RHPA, 1991: Criteria and Process

process is also consistent with our submissions on SoP reviews as they relate to compulsory certification.

As in question 20 above, the first part of the assessment in the HPRAC Model serves a gatekeeper function. The primary consideration is whether there is a demonstrated risk of harm to the health and safety of the public. If this risk of harm is established, the assessment moves to the secondary consideration, which involves determining whether regulation is in fact the most appropriate course of action or whether another risk mitigation approach would result in a better outcome.

Under HPRAC this appears to be assessed on the basis of research that has considered areas such as a literature review, a jurisdictional review and a jurisprudential review. For example a jurisdictional review will assist with discovering and appropriately sizing the importance of influences outside of the province of Ontario. Influences such as Ontario's obligations under the *Labour Mobility Act*, the Agreement on Internal Trade or the Red Seal Program. Mobility of trades is of critical importance. Solutions designed in a provincial vacuum, without consideration for the foregoing could irreparably harm the balance and flow of tradespeople that we must maintain.

In our respectful submission, a similar model is suitable for determining whether a trade ought, or ought not to be, classified as compulsory. This method can still draw from the first four factors contained in the regulation (SoP; health and safety; effect on the environment; and economic impact) however, it should use them as part of this two-step public interest-focused approach to determining whether a trade should be classified as compulsory or voluntary.

DECISIONS OF THE ONTARIO LABOUR RELATIONS BOARD

25. *Do the SoPs in regulation reflect the ways in which work is actually assigned in your trade or sector?*

No. The evolution of work practices at worksites has surpassed, for the most part, the current state of the SoPs. They remain, at a minimum, out of date and require review.

The SoPs do not reflect the ways in which work is actually assigned. Instead, the vast majority of employers make an individual assessment based on the skills available in its workforce and any claims made by a union, if any, representing a particular trade. The employer then assigns the work in a way that will best ensure that it is completed efficiently, with minimal labour disruption (i.e. grievances or jurisdictional disputes) and in compliance with health and safety and other government and contractual regulations.

In most cases, consideration is given to the practice historically employed by the contractor and its competitors and any jurisdictional accords or agreements reached by trade unions. For many employers, there is no attention whatsoever paid to the SoPs as they are generally viewed as being generic and lack the specificity to truly differentiate between trades.

26. Do you agree with the notion that most jurisdictional disputes arise from peripheral elements of the trades? Please explain.

No.

Our view is that jurisdictional disputes arise whenever a union wishes to claim work that falls explicitly or inferentially within the scope of its historical jurisdiction, whether that is in the core or periphery of its trade. Additional disputes arise when a union believes that another union is attempting to expand into its jurisdiction or is otherwise attempting to circumvent a jurisdictional accord or trade agreement that has been agreed to by the parties. These types of disputes do not arise when a union represents a number of trades on a construction project or the workers are not represented by any union. In those cases, subject to health and safety and other government and contractual regulations, the work is assigned to the most competent and efficient workers who are available. This assignment of work without regard to the trade of the worker further illustrates that most construction work can be performed by a number of different trades, and that artificial demarcations only act to create inefficiencies, conflict and additional bureaucracy that does not further the public interest.

Further, a review of the OLRB decisions does not support the conclusion that most jurisdictional disputes arise from the peripheral elements of the trades.

27. What consideration should the College give, if any, to the decisions made by the OLRB in jurisdictional or work assignment disputes under the Labour Relations Act? If the College were to adopt the OLRB's decisions, what impact would that have on your trade and the way you conduct business? Please explain.

The OSTA submits that the OLRB's jurisprudence should be taken into consideration. However, said consideration should occur within the context of the overall research function undertaken prior to, or as part of, each review – as opposed to a singular deference to it. The research function should consider, similar to the HPRAC process a literature review, a jurisdictional review and a jurisprudential review. Both the jurisdictional review (at a minimum across the Canadian provinces) and a jurisprudential review will provide for the opportunity to lessen, if not altogether eliminate, conflicting direction to the skilled trades industry.

At a minimum, the OLRB decisions only impact on the construction sector of the Skilled Trades. While one may be attracted to defer to the OLRB, we think a research-based approach could accommodate the unique nature of OLRB decisions within the overall context of all four sectors of the Skilled Trades. We submit if the SOPs are narrowed to 'core' elements this will lessen the perceived conflicts between the review outcomes and the historical jurisprudence developed over decades at the OLRB.

If the College were to simply adopt the OLRB decisions it will serve to perpetuate a system that developed to serve only unionized construction skilled trades. As you are aware this will include continued differences as one moves from one part of the province to another in Ontario. It will allow the trade union jurisdictional fights lines to creep in, unnecessarily, to the development of a skilled trades workforce with limited mobility both within and outside the borders of the province of Ontario, led by tradespeople with limited interest in the public interest or at a minimum lagging public interest.

Conclusion

In summary, the OSTA submits:

1. To achieve an outcome that is in the public interest, a new entity (not unlike the HPRAC) must be created with the responsibility for the provision of evidence-based research to support the need, or lack thereof, for heightened regulation of the 156 skilled trades.
2. The evidence-based research will afford the Ministry the opportunity to access unbiased information through:
 - (i) literature reviews,
 - (ii) jurisdictional reviews to assess best practices, mobility of skilled trades; and
 - (iii) jurisprudential reviews to assess overlapping regulatory bodies thereby minimizing duplication.
3. This entity could allow for holistic considerations far beyond the seven criteria currently guiding both the compulsory classification and ratio review processes at the College. Holistic considerations are critical to successfully protecting the public interest.
4. This entity should also provide the independent process, research and rigour to a full review of all the SoP's and provide appropriate advice to the Minister of Training, Colleges and Universities.
5. This entity must be independent of OCOT. The entity should provide the Minister with advice following a consultation process in which stakeholders will have had access to relevant research and opportunity to provide submissions.

6. The College should not attempt to take on this function. Rather, the College should re-focus on its duty to serve and protect the public interest in carrying out its objects and functions under the *OCTAA*.

7. Serious consideration should be given to providing pre-existing Ministry of Labour experienced forces (inspectors) with OCOT enforcement as opposed to creating additional overlapping enforcement mechanisms.

8. We respectfully submit the College should focus on the:
 - (i) ongoing development of standards, curriculum and initial licensing. specifically, we recommend that the College assume the current functions of the MTCU as they relate to the apprenticeship system (i.. registrations, liaison, exams, etc.);
 - (ii) promotion of the skilled trades to both potential members and the users;
 - (iii) coordinating roles (i.e. a web portal) for consumers of trades, employers of trades and the tradespeople themselves to efficiently navigate the existing regulatory schemes and ‘pathways to the trades’ efficiently; and
 - (iv) the development of internal responsibility systems, a complaints system and a public registry for practising skilled trades.

Thank-you for the opportunity to provide submissions toward improving the College.

We very much look forward to the opportunity to meet with you to further our submissions.

Yours very truly,

ONTARIO SKILLED TRADES ALLIANCE

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