Supporting a Strong and Sustainable Ontario College of Trades

Reviewer’s Report and Recommendations
to the Minister of Training, Colleges and Universities

2015
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Dear Minister:

I have completed my report on the Ontario College of Trades commissioned by you in October 2014 pursuant to Order-in-Council 1325/2014.

As you know, the issues encompassed by my terms of reference have a long and complex history and have attracted a considerable degree of interest. This, together with tensions between the College’s mandate as both advocate and regulator, has made the work interesting and challenging.

It is my hope that the report will contribute in some way to a stronger, more viable and focused College of Trades with better capacity to contribute to the economy and quality of life in Ontario. This is what the College and its stakeholders clearly want and it is what the trades and the public deserve.

Several factors have contributed to the review and my ability to deliver this report and recommendations.

First, I believe this was the right time for the review and I commend you for taking this important step relatively early in the trajectory of the College. This has been appreciated by a large number of College stakeholders.

Second, the requirement to consider the issues through the lens of the public interest brought considerable clarity to the analysis and helped in crafting recommendations. In the context of the College’s governing legislation, this lens must be applied more broadly in college decision-making and policy development and I hope this report might be helpful in suggesting how this might be done.

Third, the College, your ministry and a broad range of trades, employers, trade unions, apprentices and training associations stepped forward and offered their best advice in this review and I’m very grateful for
this. The College, through its Chair, Board, Registrar and staff, is to be commended for embracing the review and providing seamless support to my work in parallel with maintaining its important work in serving its community.

None of us work alone, and that is especially true for me. In doing this work I have received first-rate professional support from a small team of skilled and dedicated professional staff drawn from your ministry and the College.

I must particularly recognize Samantha Anderson, the project director for the review, who has led the design and implementation of the consultation process and the work on research and analysis, and has drafted large parts of this report. She is a superb professional public servant and, in her role as director, has brought out the very best from a small and highly skilled team and worked alongside me in reaching out to a large number of stakeholders. I would not have been able to do this without her.

There remains only to thank you Minister for the opportunity and privilege to do this work.

With best wishes,

Tony Dean
Reviewer
Glossary

ACA: Apprenticeship and Certification Act, 1998
Board: refers to the Board of Governors, the governing body which manages and administers the affairs of the College
CofQ: Certificate of Qualification
College: refers to the Ontario College of Trades
ESA: Electrical Safety Authority
HPRAC: Health Professions Regulatory Advisory Council
LRA: Labour Relations Act, 1995
Minister: refers to Minister of Training, Colleges and Universities
Ministry: refers to Ministry of Training, Colleges and Universities
MOL: Ontario Ministry of Labour
MTCU: Ontario Ministry of Training, Colleges and Universities
COTAC: College of Trades Appointments Council
O.Reg.: Ontario Regulation
OCTAA: Ontario College of Trades and Apprenticeship Act, 2009
OLRB: Ontario Labour Relations Board
Registrar: Registrar/Chief Executive Officer of the College
RHPA: Regulated Health Professions Act, 1991
POA: Provincial Offences Act, 1990
SFPI: Sprinkler and Fire Protection Installer
SoP: Scope(s) of Practice, a description of the work of a trade
TQAA: Trades Qualification and Apprenticeship Act, 2009
TSSA: Technical Standards and Safety Authority

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Executive Summary

Introduction

In October 2014, the Ontario Minister of Training, Colleges and Universities appointed me to undertake a review of Issues Related to the Scopes of Practice and the Classification / Reclassification of Trades. My Terms of Reference directed me, in consultation with the Ontario College of Trades, to provide the Minister with advice and recommendations on opportunities to clarify and improve the College’s policies, processes and/or criteria which support the objects and functions under OCTAA, including:

- Scopes of Practice (SoPs) for trades;
- the classification or reclassification of trades;
- the review of journeyperson to apprentice ratios for trades subject to ratios; and,
- enforcement, including what consideration, if any, the College should give to the decisions made by the Ontario Labour Relations Board in jurisdictional or work assignment disputes under the Labour Relations Act.

This review has been a complex and sensitive undertaking. The issues are in some cases quite technical and also have a long and complex history involving deeply entrenched interests. At the outset of the review opinions were somewhat polarized but, to the credit of stakeholders involved in the process, there has been some convergence of positions, at least in some areas.

In all of the areas under consideration, I have made an effort to find a balance between the College’s mandate and interests, the interests of College stakeholders, and the public interest. The report recognizes the progress made by the College Board and its Registrar in challenging circumstances. At the same time, my recommendations address some issues and elements of the College’s mandate that have attracted significant concerns and controversy. The recommendations are designed to put the College on a more solid footing in order that it can better achieve its core mandate of improving training and apprenticeship and elevating the status of the trades.
During my review, I met with many individuals and organizations with interests or concerns in the matters I was examining. I also met with Mr. Tim Armstrong and Justice Kevin Whitaker. Both wrote instrumental, government-commissioned reports that led to the establishment of the Ontario College of Trades.

Individuals and organizations who wanted to share with me their views or raise questions could do so in a variety of ways: through the review website (www.deanreview.com), by completing the Consultation Questionnaire, making a written submission, participating in one of the many meetings I held around the province, emailing or calling me directly.

I received 109 submissions and held meetings that over 300 individuals and organizations, representing the trades, large and small employers, training organizations, trade unions and associations, attended. There were meetings in eight Ontario centres. I also had telephone meetings with individuals in other locations. Everyone had the opportunity to offer their advice and perspectives on areas both inside and outside my terms of reference.

I also met with the College Board of Governors, including its Executive Committee, held regular meetings with the Chair of the Board and Registrar, and met with 35 College trade boards representing over 70 trades in the four sectors that the College’s mandate covers. In addition, I had the opportunity to meet with the College’s Service and Motive Power Divisional Boards. These discussions were positive and informative and helped guide my work.

My findings and recommendations are better for the thoughtful insights and ideas that I received during my consultations.

In addition to my consultations, research also supported my review. The research looked at the history of apprenticeship and trades in Ontario; how other Ontario regulatory colleges operate; relevant Ontario legislation, regulations and policies; and approaches to apprenticeship and trades in Canadian jurisdictions and abroad.
Key Themes Captured During This Review

**Self-Regulation and the College’s Duty to Serve and Protect the Public Interest:** The duty to serve and protect the public interest is a well-established pillar of self-regulation – a duty the College shares with other self-regulatory colleges and an important area for continuous action by the College.

**Promotion of the Skilled Trades and Apprenticeship:** The College has an important role to play in promoting and elevating the skilled trades, streamlining access and providing guidance for those interested in apprenticeship and supporting apprenticeship completions and certification.

**Balancing modernization and stability within the Skilled Trades and Apprenticeship system:** The College has the opportunity to help modernize the apprenticeship and skilled trades system in Ontario. During the review, I heard about a great number of system improvements that stakeholders are eager for the College to make, and of work that the College has already done towards this. However, I also heard about a complex system of many moving and interconnected parts that have evolved and developed over a number of decades and a concern that changes which do not consider the entire system may create instability.

**Governance:** There is a need for greater clarity and communication about the application and appointments process to the College’s governing structure. It is also important that decisions regarding the regulation of trades are in the public interest.

**Communications:** Tradespeople, employers/sponsors and apprentices would like the College to be more pro-active with its communications, especially during consultations on regulatory matters. There is a preference to see more information pushed outward to members and stakeholders.

**Collaborative Approaches:** During the review I heard about an interconnected system where a large number of other parties are involved in aspects of regulating skilled trades and apprenticeship training, alongside the College. This includes various government ministries, departments and agencies, other Ontario regulatory bodies, Ontario colleges, and apprentice training institutions. I heard a desire for a collaborative approach to ensure the best
possible user experience, reduction of unnecessary duplication of efforts, and for consistent considered decisions.

**Regional Concerns**: The College has an opportunity and a responsibility to understand the complexities of regional variation in its decision-making processes and in developing its service offerings.

**Trades and Apprenticeship Systems in Canada and Other Jurisdictions**: Ontario shares common challenges with other Canadian provinces, the U.K. and Germany. In considering the adoption/adaption of best practices from other jurisdictions, it is important to note that some systems have evolved over a long time within unique cultural contexts and relationships between parties such as government, industry and workers, including organized labour. It becomes impossible to make wholesale adoption of their successful elements.

**Recommendations**

**Scopes of Practice**

Currently, the Scope of Practice (SoP) is a description of the work of a trade. The SoPs for Ontario’s 156 trades are in four regulations made under the *Ontario College of Trades and Apprenticeship Act* – one each for the Construction, Industrial, Motive Power and Service sectors. SoPs are central to Ontario’s current trades system, supporting many of the College’s objects and functions. A common theme raised during my consultations was that SoPs are outdated and inconsistent and this may limit their usefulness as a regulatory tool.

**SoP Recommendation 1.** In consultation with the ministry, the College should proceed with its Program Evaluation Process in order to recommend any amendments to the Minister of Training, Colleges and Universities regarding the consolidation or reduction of the number of trades named under the *Ontario College of Trades and Apprenticeship Act*.

**SoP Recommendation 2.** The College should be mindful of its duty to serve and protect the public interest in carrying out SoP reviews and for the various uses of SoPs. It will be important that the College consider how SoPs are used within its policy framework.
for compliance and enforcement and, specifically, how they contribute to defining what it means to “engage in the practice” of each compulsory trade.

**SoP Recommendation 3.** The College should update and standardize the SoPs for trades using a common framework and template. The review process should be consistent for all trades with overlaps in work between trades being discussed as part of the SoP review process in order that they are acknowledged and recognized for the purpose of training and apprenticeship. The College would be responsible for scheduling and grouping trades for the SoP review. Once the SoPs are updated and standardized, the College should periodically review them to capture any changes or advancements in technology, processes and equipment for a trade.

**SoP Recommendation 4.** The College should determine which features of a trade’s SoP may be in Board regulations and which features may be in College guidelines or other operational policy documents.

In establishing updated and standardized SoPs for trades, the College should consider a broad set of inputs for the review of SoPs. This could include:

- the general description or statements in regulation
- advice of industry, subject matter experts and the public
- common overlaps with other trades
- exemptions and exclusions that may apply to the trade and are within the Board’s purview
- existing training documents used by the College, including the National Occupational Analysis for Red Seal trades and College apprenticeship training and curriculum standards
- other legislation and regulations that reference the trade
- any standards of practice, guidelines, policies and/or by-laws that may apply to members of the College practising the trade

**SoP Recommendation 5.** The College should leverage the Trade Boards to facilitate the process for reviewing and updating SoPs for trades. SoP reviews should include discussions with other trades with overlapping work, which should include discussions between Trade Boards and other stakeholders. Trades should come to consensus on proposed amendments to a trade’s SoP.
SoP Recommendation 6. The College may need to establish a non-binding conciliation process to help build consensus between trades, including discussions between Trade Boards, especially on areas of overlap.

Trade Classification/Reclassification Reviews

I found broad agreement about the improved transparency of the current process for the classification or reclassification of trades as compulsory or voluntary. However, there was less agreement on whether decisions are made using the best possible decision-making structure, criteria and process.

Trade Classification/Reclassification Reviews
Recommendation 1. The Minister of Training, Colleges and Universities should appoint a roster of experts who would serve on review panels for decisions about the classification or reclassification of trades, and be advisory to the Minister on matters of apprenticeship and training.

Trade Classification/Reclassification Reviews
Recommendation 2. In naming a new trade under the Ontario College of Trades and Apprenticeship Act, the Minister should have the option to classify a new trade as voluntary or to refer the matter to a review panel.

Trade Classification/Reclassification Reviews
Recommendation 3. After an initial consultation with the College, the Minister should determine the skills and competencies that would inform the initial appointment of individuals to a roster of experts. The roster of experts would be individuals without an affiliation with a trade or a particular trade sector. They could include individuals with expertise in areas such as public administration, facilitation and decision-making, health and safety, labour market development and the economy, and consumer protection.

Trade Classification/Reclassification Reviews
Recommendation 4. One member of the roster of experts should be appointed Chair, with responsibility to appoint the panels for applications for the classification or reclassification of trades named under the Ontario College of Trades and Apprenticeship Act.
Trade Classification/Reclassification Reviews

Recommendation 5. Each panel should be composed of five or seven members, including a chairperson that the Chair selects from the roster of experts. Decisions of review panels would be by majority decision.

Trade Classification/Reclassification Reviews

Recommendation 6. The College Board should have the authority to appoint up to two individuals with trades experience who would be advisory only to the review panel and not participate in the decision-making process of the review panel.

Trade Classification/Reclassification Reviews

Recommendation 7. Crown Employees from the Ontario Public Service should support the review panels, in a secretariat. One employee could be appointed the executive coordinator and be responsible for staff and day-to-day operations of the secretariat.

Trade Classification/Reclassification Reviews

Recommendation 8. The Minister should establish the following criteria for the purpose of review panel decisions on the classification or reclassification of a trade as voluntary or compulsory:

1. The key factor for the classification or reclassification of a trade as voluntary or compulsory is risk of harm to one or more of (a) individuals working in the trade, (b) other workers on the job and/or (c) the public.

2. The secondary factors take into account the public interest assessed in light of the following criteria:
   - economic impact, including the impact on employers, apprentices, tradespeople, training institutions and government
   - the impact on access to the trade and labour mobility
   - there is a demonstrated public need (e.g., additional regulation is warranted, enhanced environmental protections, etc.)
   - implementation considerations (e.g., education and training, strategy for individuals currently practising the trade [grandparenting], impact on training ratios, etc.)

3. A review panel is permitted to address other secondary factors that it considers to be in the public interest.
4. In its decision-making, the review panel should weigh the criteria with deference to the key factor compared with the secondary factors and may weigh each of the secondary factors, as it considers appropriate within this framework.

The expert panel, with assistance from its staff, would develop application and policy guidelines and other relevant materials to support the application process for the panel and trade applicants. This material would be available to the public.

**Trade Classification/Reclassification Reviews**

**Recommendation 9.** A College Trade Board should initiate an application for the reclassification of a trade in consultation with industry. The Trade Board could also consider applications submitted to the Trade Board from the industry. The Trade Board for the trade and the Divisional Board for the trade’s sector would endorse applications.

**Trade Classification/Reclassification Reviews**

**Recommendation 10.** The onus would be on the applicant to provide sufficient supporting evidence for the classification they are seeking or the reclassification of a trade.

**Trade Classification/Reclassification Reviews**

**Recommendation 11.** An applicant may choose to pursue classification or reclassification on the basis of either the trade’s full SoP or the features of a trade’s SoP that it considers appropriate in view of the characteristics of the trade (e.g., elements that pose risk to one or more individuals working in the trade, other workers on the job and/or the public), but leaving intact the training and certification requirements for the full scope of the trade.

**Trade Classification/Reclassification Reviews**

**Recommendation 12.** All applications should be subject to an initial screen by the Chair of the roster of experts, plus any other roster members at the discretion of the Chair. The Chair would be permitted to seek clarity on the application and would have sole discretion on the progress of the application.
Trade Classification/Reclassification Reviews
Recommendation 13. Review panels for trade classification reviews should:
• Undertake public consultation with extensive and active public and stakeholder notice.
• Call their own evidence so that they do not have to rely only on submitted evidence.
• Provide implementation advice in making decisions.

Trade Classification/Reclassification Reviews
Recommendation 14. There should be a timeframe of 180 days from the appointment of a panel to the rendering of its decision. The possibility of extension would be at the sole discretion of the chairperson of the review panel, based on the specific circumstances of an application to the Board.

Journeyperson-to-Apprentice Ratio Reviews
Like the trade classification or reclassification process, there was broad stakeholder agreement about the improved transparency for the cyclical review of journeyperson-to-apprentice ratios. During the review, I heard a desire to ensure more open and broad consultations; clear criteria linked to the purpose of journeyperson-to-apprentice ratios; and for making appropriate research and data publicly available.

Journeyperson-to-Apprentice Ratio Reviews
Recommendation 1. The roster of adjudicators for review panels and selection of review panels should continue as outlined under the Ontario College of Trades and Apprenticeship Act. Professional and administrative staff of the College should support the ratio review panels.

Journeyperson-to-Apprentice Ratio Reviews
Recommendation 2. The College should make sufficient efforts to communicate information about ratio reviews to ensure broad stakeholder participation from across Ontario.

Journeyperson-to-Apprentice Ratio Reviews
Recommendation 3. The College’s Board should consider establishing new criteria under O. Reg. 458/11. Review panels would evaluate submissions against these criteria to decide the
appropriate ratio for a trade prescribed with a ratio. The following criteria are recommended:

- quality of on-the-job training, the impact of journeyperson-to-apprentice ratio on the training and performance of the apprenticeship and certification in the trade
- the potential for risk of harm for an apprentice and others
- the demographic and labour market information for the trade, including the age and availability of journeypersons, the number of prospective and registered apprentices, and the rate of apprenticeship completions and certification
- economic impact, including impact on consumers, employers, apprentices, tradespeople, training institutions and government
- the demand for skilled trades in different regional/geographic areas of the province and any trade sector realities
- the experience of ratios for a similar trade or trade sector in other jurisdictions
- other factors relevant to the public interest

The review panel may weigh the criteria, as it considers appropriate.

Journeyperson-to-Apprentice Ratio Reviews
Recommendation 4. There may be a need to provide the Board with the authority to consider a short delay for the next cycle, due to begin in 2016, to allow for public consultation on any proposed regulatory amendments and other implementation activities.

Journeyperson-to-Apprentice Ratio Reviews
Recommendation 5. The review panel for ratios should have the ability to call its own evidence. It should not be limited to evidence contained in participant written and oral submissions.

Journeyperson-to-Apprentice Ratio Reviews
Recommendation 6. The College should accelerate the collection of, monitoring of and research about ratios and make this information available as part of its public data.

Journeyperson-to-Apprentice Ratio Reviews
Recommendation 7. The Board should revisit the timeframe required for a review panel to render its decision following its appointment. The current 120-day timeframe could be extended.
to 180 days, with any further extension being at the discretion of the Board. Alternatively, the Chair of the review panel could determine the time required for this part of the process, based on the specific circumstances of the application. There should be clear communication of the timeframe.

**Journeyperson-to-Apprentice Ratio Reviews**

**Recommendation 8.** The College should develop a policy and evaluation framework to clarify the broader public-policy goals, including the purpose and implementation considerations for journeyperson-to-apprentice ratios for trades prescribed with ratios. This framework should be informed by College stakeholders and the findings made publicly available.

**College Enforcement**

The College’s current approach to compliance and enforcement of the prohibitions under OCTAA could benefit from a framework to provide clarity on enforcement that aligns with the public interest to protect workers and the public from harms.

**College Enforcement Recommendation 1.** The College should develop a policy-based approach to compliance and enforcement that considers risk of harms and consumer protection. The College Registrar could operationalize this through the issuance of directives, guidelines or other interpretive documents made publicly available on the College’s website and through any other means the College deems appropriate.

**College Enforcement Recommendation 2.** The College should establish a compliance and enforcement committee of the Board to assist with the development of a policy-based framework for compliance and enforcement. The majority of the membership of this committee should be representatives from employer and employee groups with knowledge of the trades or trade sectors and who are not members of the College’s governing boards. The Board may also consider the need for representatives of other regulators and the public.
College Enforcement and Ontario Labour Relations Board Decisions

The College’s current approach to enforcement applies to the “full scope of practice” for a compulsory trade, and it regards this as equivalent to “engaging in the practice” of a compulsory trade. This approach is inconsistent with and, in some cases, is disruptive of previous agreements between workplace parties and past decisions of the Ontario Labour Relations Board (OLRB) in resolving jurisdictional disputes. This is an issue because of the many factors in sectors and workplaces which have given rise to overlapping work between trades.

OLRB Decision Recommendation 1. Develop a mechanism that would allow individuals or their representatives or employers to appeal to the OLRB on the basis that the OLRB previously addressed the College enforcement action or it is the subject of an existing agreement.

In developing the mechanism for appeals, it is recommended that:

- The OLRB would first determine on a prima facie basis whether there are grounds for an appeal.
- Where the OLRB proceeds with an appeal, it would be directed to have regard to, among other things, the Ontario College of Trades and Apprenticeship Act, and the College would have standing before the OLRB. Where an appeal is upheld, the matter would be nullified.
- Where the OLRB finds that an existing decision or agreement is relevant in an appeal but not determinative, it may designate the matter as a jurisdictional dispute and it would be processed accordingly. In this case, the College would have standing before the OLRB. If the OLRB finds on behalf of the appellant, the matter would be nullified.
- The action of the College would be stayed until the OLRB releases a decision.
Conclusion

It is my hope that a review early in the life of a new organization is helpful in taking stock of progress and identifying challenges and opportunities. It can also be disruptive. I recognize that significant policy work, program development and regulatory activity are on hold, pending the outcome of this report.

While many of these activities can now get back up to speed, the College and the Ministry of Training, Colleges and Universities (MTCU) will now also be involved in the implementation of any of my recommendations accepted by government and/or the College’s Board of Governors. Implementing change in busy and complex environments is challenging, particularly where there is a distribution of responsibility across two or more organizations. Ideas and plans for change are only as good as an organization’s capacity to implement them. I see seven factors as key to successful implementation of any of my recommendations. They are:

- Establishing clear accountability and leadership
- A governance structure that supports collaboration
- Assigning dedicated resources
- Identifying key levers for change
- Providing more and timely information
- Establishing a timeline and target dates
- Identifying risks and constraints and developing strategies to manage them

The role and accountability of the College and MTCU will vary based on each of the recommendations. The nature of each recommendation, its fit with College and ministry priorities and the depth of stakeholder interest and impact will drive the degree to which it is prioritized and resourced.

The College carries out its broad and complex mandate within an already multifaceted system, and with a long history of practices adopted by the trades in conducting their work. It is understandable that there are tensions around the College’s structure and questions about its governance. My review hopefully provides the opportunity to improve College processes and clarify its mandate before these tensions become further entrenched. It is time for the College to grow further and to mature in delivering on its mandate.
Introduction

In October 2014, the Ontario Minister of Training, Colleges and Universities appointed me to undertake a review of issues related to the scopes of practice and the classification or reclassification of trades with a view to supporting the success of the Ontario College of Trades. This report describes:

- The approach that I used in undertaking the review
- What I learned during my review
- My recommendations

I would like to thank all of the individuals and organizations, from across the province, who took the time to meet with me, complete the review questionnaire share their insights and concerns in written submissions. Your participation in the review was enormously helpful and positive.

I would also like to express my thanks and appreciation to the staff of the Review Secretariat, the College of Trades, and the Ministry of Training, Colleges and Universities for all of their assistance during my review.

A special note of recognition must go to Samantha Anderson, who was at my side throughout the review, starting with the planning stages and preparation of the consultation guide, through an extensive province-wide consultation tour, a period of analysis and drafting sections of this report. Samantha assembled a strong professional team, and exercised superb judgement in sorting through complex issues and complex interests. She is an exemplary public servant and I could not have done this work without her.

Mandate of the Review

The Terms of Reference for my review directed me, in consultation with the College of Trades, to provide the Minister with advice and recommendations on opportunities to clarify and improve the College’s policies, processes and/or criteria related to:

- the manner in which the College makes decisions on issues related to Scopes of Practice (SoPs) of the trades and the ways in which
SoPs are used to support the performance of objects and functions under the *Ontario College of Trades and Apprenticeship Act* (OCTAA), that include, but are not limited to, the following:

» enforcement of the prohibitions in Part II of OCTAA, including decisions regarding skill overlaps between SoPs
» establishment of apprenticeship programs
» review and amendment of SoPs
» the process and criteria prescribed in Ontario Regulation 458/11, made under OCTAA, including the process and criteria for the classification or reclassification of trades as compulsory or voluntary; and

• what consideration the College should give, if any, to the decisions made by the Ontario Labour Relations Board in jurisdictional or work assignment disputes under the *Labour Relations Act*.

Appendix 1 has the full Terms of Reference for my review.

**Policy Secretariat**

The Ministry of Training, Colleges and Universities and the Ontario College of Trades provided staff for a policy secretariat with professional and administrative staff to support the review work. The Policy Secretariat had a full-time project director and part-time research and administrative support.
Review Principles and Methodology

I began my review by identifying six principles to guide my work. The review was to be:

**Independent:** to act impartially and independently from the Government of Ontario and the College

**Policy based:** to identify challenges and opportunities and look for solutions

**Informed by research and evidence:** to produce real-world solutions for real-world issues

**Open and transparent:** to build confidence among the stakeholders who will live with the results of the review

**Engaging:** to tap the knowledge and experience of industry stakeholders and members of the College, including apprentices and journeypersons

**Iterative:** to test ideas as I proceeded. I wanted no surprises.

Stakeholder Outreach and Communications

From the outset of the review, it became clear to me that a large number of individuals and organizations had interests or concerns in the matters I was examining. In November 2014, I contacted over 30 College stakeholder groups. Eventually, I spoke with many more.

I also met with Mr. Tim Armstrong and Justice Kevin Whitaker, both of whom wrote instrumental, government-commissioned reports\(^1\) that led to the establishment of the Ontario College of Trades.

Lines of communication stayed open throughout the entire review period. One of my first steps was to set up a website for the

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review (www.deanreview.com). The website included background information on me, the Terms of Reference for the review and a high-level work-plan. My contact information (phone, email, mailing address) was on the site. Anyone could contact me, using whatever method worked best for him or her. I met or talked by phone with every individual or organization wishing to share their views or raise questions with me.

I posted regular updates on the review’s website to keep stakeholders up to date on my progress and thinking. This included information on the stakeholder consultation process; the Consultation Guide and Consultation Questionnaire; written submissions from individuals and organizations (published with their consent); and details on regional in-person meetings. As we approached the end of the review I was also clear in signalling likely directions and outcomes.

**Consultation Guide and Questionnaire**

I launched the formal stakeholder consultation with a Consultation Guide and a Consultation Questionnaire. Any person or group could use the questionnaire to respond to the guide. The guide and questionnaire helped participants respond to complex issues in a consistent and organized way. Participants who completed the questionnaire had the flexibility to send me a written submission with additional information and material. I also welcomed responses from individuals and groups who did not use the questionnaire.

Altogether, I received 109 written submissions from individuals and apprentices in the trades, large and small employers, training organizations, trade unions and associations. I received submissions from people connected with all four sectors – Construction, Industrial, Motive Power and Service sector trades. The largest response came from the construction sector, with about half of the submissions from people working in this sector, or organizations employing, training or representing people working in the sector.

Participants had the option of giving consent for their written submission to be published on the review’s website. Of the 109
submissions, 102 were posted. Also, in preparing this report, I have quoted from many of these submissions and included the name of the individual or organization where consent was provided.

The Consultation Questionnaire is in Appendix 2. Appendix 3 lists all the individuals and organizations that I met with.

Regional In-Person Meetings

I invited every individual or group who sent me a written submission to meet with me during regional in-person meetings held across Ontario. I scheduled meetings in eight Ontario centres: Kingston, Ottawa, Hamilton, London, Sarnia, Thunder Bay, Sudbury and Toronto. I also attended meetings in Oshawa, Whitby and Vaughan, and held telephone meetings with individuals in other locations.

In all, I met with over 300 individuals and representatives of organizations. Everyone was heard. Individuals and representatives of organizations had the opportunity to share their experiences and ideas. They had full scope to offer their advice and perspectives on areas either inside and/or outside my terms of reference.

These meetings were both constructive and helpful. The individuals and organizations who participated helped me understand the opportunities and challenges encompassed by my review. They also offered thoughtful ideas about how to address them. This report and recommendations reflect what I learned during those discussions.

Meetings with the College’s Boards

I was fortunate to meet with 35 College trade boards representing over 70 trades in the four sectors covered by the College’s mandate. I also had the opportunity to meet with the College’s Service and Motive Power Divisional Boards. These discussions were positive and informative and helped guide my work.

The Trade Boards and Divisional Boards are important parts of the College’s governance structure and the role of Trade Boards is outlined in some of my recommendations that follow. In my view, they are the interface between the College and its members and stakeholders. The boards have a uniformly strong capacity. They
are comprised of hard-working and committed individuals, supported by equally committed professional staff.

Appendix 3 lists the divisional and trade boards I met with.

Meetings with the College’s Board of Governors and Staff

The Registrar’s Office at the College facilitated regular meetings with the College’s Board and Executive Committee of the Board during the review. I held meetings with the Chair, Vice-Chair and Registrar in January, July and September. My report also benefited from discussions held with senior management officials at the College, including the directors responsible for compliance and enforcement, policy and programs and communications. Finally, I had the opportunity to meet with staff of the policy and research department, who provided me with helpful feedback at the time I had signalled my early directions and through subsequent correspondence on the early draft written report. All of these discussions were helpful.
Research

The following research was undertaken:

- research and review of the history of apprenticeship and trades regulation in Ontario, including discussions with Mr. Tim Armstrong, Justice Kevin Whitaker and staff of the Ministry of Training, Colleges and Universities and the Ministry of Labour
- analysis of approaches used by other Ontario regulatory colleges and relevant literature
- analysis of relevant legislation, regulations and policies, including meetings with representatives from the Electrical Safety Authority; Technical Safety and Standards Authority; Ministry of Health and Long-Term Care; Ministry of Government and Consumer Services; Ministry of Attorney General; and the Ministry of Labour
- analysis of approaches used in other Canadian jurisdictions with regard to scopes of practice; enforcement; trade classification reviews; and apprenticeship and trades; including interviews with representatives of the regulatory body/government in Nova Scotia, Quebec, Saskatchewan, and British Columbia
- analysis of approaches to apprenticeship and trades in the U.K. and Germany
- review and analysis of literature, including academic reports and decisions from the Ontario Labour Relations Board
- analysis of Ontario College of Trades’ review panel decisions on ratios and trade classification reviews and review of the College’s current trade classification and ratio review processes and criteria framework
- review and analysis of briefing materials and research prepared by staff of the Ontario College of Trades and the Ministry of Training, Colleges and Universities
The Public Interest in this Review

The creation of the Ontario College of Trades involved a very significant transfer of rights and responsibilities from the Ministry of Training, Colleges and Universities to a body governed mostly by representatives from the province’s skilled trades. The transfer of activity is reflected in the College’s:

• role in elevating the status of the skilled trades and promoting careers in the trades, and
• its mandate, which includes establishing apprenticeship training programs and standards; regulating the practice of trades and members of the College; carrying out an enforcement role; and managing the trade classification and journeyperson-to-apprentice ratio reviews.

The College has taken on weighty responsibilities. These include areas of regulation that have a huge impact on the trades and College stakeholders and the responsibility of balancing its statutory duty to "serve and protect the public interest" with the interests of trade professionals.

This duty to serve and protect the public interest is a well-established pillar of self-regulation in other professions across Canada and internationally. It was introduced to the world of trades in Ontario with the passing of OCTAA in 2009 and the creation of the College as a self-regulatory, professional body. The former trades’ legislation did not contain an explicit statement of the duty to serve and protect the public interest. Under the present legislation, the College exists to serve and protect the public interest, because of the privilege of self-regulation granted to the trades. The duty comes with an expectation that members will meet standards of professionalism, and that the College will put the public first and establish, for instance, registration requirements, a complaints and discipline process, and a public register.

The concept of “public interest” is not easy to define, and it varies in different contexts. In a regulatory setting it speaks to the importance of transparent, inclusive and rigorous processes with clearly understandable and impartial decision-making frameworks.
As Pal and Maxwell suggest, the public interest also involves, “taking a balanced approach to regulatory outcomes in terms of the various interests involved, but also in terms of equilibrium among individual consumer and citizen interests, commercial interests and broad Canadian societal values.”\(^2\).

Additionally, in the context of institutions with a broad range of stakeholders with widely varying interests, the public interest also speaks to the need to find a reasonable balance between these interests.

The privilege of self-regulation granted to the trades comes with the legislated responsibility to effectively regulate in the public interest. The duty to serve and protect the public interest is shared by other self-regulatory professional bodies in Ontario, such the Ontario College of Teachers, the Professional Engineers of Ontario and the health regulatory colleges. In that context, a report arising from the 1982 Health Professions Legislative Review\(^3\) pointed out that:

> The important principle underlying each of the criteria [for regulation] is that the sole purpose of professional regulation is to advance and protect the public interest. The public is the intended beneficiary of regulation, not the members of the professions.

This does not mean that a public-interest test should trump all other interests at every point and on every issue in discussions as part of College decision-making. But it does mean that the public interest should be a consideration in all aspects of College decision-making. And it also means that the public interest should prevail over private interests when they cannot be reconciled or aligned. This is a responsibility that I feel in conducting this review.


\(^3\) Striking a New Balance: A Blueprint for the Regulation of Ontario's Health Professions (Toronto:Queen's Printer, 1998), pg. 9-10.
I have learned that the College Board, together with its highly competent staff, have been exploring the meaning and impact of their collective responsibility to bring a public lens to their work and responsibilities. While this will initially add another layer of complexity in an already complicated environment, it will also be an important guidepost in decision-making on policy and program development. It has certainly helped me in thinking about the issues before me, as it has in my previous work in government and in other reviews.
What Stakeholders Said about Areas Outside the Review’s Terms of Reference

As the College moves through its third year of operations, its Board of Governors and Registrar will be engaging in their own review of progress and thinking about areas for organizational improvement and strategic directions. The Minister and the Board were open to hearing about areas for improvement outside my terms of reference. I had this in mind as I welcomed stakeholders’ views.

Individuals offered thoughtful and constructive suggestions about the role of the College as steward for apprenticeship and the skilled trades in Ontario, opportunities to improve governance, and the need for active communication to the public and members of the College. Throughout the province, stakeholders said the review was an opportunity to clarify the role of the ministry and College, reinforce the regional diversity for the skilled trades in the province and streamline services and supports for apprentices and employers/sponsors through a client-focused approach.

Here is a summary of what I heard on these themes and my suggestions for consideration by the Minister and College.

Promotion of the Trades and Apprenticeship

Almost everyone I met with spoke about the important role of the College in promoting and elevating the trades, streamlining access and providing guidance or support for those interested in apprenticeship. Individuals and organizations I heard from said:

- There is a lot of confusion about the College’s shared role in the apprenticeship system with the Ministry of Training, Colleges and Universities (MTCU), and there is a feeling that service levels change or have changed without notice.
- A common and major concern was the ongoing division of some responsibilities between the College and MTCU in the registration and examination process. Even in the absence of a full merging
Almost everyone spoke about the important role of the College in promoting and elevating the trades, streamlining access and providing guidance or support for those interested in apprenticeship.

Public Services (“The Drummond Report”)4 also recommended streamlining administrative responsibilities for apprenticeship.

- Trade Boards and many stakeholders believe there should be better utilization of schools, with teachers and educators more equipped to promote apprenticeship as a pathway to good careers in the trades. They spoke about a broad range of potentially rewarding and fulfilling careers – from residential and commercial construction and automotive and equipment technicians and operators to hospitality and human services. The promotion of trades is especially critical for in-demand trades and occupations, and those facing shortages due to demographics and other factors.

- The promotion of the trades includes raising the profile and understanding of the Certificate of Qualification (CoQ). In the same way, apprentices would benefit from recognition of their prior learning and training and from pathways to other postsecondary credentials. It was also evident that tradespeople and employers place great importance and value on the national Red Seal Program (the Canadian standard of excellence for skilled trades).

- There is a need to ensure the quality of apprenticeship training, to improve the link between certification exams and training, and for better incentives to encourage employers and sponsors to hire apprentices to completion, including on-the-job training and release for in-school training.

All of the above are matters that the College should be championing on behalf of Ontario’s skilled trades and those interested in apprenticeship.

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and the skilled trades, in partnership with government ministries, employers and educational institutions. Much is said about the mismatch between the supply of, and demand for, labour in this province. The College and its partners have both the opportunity and the responsibility to contribute to closing this gap.

Governance

Many people spoke with me about representation and governance at the College. They said:

• There is confusion about the application and appointments process for board appointees and a perception that the College governing boards are “Toronto-centric” and not inclusive of representatives in the trades working in “open shops,” where workers are not required to join a union. Some asked about the opportunity to elect the members of the College’s Board of Governors. The College of Trades Appointments Council (COTAC) is the agency that makes appointments to the College’s governing structure. It is my understanding that COTAC continues to make improvements to its processes. While this is outside my terms of reference, it appears that the government should make an effort to ensure that COTAC continues to improve its communications about the application process and its criteria for assessing applicants. In the future, the government, in consultation with the College, may want to consider whether appointments to the College’s governing structure could evolve to something similar to that of other professional colleges, which normally operate with a mix of governors from the profession and elected by the members, and a smaller number of governors appointed by government. For example, the Ontario College of Nurses uses a combination of election from the membership by the College’s members and the appointment of people who are not members of the College by the Lieutenant Governor in Council.

• Members of the College suggested that the Board of Governors hold some of its meetings outside the Greater Toronto Area as a way to reach out to its members and stakeholders, and hold meetings on evenings or weekends, outside traditional working

hours, to make it easier for people to attend without taking time off work. Some members felt the College should ensure the Annual Members Meeting is accessible to members.

- The Trade Boards have high capacity, but many continue to seek clarity on their role in setting priorities and assisting the College in furthering outcomes associated with its mandate. In addition, some trades do not have the benefit of representation by a Trade Board, but are instead represented at the Divisional Board level.

The College has informed me that it has made a considerable effort to educate its appointees about the importance of the public interest via workshops, internal training sessions etc., including presentations from Richard Steinecke, who practices law exclusively in the area of professional regulation. As the College Board matures, I would expect it to continue evolving in taking on its responsibility to consider the broader public interest and broader interests of the trades as it does its work.

**College Communications**

I heard from tradespeople, employers and apprentices who would like the College to be more pro-active with its communications. There is a preference to see more information pushed outward to members and stakeholders, as opposed to just publishing it on the College’s website.

Some members said that they do not understand what benefits the College provides to them. Even self-identified supporters of the College indicated that, although they are aware of the theoretical benefits of the College, they struggle to explain to their peers what tangible positive difference the College is making. The College may benefit from clearer communication about the advantages of its mandate and work for its members and prospective members. I have no doubt that College governors and staff are very conscious of this challenge, and that the College’s value proposition to members will improve.

I also heard positive comments about:

- the College’s popular *Earn While You Learn* campaign that aims to promote apprenticeship opportunities to youth
• the College making the most of the communication opportunities already available to it within its existing mandate
• the potential of the College to promote its role and the importance of apprenticeships and the trades through stronger communications campaigns

Regional Concerns

In my travels across the province, people stressed their region’s unique circumstances and challenges. They told me about the challenges of interjurisdictional work in border regions, the vast geographic distances in the North, and each region’s distinctive demographic and economic situations and pressures.

I was particularly impressed by round-table sessions led by the local Chambers of Commerce in Thunder Bay, Sudbury and Oshawa. These sessions brought together parties with different backgrounds to create solutions to a broad range of challenges unique to their region.

The issues and opportunities associated with regional diversity in many cases go back a very long way, far beyond the creation of the College. They will continue to evolve. The College has an opportunity and a responsibility to understand the complexities of regional variation in its decision-making processes and in developing its service offerings.
Trades and Apprenticeship Systems in Ontario and Other Jurisdictions

The modern, open economy relies on a supply of mobile labour with portable, industry-relevant skills. To better understand how governments and industry work together to support skilled workers in the trades, we conducted research on the regulatory practices for apprenticeship and the skilled trades in other Canadian provinces and international jurisdictions. Early in our research, the policy secretariat reached out to directors of apprenticeship in Canada to understand how their trades systems work and to explore what tools and governance mechanisms they use to address some of the issues in my mandate. Four provinces – Nova Scotia, Quebec, Saskatchewan, and British Columbia – responded and secretariat staff engaged senior level staff through a series of conference calls and emails. The secretariat also engaged the Organization of Economic Cooperation and Development Secretariat about its body of research on trades systems and their relevant regulatory regimes. In addition, the policy secretariat used research prepared for ministry officials for a 2014 federal-provincial study tour of the apprenticeship systems of the U.K. and Germany. We examined the legislative and policy structures in the U.K. and Germany for this review, because both countries have features worth understanding further. The U.K.’s trades system is currently in a period of transformation, with the 2012 Richard Review6 helping to change how apprenticeships are designed. Germany is noteworthy because its well-established system has clear, statutorily defined roles and responsibilities for stakeholders, with clear employment pathways for apprentices.

Notwithstanding the striking differences between trades systems, some features help us in understanding where Ontario’s sits in an international context. Understandably, there are limits to what can be gained from examining other jurisdictions’ policies and practices: given the cultural, historical and political factors influencing system

development. Nevertheless, many jurisdictions acknowledge common challenges (such as youth unemployment), which they seek to address, in part, by attracting and training more apprentices, supporting apprenticeship training completions and strengthening the links between vocational training and other higher-education options. Overall, there is a strong recognition that apprenticeships benefit from strong partnerships between education, training, labour and management partners, and that this can result in very successful pathways to employment in various sectors.

The number of trades and occupations using apprenticeship as the model of training varies across jurisdictions. Ontario, currently at 156 trades, 47 which are Red Seal, has the most recognized trades in Canada. Nova Scotia has 69 trades, 57 of which are Red Seal. British Columbia has over 100 trades, 48 of which are in the Red Seal program. Quebec’s construction sector has 25 trades (for which an apprenticeship exists) and 30 occupations (without apprenticeships but having on-the-job training). Some jurisdictions outside Canada have a more expansive notion of apprenticeship, spanning occupations and traineeships that cover a wide range of traditional crafts and professional services (e.g., Australia and England, with about 500 and 1,500 occupations, respectively). Germany has about 350 trades, which are in some sense “voluntary” (with some restrictions on the use of titles, and business ownership for some professions), but considered a prerequisite for employment by many firms.

We can distinguish between unitary systems on the one hand – where there is a high degree of centralization of funding, planning and regulation (e.g., England) – and federal systems, where there is a devolved transfer of authority over these areas, with a varying degree of coordination between levels of government/regulatory authorities (e.g., Canada). In the U.K., the central government has devolved skills and training policy and delivery to Scotland and Wales. The Skills Funding Agency under purview of the Department
for Business, Innovation & Skills, maintains a central coordinating function in England. The Agency is responsible for a number of areas including promoting apprenticeships, helping employers through the recruitment and training process, and maintaining a job-matching service for prospective apprentices and employers (via the National Apprenticeship Service). In Canada, on the other hand, these functions are managed at the provincial and territorial level through various training authorities, departments and agencies. There is coordination with the federal government on labour mobility through initiatives such as the Red Seal program, and with other provinces on a bi- and multi-lateral basis to coordinate training standards and enable regional economic development.

Having a central, recognized coordinating body can be an asset because it can help stakeholders come together to solve problems. England is currently reviewing and creating new apprenticeship standards for all trades, with a goal of having all new apprentices in the 2017-18 year on the new, employer-designed standards. This work is being coordinated by the Skills Funding Agency, with participation from industry.9 Central coordination can enable consistency and avoid duplication of responsibilities throughout the system.

Statutory Features

It was illustrative that all jurisdictions explored have a statutory framework for apprenticeships and trades. The U.K.’s Apprenticeship, Skills, Children and Learning Act, 2009 defines what an apprenticeship completion means in England and Wales, and confirms the bodies authorized to issue certification in those countries. England has legislation that clarifies government’s role in funding apprentices (e.g., Education Act, 2011). Minimum training standards in England were set in 2012 by the Skills Funding Agency/National Apprenticeship Service as a policy

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9. The National Apprenticeship Service published minimum apprenticeship standards in 2012. The Department for Business Innovation & Skills, along with the Skills Funding Agency, another central body, are coordinating an industry-led process (known as “Trailblazers”) to develop new apprenticeship standards. These proposed standards are being assessed by an external panel of experts before being considered for approval by the Minister of State for Skills.
statement. A proposed Enterprise Bill announced by the U.K. government in spring 2015\textsuperscript{10} would provide the term “apprenticeship” with legal standing in England, and prohibit trainers from offering an apprenticeship that is not officially recognized.

The provinces we consulted have legislation and regulations for trades, clarifying which are compulsory or voluntary and providing trade definitions. Provinces that have an industry training authority or an apprenticeship agency have enabling legislation to establish their organization and clarify its relationship with industry and government. Notably though, Ontario is the only Canadian jurisdiction with a professional regulatory college for its skilled trades.

Besides the use of legislation in regulating the trades system, some jurisdictions we explored use laws to clarify the roles and responsibilities of individuals and organizations in their systems. Germany, for example, stands out as having well-established statutory responsibilities delegated to state and non-state actors. The research suggests that this clarity of roles in the German system supports collaboration between stakeholders. Consequently, regulations can be flexible enough to meet the economy’s needs while providing clear relief options for stakeholder tensions.

**Common Challenges, Different Approaches**

As we look to practices in other jurisdictions, it is important to note that systems have evolved over long periods of time, making it impossible to adopt seemingly successful approaches wholesale. Germany has often been the focus of policymakers’ attention in recent years,\textsuperscript{11} with its enviably low unemployment, particularly for youth. The degree of engagement in business decisions by works


\textsuperscript{11} Ontario has engaged UK and German government officials, industry leaders and training providers to better understand the successful features of their system. Federal and provincial officials recently embarked on a study tour of these countries. See: http://www.newswire.ca/news-releases/minister-kenney-leads-canadian-delegation-to-germany-and-the-united-kingdom-to-study-training-systems-513879881.html
councils comprising employer and employee representatives – and the active roles played by the many social actors in training people for the approximately 350 trades – makes the German system unique and elements difficult if not impossible to replicate elsewhere. In comparison, Ontario’s system of trades is relatively new, with major pieces of legislation introduced to regulate them at times of rapid economic change during the 20th century.

Despite the systemic differences and regulatory approaches, we did discover some common policy goals among jurisdictions. Governments acknowledge the need to provide an employment pathway for youth. Training standards need to be industry-led, or in consultation with industry, and to enable career mobility. Agencies developed with or training authorities that work with industry have a strong mandate to engage employers in their decision-making processes. As a tool to serve policy goals, regulatory bodies aim for accountability to industry and the public, and often provide relief valves – in statute or operational policy – for dealing with contentious issues. These public-policy goals are helpful to keep in mind as we put the public interest lens on the issues before us.
A Brief Historical Overview of Apprenticeship Legislation in Ontario

We now outline key developments in the evolution of apprenticeship legislation in Ontario, starting with the Apprenticeship Act. The statutes governing the province’s apprenticeship and certification system have sought to address a broad set of social policy and public interest goals within the skilled trades system over time. The evolution of this legislative history shows the measured steps that governments have taken to ensure the modernization of the apprenticeship and skilled trades system. At the same time, the various acts and regulations have led to the complexities of today’s system. One of those complexities arises from the long-standing involvement of employers and trade unions in training and apprenticeship. This has brought significant benefits to the system, but it also means that a mix of private and public interests are woven into its fabric.

1928 – The Apprenticeship Act was passed to address skilled trades training of “minors” between 16 and 21 years of age in the construction trades of bricklayer, mason, carpenter, painter and plasterer. Additional trades were added in the following years.

1944 – The Apprenticeship Act introduced compulsory certification for the trade motor vehicle repairer to protect the public from faulty work. In 1963, revisions to the Apprenticeship Act allowed applicants 16 years of age and over to enter apprenticeship-training programs.

1964 – Apprenticeship reforms were undertaken with recommendations of the Select Committee on Manpower Training. The Apprenticeship and Tradesmen’s Qualification Act was introduced, replacing the Apprenticeship Act. The Act also introduced compulsory certification to some existing trades and apprenticeship programs.
1990 – The Apprenticeship and Tradesmen’s Qualification Act was renamed the Trades Qualification and Apprenticeship Act. There were no significant changes to the existing legislative framework.

1998 – Apprenticeship reform consultations undertaken by the Minister of Education and Training from 1996 to 1998 led to the passage of the Apprenticeship and Certification Act. The new act introduced the concept of skill sets and restricted skill sets rather than compulsory trades. The Trades Qualification and Apprenticeship Act was amended to only apply to construction trades. The Apprenticeship and Certification Act applied to all trade sectors, including some construction trades.

2009 – The provincial legislature passed the Ontario College of Trades and Apprenticeship Act, replacing the Trades Qualification and Apprenticeship Act and the Apprenticeship and Certification Act. The Ontario College of Trades and Apprenticeship Act, was introduced following the receipt of recommendations and reports by the Minister of Training, Colleges and Universities from special advisors Mr. Tim Armstrong and Justice Kevin Whitaker. The act established the College, and transferred a number of functions to it, including the determination of whether a trade should have compulsory certification status and establishing appropriate journeyperson to apprentice ratios.
Actions Leading to this Review

Before the creation of the College, the Ministry of Training, Colleges and Universities was responsible for overseeing Ontario’s apprenticeship and skilled trades system and its responsibilities included:

- designating trades and occupations
- overseeing training and curriculum standards development
- delivering and funding apprenticeship training programs
- registering apprentices
- overseeing certification of journeypersons
- establishing industry advisory committees
- determining compulsory certification status and journeyperson-to-apprentice ratios
- establishing regulations, and making other decisions consistent with its mandate

Currently, the College and the ministry share responsibilities, with the College assuming responsibility for establishing apprenticeship programs, certification of journeypersons and regulation of the trades, and the ministry retaining responsibility for apprenticeship training and certification of apprentices.

As noted above, the establishment of the Ontario College of Trades originated from two reports that the government commissioned in 2008-2009: the 2008 Compulsory Certification Project report by Tim Armstrong and the 2009 College of Trades report by Kevin Whitaker. These reports provided the roadmap toward the passage of the Ontario College of Trades and Apprenticeship Act. Both reports responded to dissatisfaction within the skilled trades’ community, particularly surrounding processes for determining trade classifications and journeyperson-to-apprentice ratios, and a desire for industry-led governance in the trades system.

The government appointed Mr. Tim Armstrong to review and provide recommendations to it on the impact of expanding compulsory certification for trades that were currently voluntary. Armstrong identified and discussed the various elements and potential criteria that might appropriately inform decisions about trade classifications in a thorough and thoughtful manner. Armstrong’s starting point
was that the decision to make a trade compulsory is of significant legal import and has the potential to significantly affect the work of other trades, especially where there are overlaps in work with other trades. The thinking and directions on these matters continued to evolve after the government’s receipt of the Armstrong Report. In some cases, this involved Armstrong, who was appointed by the government in 2011 to be the Chair of the Appointments Council, which acted as the Transition Board in the transition to the new Ontario College of Trades.

Armstrong specifically recommended establishing the Ontario College of Trades as an all-trades governance institution – one whose functions should include the establishment of expert panels to consider applications for compulsory certification and provide advice to the Minister; to engage in certification enforcement; to raise the profile and status of the trades; and to provide for periodic review(s) of ratio provisions.

Following the release of the Armstrong Report, the government announced its intention to establish a “College of Trades,” an all-trades governance institution.

Justice Kevin Whitaker was appointed as the Implementation Advisor. His terms of reference were to develop the College’s governance structure, scope, and mandate framework. Whitaker, in his implementation report on the establishment of the College, highlighted that the establishment of the College would present a series of unique challenges for the institution itself, for the Ministry of Training, Colleges and Universities and for the trades.

The College’s final governance structure, scope and mandate did not reflect all of Armstrong’s and Whitaker’s advice. For example:

- The decision to vary from Armstrong’s assumptions and delegate management of trade classifications and ratio reviews from direct political oversight by the Ministry of Training, Colleges and Universities to an industry-led institution was arguably of equal significance as the creation of the College itself. Particularly in view of Armstrong’s cautions about the potential magnitude of...
their impact, classification reviews should be exercised with the
highest rigour and probity.

- The College, through the Transition Board, established an agreement
  with the Ontario Labour Relations Board (OLRB) and the Ministry
  of Labour (MOL). It set out that the roster of adjudicators reflect
  a model similar to the OLRB. This departs from Armstrong’s and
  Whitaker’s recommendations for conducting trade classification
  and ratio reviews:

  » Armstrong recommended “expert panels” to consider applica-
    tions for compulsory certification and ratios on the basis of
    a stipulated set of criteria and processes. He recommended
    that panels be advisory to the Minister and that members be
    chosen following consultation with stakeholders.

  » Whitaker recommended three-person review panels consisting
    of neutral and impartial adjudicators drawn from the existing
    pool of professional labour and employment-law arbitrators
    who work in Ontario.

  » The College currently uses a three-person review panel,
    consisting of neutral and impartial adjudicators with a Chair
    (appointed from the Vice-Chairs of the OLRB) and two side
    persons, one representing the perspective of employees and
    one representing the perspective of employers. The employee
    and employer representatives appointed are affiliated with the
    skilled trades system.

Neither Armstrong’s nor Whitaker’s advice was adopted at that time
which in my view was a mistake; and one that needs to be rectified.
Implicit in this is my view that the current decision-making process for
reviewing ratios and trade classifications does not involve the broad
range of expertise envisaged by Armstrong in his report, or by me in
this one.

I understand the complexities that the College faces and the
complex history of the skilled trades system as a whole. My review
is seeking to address similar challenges to those faced by previous
reviews, including a need to focus on an obligation to act in the
public interest. In part, this means that that processes established
to determine issues of compulsory certification and ratios must
be supported with appropriate subject matter expertise and an
assurance that a burden of proof had been met in the decision-
making process.
I recognize that the College carries a heavy mandate and has worked hard to develop the resources needed to carry out its functions. The College has made a lot of progress in a short time in undertaking ratio reviews and trade classification reviews within the first two years of opening its doors.

Multiple Functions – High Expectations

The Ontario College of Trades is, uniquely, the first professional regulatory college for the skilled trades in Canada and, from the review’s research, the first of its kind internationally.

The College was established in 2009 with a duty to protect the public interest in carrying out its objects and functions as a:

- **Training authority**, responsible for establishing apprenticeship programs, including industry training standards for the 156 skilled trades named under OCTAA;
- **Professional college**, responsible for regulating its members and governing the practice of compulsory trades; and
- **“Delegated authority,”** responsible for:
  - Determining whether a trade should have compulsory certification status;
  - Determining appropriate journeyperson-to-apprentice ratios for trades subject to ratios; and
  - Carrying out compliance with the prohibitions under OCTAA, including staff appointed by the minister as provincial offences officers under the *Provincial Offences Act*.

These multiple functions have created high expectations for the College. Although it is possible for one organization to carry out these tasks, it is understandable that, in the first few years of its life, the College has faced challenges in setting clear expectations about its mandate and delivering on the expectations of its stakeholders.

The lack of a clear definition of the public interest in its enabling legislation compounds these challenges. A clear definition could act as a thread to weave together the College’s actions in carrying out its complex mandate. The College’s Board may find comfort in knowing that this is a common challenge for other regulatory bodies, and one that necessitates continuous monitoring and evaluation. A research scan for this review of the “public interest” in enabling legislation and public websites for other regulatory bodies found
that procedural approaches used to demonstrate that public interest is being served vary. Examples include: the public interest committees made up of non-members, clear conflict-of-interest guidelines for governors or directors, and publishing results of third-party surveys that gauge the public perception, attitudes and opinions about the organization. This will be an important area for further study and action by the College.

The College carries out its broad and complex mandate within a multifaceted system, which evolved over a long period of time. There has always been divergent interests between different stakeholders within the system. It is understandable that there are tensions around the College’s structure and questions about its governance. This review provides an opportunity to improve College processes and clarify its mandate before some of its contested processes and practices become entrenched. Through my discussions with a wide range of stakeholders, I sensed optimism about this opportunity even from many who expressed serious doubts about the College. Now is the time for the College to grow into its mandate.
Scopes of Practice

My terms of reference require me to provide analysis, advice and recommendations on scopes of practice (SoPs). I believe that there are opportunities to clarify and improve the ways in which the College makes decisions about scopes of practice and how SoPs are used to support the performance of objects and functions under the Ontario College of Trades and Apprenticeship Act (OCTAA).

At present, the SoP is a description of the work of a trade. Many different self-regulated occupations in Ontario – from Registered Early Childhood Educators to Certified Engineering Technologists – use SoPs in their training, professional and regulatory activities. Within the Ontario College of Trades system, each trade has its own SoP. The current SoP provisions for Ontario’s 156 trades are set out in four regulations made under OCTAA – one regulation for each of the Construction, Industrial, Motive Power, and Service sectors. These SoPs were essentially “carry-overs” from the previous system, adopted from regulations and training documents under the Trades Qualification and Apprenticeship Act (TQAA) or the Apprenticeship and Certification Act (ACA).

SoPs are central to Ontario’s current trades system, supporting many of the College’s objects and functions. Apprenticeship training and curriculum standards should flow from the SoP for the trade. Training for apprentices in that trade should cover the full scope of the trade. Also, the SoP for a trade is one of multiple criteria that review panels must now consider in determining the classification of a trade as compulsory or voluntary and determining the appropriate journeyperson-to-apprentice ratio for a trade that is subject to ratios. Finally, SoPs are currently used as the primary basis for determining compliance with the prohibitions against the unauthorized practice of compulsory trades (sections 2 and 4 of OCTAA).

In my consultations with College stakeholders, a common theme was that SoPs are outdated and inconsistent, making their application across the different College functions a significant challenge.
The College’s Use of SoPs under OCTAA

The College’s job has been challenging due to the merging of different pre-OCTAA regulatory and non-regulatory concepts. Prior to OCTAA, there were no SoPs for all trades in Ontario in legislation. There were:

- “trade definitions” or “scopes of trades” in TQAA regulations;
- “trade definitions” in ACA for “restricted skill sets”; and,
- “training and curriculum standards” for ACA trades, which were not in regulations.

These concepts for trades under both pieces of legislation had limited scope. Their primary intent was to guide apprenticeship training standards. Increasingly, the standards of provincial trade descriptions and the National Occupational Analyses steered their use. For enforcement purposes, the Ministry of Labour had the authority to determine whether persons performing work in compulsory trades under TQAA or restricted skill sets under ACA were properly qualified.

OCTAA incorporated the TQAA and ACA descriptions and standards into its current provisions and used them for different purposes; namely, trade descriptions for the purposes of enforcing right-to-practice in a compulsory trade, developing training and curriculum standards and determining a trade’s classification or reclassification as either compulsory or voluntary. This blend of concepts and their operationalization has given rise to some problems, some of which are encompassed by my terms of reference.

In particular, the scopes of practice for particular trades have given rise to challenges and questions about the use of SoPs in guiding College enforcement. These challenges were raised in briefing materials prepared by the College for this review and informed some of the questions raised in my consultation guide questionnaire.

The College uses SoPs to enforce the prohibitions against the unauthorized practice of a compulsory trade under OCTAA and determine what “engage in the practice of a compulsory trade” means (OCTAA, sections 2 and 4). I understand that the College,
in carrying out its compliance and enforcement function, is using what some may describe as a “to-the-letter” reading of the SoP for compulsory trades to determine what it means to “engage in the practice of a compulsory trade,” including the isolated performance of any part or work element of the SoP being deemed to constitute “engaging in the practice” of a compulsory trade, subject to exclusions, exemptions and SoP overlaps. For example, the College had developed a variety of tools to provide the interpretation of SoPs to support its enforcement officers in the field, including:

- the “SoP matrix,” described by the College as a tool to “break down the language in a SoP provision and identify the various possible activities or ‘work elements’ contained within it,”12 and,
- “Overlapping Actions Matrices”13 and “General Overlap Catalogue,”14 which work together to identify overlaps in the language between SoPs for different trades.

However, in my view this raises a question about whether any SoP could, or should, be used in isolation of other factors on a job site or within the broader context of training and oversight for work performed on the job. This is particularly worrisome when it comes to enforcement in a world where the practice of trades is rarely performed in isolation of other trades and where there is bound to be overlapping work with other trades.

It appears reasonable that the College is not required to maintain a strict reading of the SoPs in every instance to support its enforcement of the prohibitions under OCTAA, and may benefit from further examination of how SoPS can inform enforcement through a public interest lens.

As they are used today, an entire SoP is also aligned with the trade’s classification status; that is, the work reflected in a compulsory trade’s entire SoP is restricted to that trade. However, in many cases overlaps in work will occur between two or more trades. This is a product of history, practices on work sites, previous agreements and competitive pressures. It is realistic to assume that these overlaps will continue in one form or another. Indeed, the College’s own legal interpretation on overlapping compulsory and voluntary scopes of activities.
practice (although inherited) confirms these assumptions about the ongoing reality of overlaps.

- Where overlaps exist between compulsory and voluntary trades’ SoPs, the College adopts the legal interpretation that, if a task is in the SoP for a voluntary trade, anyone can do the task—even if it’s contained in a compulsory trade’s SoP. This interpretation has created difficulties, because it’s not clear that applying it will always pass a public-interest test.

- College enforcement managers have made a decision to enforce activity on work sites with reference to the entire SoP for compulsory trades. This is even the case where, in Armstrong’s words, a complaint involves “non-hazardous, non-complex peripheral functions beyond the essential core components of the trades.”

Some trade descriptions imported from previous versions were very general and not particularly useful for demarcating the scope of a trade’s work. This may be due to the idea that trades should exist as “whole” trades, with exclusive areas of practice which cannot encroach upon other trades. In practice, tradespeople often focus on specific areas within their trade, and trades often share overlapping elements between them. Therefore, it’s reasonable to expect a certain amount of specialization (of tasks, responsibilities and other work elements) in a SoP. However, often this is not the case.

An overly general formulation of a trade’s SoP is challenging to work with because it obscures the tasks that overlap between trades. This creates confusion when SoPs are used for other purposes. Given that the initial design of SoPs did not apply a public interest lens or take into account using a trade’s SoP for multiple functions, there is obviously room for review and greater clarity. The College and its stakeholders know a lot of this already. However, as with many other complex and thorny issues in any organization, these SoP issues stay mostly beneath the surface (although highlighted in Armstrong’s Report). As a post-College reviewer compelled to look at these issues through a public interest lens, it is my responsibility to raise and discuss these matters.

The current approach to Scopes of Practice did not take into account Armstrong’s caution that “the contours of parts of the particular trade’s functional components sought to be included in the compulsory description of the trade that may give rise to undesirable and avoidable ‘overlap’ problems: e.g., the inclusion of non-hazardous, non-complex peripheral functions beyond the essential core components of the trade.” A clearer regulatory concept will inform decision-making at the College, and help it serve the public more effectively. Without such clarity, the College will:

• struggle to define roles and responsibilities in the uses of SoPs.
• have difficulty implementing an impartial and credible process for reviewing SoPs while reflecting the public interest and balancing private interests.

As the College works to develop a clearer concept of the SoP, it will have to design a SoP that:

• has appropriate “breadth of scope”: neither too broad – which can lead to “scope creep” and specific trades using the SoP to capture more work – nor too narrow – where a trade’s description lacks enough detail to be useful for training or other purposes (or reflexive enough to accommodate changes in technology and work processes);
• takes into account the potential for harm and whether it is in the public interest to restrict non-harmful activities to a particular trade.

Since the establishment of the College, many Trade Boards have recognized the need to review the SoPs for their trades. They have made requests to:

• amend them to reflect the trade’s current practices;
• remove tasks or items that are no longer relevant to the trade;
• recognize new technologies, processes and/or equipment;
• align their SoPs with those of equivalent trades in other provinces and territories for labour mobility and Red Seal purposes.

It is not a straightforward process to make these changes.
SoPs: What Other Canadian Jurisdictions Do

The review’s research found variations in the design and use of SoPs:

• SoPs in the skilled trades exist in all Canadian provinces except British Columbia.
• Many Canadian jurisdictions grapple with similar issues related to overlaps, enforcement and the compulsory status of trades.
• The degree of restrictiveness of SoPs varies across jurisdictions – from very restrictive to expansive.
• The SoPs for all trades are set out at the provincial level. In case of Red Seal trades, provincial SoPs are often based on the national standards, as set out in the National Occupational Analyses for those trades.
• For some provinces, SoP reviews take place on a regular basis to address technological or process changes. For other jurisdictions, such as Saskatchewan and Quebec (construction), the process is industry-initiated.
• More than one province acknowledged the issue of overlapping scope:
  » When addressing overlaps between trades, the Saskatchewan Apprenticeship and Trade Certification Commission first seeks clarification from the industry representative or subject matter expert on the board. The province has developed an operational manual to clarify which specific tasks or work processes are restricted to compulsory trades, and to illustrate exceptions found in the regulations. Giving context to the tasks in a trade’s SoP helps to clarify whether an offence has occurred.
  » In Quebec, if overlap issues cannot be resolved in the construction sector, a conflict-resolution committee is established to make determinations.

SoPs: Ontario’s Regulated Health Professions

This section explores features of the regulatory framework for Ontario’s health professions as an illustration of the use of SoPs in another regulatory model. While I am not suggesting the health regulatory model for the regulation of Ontario’s skilled trades, the model has worked well for the myriad of, sometimes overlapping, health professions in Ontario and is one that I believe is worth describing here.
The “controlled acts” model, also known as the “reserved activities” model, is commonly used in the regulation of the health professions. Examples of this model include Ontario’s Regulated Health Professions Act [RHPA],16 Alberta’s Health Professions Act17 and Quebec’s Professional Code18.

The RHPA contains a list of controlled acts, which by their nature can be harmful if performed by unqualified individuals. An example of a controlled act is managing labour or conducting the delivery of a baby. There are some exceptions to performing those acts (e.g., in the event of an emergency), and in some cases the ability to delegate tasks has been provided to regulated health professions, however this is dependent on regulations being made by professional colleges to permit this delegation to occur.

In addition to the RHPA, each of Ontario’s self-regulatory health professions has its own legislation. The profession-specific legislation outlines the profession’s scope of practice statement and any controlled acts which that profession can perform (either independently or on the order of another regulated health professional). These controlled acts can be further broken down such that a profession, under its applicable legislation, may be allowed only to do part of a controlled act. In other words, the profession-specific legislation outlines the conditions under which the controlled act can be performed, detailing the “where” and “how.” Unlike the assumption made under OCTAA, health professions’ scopes of practice, including the controlled acts, are not exclusive to the professions: they are overlapping in nature. This concept reflects one of the tenets of the legislation, which is that patients, clients and consumers should have access to the profession of their choice.

The health professions take a broad approach to scopes of practice for the regulated health professions. A scope of practice statement within each health profession’s act briefly defines what the profession does and how the professional does it (i.e., the activities undertaken

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to perform the profession). Separate from the scope of practice, are authorized acts (if any) and title protections. A “harm clause” found within the RHPA, Section 30 (1), states:

“No person, other than a member treating or advising within the scope of practice of his or her profession, shall treat or advise a person with respect to his or her health in circumstances in which it is reasonably foreseeable that serious bodily harm may result from the treatment or advice or from an omission from them.”

This clause covers all health professions, and helps to cover acts that are not prohibited already by controlled acts.

In addition, the following elements are also taken into consideration when examining a regulated health profession’s scope of practice:

- Exemptions or exceptions under the RHPA that may apply to the profession;
- Other legislation that may affect the profession;
- Relevant regulations developed under the profession’s own profession-specific act; and
- Standards of practice, guidelines, policies and by-laws developed by the regulatory college for the profession.

All of these elements are understood to determine the profession’s scope of practice.

Ontario’s health professions work on addressing overlaps to improve patient care. Overlaps are considered to be a positive feature in the delivery of care. The Federation of Health Regulatory Colleges of Ontario (which is made up of the province’s 26 health regulatory colleges,19 some of which regulate more than one profession) has developed an e-Tool. It helps patient-care teams of multiple health professions to coordinate care within their overlapping scopes and authorities established by the Regulated Health Professions Statute Law Amendment Act. “The e-tool is used as a customizable, point of care, decision-making tool that will enable teams to optimize roles, responsibilities and services for fulfilling patient/client needs.”20

In summary, the health professions use a model of collaboration, built around a risk-of-harm framework. This seems to be very

sensible and responsive to a broader public interest. I raise the health professions’ regulatory framework and the use of a “controlled acts” model to illustrate a successful regulatory approach for the regulated health professions in Ontario. Despite the obvious risk of harms in the context of many areas of health care delivery this scheme is far more flexible (for patients/consumers and health professionals) than that created under OCTAA. Although I am not recommending adopting the use of “controlled acts” in this report, it is worth considering elements of this model as the legislation in Ontario evolves.

What Stakeholders Told Me about SoPs

I heard from many in this review that the Scopes of Practice for trades are outdated, not fit for their purpose and should be revised. About a third of respondents to the consultation questionnaire offered this opinion.

“With the outdated SOP and non-standardized format as well as the compulsory vs voluntary trade debate, it is our belief that the college is not protecting the public interest.” (DR-71 – Ontario College of Trades Heavy Duty Equipment Technician Trade Board)

“SoPs in regulation are overbroad and out of date and accordingly have little impact on the daily work of our members, except as training standards for on-the-job training for apprentices.” (DR-54 – LIUNA Locals 625, 1059 and 1089)

“SoPs are outdated and do not accurately reflect today’s auto-body trade.” (DR-21 – International Association of Machinists and Aerospace Workers)

During regional meetings, I heard that today’s trades’ environment is a complex system made up of individual workers who may be specialists or generalists. In some cases work is being carried out through the use of composite crews – workers from different trades working together – and this has become commonplace in large scale industrial, commercial, and construction projects, as well as in residential construction. These arrangements are sometimes enshrined in collective agreements and driven by regional economic and workforce realities.
I heard about rapidly changing work practices, systems and new technologies requiring continuous learning and skill development in the construction and motive power sectors. The importance of a trades system that allows for individual tradespeople to practise a wide range of tasks was discussed, and many raised concerns about current SoPs in regulation lagging behind the complex and diverse environment of today’s skilled trades in Ontario.

“In the construction industry, the efficient utilization of tradespeople particularly includes the ability to cross-craft and supplement skilled voluntary trades with others having similar skills when trade shortages arise.” (DR-8 - Sarnia Construction Association)

“[The journeyperson] and apprentices perform a wide range of skilled work, including carpentry, drywall, resilient flooring, framing, concrete formwork, underwater construction, welding, scaffolding, and a long list of other construction-related work. Most of our members receive training through the various training centres owned and operated by local unions across the province. In fact, many non-union members also take specified training in our facilities as well. Our members provide their employers with their skills and commitment to mutual success – qualities that are needed to complete projects on time and on budget.” (DR-26 – Carpenters’ District Council of Ontario, United Brotherhood of Carpenters and Joiners of America)

Some stakeholders hold the belief the College should be responsible only for what some refer to as “authentic” or “real” trades. Others suggested that Ontario has too many trades, and the College should seek to reduce the number of trades through consolidation of like-trades or removal of a trade where industry may no longer support it.

The consultation questionnaire asked about overlaps between SoPs for trades and many respondents confirmed the necessary existence of overlaps between trades. Some respondents also expressed concern that overlaps should be managed with the public interest and safety in mind. I heard more about this in the regional meetings and from Trade Boards.
“The entire SoP for a compulsory trade should not be subject to enforcement. A compulsory trade’s SoP will always overlap with the SoPs of certain voluntary trades. Similarly, a compulsory trade’s SoP will always cover certain work which can also be safely performed by members of certain voluntary trades.” (DR-49 – Heavy Construction Association of Toronto)

“Only after completing a review of the Scopes of Practice for all construction trades will the College be able to take account of the many overlaps that are common in the 21st century construction industry, where flexibility and productivity are driven by an multi-skilled workforce and which often are not reflected in the current Scopes of Practice.” (DR-94 – Progressive Contractors Association of Canada)

“For instance, millwrights place equipment, and are trained and qualified to run air and waterlines, as well as duct work to that equipment. This is a part of the trade. It is also a part of sheet metal and of a plumber.” (DR-24 – Tri-Mach Group)

“It poses a risk if the tasks that overlap between compulsory and voluntary trades open the door to anyone, competent or not, who performs potentially dangerous tasks. The way to address this is to ensure that all tasks associated with risk are limited to the SoPs of compulsory trades. The current situation is backwards. In instances where a mandatory trade shares an element of its SoP with a voluntary trade, the third legal interpretation holds that the element essentially becomes voluntary as the tradesperson performing the task is not required to be licensed. In the interest of public and worker safety, elements that pose a risk of harm should default to compulsory trades, ensuring the work is completed by people certified in that trade.” (DR-36 – Electrical Contractors Association of Ontario, International Brotherhood of Electrical Workers)

Nearly two-thirds of respondents to the consultation questionnaire provided an opinion on the key elements that should be contained in a trade’s SoP. Some suggested a brief and concise SoP outlined in regulation, whereas others suggested that the SoP contain an expansive or even exhaustive list of everything someone might
do in that trade. It became clear at the regional meetings that
stakeholders, regardless of their opinion on what should be
contained in the SoP, share the desire to discuss overlaps and
reduce jurisdictional clashes between trades.

In asking about the process for updating the SoPs, few respondents
thought it should be led by an external body, whereas most (about
two-thirds of respondents) said the process should include the
College’s Trade Boards and broad stakeholder outreach.

“The relevant industry Board should first review the SoP
internally with trade specific resource staff [followed by
distribution] to various stakeholders who would have to
respond to their suggestions to the relevance of the SoP
in relation to the feedback.” (DR100 – Peter Wynnyczuk)

“SoP reviews should be driven by the trades. A review or
change should start at the trade board with input from the
divisional boards.” (DR-38 – Ontario Pipe Trades Council)

“Any change in an SoP would need broad consultation with
all industry stakeholders, not just individuals sitting on OCOT
Trade Boards, Divisional Boards or the Board of Governors. In
order for the diversity of Ontario’s construction industry to have
buy-in to any changes to a SoP, there needs to be outreach
more inclusive than the ratio review or compulsory certification
review process and regional roundtables should be established
with a cross section of industry representatives to provide input
into any SoP change. OHBA members in Toronto may allocate
workers to perform tasks much differently than our members
organize a jobsite in Stratford. Therefore broad-based consul-
tation will be required.” (DR-77 – Ontario Home Builders’
Association)

During the regional meetings I was able to obtain more clarification
on this, and most people who spoke about this said the process
should involve industry, should be well communicated and should
be open to input from across the Ontario trades system.
SoP Recommendations

Scopes of Practice (SoP) associated with skilled trades have evolved over decades in a variety of circumstances and to serve many different purposes. Prior to this review, the College of Trades had commenced an internal discussion on the importance of reviewing and, to the extent possible, standardizing and modernizing SoPs. The College’s Board sees this initiative going hand-in-hand with an opportunity to consolidate and potentially trim some of the 156 trades for which it is responsible, some of which are no longer operable, for example where there are little to no apprenticeship registrations (OCOT’s Program Evaluation exercise). I was asked to provide advice on how the SoP review might work.

Consultations across the province and with Trade Boards confirmed that a review of SoPs is timely. I have proposed some desired outcomes and potential inputs that would allow for the development of more standardized SoPs. I have heard, for example, that the attempt at an exhaustive list of tasks, activities and functions in some SoPs cause the SoP versions to constantly lag behind current practices in those trades. In view of this, it might be better to reference training standards in SoPs, making it clear that the SoP will always reflect the most current standard/s.

Beyond the question of the content of SoPs, I believe that the SoP review process would create an opportunity for trades to discuss overlaps in the work, especially where this has been an irritant. A discussion would be important in itself and it might well go no further than that, but there might also be an opportunity to at least resolve some of the more minor irritants. This report identifies risk of harms as a key indicator of the public interest in future classification reviews and it might also be helpful as a point of reference in discussions of overlapping work. Disagreements over relatively safe work, for which workers have received appropriate levels of training, do not appear to me to be in the broader public interest. That being said, I recognize that these issues are long-standing and that the trades, and in some cases employers, involved are all responding in part to competitive pressures as well as institutional interests. It remains the case, however, that both the College, and myself as reviewer, are now required to examine these issues with a public interest lens.
Desired Outcomes:

- Common framework in place for a comprehensive review of scopes of practice for trades, leveraging the capacity of Trade Boards and including broad and inclusive consultations with trades and other stakeholders
- Updated SoPs by modernizing Board regulations respecting the scopes of practice for trades including the acknowledgement of overlaps between trades, both explicit (in regulation) and tacit (in practice in real-world settings). This should involve resolving disagreements of overlaps between trades and contribute to the stability of the trades system. SoPs support and inform various functions of the College, including apprenticeship and certification, promotion of the trades, ratio reviews, standards of practice and compliance.

SoP Recommendation 1. In consultation with the ministry, the College should proceed with its Program Evaluation Process in order to recommend any amendments to the Minister of Training, Colleges and Universities regarding the consolidation or reduction of the number of trades named under the Ontario College of Trades and Apprenticeship Act.

SoP Recommendation 2. The College should be mindful of its duty to serve and protect the public interest in carrying out SoP reviews and for the various uses of SoPs. It will be important that the College consider how SoPs are used within its policy framework for compliance and enforcement and, specifically, how they contribute to defining what it means to “engage in the practice” of each compulsory trade.

SoP Recommendation 3. The College should update and standardize the SoPs for trades using a common framework and template. The review process should be consistent for all trades, with overlaps in work between trades being discussed as part of the SoP review process in order that they are acknowledged and recognized for the purpose of training and apprenticeship. The College would be responsible for scheduling and grouping trades for the SoP review. Once the SoPs are updated and standardized, the College should periodically review them to capture any changes or advancements in technology, processes and equipment for a trade.
SoP Recommendation 4. The College should determine which features of a trade’s SoP may be in Board regulations and which features may be in College guidelines or other operational policy documents.

In establishing updated and standardized SoPs for trades, the College should consider a broad set of inputs for the review of SoPs. This could include:

- the general description or statements in regulation
- advice of industry, subject matter experts and the public
- common overlaps with other trades
- exemptions and exclusions that may apply to the trade and are within the Board’s purview
- existing training documents used by the College, including the National Occupational Analysis for Red Seal trades and College apprenticeship training and curriculum standards
- other legislation and regulations that reference the trade
- any standards of practice, guidelines, policies and/or by-laws that may apply to members of the College practising the trade

SoP Recommendation 5. The College should leverage the Trade Boards to facilitate the process for reviewing and updating SoPs for trades. SoP reviews should include discussions with other trades with overlapping work, which should include discussions between Trade Boards and other stakeholders. Trades should come to consensus on proposed amendments to a trade’s SoP.

SoP Recommendation 6. The College may need to establish a non-binding conciliation process to help build consensus between trades, including discussions between Trade Boards, especially on areas of overlap.
Reviews under the *Ontario College of Trades and Apprenticeship Act*

**Process and Criteria for Reviews under Ontario Regulation 458/11**

My terms of reference require me to provide analysis, advice and recommendations on opportunities to clarify and improve how the College makes decisions on the classification or reclassification of trades as compulsory or voluntary and for the reviews of journeyperson-to-apprentice ratios for trades subject to ratios.

Within this context, I have examined:

- the current process and criteria for trade classification or reclassification and journeyperson-to-apprentice ratio reviews
- whether these processes or criteria for reviews can be improved in the future
- the makeup and mandate of the review panels in making decisions for reviews

**Part I. Compulsory Certification**

Compulsory certification requires an individual be a member of the College in good standing in a compulsory trade in order to be able to practise that trade. Under the *Ontario College of Trades and Apprenticeship Act*, the ability to engage in the practise of a compulsory trade is restricted to:

- individuals holding a valid Certificate of Qualification in that trade in the College’s Journeypersons Class, or
- an apprentice in that trade with a valid registered training agreement, or
- individuals holding a valid statement of membership in the College’s Journeyperson Candidates Class.

The College regulates different aspects of a trade depending on its classification as compulsory or voluntary. Moreover, the work
of the compulsory trades is restricted to College members in good standing.

In the current system, classifying or reclassifying a trade as compulsory makes the entire Scopes of Practice compulsory. The College regulates specific areas exclusively for compulsory trades, including:

- prohibitions against the unauthorized practice of a compulsory trade
- employing or engaging unauthorized individuals to practise a compulsory trade
- prohibition against holding oneself out as able to engage in the practice of a compulsory trade

However, individuals (who may not have to be members of the College) may be able to practise all or part of a compulsory trade by virtue of an overlap between Scopes of Practice in regulation or an exemption in regulation. The College has carried over legal interpretation principles from the MTCU system for how SoP overlaps are addressed (see Appendix 4).

There have been questions about whether every single activity in a compulsory trade should be compulsory when a trade is reclassified. This is at the centre of some of the policy considerations of my review.

I have been asked to look at the new classification process and the criteria the College established and managed. I have done this, having listened carefully to the advice of the participants in my review.

Trade Classification or Reclassification Reviews in Ontario

In Ontario, the majority of compulsory trade designations took place before 1968 (seven in 1946 and nine in 1967). Until the compulsory designation of the Sprinkler and Fire Protection Installer trade, which will take effect in February 2017, the previous designation in Ontario occurred in the 1980s-90s for the Hoisting Engineer trades.
The current classification of 22 trades as compulsory or voluntary is a carry-over from previous trades’ legislation. The TQAA classified trades as compulsory or voluntary. The ACA classified them as “restricted” and “unrestricted.” Prior to Ontario Regulation 458/11 under OCTAA and the creation of the Ontario College of Trades, there was no open and deliberative process for trades seeking compulsory status of trades – until then, ministers in the relevant Ontario government departments made the decisions. There is broad agreement that the transparency of the current process is an important and positive development, but there is less agreement on whether it is the best possible process and decision-making structure.

In 2010–11, members of the College of Trades Appointments Council, acting as the Transition Board, developed and consulted on a proposed process and criteria for trade classification (and ratio) reviews, to be prescribed in a regulation (O. Reg 458/11) under OCTAA. The proposed criteria for classification reviews were closely aligned with Armstrong’s recommended criteria in his report. However, not all process and criteria elements proposed by Armstrong were adopted in regulation, for example, that panels be advisory to the Minister and should specifically take into account the public interest. Furthermore, Armstrong devoted considerable attention to data and evidence that could inform decision-making about compulsory certification, in particular, health and safety outcomes, apprenticeship registrations and completions, economic impact, and consumer protection. In all of these areas he found a dearth of information and concluded that, even if it were abundant, it might not be helpful in comparing the benefits and downsides of change in classification and recommended that the review panels have the ability to request research support from the College. My recommendations seek to address these gaps to help better inform decisions about trade classifications going forward.

In 2013, the College launched its first (and, so far, its only) trade reclassification review by a review panel for the trade of Sprinkler and Fire Protection Installer. Completed in 2014, this review was...
an important learning experience for the College, including its Trade Boards, for stakeholders and for the review panel involved. The College’s stakeholders carefully watched the process. It was contentious, not only because of the myriad interests involved in this “first pass,” but also because many of the participants in the process chose to use it as a venue to voice various forms of opposition to the College itself.

In April 2014, the review panel rendered its decision to change the classification of the trade from voluntary to compulsory. At that time, the College started receiving calls from interest groups calling for a halt to all classification reviews, pending changes to the process. The review panel decision and dissenting opinion also raised questions about some aspects of the process. A large number of stakeholders subsequently called for changes to the process with a focus on procedural fairness, including: the rules of procedure (whether the onus for proving the efficacy of an application falls on the proponent or respondent); the sufficiency of notice provided to stakeholders through the requirement on the College to simply post the application on its website; and the time permitted for stakeholders to respond to applicants. Concerns were also raised about the nature of evidence expected and required in the process, including the inability of the panel to call its own evidence and whether the College (the Board and Divisional Boards) could and should present its own evidence. Additionally, there are strongly held and differing views about the degree and nature to which compulsory certification is informed by, or is reflective of, the public interest.

Proponents of compulsory certification say it:

- ensures rigour in training, skills development and competence
- promotes safe and high-quality work
- elevates the status of trades and the mobility of the trades
- provides for a predictable supply of dependable and highly trained workers
- is an incentive to both the entry of apprentices to trades and to apprenticeship completions

Generally, the main proponents of compulsory certification are found in the construction sector. It is common, across Canada, for construction industry employers, trade unions, and trades training
and apprenticeship programs to be actively involved in the sector. This has been beneficial for the apprenticeship system. At the same time, there are suggestions of close relationships between the breadth of trades training, the sometimes rigid boundaries between trades, and the jurisdictional interests of trades unions and their employer counterparts. These tensions are understandable, predictable and undeniable. They have been apparent in the course of my work – as I expected.

Opponents of compulsory certification say:

- A strong association with a public interest would have resulted in more uniform and predictable approaches to trade classifications
- The risk of harms and consumer protection aspects of the work of trades are addressed through myriad and “overlapping” regulatory regimes, including consumer protection, health and safety laws, building codes and warranty requirements

At the centre of some of the policy considerations of my review is the tension between, on the one hand, the role of the College as an advocate for the trades and for trades training, and, on the other, its role in managing the regulatory process through which compulsory classification might be available. For example, many stakeholders point out that in some cases, a finding of compulsory status for one trade might result in a loss of work for another trade and employers of that trade. Others point out that since members of compulsory trades are obligated to pay annual membership fees to the College, any additional compulsory classifications will result in additional income for the College. Arising from this are perceptions that self-interest might motivate the College to design its processes, make decisions on the process, or make appointments that would result in compulsory certification outcomes.

There is an obvious public interest in fair, inclusive and transparent decision-making procedures and the rigour of processes and their ability to meet this test. This was also at the heart of Armstrong’s report. These concerns need to be addressed. In this area, we can learn from the work of Health Professions Legislation Review. It concluded that professional regulation should take into consideration:

- the history and evolution of the profession
- evidence of its benefit to the public
• whether or not regulatory mechanisms are in place to oversee professional activities and competence

Trade Classification: What Other Canadian Jurisdictions Do

Coming into this review, it quickly became clear to me that the evolution of decision-making about compulsory certification in Canada and Ontario has been long-standing, episodic, contentious and mostly opaque. There is very little information on the previous evidence and criteria that ministries and agencies used to make these determinations over the past 80 years.

Not surprisingly, the degree and nature of compulsory certification varies considerably across the country. Most of the designations still in place date back to the mid-20th century.

As mentioned earlier in this report, the policy secretariat supporting this review reached out to all Canadian jurisdictions to learn about their trades systems, and engaged with officials in four provinces. The examples cited below reflect this engagement. In the provinces studied, there has been a decline in the number of compulsory designations over the past few decades. For example:

• Compared to the 22 compulsory trades in Ontario, there are only five compulsory trades in Saskatchewan.
• In British Columbia the government has moved towards having no compulsory trades.

In contrast, the Quebec skilled trades system varies greatly from other provinces. All 25 unionized construction trades and 30 unionized occupations are designated compulsory. The Commission de la construction du Québec (CCQ) regulates the construction trades, delivers apprenticeship training to construction trades and manages the pension plan and collective agreements of employers (unions) in these trades.

In this report, I am not recommending a shift towards designating greater or fewer numbers of compulsory trades, as this is a broader policy question that falls outside my terms of reference. Rather, I am focused on improving the processes through which the College engages relevant parties and makes decisions on a trade’s classification.
The Armstrong Report emphasized the importance and weight of a decision to restrict access to certain types of work by classifying a trade as compulsory. Armstrong said, “The power to restrict access to an occupation is an extremely important legal concept and one that should be reserved for ministerial discretion.”21 This approach is reflected in other provinces where governments have retained the power to determine trade classifications. The processes and policies guiding the classification of trades vary considerably. For example:

- In British Columbia, the current government has not been open to proposed mandatory designations
- In Saskatchewan, there is a defined process and criteria for determining trade classification and a designation officer who supports the applicant through the process
- In Quebec, construction trades automatically have a compulsory designation
- In Nova Scotia, the newly created agency, the Nova Scotia Apprenticeship Agency (NSAA), evaluates a number of factors to determine whether compulsory certification is warranted, including:
  - health and safety of the public and worker
  - impact on consumers
  - impact on environmental protection
  - other regulatory authorities with purview over the trade
  - whether other trades’ scope of work may be affected
  - impact on training and certification

Trade Classification Reviews: What Stakeholders Told Me

In my consultation questionnaire I asked “what makes a compulsory trade compulsory?” and nearly half of respondents who answered this question said compulsory status is based on risk of harms. This was also the predominant response when I raised this question at the regional meetings and with Trade Boards. Some focused on the complexity of the trade as the purpose for required training and compulsory status. Participants were also quick to add economic impact, environmental impact, interprovincial labour mobility and consumer protection as important factors for decisions about compulsory status.

21. Armstrong, pp. 5
“Generally, an inherent risk of harm to public or worker health and safety, the complexity of the work in a trade, the economic impact on employers, apprentices, journeypersons, and the industry in general should be the primary considerations in classifying a trade as compulsory. That is not to say that these should be the only determinations. Other provinces give weight to industry support, consumer protection, and environmental impact. In most provinces, the overwhelmingly dominant criteria or consideration seems to be that of preserving public safety.” (DR-19 – Interior Systems Contractors Association of Ontario)

“It [compulsory status] really comes down to the First Principles:
1. Protection of the public. 2. Health and safety of the worker. 3. Environmental protection. If the work of a trade has any impact on these three criteria, it should be compulsory. However, we also recognize that there are other factors to be considered, but the criteria used to determine whether a trade is compulsory should be weighted in favour of these First Principles. We would also like to add that the criteria should be clear and attainable, and applied consistently by the College.” (DR-36 – International Union of Painters and Allied Trades, District Council 46)

In response to the question – what makes a compulsory trade compulsory?

“The level of knowledge needed to perform the work.”
(DR-66 – Automotive Aftermarket Retailers of Ontario)

“A compulsory trade should be one that requires diligent regulatory oversight due to the risk it poses to the public interest and the College’s mandate to serve and protect it. Voluntary trade qualification should consist of trades that do not pose a serious risk of harm to the general public, but its practitioners should be encouraged to seek certification with the College.” (DR-35 – Ontario Hairstylists Association).

“We believe that compulsory certification should not be limited to any specific “tasks” or “elements” as they may be arbitrarily set and misinterpreted by the current bureaucratic structure and governance of the College. We do not want the
system in Ontario to change with regards to what is included in our trade, i.e., No “core/peripheral” job functions. The fact remains that Plumbers have learned the work of a Sprinkler Fitter and are able to do that work as part of their Scope of Practice. The College’s job is not to reinvent the wheel when it comes to the Construction Industry and the job functions of those involved. Again, the intention which we supported at the onset is a system of self-regulation in which the tradespeople themselves determine whether there is an issue that needs to be addressed, and how the issues should be resolved, with the College and its employees acting only as a resource for facilitation.” (Emphasis in submission) (DR-5 – Name withheld at submitter’s request)

“A trade should be deemed compulsory when there is sufficient reason to believe that there may be a risk of harm to the public, tradespeople or other workers or the environment either while performing work within the trade’s entire SoP, or after the work is performed. The risk of harm can be different for different trades. For example, work in the Hoisting Engineer trade is inherently risky throughout the crane set-up and tear-down process, as well as during actual hoisting operations. There is no risk to the public, tradespeople or other workers on the job once the crane is removed from the jobsite. For other trades, the risk to the public may be just as great after the work is finished if the work is not carried out correctly.” (DR-87 – Ontario College of Trades Hoisting Engineer Trade Board)

The questionnaire respondents were evenly split on the question of who should make the decision on the classification or reclassification of trades. About half of respondents feel that that the College should continue to facilitate this process through the current model of three-person adjudicative panels selected by the College Boards. The other half of respondents focused on the need for clear independence from the College and raised significant concerns about an internal process having the potential for inherent or perceived bias, given that decisions to classify trades as compulsory support the sustainability of the College.

“The determination of what is a compulsory trade needs to be made by the people in that trade, and it should be a fair process that will establish the principles of worker and public
safety and environmental protection.” (DR-38 – Ontario Pipe Trades Council)

“In general, we submit that the current process as set out in legislation is effective, acceptable and not in any significant need of change (certainly not deserving of stopping activity in this area).” (DR-46 – Ontario Glazier Apprenticeship and Training Committee)

“In our view, the adjudicative model should be replaced by a public inquiry model more akin to the model used by the [Health Professions Regulatory Advisory Council].” (DR-73 – Residential Low Rise Forming Contractors of Metropolitan Toronto and Vicinity)

“There is a lot of work that needs to be done to fix this process. From our perspective, the College has self-serving bureaucratic and financial interests when it comes to expanding the number of trades that are classified as compulsory, and therefore subject to membership fees. We note, with trepidation, that one of the College’s strategic objectives is “to promote the College of Trades and build its membership.” (DR-78 – Ontario Chamber of Commerce)

On both sides, however, I heard a common desire to see decisions made in the public interest, with no perceived bias, and with clear industry involvement.

I also heard that the onus of proof for a change in classification should be on the applicant for the classification review, and that the body considering the classification of a trade should also be able to pro actively gather information instead of relying on the submissions it receives.

“We are adamant that the responsibility must be on the party requesting a classification review to prove it is warranted prior to it going ahead.” (DR-16 – Garwin Pitman)

“The party/parties asserting that the trade’s status should be changed to “compulsory” bear a significant onus of demonstrating, by reference to relevant objective evidence, that there is a need (not just a desire) for a change to the status quo.” (DR-49 – Heavy Construction Association of Toronto)
“[To refine and improve the process] allow the panel to engage in an independent review rather than rely only on the information it is provided by the parties providing evidence and testimony.” (DR-36 – Electrical Contractors Association of Ontario, International Brotherhood of Electrical Workers)

Over the course of the review, there was growing comfort with the idea that an applicant for a trade classification review should be able to select certain features of the trade (or the entire trade, if desired) for consideration in the trade classification review.

The consultation questionnaire asked whether an entire SoP should be enforced, and whether the enforcement of a compulsory trade could be limited to those that have been identified as posing a risk of harm. The responses to these questions were split, with about equal numbers agreeing and disagreeing.

“The entire scope of practice for every compulsory trade should be enforced. To allow grey areas or overlap between trades will invite jurisdictional challenges particularly in the organized sector.” (DR-33 – International Union of Painters and Allied Trades, District Council 46)

“[In response to the question: should the entire SoP for a compulsory trade be enforceable or be subject to enforcement?] Yes. Particularly for the electrical trades. Working with electricity is a hazardous job that carries significant risk. It is extremely important, for the protection of both the public and the workers, that it is conducted by people who are trained and certified.” (DR-36 – Electrical Contractors Association of Ontario, International Brotherhood of Electrical Workers)

“Whether to enforce an SoP in its entirety depends on the trade. In the case of the three Hoisting Engineer trades, these are essentially a coherent set of skills that cannot be parcelled out, because they are all linked to the operation and maintenance of particular types of equipment. It would be exceedingly dangerous for an unqualified worker to perform any of the tasks listed in the SoP. For Hoisting Engineers, therefore, the entire SoP should be enforced and should be enforced in all circumstances, without exception. This may or may not apply to other compulsory trades.” (DR-87 – Ontario College of Trades Hoisting Engineer Trade Board)
“If the SoP is structured [so that] both core and peripheral elements are included, but identified and listed separately, then only the core elements could be subject to enforcement. If the SoP does not distinguish between core and peripheral tasks, then the entire SoP cannot be subject to enforcement.” (DR-82 – Christian Labour Association of Canada)

“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.” (DR-67 – Ontario Skilled Trades Alliance)

“Yes. With the provision of allowing some activities to be done by several trades, e.g., automotive (310S), truck (310T), or trailer (310J). Given a fundamental change to the SoP model, the enforcement function should also potentially be revised. [For example], changing an air hose on a vehicle such as a truck, trailer, car, motor home […], etc., requires the same core ability, but current SoPs pigeon-hole this work” (DR-22 – Rolf VanderSwaag)

I also heard about the current legislative requirement for trade classification review when naming a new trade and the development of an apprenticeship program. This has created an unintended disincentive for some industry stakeholders, and I offer a recommendation on this below.

Trade Classification Reviews: Recommendations

Prior to the creation of the College of Trades, the granting of compulsory status lay in the hands of government, specifically under the authority of the provincial minister responsible for training and apprenticeship (currently the Ministry of Training, College and Universities). This was an opaque process without publicly available criteria and no formal mechanisms for involvement. The government recognized the need for transparency and criteria in making these important decisions. This led to Tim Armstrong’s appointment. It is not surprising then that Tim Armstrong’s recommended shift to a more transparent and policy-based process, with a key role for expert panels, was initially met with fairly broad acceptance by
the trades and the College’s current stakeholders. In retrospect, Armstrong’s advice was well-reasoned and insightful. If that advice had been followed more precisely, I suspect that this review would not have been necessary.

Importantly, Tim Armstrong noted that the granting of compulsory status to a trade is an important legal step, and one that should be made with careful consideration of the public interest. This is particularly so because it effectively grants to a trade monopoly over a considerable range of work. The decision thus has a broad impact on workers, employers and consumers. It is a decision that should not be taken lightly, and the process through which decisions are made must be capable of withstanding public scrutiny. It must be accessible, transparent, evidence-informed and even-handed. It is for this reason that, in Ontario, final decisions about whether unregulated health professions should be regulated are made at the ministerial level, with approval from the legislature.

In the final event, the decision-making process at the College of Trades varied from Armstrong’s recommendations. The College was given a more hands-on role in managing the classification review process, and its boards have a significant role in the appointment of decision-makers. This approach carried some risk from the outset in view of the inherent tension in the College between its role as both advocate and regulator. Given the impact of granting a monopoly over work, the College was always going to be held to a high degree of external scrutiny, and an equally high standard of propriety. This was a very high bar and perhaps too high for any professional college to take on itself, despite the best efforts of the College and its board. Much of the frailty built into the process was revealed in the first application processed under the new system, and some of its shortcomings were recorded by the decision-making panel. To be fair to the College, that process was not helped by the large number of participants who used the process as an opportunity to voice concerns about the College itself. I am persuaded neither by those who like things as they are nor those who would like me to recommend turning the clock back to the pre-College classification framework.

Rather, my view is that, from a public interest perspective, the interests of trades and the long-term stability of the College, this
decision-making process must be revisited in a way that will build more predictability and confidence in classification reviews – and broader commitment to the College of Trades. In some respects, this can be accomplished by revisiting Armstrong’s advice about the importance of independent experts. The recommendations are also responsive to opportunities for improvement offered in our consultations, including: timelines, inclusiveness, transparency, and providing access to more information and research.

In addition, I am raising a question about the long-standing approach under which a trade seeking compulsory classification is either granted compulsory status for its full scope of practice, or remains entirely voluntary and unregulated. Upon careful analysis of the broader system, it seems to me that an applicant trade should have some degree of choice about the range of work for which it is seeking compulsory status, without compromising the requirement for training and certification for the full scope of the trade.

**Desired Outcomes:**

- The decisions about the classification of a trade as compulsory would be made by independent expert panels on the basis of stipulated criteria
- The key factor for decisions about the classification of a trade as compulsory is risk of harm
- Voluntary trades may continue to pursue compulsory status for their full scope of practice. They may also elect to pursue compulsory status on the basis of the features of a trade’s SoP they consider appropriate in view of the characteristics of the trade. Decisions in this area could be used to help inform the College’s policy framework for compliance
- Applicant onus and confidence in an evidence-informed, transparent and inclusive process
- Review panels for trade classification or reclassification reviews continue to look to a trade’s SoP and other supporting information for trades
- College emphasis on training and certification for the full scope of trades, regulating the practice of compulsory trades and governing its members
Trade Classification/Reclassification Reviews
Recommendation 1. The Minister of Training, Colleges and Universities should appoint a roster of experts who would serve on review panels for decisions about the classification or reclassification of trades, and be advisory to the Minister on matters of apprenticeship and training.

Trade Classification/Reclassification Reviews
Recommendation 2. In naming a new trade under the Ontario College of Trades and Apprenticeship Act, the Minister should have the option to classify a new trade as voluntary or to refer the matter to a review panel.

Trade Classification/Reclassification Reviews
Recommendation 3. After an initial consultation with the College, the Minister should determine the skills and competencies that would inform the initial appointment of individuals to a roster of experts. The roster of experts would be individuals without an affiliation with a trade or a particular trade sector. They could include individuals with expertise in areas such as public administration, facilitation and decision-making, health and safety, labour market development and the economy, and consumer protection.

Trade Classification/Reclassification Reviews
Recommendation 4. One member of the roster of experts should be appointed Chair, with responsibility to appoint the panels for applications for the classification or reclassification of trades named under the Ontario College of Trades and Apprenticeship Act.

Trade Classification/Reclassification Reviews
Recommendation 5. Each panel should be composed of five or seven members, including a chairperson that the Chair selects from the roster of experts. Decisions of review panels would be by majority decision.

Trade Classification/Reclassification Reviews
Recommendation 6. The College Board should have the authority to appoint up to two individuals with trades experience who would be advisory only to the review panel and not participate in the decision-making process of the review panel.
Trade Classification/Reclassification Reviews

Recommendation 7. Crown Employees from the Ontario Public Service should support the review panels in a secretariat. One employee could be appointed the executive coordinator and be responsible for staff and day-to-day operations of the secretariat.

Trade Classification/Reclassification Reviews

Recommendation 8. The Minister should establish the following criteria for the purpose of review panel decisions on the classification or reclassification of a trade as voluntary or compulsory:

1. The key factor for the classification or reclassification of a trade as voluntary or compulsory is risk of harm to one or more of (a) individuals working in the trade, (b) other workers on the job and/or (c) the public.

2. The secondary factors take into account the public interest, assessed in light of the following criteria:
   - economic impact, including the impact on employers, apprentices, tradespeople, training institutions and government
   - the impact on access to the trade and labour mobility
   - there is a demonstrated public need (e.g., additional regulation is warranted, enhanced environmental protections, etc.)
   - implementation considerations (e.g., education and training, strategy for individuals currently practicing the trade [grandparenting], impact on training ratios, etc.)

3. A review panel is permitted to address other secondary factors that it considers to be in the public interest.

4. In its decision-making, the review panel should weigh the criteria with deference to the key factor compared with the secondary factors and may weigh each of the secondary factors as it considers appropriate within this framework.

The expert panel, with assistance from its staff, would develop application and policy guidelines and other relevant materials to support the application process for the panel and trade applicants. This material would be available to the public.

Trade Classification/Reclassification Reviews

Recommendation 9. A College Trade Board should initiate an application for the reclassification of a trade in consultation with
industry. The Trade Board could also consider applications submitted to the Trade Board from the industry. The Trade Board for the trade and the Divisional Board for the trade’s sector would endorse applications.

**Trade Classification/Reclassification Reviews**

**Recommendation 10.** The onus would be on the applicant to provide sufficient supporting evidence for the classification they are seeking or the reclassification of a trade.

**Trade Classification/Reclassification Reviews**

**Recommendation 11.** An applicant may choose to pursue classification or reclassification on the basis of either the trade’s full SoP or the features of a trade’s SoP that it considers appropriate in view of the characteristics of the trade (e.g., elements that pose risk to one or more individuals working in the trade, other workers on the job and/or the public), but leaving intact the training and certification requirements for the full scope of the trade.

**Trade Classification/Reclassification Reviews**

**Recommendation 12.** All applications should be subject to an initial screen by the Chair of the roster of experts, plus any other roster members at the discretion of the Chair. The Chair would be permitted to seek clarity on the application and would have sole discretion on the progress of the application.

**Trade Classification/Reclassification Reviews**

**Recommendation 13.** Review panels for trade classification reviews should:

- Undertake public consultation with extensive and active public and stakeholder notice.
- Call their own evidence, so that they do not have to rely only on submitted evidence.
- Provide implementation advice in making decisions.

**Trade Classification/Reclassification Reviews**

**Recommendation 14.** There should be a timeframe of 180 days from the appointment of a panel to the rendering of its decision. The possibility of extension would be at the sole discretion of the chairperson of the review panel, based on the specific circumstances of an application to the Board.
Those Trades Currently in the Queue for a Trade Reclassification Review

The recommendations above would apply to trades on a going-forward basis who wish to seek an application for a trade classification or reclassification review. During my consultations, I was also asked about the status of the application for trades who are currently in the lineup for reclassification review after submitting an application prior to the start of this review. Several voluntary trades filed applications for a reclassification review prior to the launch of this review in October 2014. Those reclassification reviews were placed on hold pending the outcome of this review. In view of my recommendations on SoP reviews, revised decision-making criteria and the decision-making process itself, a question arises as to what now happens to those in the queue following implementation of any changes arising from this review.

First, if my recommendations in these areas are implemented, the revised classification review process should apply uniformly going forward and include those voluntary trades already in the queue. However, in view of the degree of change contemplated in these recommendations, including the decision-making criteria, some trades might wish to revise their applications, and this should be permissible without a trade losing its place in the queue, subject to the divisional board endorsing any revised application.

Preferably, those trades already in the queue would participate in a SoP review before proceeding with their reclassification review. In such cases, I would recommend that these trades retain their place in the queue and be “fast-tracked” through the SoP review process. Notwithstanding this, any trade that elects to maintain its current reclassification application and to complete that prior to entering a SoP review should have the opportunity to do that.

Implicit in these recommendations is that trades currently classified as compulsory would not be required to confirm their compulsory status through the revised going-forward process. While the original policy basis for the classification of these trades as compulsory is in some cases unclear or unrecorded, they have enjoyed this status in an uninterrupted way for a considerable period of time, and successive governments have not chosen to revisit this. While
I am not inclined to revisit the classification of these trades, I will offer some observations in my discussion of enforcement about the important question of what is, practically and reasonably, compulsory about compulsory trades.

**Part II. Journeyperson-to-Apprentice Ratio Reviews**

There are 33 construction trades with prescribed ratios under OCTAA. Section 60(1) of OCTAA describes these ratios as: “the number of apprentices who may be sponsored or employed by a person in that trade in relation to the number of journeypersons employed or otherwise engaged by the person.”

The College initiated the first cycle of ratio reviews in 2012, with completion in summer 2013. There was positive feedback that the review process was more transparent than previously. However, participants in the reviews, members of the independent panels making the review decisions and members of the wider College community asked questions and made suggestions on how to further improve the process.

These questions focused on the lack of available data to inform participants’ submissions, whether the College was in a position to provide this data, whether the panels should be able to make a decision on ratios in the absence of evidence, whether the process could follow a more consultative approach and whether the panel could consider material not contained in written submissions. There were also questions about the purpose of journeyperson-to-apprentice ratios and an absence of consensus regarding this on the part of participants and a lack of clarity provided by the College. Participants in two separate reviews also suggested that members of the independent panels may have had a potential conflict of interest, and that the process must be free from a reasonable apprehension of bias if it is to be taken seriously.

The independent panels often commented in their decisions on the questions and suggestions made in the written submissions to them, and, in some cases made observations.
As these written decisions remain publicly available on the College website, I have taken the liberty of quoting from a selection of these which provide a background to some of the issues and limitations that have already been formally identified.

“Both parties made submissions, primarily in their oral remarks that we have not considered. These submissions were with respect to the many tasks that the parties thought that the College should undertake: gathering and publicising more data, taking steps to promote the completion of an apprenticeship program, promoting the trades in high schools and so on. We do not mean to diminish the significance of those submissions. It is simply that we have no authority to consider them or to make recommendations on them. Access to data is a common submission from parties before Review Panels, and the view that the College should be doing more to collect and make available relevant data. The College does in fact connect on its website to some of the publicly available data from the Ministry of Training Colleges and Universities (‘MTCU’), and no doubt will welcome any constructive suggestions in this regard.” (Ratio Review Panel RR7-2012 for Architectural Glass and Metal Technician)

“All of these parties addressed the relevant issues, and both provided some thoughtful input. However, as will be seen below, none of them had any significant amount of data to provide the review panel. We accept as legitimate, and no doubt informed, the perceptions and concerns expressed by both of the parties. However, it is very difficult to make a decision unless these concerns are backed up by objective data that provide a rationale for the conclusions that the parties urge on this panel. The OHBA makes this point directly a number of times in its brief, suggesting that it is the duty of the College to provide that information. As a Review Panel, it is not within our mandate to comment on that submission at all. This Panel, like any review panel is faced with the task of making a decision based on the material before us. Indeed, we may not look beyond those submissions.” (Ratio Review Panel RR4-2012 for Cement (Concrete) Finisher)
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. (Ratio Review Panel RR18-2012 for Electrician – Construction and Maintenance and Electrician – Domestic and Rural)

I heard that the ratios are established to achieve a number of different, and potentially unaligned, objectives, including:

- maintaining training standards
- promoting health and safety on worksites
- helping to ensure a balanced labour supply in the province

Historically, there have been journeyperson-to-apprentice ratios since medieval Europe. Ontario first used ratios as a concept in legislation in the Apprenticeship and Tradesmen’s Qualification Act (ATQA). The TQAA replaced the ATQA in 1990. Under both pieces of legislation, Provincial Advisory Committees (experts appointed by the Minister) provided recommendations to the relevant Minister on issues related to the skilled trades, including ratios. This process of making recommendations to the Minister about the ratios was not widely known, did not invite participation from any parties beyond the Provincial Advisory Committees, and decisions made were not based on a consistent set of publicly known criteria.

Following the Armstrong and Whitaker Reports, one of the core functions under the College’s mandate was managing an independent and cyclical review of the journeyperson-to-apprentice ratios. Both Armstrong and Whitaker widely discussed the potential process and criteria for these reviews, and the members of the College of Trades Appointments Council, acting as the Transition Board of the College, set out the process and criteria for ratio reviews in O. Reg 458/11.
History of Journeyperson-to-Apprentice Ratio Setting in Ontario

Training ratios can significantly affect the core aspects of some businesses and, in some cases, the broader communities to which they belong. The concerns about ratios long predate the establishment of the College. In my meetings with stakeholders, I heard about the contending arguments for and against ratios, including those that elected officials have raised through ongoing legislative debate.

The following summary describes the historical developments that have led to today’s approach.

In the simplest terms, the debate about apprenticeship training ratios splits into two opposing arguments. In his 2008 report on compulsory certification, Tim Armstrong summarized the opposing sides:

“Those in favour of the existing ratio system pointed to the necessity of ensuring that employers had a sufficient number of journeypersons to provide quality training to apprentices [and those] critical of the existing [ratio] system said that too often it operates to artificially limit the supply of labour.” 22

Under the Trades Qualification and Apprenticeship Act (TQAA), ratios were ostensibly established for reasons of safety, quality workmanship and effective training. Ratio stipulations were legislated within general regulations or specific trade regulations. However, many employers maintain that the inflexibility of ratios has proven to be a challenge.

The Apprenticeship and Certification Act (ACA) was the result of the extensive feedback received during a two-year apprenticeship reform engagement process. The ACA did not require ratios for training in the workplace, nor did it legislate hours or wage rates for trades. Rather, industry committees established policy guidelines for trades governed by the ACA. Adhering to these guidelines was at the discretion of individual employers, giving them flexibility to hire apprentices where the quality and safety of training would not be undermined.

22. Armstrong Report, pp. 89
The journeyperson-to-apprentice ratios trades were carried forward from TQAA to OCTAA and the College was given the responsibility to initiate cyclical reviews of ratios, including the establishment of the criteria and process. The creation of the College enabled a systematic and transparent process to review ratios. It also provided the opportunity for the College to establish a public-policy framework to guide the development of ratios.

Such a policy framework would help industry, and provide a public lens to balance the private interests implicit in the use and monitoring of ratios. Without a clear framework that includes public-policy goals, it is difficult to gauge the purpose and effectiveness of ratios. As Tim Armstrong noted, the understanding that ratios can have an effect on labour supply and demand, wages, and the economy, have been debated going back to at least the 1973 Dymond Report. As I have heard during the course of my review, ratios can have an impact – either positive or negative, depending on the perspective and implementation factors – on a number of important aspects of the labour market, worker safety, wages, and training (e.g., adequate skill development, training delivery flexibility), and the resource impact on employers. This list is not exhaustive, showing the complexity of implementing ratios and the important impacts they can have on industry and the broader economy.

During my consultations, some stakeholders said the current criteria used to determine ratios did not clearly align with a public benefit – a problem compounded by the lack of relevant data to inform decision-making. I heard that, in the first round of ratio reviews, trades advocated their positions without always relying upon data, either due to omission or a lack of reliable data. Evidence that was presented was often inconclusive, pointing to the need for better data presented in a context and format that would allow a review panel to understand whether the evidence was directly relevant or peripheral to an argument. There were concerns about the timeframe provided to present evidence to a review panel, and the panel’s ability to ask for additional evidence to provide greater context. Given these concerns, and the confusion surrounding the unclear public-policy goals of using ratios, it is no surprise the first round of ratio reviews created and exacerbated tensions. In order to gauge the effectiveness of using ratios, in terms of their impacts
and outcomes, better evidence, guided by a clearer policy objective and supported by a more rigorous process, should help to drive better decisions.

**Ratios in Other Jurisdictions**

In Canada’s federal system of government, responsibility for the regulation of trades has been devolved to the provinces. Consequently, processes used to determine journeyperson-to-apprentice ratios vary across the country in terms of:

- the number of trades to which ratios apply
- the method of determining which trades have ratios
- the use of a ratio itself

The approach to using and developing ratios, like the development of regulations in the trade, developed as governments’ relationships with industry evolved. Some governments have opted to allow employers great flexibility in delivering apprentice training, either not using ratios at all or allowing fewer journeypersons to train more apprentices. For example:

- British Columbia has never had mandatory ratios. Since 2011, all trades in Alberta now have a journeyperson-to-apprentice ratio of 1:2, or greater, varying by trade (i.e., one journeyperson can train at least two apprentices in all trades).
- In Saskatchewan, too, most trade ratios in regulations23 permit a journeyperson to train multiple apprentices. A few trades (boilermaker, insulator, plasterer, steamfitter-pipefitter) have ratios permitting 1:1 for the first apprentice hired; then, they require multiple journeypersons to train additional apprentices. Ratio reviews are opened at the government’s request, but this rarely happens, following organized input from stakeholders. Government policymakers develop recommendations after looking at safety factors, giving primary consideration to economic factors.
- In Nova Scotia, all trades have a default ratio of 1:1, though there are trades with higher ratios (which allow a journeyperson to train several apprentices). For every compulsory trade, the ratio is 1:1 and the process for changing a ratio is industry-led through

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the Trade Advisory Committee. If an employer cannot meet the ratio, it may apply for a ratio adjustment to the Nova Scotia Apprenticeship Agency. The employer needs to demonstrate there is a limited capability to locate and employ journeypersons; detail the steps taken to hire more journeypersons; outline the availability of senior-level apprentices; and meet other criteria.

- Quebec’s use of training ratios is perhaps the closest to Ontario’s. In contrast to Saskatchewan and Nova Scotia, the ratio calculations in Ontario and Quebec defer to a higher number of journeypersons to supervise apprentices. The number is calculated based on a sliding scale for worksites employing more than one apprentice (e.g., roofer, journeyperson-to-apprentice, 1:1, 2:1). All of Quebec’s construction trades have enforced ratios. There are no ratios in non-construction trades.

Ontario will continue to use ratios in the near future. Therefore, it is important to maintain a transparent, defensible process for determining them, and provide decision-makers with the best criteria to do so. It is also important for training ratios to meet public-policy goals based on the best information available to decision-makers.

**Journeyperson-to-Apprentice Ratios: What Stakeholders Told Me**

I was asked to provide recommendations on the process and criteria prescribed in Ontario Regulation 458/11, made under OCTAA. This includes the process and criteria for ratio reviews for journeyperson-to-apprentice ratios for trades prescribed with a ratio.

While outside my mandate, many participants raised positions for and against the existence of ratios in Ontario. Some discussed the specific merits of the current ratios for trades. I heard that ratios are the highest in Ontario when compared to other Canadian jurisdictions and should be relaxed in order to provide the flexibility for employers to hire apprentices. Others claimed that ratios have little impact on hiring, because employers are just not hiring apprentices in some trades, sectors and/or regions.

In both written submissions and during in-person meetings, most stakeholders appeared comfortable with the ratio review function
remaining with the College, provided that improvements are made to the criteria and process in time for the next cycle. I heard a desire to ensure more open and broader consultations, clear criteria linked to the purpose of journeyperson-to-apprentice ratios, including a link to risk of harms, and for appropriate research and data to be made available to the participants in the process.

“The adjudicative review panel approach worked well in the consideration of ratio changes. A large number of ratio cases were considered within a relatively compressed period of time. The decisions of the review panels rigorously applied the criteria specified in O. Reg 458/11 and weighed the evidence that was presented. All proponents had an opportunity to make oral representations. The limits that the panels imposed on the length and format of written submissions and the duration of oral argument were not unreasonable. All of the requirements of due process and fairness were met.” (DR-85 – Ontario College of Trades Heavy Equipment Operator Trade Board)

“There is a concern with the lack of representation from employers in ratio and trade classification review processes, particularly the limited voices coming out of the SME sector. Without broad representation of views, stakeholders and regions, the review processes will fail to produce an outcome that is the best for the whole of Ontario and for the public interest.” (DR-53 – Greater Sudbury Chamber of Commerce)

“The OLRB model prevents participation from non-experts. The ratio reviews in particular demonstrated how individuals with legitimate concerns regarding the regulatory process were not able to access the onerous and formal requirements to engage the review.” (DR-77 – Ontario Home Builders’ Association)

“As we experienced when we entered ratio reviews, too much of the process has become politicized. In some instances, it became a ‘contest’ to see which dissenting union or organization could generate the most form letters. That is not a good way to make decisions when you are dealing with trades in high-risk situations. Furthermore, it does not protect the public interest to give, for example, labour mobility the same weighting in the decision-making process as environmental
protection or public safety. Clearly, the latter two are significantly more important and should be treated as such when rendering a decision. All decisions in these instances should err on the side of public and worker safety.” (DR-36 – Electrical Contractors Association of Ontario, International Brotherhood of Electrical Workers)

“There are ongoing challenges with College consultation processes, including this one, where it requires special expertise to properly respond to the questions asked. This limits the opportunity for meaningful feedback from the entire sector, i.e., journeypersons, apprentices, contractors, and the general public who are ultimately affected by the outcome of the consultation processes.” (DR-45 – Ontario Electrical League)

Journeyperson-to-Apprentice Ratios: Recommendations

The journeyperson-to-apprentice ratio prescribes the number of apprentices who may be sponsored or employed in that trade in relation to the number of journeypersons employed or otherwise engaged. Over time, ratios appear to have been set to achieve a number of different, and potentially unaligned, objectives, including: maintaining training-led standards; promoting health and safety on worksites; and helping to ensure a balanced labour supply in the province. These are all important outcomes.

Ratios were first established under the Apprenticeship and Tradesmen’s Qualification Act (ATQA). The TQAA replaced the ATQA in 1990, and under both pieces of legislation Provincial Advisory Committees (advisors appointed by the Minister) provided recommendations to the relevant Minister on issues related to the skilled trades, including ratios. This process of making recommendations to the Minister regarding the ratios was not widely known and did not invite participation from any parties beyond the Provincial Advisory Committees, and decisions were not made based on a consistent set of publicly known criteria.

Following the Armstrong and Whitaker Reports, the College was mandated to establish and manage an independent and cyclical review of the journeyperson-to-apprentice ratio. Both the trades, employers and other College stakeholders have been generally
satisfied with the first round of these reviews in 2012–13, and especially their transparency and cyclical nature. This is to the credit of the designers of the decision-making architecture and the College of Trades. Some questions were nevertheless raised about the degree of inclusiveness, perceived short timelines for decisions, and the large number and general nature of criteria established to guide decision-makers.

I make a number of recommendations dealing with opportunities to improve a process that has been well-managed by the College. These replicate some of the proposed changes designed to embed more rigour in the classification review process, although they fall short of recommending a change to the structure or location of decision-making. It seems to me that the current College-led “tripartite” panel model is relevant to the core role of the College, in training and apprenticeship, as well as the interests of employers, trade unions and tradespersons. In this context a public interest lens is brought into play through a recommendation that would see a shorter and much more focused set of criteria to guide decision-makers.

**Desired Outcomes:**
- Improved College monitoring and reporting on journeyperson-to-apprentice ratios
- Panels sufficiently supported by College staff
- Understanding about the purpose of ratios (i.e., quality of training and supply) and criteria
- Confidence in an evidence-informed, transparent and inclusive process

**Journeyperson-to-Apprentice Ratio Reviews**

**Recommendation 1.** The roster of adjudicators for review panels and selection of review panels should continue as outlined under the *Ontario College of Trades and Apprenticeship Act*. Professional and administrative staff of the College should support the ratio review panels.

**Journeyperson-to-Apprentice Ratio Reviews**

**Recommendation 2.** The College should make sufficient efforts to communicate information about ratio reviews to ensure broad stakeholder participation from across Ontario.
Recommendation 3. The College’s Board should consider establishing new criteria under O. Reg. 458/11. Review panels would evaluate submissions against these criteria to decide the appropriate ratio for a trade prescribed with a ratio. The following criteria are recommended:

- **quality of on-the-job training**, the impact of journeyperson-to-apprentice ratio on the training and performance of the apprenticeship and certification in the trade
- the potential for **risk of harm** for an apprentice and others
- the **demographic and labour market information for the trade**, including the age and availability of journeypersons, the number of prospective and registered apprentices, and the rate of apprenticeship completions and certification
- **economic impact**, including impact on consumers, employers, apprentices, tradespeople, training institutions and government
- the **demand for skilled trades in different regional/geographic areas of the province** and any trade-sector realities
- the experience of ratios for a similar trade or trade sector in **other jurisdictions**
- **other factors** relevant to the public interest

The review panel may weigh the criteria, as it considers appropriate.

Recommendation 4. There may be a need to provide the Board with the authority to consider a short delay for the next cycle, due to begin in 2016, to allow for public consultation on any proposed regulatory amendments and other implementation activities.

Recommendation 5. The review panel for ratios should have the ability to call its own evidence. It should not be limited to evidence contained in participant written and oral submissions.

Recommendation 6. The College should accelerate the collection of, monitoring of, and research about ratios and make this information available as part of its public data.
Journeyperson-to-Apprentice Ratio Reviews

**Recommendation 7.** The Board should revisit the timeframe required for a review panel to render its decision following its appointment. The current 120-day timeframe could be extended to 180 days, with any further extension being at the discretion of the Board. Alternatively, the Chair of the review panel could determine the time required for this part of the process, based on the specific circumstances of the application. There should be clear communication of the timeframe.

Journeyperson-to-Apprentice Ratio Reviews

**Recommendation 8.** The College should develop a policy and evaluation framework to clarify the broader public-policy goals, including the purpose and implementation considerations for journeyperson-to-apprentice ratios for trades prescribed with ratios. This framework ought to be informed by College stakeholders and the findings made publicly available.
College Enforcement

Under the umbrella of College enforcement, my terms of reference require me to make recommendations on:

1. Opportunities to clarify and improve the manner in which the College makes decisions related to Scopes of Practice of trades, including the enforcement of the prohibitions in Part II of OCTAA; and,

2. What consideration College enforcement should give, if any, to the decisions made by the Ontario Labour Relations Board (OLRB) in jurisdictional or work assignment disputes (between trade unions and/or employers) under the Labour Relations Act.

Like statutes for other self-regulatory colleges, OCTAA sets out provisions for dealing with matters of complaints, discipline and fitness to practice of members of the College. These provisions are in Part V of OCTAA but were not in scope for this review. Rather, my terms of reference point me to a review of the offence provisions set out in section 86 of OCTAA; specifically, the College’s compliance and enforcement of the compulsory certification requirements (or unauthorized practice of compulsory work) in sections 2 and 4 of OCTAA.

In simple terms, the issues addressed in this part of my review are driven by concerns and complaints by some unions and employers in the construction industry. They say that the College’s approach to enforcement of compulsory certification requirements is inconsistent with the statutory obligations and jurisprudence of the OLRB. The case has been made to me that this is causing uncertainty and disruption on work sites. The College’s approach and the impact on the ground is, for the most part, uncontested, although there are divergent opinions about how to remedy it.

This section of the report is organized in the following way:

- **Background**: a short history of enforcement of compulsory certification requirements in Ontario
- **The College’s Use of SoPs in Enforcement**: a discussion of the degree to which the College has sufficient upstream discretion to enforce in ways that could/would be more accommodating
of OLRB decision-making and jurisprudence, and of the rights of employers, trade unions and workers that flow from this. This is one of several places in this report where I point to upstream opportunities for the College to play a more active role in addressing issues that flow from overlapping work between trades

- **Risk-based Enforcement**: a discussion of risk-based approaches as an element of regulation
- **The Clash between College Enforcement and OLRB Decision-making**: including the origins and nature of this clash, which are already widely acknowledged by construction industry stakeholders. This is supported by cases, comments and concerns from consultation participants
- **Approaches to Addressing the Clash between College Enforcement and OLRB Decision-making**: including my confirmation of the concerns expressed by consultation stakeholders with the status quo. I also express discomfort with the view of a considerable number of stakeholders that the College’s dedicated enforcement function should be discontinued, on the basis that it duplicates resources in other agencies or inspection functions
- **Recommendations Related to College Enforcement**: In recommending a role for the OLRB in dealing with appeals arising from certain forms of enforcement activity, I am recommending that the College have formal standing in any such appeals and that any amending legislation arising from government decisions should require the OLRB to have regard, among other things, to the OCTAA

**Background**

Before the establishment of the College, the Ministry of Labour (MOL) had delegated authority for compliance with the compulsory certification requirements for all compulsory trades named under the TQAA and ACA, except the trade of hairstylist (21 out of 22 compulsory trades). At first, this was as part of a 1993 Order-in-Council to MOL to enforce trades qualifications. Later, it was under OHSA’s O. Reg. 572/99, Training Requirements for Certain Skill Sets and Trades, and dealing specifically with training requirements for certain skill sets and trades. Also, Regulation 950 under the
Provincial Offences Act (POA) authorized MOL to issue tickets for non-compliance of compulsory certification requirements: $195 for the worker; $295 for the employer.

In my discussions with MOL officials during this review, I learned that the vast majority of tickets under the POA for non-compliance with the compulsory certification requirements were issued by MOL’s Ottawa-based Jobs Protections Office. For other areas of the province, MOL inspectors used their powers under the Ontario Health and Safety Act (OHSA). The majority of enforcement action took the form of inspector’s compliance orders for contraventions of OHSA. Some trades held the view that this was not a consistent and comprehensive application of the TQAA and ACA requirements across the province. Under OHSA, appeals of an inspector’s order and adjudicative oversight rested with the OLRB. The OLRB already had considerable expertise in analyzing and interpreting appeals contextually and in light of its lengthy experience and responsibility in adjudicating jurisdictional disputes under section 99 of the Labour Relations Act (LRA). The written submissions I received and my discussions in the course of this review have led me to the understanding that the OLRB’s involvement worked very well. We can presume that there would be strong and broad opposition to any suggestion that this might be disrupted.

Furthermore, I understand that MOL inspectors, in carrying out routine inspections under OHSA, checked for Certificates of Qualification but were careful to distinguish these from complaints that were directly related to disagreements between parties about work jurisdiction. MOL policy advice guided inspectors. This advice cautioned inspectors to avoid being drawn into “economic or political” disputes such as those where “two trades are ‘squabbling’ because each wants to be awarded work on a contract” (i.e., a jurisdictional dispute). This leads me to the conclusion that efforts by trade unions to claim work through complaints processes, including under the TQAA and OHSA, pre-date the creation of the College. It is, therefore, not surprising that this matter re-emerged under OCTAA.

In his report and recommendations on the establishment of the Ontario College of Trades Armstrong envisioned a stronger, more collaborative approach to enforcement than what was happening at the time. This approach would involve MTCU field office staff and MOL inspectors identifying and targeting violations to the trades statutes and regulations in place, to ensure health and safety factors such as ratio requirements were being met on job sites.\(^{25}\)

In his recommendation to establish an “Enhanced Enforcement Unit,” Armstrong envisioned it would work closely with MTCU and MOL field staff to enforce all violations of trade statutory/regulatory requirements. He wrote that this enforcement activity “would relate principally, although not exclusively, to the compulsory trades,” and that “statutory enforcement powers could be given to the [College of Trades enforcement team] members.”\(^{26}\) Guiding Armstrong’s recommendations on enforcement was his assumption that the non-enforcement of ratios (which at the time, he noted, was common) could increase health and safety issues. To emphasize this, he recommended tightening ratio requirements – not changing the ratios per se, but the requirements employers had to meet and the penalties they could incur.\(^{27}\) He noted that some stakeholders who called for stronger enforcement of trade provisions recommended issuing MTCU field staff (Employment and Training Consultants) with statutory enforcement powers. His final recommendation supported statutory powers for College of Trades enforcement officers to address the issues noted above. Therefore, it is reasonable to assume he envisioned these officers working in collaboration with other officials in the field to minimize health and safety issues on job sites.

Further, Justice Whitaker, in his report, recommended a standing enforcement department, guided by an enforcement framework.\(^{28}\)

During the Standing Committee hearings for OCTAA (Bill 183), the Ontario government heard from some stakeholder groups who envisioned a stronger and more rigorous enforcement role for the College than had been previously assumed by government. These stakeholders emphasized enforcement to protect the public and the integrity of compulsory trades against persons practising without a

\(^{25}\) Armstrong, pp. 53-4.
\(^{26}\) Armstrong, pp. 103.
\(^{27}\) Armstrong, pp. 54.
\(^{28}\) Whitaker, pp. 72, 79.
licensure and who violate work-site codes, regulations or standards. Some stakeholders emphasized that adequate enforcement was important for tradespeople, to ensure the meeting of training and ratio requirements.

In Spring 2013, the government transferred enforcement powers (Part I and Part III offences under the POA) from the Ministry of Labour to the College. The Registrar of the College appoints inspectors and investigators who are designated by the Minister of Training, Colleges and Universities as provincial offences officers, pursuant to subsection 1(3) of the POA. I understand that the enforcement function at the College currently has a complement of around 75 staff, with about 50 enforcement officers.

Since April 8, 2013, the College has been enforcing compulsory certification requirements in Ontario. MOL supported the College for one year while the College prepared to take on its own enforcement activities. The College has a duty under OCTAA to serve and protect the public interest – a duty that applies to the College as it carries out each of its objects and functions. One of these objects is “[t]o address compliance issues in respect of matters within the jurisdiction of the College,” including sections 2 and 4 of OCTAA:

- Section 2 prohibits an unauthorized individual from engaging in the practice of a compulsory trade.
- Section 4 prohibits a person from employing or otherwise engaging an unauthorized individual to perform work or engage in the practice of a compulsory trade.

Enforcing these prohibitions can protect the public interest in a number of ways – for example, by ensuring that only professionals who have met a standard threshold with regard to training and competency perform potentially harmful acts or engage in the practice of the trade with a number of potentially harmful acts, thus reducing the risk of harm. Ensuring compliance with these prohibitions ensures more individuals are members of the College and, therefore, bound by a number of other professional standards and requirements. These would include being subject to public complaints – with potential disciplinary measures regarding professional misconduct, incompetence or incapacity, further to the provisions under part V of OCTAA. These are core features of
any professional college. The College is bound by its legislation to protect the public interest, even where other bodies mitigate or regulate the risks of harm or consumer protection.

The College’s Use of SoPs in Enforcement

The College’s Compliance and Enforcement Division has used SoPs as the primary basis for determining whether an individual or person is in violation of the prohibitions in sections 2 or 4, respectively, of OCTAA.

The College has adopted a practice of considering the performance of any act in the SoP of a compulsory trade, subject to applicable exemptions or SoP overlaps, as being equivalent to “engaging in the practice” of a compulsory trade and, therefore, a violation of the prohibitions under Part II of OCTAA. To support this, the College has developed a number of tools, including:

- An “SoP Matrix,” described by the College as “designed to break down the language in a SoP provision and identify the various possible activities or ‘work elements’ contained within it,” and
- “Overlapping Actions Matrices” and a “General Overlap Catalogue” which work together to identify overlaps in the language between SoPs for different trades.

Some stakeholders have expressed concern that the SoPs, in their current state, do not support such a practice. In the words of one stakeholder, “It is neither possible nor desirable to view every aspect of any trade’s SoP as compulsory and enforce it as such.” This same stakeholder said,

“The SoPs are also outdated because they were drafted at a particular point in time and in many cases have been overtaken by technological and other changes. For these reasons, the [OLRB], which formerly had jurisdiction over the trades regulation regime, took a purposive and contextual approach to the SoPs. Rather than giving the terms their dictionary meanings and applying them in a vacuum, the OLRB would only uphold a compulsory trade order if the work in dispute, understood in its practical context,
could not be performed safely without the specialized training available exclusively to members of the compulsory trade.\(^{29}\)

This is an important statement. It raises a preliminary question about whether the College is required to defer to dictionary definitions of the SoPs to define what it means to “engage in the practice” of a compulsory trade for the purposes of the prohibitions under OCTAA. Richard Steinecke’s analysis of scopes of professional activities\(^{30}\) and what it means to “engage in the practice” of a profession suggests that conduct does not necessarily have to be detailed in the (expansive) scope of a profession for it to be regulated. There is a common-law requirement that conduct from a scope of a profession is practised frequently, customarily or habitually to be considered “engaging in practice.” However, this requirement has been loosened when public interest or risk of harm are potential issues.

The point is that there is not a clear definition of what it means to “engage in the practice” of a compulsory trade. This is not necessarily as straightforward as referring to definitions of words in the SoPs. That is, such a rigid reading of the SoPs may not be appropriate for the purposes of defining what it means to engage in the practice of a compulsory trade. Instead, it is my view that the College has an opportunity to approach this within a clear and consistent policy framework to provide clarity on the subject, but now with a public-interest lens that should likely include risk-of-harm considerations.

**Current College Enforcement Activity**

Although the information is not on its public website, the College advises that it has established policy and operational procedures to support its enforcement officers in the field. The College describes its policy and operational guidelines as grounded in principles, such as the:

- promotion of compliance through information and education
- application of rigorous methodology

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29. Correspondence received from L.A. Richmond, Goldblatt Partners LLB on behalf of the Labourers International Union of North America (LIUNA) Locals 625, 1059, and 1089 dated October 27, 2015
• exercise of discretion on whether or not to enforce on a case-by-case basis
• protection of the public interest

The College’s “how to conduct an inspection procedure” refers to enforcement officers’ use of their discretion:

[If an individual/employer is not in compliance or if any violations are observed the Officer evaluates the situation and uses his/her discretion based on many factors (such as the individual knowingly not having a licence and therefore putting public safety at risk, attitude, contravention of SOP, result of previous encounters, complexity, etc.) to decide how to proceed.

These procedures refer to violations. The College has gone to great efforts to define “violations,” using various matrices breaking down and comparing the language contained within SoPs. It also includes an assertion that there is an automatic equation between “knowingly not having a licence” and “putting public safety at risk.” While it is important to provide enforcement staff with discretion, a more responsive, risk-based reading of the SoPs to define the violations themselves may provide more considered and consistent results.

The College provided me with a brief snapshot of its enforcement activity during the period of this review. For the period January to September 2015, the College reports about an even split for field inspections between the motive power and construction sectors, with 50 per cent (3,916 field inspection visits) and 46 per cent (3,565 field inspection visits), respectively. About 4 per cent, or 281 field inspection visits, were in the service sector. Of the total number of field inspection visits during the same period, the enforcement officers issued 113 tickets to individuals or employers in the motive power sector and 136 tickets to individuals or employers in the construction sector. These included 69 in ICI construction and 67 in residential construction.

The total number of tickets issued in ICI construction was about 10 per cent of the total enforcement action (69 tickets issued for 670 unauthorized individuals found). However, the use of provincial tickets and reportedly aggressive warnings has caught some employers by surprise. This is particularly so in circumstances where employers
were working with the belief that other mechanisms (e.g., collective agreements of unions and employers, jurisprudence from OLRB decisions) were addressing matters of work assignment and where no such enforcement has occurred for decades.

Not all enforcement action against unauthorized people engaging in the practice of a trade results in tickets. The College uses a number of tactics to bring individuals and employers into compliance. These include providing information and education. For example, the College tells out-of-compliance individuals about apprenticeship options, the Trade Equivalency Assessment process 31, and College membership. This approach is commendable in its encouragement of College membership and, potentially, ensuring more people are subject to various standards under provisions in Part V of OCTAA.

However, rigid readings of SoPs continue to define out-of-compliance individuals – subject to various exceptions, exemptions and SoP overlaps. These rigid readings do not directly take into account risk of harms or jurisdictional overlaps that are not in SoPs. Also, they may not provide relief to individuals who should not be required to move into compliance from a risk-of-harms perspective.

The College has also developed an enforcement blitz protocol. This protocol is aimed at targeting enforcement efforts in specific sectors and geographic areas to ensure maximum impact, based on sectors with the highest complaints. The College carried out blitzes in the construction and motive power sectors in two regions in the first half of 2015, and is planning another two blitzes for 2015. The College has not provided any evidence that these enforcement activities focus on high-risk workplaces or the underground economy – in fact, complaints seem to be the driver.

**Risk-based Approach to Enforcement**

Risk-based approaches to regulation have been evolving for a number of decades, particularly as an element in efforts to modernize regulation. Risk-based and data-driven approaches and tools have enabled a broader range of policy choices, resolved conflicts between competing interest groups, and provided objectivity and

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31. The College Trade Equivalency Assessment process is detailed on its website http://www.collegeof trades.ca/trade-assessment
transparency for defensibly explaining resource allocation. For example, in the UK, the Professional Standards Authority oversees the work of nine health regulatory bodies, using an approach it calls “right touch regulation.” This works to identify an appropriate regulatory force for a quantified and qualified assessment of risk of harm.

The use of a risk-based approach to enforcement is also common among regulatory authorities in Ontario, including the Technical Standards and Safety Authority (TSSA) and Electrical Safety Authority (ESA). The TSSA has a broad mandate to ensure the safety of a wide number of diverse things. They include elevating devices, amusement park devices, stuffed articles, and the transportation, handling and storage of volatile gases. The TSSA uses a “Risk Informed Decision Making” process to manage its regulatory priorities. This process includes the World Health Organisation’s disability-adjusted life-years (DALY) metric. DALY provides a rational way to combine injuries of different severities into a single unit of measurement. The ESA has also undertaken extensive work to develop a risk assessment to deal with people who operate or hold themselves out as operating an electrical contracting business without valid licences.

The College also recognizes this. In 2014–2015, Michael Rothe undertook a review of the College’s Compliance and Enforcement Complaints Process. The review concluded in March 2015. It included recommendations that the College adopt a risk-based enforcement approach to regulating the industry and consider the use of POA sparingly, and as a means to combat the underground economy. The review specifically recommended the College adopt an approach similar to the one that the TSSA uses:

OCOT...would greatly benefit from a similar approach to enforcement. Instead of passively reacting to consumer

33. Summarized on the TSSA public website https://www.tssa.org/regulated/about/aboutInquiries.aspx
34. Compliance and Enforcement complaints process review, Michael Rothe March 6, 2015, as provided to MTCU staff at the June 16, 2015 public meeting of the College of Trades Board of Governors
complaints, like the majority of the regulated health professions, or sending out its limited cadre of EOs to conduct random inspections, as is currently the practice, the College would be able to identify and concentrate on those sectors of its regulated mandate which poses the most significant and systemic risks to the public and justify this both to the public and government alike on the occasion of a “tail risk” event.35

I understand that the College’s Board has adopted the recommendations of the review, with a view to strengthening enforcement practices by adopting a risk-based approach. I strongly support this. The Rothe report intersects in a timely way with some of the themes I am discussing. It relates directly to my discussion of the broader policy on interpreting what it means to engage in compulsory trades: supporting a transparent, defensible, and predictable approach – informed by risk of harms. The framework and specific interpretations should be publicly available to support this.

Many stakeholders also spoke to me about a perception of overlapping mandates between the College and other regulators. This is expected within a system as large and complex as the trades system. I understand a number of bodies, including the College, regulate many of the same tradespeople or the work they perform. Some of these other regulators, like the TSSA, have expressed a desire for greater collaboration with the College, specifically with regard to its enforcement practices and the way it uses SoPs to inform these practices.

I am advised that some College stakeholders, including employer and employee representatives, have offered to provide their expertise in the field to the College. The need for collaboration is important. I am recommending that the Board establish an advisory committee made up of its stakeholders. This draws on Armstrong’s recommendation that there should be resources for a joint employer/employee “Enhanced Enforcement Unit” to engage in both enforcement issues related to compulsory certification and broader public-policy priorities of protecting the public (e.g., the underground economy).

Like other regulatory colleges, the College’s Board has the authority to establish committees under OCTAA. Regulatory colleges typically

35. Ibid.
establish standing or ad-hoc committees that serve important functions in the operation of the College’s programs and services. For example, the Royal College of Dental Surgeons of Ontario has a standing Professional Liability Program Committee made up of non-Board (Council) members. This committee brings all of its decisions as formal recommendations to the Board (Council) for approval.

The Clash Between College Enforcement and Decisions of the Ontario Labour Relations Board

The College’s decision to adopt the full scope of practice for trades as a benchmark for enforcement includes work on the “periphery” of the trades. There has been some reaction to this notion of the “periphery” of trades. It might be helpful to begin by referring to Armstrong’s comments on compulsory certification. Armstrong recognized and cautioned that “the contours of parts of the particular trade’s functional components sought to be included in the compulsory description of the trade that may give rise to undesirable and avoidable ‘overlap’ problems: e.g., the inclusion of non-hazardous, non-complex peripheral functions beyond the essential core components of the trade.”

For clarity, this is the contextual meaning I give to “periphery.” The majority of construction tradespersons I engaged with during my consultations readily understood the concept in the same way.

It is uncontested, particularly in the construction sector, but also across other sectors, that overlapping work exists between trades. For decades, disputes about these areas of overlap (almost entirely in the construction industry) have been resolved between trade unions, or between unions and employers, and captured in various kinds of arrangements. In some cases, disputes about trade jurisdiction (which in most cases is synonymous with union jurisdiction) were referred to the OLRB as jurisdictional disputes. They were settled in that forum based on criteria that the Board established. Its decisions have been widely accepted. The OLRB’s expertise, experience and long-standing credibility in dealing with work jurisdiction and other labour-relations matters is regarded as being unparalleled in Ontario. I return to this later.

In the weeks following my appointment, it quickly became apparent to me that the question the minister asked me to address could be unpacked a little further: The core of the issue is that there is a clash between College enforcement practices and the OLRB’s jurisprudence in adjudicating jurisdictional disputes under section 99 of the LRA.

Inevitably, the College’s decision to adopt an approach to enforcement where the performance of any act in the “full scope of practice” for a compulsory trade is equivalent to “engaging in the practice” of a compulsory trade\(^{37}\) (and, therefore, enforced against) will conflict with, and in some cases override, previous agreements between workplace parties and past decisions of the OLRB in resolving jurisdictional disputes.

This is also likely to be an issue prospectively because of the myriad factors in sectors and workplaces which have given rise to overlaps in the past. The requirement, in some cases, for composite work crews with interchangeable tasks is an obvious example. It is not going away.

This description of the core of the issue is widely recognized by College stakeholders in the construction industry. There was clearly a pre-existing consensus on the nature of this issue prior to my appointment as reviewer. This “clash” and its relationship with SoPs was set out in foundational briefing materials provided to me by Ministry and College staff.\(^{38}\) In response to my further requests, staff provided examples of how this clash was materializing on work sites (see below).

It is hardly surprising then that my characterization of this clash in discussions with stakeholders across the province has been, almost entirely, uncontested. Regardless of the magnitude of the College’s approach to enforcement (addressed below), it has been alleged

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\(^{37}\) Mr. Armstrong’s report characterized the MOL enforcement powers in the following way: “Ministry of Labour inspectors have the authority to determine whether the provisions of the TQAA and the ACA relating, respectively, to those entitled to perform compulsory and restricted trades are being complied with, pursuant to their powers under O. Reg. 572/99 under the OHSA” (Armstrong, p. 51). In the course of this review, the College has stated its approach is generally consistent with the MOL approach used under OHS, but I have been advised by MOL officials who have had direct responsibility for the Job Protection Office that this is not the case, and that the MOL authority in this regard has been exercised with a greater degree of sensitivity to contextual factors and impacts than that employed by College enforcement officers.

\(^{38}\) Foundational Material provided by the College of Trades on June 1, 2015.
that it has had a tangible impact on the pre-existing rights of trade unions, workers and employers – with the potential to have a far greater impact. I am inclined to agree. This needs to be addressed. I make recommendations that will do that without compromising any rights and agreements that pre-date the inception of the College. Not addressing this will cause disruption to the ability of the College to meet its mandate.

Evidence Related to the College, Work Jurisdiction and the OLRB

A number of concerns have been raised with me about the negative impacts of the College’s approach to enforcement. This section of the report describes two major concerns along with some case studies and a representative sample of stakeholder comments on the issues raised. The first concern relates to the appeal mechanism under OCTAA:

“Under this new regime the role of the [Ontario Labour Relations] Board has been eliminated. OCOT inspectors issue charges that are prosecuted under the Provincial Offences Act. These charges can only be challenged before the provincial court, which lacks both the expertise and the jurisdiction to interpret compulsory trades restrictions in their proper context, Trade unions have no standing to challenge charges or to participate in proceedings before the provincial court, even where the charges in question fundamentally affect the interest of the workers they represent. The provincial court also lacks jurisdiction to issue a stay, which unnecessarily threatens the stability of construction projects and opens the door to abuse. The result is a compulsory trades enforcement regime that lacks the required expertise, principled guidance and procedural safeguards necessary to ensure its fairness, rationality and overall legitimacy.”39

A second concern, raised by the Labourers’ International Union of North America Local 183, together with other unions, employers and employer associations is that the College’s enforcement staff are receiving a number of complaints about work jurisdiction

that previously would have been the subject of consideration and adjudication at the OLRB. Further, there are suggestions that these complaints involve efforts, potentially on the part of competitor trade unions, to re-litigate jurisdictional disputes already settled by OLRB decisions or which were previously matters included in workplace agreements.

In my meetings across the province, those raising issues about the College’s enforcement activities expressed a parallel concern about the potential for the disruption of long-standing working arrangements on construction work sites. In my view, these are serious concerns that merit attention.

The College’s position to date has been to enforce to the full scope of practice. It has been suggested to me that some planned enforcement activity has been stayed, pending this report. If my recommendation in this area is approved, implementation would require the re-examination of some enforcement practices.

In some cases, the clash between College enforcement and OLRB jurisprudence has been predated by decades-old battles over work jurisdiction involving large and powerful unions in the construction industry. Common examples include the installation of electrical conduit to carry cables, trenching for the installation of drains and, more recently, activities involved in the installation of solar panels. The examples below show the re-emergence, in the context of College enforcement activity, of disputes involving some of the same work and the same trade unions.

The College provided me with briefing materials which included examples of “clashes between College enforcement and the OLRB’s jurisprudence.” I have included a representative sample of cases, comments and concerns from the briefing materials and from consultation participants, below. In each case, there has been a disruptive impact on the work site. As suggested earlier, there is no practical right of appeal for the trade unions negatively affected by the enforcement activity. These cases are well known in the construction industry. They have become a focal point for many stakeholders concerned about the mandate and operations of the College.
Also cited is a concern raised with me by the Ontario Sewer and Watermain Construction Association. Concerns raised by employers, employers associations and trade unions are also cited below.

**Stacey Electric – Windsor Herb Gray Parkway**

Many stakeholders cited this landmark case. It triggered widespread concern on the part of some voluntary trades and their employers/employer associations. This case dealt with work involving the installation of street and tunnel lights on the Herb Gray Parkway in Windsor (the Windsor Parkway). The accounts of the work performed and the views on the appropriateness of the College’s enforcement action vary, depending on the source. However, there seems to be no dispute that, in April 2014, a College Inspector issued 11 provincial offences notices (tickets) to Stacey Electric, one of the primary electrical contractors involved in the Windsor Parkway Project. This was on the grounds that it had employed or engaged uncertified members of LIUNA Local 625 to perform work or engage in the practice of the compulsory trade of Electrician – Construction and Maintenance, in violation of section 4 of OCTAA. Each ticket carried a fine of $360. There was no ticketing of individual workers.

Given that the College Inspector threatened to issue more tickets, with higher fines, if the breach continued, Stacey Electric decided to stop assigning the work in question to the labourers. Instead, it assigned the work to certified electricians. Accounts diverge on the exact nature of the work being performed by LIUNA’s members. According to the College’s Enforcement arm, non-electrician construction labourers were found hooking up electrical wires. The College considers this work to be dangerous and part of the SoP for the Electrician – Construction and Maintenance trade. According to LIUNA, certified electricians carried out all electrical work. The labourers only performed “civil” (or non-electrical) work that “did not involve installing electrical cables or working with live electricity.” Specifically, the labourers were only installing conduit,

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40. Foundational Briefing Material provided by the College of Trades on June 1, 2015
42. Submission DR-54, “Submission filed by Sack Goldblatt Mitchell LLP on behalf of LIUNA Locals 625, 1059, 1089.”
cable tray and ground rods, which is “the kind of work that has been carried out by members of LIUNA for decades both in the Windsor area and across the province,”43 apparently pursuant to a previous OLRB decision in the context of a different construction project.

LIUNA Locals 625, 1059 and 1089 used the Stacey Electric case to illustrate the shortcomings of the new enforcement regime under OCTAA. In their submission, while Stacey chose to defend itself by pleading not guilty to the charges, LIUNA Local 625 had no status or standing before the provincial court to contest the charges or participate in the proceedings.

The provincial court hearing was scheduled for five months after the charges were laid. Meanwhile, Stacey was placed into receivership and the charges were stayed. The LIUNA locals argued that, had the case made it to court, it is unlikely that the provincial court would have applied the Weinmann case (which found that non-electrician members of LIUNA had the experience to perform precisely this kind of work safely) – given its lack of expertise and express jurisdiction to analyze the charges purposively, contextually and consistently with the OLRB’s jurisprudence on jurisdictional disputes. The LIUNA locals submitted that the Stacey scenario threatens to repeat itself unless OCTAA’s enforcement regime is remedied on an urgent basis and that expanding compulsory certification would only increase the problem.44

I have been advised that, as a result of the Stacey Electric charges, the Labourers and others raised strong objections with the Government of Ontario to the use of the College’s enforcement power for jurisdictional purposes.

**Greenfield Energy Centre in Sarnia**

In 2012, the OLRB had issued a decision46 confirming the assignment of the disputed work (i.e., taking off and putting

43. Submission DR-54, “Submission filed by Sack Goldblatt Mitchell LLP on behalf of LIUNA Locals 625, 1059, 1089.”
44. Submission DR-54, “Submission filed by Sack Goldblatt Mitchell LLP on behalf of LIUNA Locals 625, 1059, 1089.”
45. Foundational Briefing Material provided by the College of Trades on June 1, 2015.
back of heavy bore air and gas line piping, lube oil piping flanges and spools, and flanges and spools necessary to disconnect certain turbines, generators and other equipment) to the Millwrights over the Steamfitters. In 2014, the College received a complaint about this work assignment. The College carried out an inspection. It was provided with the 2012 OLRB decision as proof that the assignment of the work to the Millwrights had been correct, and that the College should not proceed to enforce.

The College considered the matter and concluded that, in spite of the OLRB decision, some of the disputed work (i.e., reconnecting the interconnected piping on the turbo generator) should be performed by Steamfitters only (not by Millwrights). Moreover, the College disagreed with the OLRB’s decision to assign the entirety of the disputed work to the Millwrights, because such finding was not supported by an analysis of the respective SoPs under OCTAA regulations. In particular, the College found:

- The OLRB should not have treated the skill and training factor as “neutral,” given that the two trades are not actually on equal footing from a training point of view with respect to the disputed work. (Construction Millwrights receive some optional training associated with systems that are pneumatic or hydraulic in nature, while the Steamfitters receive extensive training over a broad range of systems, including high-pressure systems which incorporate piping.)
- The OLRB appeared to have treated the SoPs in the TQAA regulations in a perfunctory manner, without defining or applying relevant terms, such as turbine.

In the final event, on or about October 22, 2014, College Enforcement exercised its discretion and decided not to enforce OCTAA prohibitions against the Millwrights. The College’s intervention was disruptive, nevertheless. This case provides clear evidence of the reality of the clash between OCOT enforcement and the OLRB.

Greely Construction – Ottawa LRT

LIUNA’s Central & Eastern Canada Regional Office wrote to the Reviewer on May 7, 2015, to raise concerns about a Field Visit Inspection involving the consortium working on the Ottawa LRT.

47. The College also determined that either trade could disconnect the interconnected piping.
According to LIUNA, a College Inspector has “threatened” to lay charges and possibly pursue an injunction if subcontractor Greely Construction continues to use LIUNA members to lay conduit. LIUNA asserted that, for several decades, its members have been laying conduit pipe pursuant to clear, decades-long jurisprudence from the OLRB.48

**Solar Farm in Cochrane**

LIUNA’s Central & Eastern Canada Regional Office wrote to me on March 27, 2015, to raise concerns about a warning that College Inspectors had given on March 19 to an electrical contractor performing work at a solar farm in Cochrane.49 According to the College’s Field Visit Inspection Report, College Inspectors attended at the site in response to a complaint to the College. After verifying the workers’ trade certification, the Enforcement Officer appears to have discussed the matter with representatives of the electrical contractor and subcontractor involved. The Enforcement Officer instructed them that Electricians must perform the installation of solar modules, specifically metal racks being used as raceways, as the work falls within the SoP for the Electrician trade. The inspectors also secured an agreement from the contractor and subcontractor “that this work must be done by Electricians as of March 19, 2015.”50

LIUNA claimed that College Enforcement had made a “jurisdictional determination” that interfered with its jurisdiction, relying on a 2014 OLRB decision which had previously gone in LIUNA’s favour (*H.B. White*).51

The briefing material that the College provided to me suggests that the work in dispute in the *H.B. White* decision may be different from the work in dispute in the solar farm in Cochrane. I take the view later in this report that this sort of determination would be better made by an administrative tribunal such as the OLRB.

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48. Foundational Briefing Material provided by the College of Trades on June 1, 2015.
49. Letter from Joseph S. Mancinelli (International Vice President and Central & Eastern Canada Regional Manager) to David Tsubouchi (Registrar and CEO, OCOT), copying the Hon. Kathleen Wynne (Premier of Ontario), the Hon. Reza Moridi (Minister of Training, Colleges and Universities), Bob Onyschuk (Director of Compliance and Enforcement, OCOT), Tony Dean (Reviewer), et al. (27 March 2015).
50. Foundational Briefing Material provided by the College of Trades on June 1, 2015.
51. Labourers’ International Union of North America, Local 493 v International Brotherhood of Electrical Workers, 2014 CanLII 66574 (ON LRB), online: http://canlii.ca/t/gf7ss
Concerns Raised by Large Employer Associations and Small Business

I heard myriad concerns about the College’s approach to enforcement in every region of the province. These came from both small and large employers, as well as industry associations. Here are four examples.

In its submission to me, the Sarnia Construction Association points to the tension between the realities of overlaps in the work of both compulsory and voluntary trades, and the College’s approach to enforcement. The association maintains that the creation of the College and its current approach to enforcement creates a greater possibility of jurisdictional disputes arising on job sites. It alleges that some compulsory trades are now attempting to use their Scope of Practice to support jurisdictional claims. The association states that, “These claims have been frivolous and raise the danger of OCoT’s involvement in labour relations matters. This will not only be disruptive but could also lead to increased costs to the industry. Jurisdictional claims should be resolved by the parties to the dispute and/or by the OLRB if necessary, and not by OCoT.” (DR-8, Sarnia Construction Association)

The Heavy Construction Association of Ontario’s submission argues that SoPs set out in O. Reg. 275/11 under OCTAA do not accurately reflect the way that work is actually assigned in the construction industry. The Association argues that, “when the TQAA was replaced by the OCTAA there was no reasonable justification for stripping the OLRB of jurisdiction over appeals of decisions regarding what does or does not constitute the exclusive work of a compulsory trade, and all such authority should be immediately restored to the OLRB.” The Association maintains that the OLRB has regularly adjudicated these matters for decades in the context of appeals of stop work orders issued under the TQAA, as well in the context of jurisdictional disputes between trade unions. A further concern raised by the Heavy Construction Association of Ontario is that OCTAA’s restrictions on employers’ ability to assign work that arguably falls within the SoP of a compulsory trade are not responsive to varying geographic or sectoral conditions in the construction industry. It contrasts this with the OLRB’s approach in resolving jurisdictional disputes between construction trade unions,
under which local area practice is an important consideration. (DR-49 – Heavy Construction Association of Ontario)

Hydro One Networks Inc. reinforced the view that potential conflicts between decisions of OCOT and the OLRB are a major concern, stating that there should be a single authority for decision-making. Hydro One’s submission stated that “OCOT should not penalize an employer for following direction from the OLRB. An employer should not be left in the untenable situation of having to disregard one or the other.” (DR-30 – Hydro One Networks Inc.)

The Ontario Sewer and Watermain Construction Association (OSWCA) raised a concern with me about one of its smaller members receiving a warning and the threat of fines over the installation of electrical conduit piping. The OSWCA stated that, “This is the same jurisdictional issue that has arisen in other areas of the province, most notably on the Herb Grey Parkway, though in this instance it involves a much smaller contractor on a much lower profile job ... we do sincerely hope that the recommendations from your review process clearly spell out how disputes between past practice, OLRB decisions, and Regulation 275/11 are to be dealt with, as the uncertainty with how to work through this is increasingly difficult.”

Concerns Raised by Trade Unions

As well as the extensive submissions filed by LIUNA on enforcement concerns, other unions raised concerns about the College’s approach to enforcement:

The Carpenters’ District Council of Ontario’s submission makes the case that where the OLRB has already made a determination that certain work is shared, and can be properly performed by more than one trade, the College should defer to the OLRB and adopt the Board’s contextual approach to SoPs. The submission states that “To do otherwise would create a nightmare of conflicting rulings that would grind our industry to a halt. In addition, we would also assert that the College, in undertaking its enforcement activities, must vigilantly guard against parties trying to use it to win jurisdiction via the backdoor.” (DR-26, Carpenters’ District Council of Ontario

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52. Quoted from e-mail from Ontario Sewer and Watermain Construction Association to Tony Dean and Samantha Anderson, June 12, 2015.
The Millwright Regional Council of Ontario takes the view that “the Scope of Practice in regulation in no way reflect the ways in which work is actually assigned in its trade or sector.” It further states that “assignments of work through mark ups have successfully survived for many decades in Ontario from past practice in board areas to past OLRB decisions, contractor assignment letters, along with the many trade agreements, allows all trades and the OLRB to conduct their business” (DR-25 – Millwright Regional Council of Ontario).

The Iron Workers District Council of Ontario takes a similar view, noting that SoPs “do not reflect the way that much work is actually assigned by employers” and that “the College ought to consider and defer to the Board’s role as an expert labour relations construction tribunal.” (DR-17 – Iron Workers District Council of Ontario).

Approaches to Addressing the Clash between College Enforcement and OLRB Decision-making

It is clear from the cases cited above and from my discussions with hundreds of College stakeholders, that there is a clash between College enforcement and the OLRB’s statutory obligation to adjudicate jurisdictional disputes, its jurisprudence and, in some cases, workplace-based agreements. College enforcement activity is disrupting stability on construction work sites in Ontario. It is further evident that there are disruptions in circumstances in which employers, workers, and trade unions believe their rights have been crystallized by OLRB decisions, workplace agreements or past practice.

Additionally, all of this appears to be well known and understood by the College enforcement function which, arguably, has the opportunity and flexibility to change its approach. On the evidence in front of me, these are my findings on this issue.

That being said, there are different views on how to resolve the matter. I now arrive at the heart of what the minister asked me to
consider. In response to the question raised in my terms of reference, the College and the compulsory trades expressed concern about any role for the OLRB or consideration of its jurisprudence in the administration of College enforcement. A minority of the submissions providing advice on this question support this position; for example, the Ontario Glazier Apprenticeship and Training Committee (DR# 46).

On the other side of the minister’s question, there are large swaths of stakeholders who would like to see the College enforcement function returned to the Ministry of Labour. They include: The Skilled Trades Alliance, trade unions such as LIUNA Locals 625, 1059 and 1089, LIUNA Local 183, LIUNA Canadian Tri-Fund, the Carpenters’ District Council of Ontario, and the Iron Workers District Council of Ontario and its Locals 700, 721, 736, 765, 759, and 786; and employers such as the five contractor associations represented by the law firm of Filion Wakely: Ontario Formwork Association (DR-72); Residential Low-Rise Forming Contractors of Metropolitan Toronto and Vicinity (DR-73); RESCON (DR-74); Utility Contractor Association of Ontario (DR-75); and, Ontario Concrete and Drain Contractors Association (DR-76).

Among these are employers and unions which, based on correspondence and discussions during my review period, would be more accepting of College enforcement if it included a bridge back towards the OLRB for the adjudication of appeals filed against College enforcement action. In my view, this approach finds sensible middle ground between the contested status quo and the contentious proposal from a number of vocal stakeholders that the College’s enforcement function should be eliminated.

In addition to the virtues of middle ground, there are very good substantive policy and labour-relations reasons to consider a role for the OLRB in enforcement appeals. I discuss this below. I am not inclined to recommend the return of College enforcement to MOL. At the same time, I have a strong sense that the “clash” between College enforcement and OLRB jurisprudence will recur and likely intensify. I have seen no evidence that would convince me otherwise.
The OLRB

The OLRB is an administrative tribunal. It decides, among other matters, jurisdictional or work assignment disputes between trade unions and/or employers under the Labour Relations Act (LRA). “The purpose of vesting this power in the Board is to substitute an effective legal process for labour relations strife.” Since 1966, the OLRB has provided legal certainty and labour relations stability. The OLRB is an accepted, expert forum for the resolution of jurisdictional disputes where trade unions and employers alike are comfortable litigating and can expect fair, independent and impartial decision-making.

The purpose of a work assignment or jurisdictional dispute is to have the OLRB determine whether an employer’s assignment of particular work to the members of a particular trade union in a particular work site or geographic area is correct, and consistent with past practice, relevant collective and jurisdictional agreements, and understandings between specific trade unions and employers.

Collective agreements may have their own descriptions of the work of a particular trade at a work site, and these descriptions may or may not be consistent with the SoPs in regulation.

Prior to the creation of the College, the OLRB was used to adjudicate TQAA compulsory trade restrictions under OHSA. This is demonstrated in the case of PCL Constructors. It involved the labourers and sheet metal worker unions. PCL and the Labourers appealed to the OLRB a stop-work order enforced under OHSA’s health-and-safety violations. In addition to interpreting regulations under TQAA and OHSA and reviewing jurisdictional dispute jurisprudence, the OLRB made determinations to suspend the order (thereby allowing work to continue), based on a number of considerations:

1. that prima facie, the disputed work in question did not meet the description of work under the sheet metal workers’ Regulation 572/99
2. whether worker safety was endangered by stopping the work
3. the relative prejudice to the parties if the order was or was not suspended and the motives of the party making the complaint

(i.e., whether it was for jurisdictional reasons, or health and safety ones, which the inspector was required to enforce).\(^5\)

Following suspension of the work order, the OLRB made a more lengthy analysis using a contextual approach and adjudicated in favour of the contractor and the Labourers. It did so based on the OLRB’s interpretation of the purpose of the TQAA (to provide appropriate training), the nature of work being performed and other factors.

Through its decisions, the OLRB either confirms an employer’s assignment of work to members of a particular trade union or overturns an existing work assignment and directs that the assignment be made to members of a different trade union.

Unlike the College’s enforcement action, the jurisdictional disputes that the OLRB adjudicates are not about the work of a trade under the applicable SoP in regulation but about which union has a better claim to particular work in a specific work site or geographic area, based primarily on past practice.

The OLRB has developed a large body of jurisprudence, setting out the factors to be considered in deciding a jurisdictional dispute. The standard factors the OLRB considers are:

- collective bargaining relationships
- trade agreements between the competing unions
- tribunal decisions
- employer practice
- area practice
- safety, skills and training
- economy and efficiency
- any other relevant factor\(^5\)

It is important to emphasize that this approach is different from the one that the College uses in making enforcement determinations.

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The premise of that approach is the interpretation of the SoPs in regulation, without reference to the OLRB’s jurisprudence.

The OLRB does not always consider the SoPs established in regulation for the trades involved. When the OLRB does consider SoPs, they usually fall under the “safety, skills and training” factor, and as only one element of this factor.

It appears that a main consideration in applying the “safety, skills and training” factor is not whether the work falls within the SoP of a compulsory or a voluntary trade, but rather whether the trades involved have been trained in the work and are able to perform it safely. It is notable, however, that the OLRB has given weight to SoPs for trades in cases in which the disputed work is closer to the core (or potentially more harmful) work of compulsory trades. College officials advised me that the College is concerned that the OLRB, in making jurisdictional decisions, is not required to give precedence to the College’s SoPs. This, of course, would be the flip-side of arguments made by others that College enforcement decisions should be deferential to OLRB jurisprudence. Upon careful consideration, I am disinclined to recommend either of these approaches.

However, I do see a role for the OLRB in adjudicating appeals of College enforcement. Together with that, it seems to me that my recommendations should allow for some porosity or reflexivity to emerge over time between the College’s approach to enforcement and the OLRB’s jurisprudence. In that light, I have considered a requirement that,

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56. See, for instance, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 v. Aecon Industrial (2011) 2011 CanLII 49551, online: http://canlii.ca/t/fmmsh

57. See, for instance, the following jurisdictional dispute between Plumbers (a compulsory trade) and Ironworkers (a voluntary trade) over “[a]ll work in connection with the offloading, loading, rigging and handling for the removal of twelve (12) decommissioned chillers and the installation of twelve (12) replacement chillers at the Darlington Nuclear Generating Station.” In finding the “skills, training and safety” factor to be neutral in that case, the OLRB did not consider the Trades Qualification and Apprenticeship Act (TQAA) (in force at the time), but found that “[b]oth trades attend similar course to enable them to perform the work in dispute. There is no demonstrable difference in this case that would cause me to consider one of these trades to be superior in terms of skills, training and safety.” Notably, the OLRB did not address whether the work at hand required compulsory certification. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 v. Aecon Industrial (2011) at paras. 2, 27-28, online: http://canlii.ca/t/fmmsh
in adjudicating appeals, the OLRB’s considerations should have regard to OCTAA. Together with the College having standing at such appeals, this would provide a forum in which the College could speak to the objects of its legislation and thus open up the possibility of an emerging bridge between the two, albeit independent, institutions.

**Unforeseen Consequences of the College’s Approach to Enforcement**

During my review, I spoke with a large number of people involved in the formation of the College, government officials involved in policy development associated with the College and a broad range of stakeholders. The College’s approach to enforcement has caught them off guard. It flows from this that the policy development process did not involve an assessment of the consequences of this approach to enforcement and the resulting implications for the trades and OLRB decisions.

Armstrong offered some important guidance about unintended policy and operational outcomes associated with the College in his report. Armstrong commented on the relationship between any future trades legislation and the jurisdictional rights of trade unions. He said that “[it] should also be made clear, in any legislative redrafting, that nothing in the training legislation or in the Regulations under any Act (such as O. Reg. 572/99 under the Occupational Health and Safety Act) is to be construed as dealing with the jurisdictional rights of trade unions.”

It seems that exactly the reverse has happened.

As noted above, at the root of this issue are decades-old overlaps between the work of trades. This is endemic in the construction industry and has been for years. In view of competitive pressures, employers’ constant search for flexibility and competitive advantage, and practical realities on work sites, this is unlikely to change. Where this results in circumstances where untrained and/or uncertified workers are performing work that attracts a risk of harm to themselves, co-workers or the public, the availability of strong enforcement is an important tool for regulatory agencies. The

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College has, in collaboration with others where necessary, put some focus in this area.

On the face of it, though, at least some of the peripheral work in dispute here may not attract a risk of harm, particularly in view of the fact that we are talking about some well-established unions with world-class training facilities, such as those representing carpenters and labourers. Additionally, it is evident that Ministry of Labour officials and enforcement staff are aware of these overlap issues and have seldom found cause to intervene on health and safety grounds.

In responding to complaints about (at least in some instances) overlapping work between trades, the College might well be diverting its enforcement resources from a focus on the burgeoning underground economy or from demonstrably high-risk sectors or activities. I understand that this must be placed in the context of the overall distribution of College enforcement resources, in all sectors, but I remain concerned.

**Bridging the Worlds of the College and the OLRB**

As I have discussed above, the main issue at hand is the clash between the long-standing decision-making framework of the OLRB and the College’s approach to enforcement. However, a long-standing lack of clarity around the SoPs and the definitions and interpretations of compulsory trades has given rise to and compounded the issue. I deal with these issues separately under the sections in my report dealing with Scopes of Practice and the Trade Classification Reviews. These are connected and interwoven matters.

Within the unionized sector, it seems to me that the trades themselves, through their respective trade unions, can and should have dealt with these overlap issues. These are mature, sophisticated and well-resourced organizations. They are well practised in making deals. The fact that they have not done so is perhaps (and not surprisingly) indicative of the private interests at play. This is not conjecture. It is broadly known and much discussed in the construction sector and beyond. This is understandable in view of the history, interests and tensions within the trades system. I would like to see the College acknowledge this more openly and develop strategies that might better address or accommodate it. I believe this would be in the public interest.
To be fair to the College and the OLRB, both operate under very different mandates. As legislatively driven silos, they make decisions on some of the same facts but with reference to different criteria:

- The College gives predominance to the “full scope” of SoPs.
- The OLRB is more concerned with bargaining relationships, employer and area practices, skills, training and safety and economy and efficiency.

There is an opportunity for trades involved in disputes related to overlaps to discuss the issues and attempt to work them out. I am recommending that there should be readiness to do this as part of the SoP review process. There is also a need to find approaches that bring the worlds of the College and OLRB together in some way – particularly as they deal with disputed overlapping work.

It is important that the College develop a framework to govern enforcement, with clarity on enforcing Scopes of Practice. This must go beyond its current unpublished operational enforcement policy. There is an argument that this framework should be based on circumstances where there is demonstrable harm to the public or worker safety, and consideration that an uncertified individual is performing the work.

Previous OLRB decisions and established industry practices should not be re-litigated through the College’s enforcement processes. The OLRB should continue to be available to those who wish to clarify their jurisdictional rights.

I am therefore recommending that the OLRB is the appropriate body to adjudicate appeals of College enforcement practices, since it has expertise and history in labour relations, knowledge of issues of jurisdictional disputes within the skilled trades system and respect and trust from stakeholders with divergent interests. It would divert appeals away from the courts and into a dedicated and experienced administrative tribunal with decades of experience in dealing with these issues.

**What Stakeholders Told Me about College Enforcement**

The main picture presented to me about College enforcement in both written submissions and at in-person meetings was that the
College exists within a complex system in Ontario. About one-sixth of responses highlighted potential overlaps in mandate with other agencies and regulatory bodies. I heard more about this during my in-person meetings, including concern about potential clashes and a desire for greater co-ordination and communication between the College and these other bodies.

“College enforcement activities illustrate a lack of regard for existing regulatory agencies and the duplication and/or a waste of resources this results in.” (DR-67 – Ontario Skilled Trades Alliance)

“In advancing the purposes described above, the College should not be attempting to expand its authority by purporting to serve certain interests which are already covered by other legislation or regulatory regimes. In other words, the "public” in the public interest the College should be serving does not include public interests that are already covered by other legislation, regulatory regimes and/or government agencies. For example, the College should not be expanding its jurisdiction by purporting to regulate the following areas – all of which would fall under a broad, dictionary definition of “public interest” but fall outside the narrow scope of public interests falling within the specific mandate of the College.” (DR-49 – Heavy Construction Association of Toronto)

Many groups acknowledged that enforcement is a difficult task for the College, as the SoPs upon which enforcement is based often do not reflect current work practices. I also heard a wide range of opinions on whether enforcement is necessary on regional issues that some parties would like to be considered, and a perception of broad enforcement as a barrier for some tradespeople in Ontario.

There is a split opinion in the written submissions between those in favour of and those opposed to enforcing the entire SoP for a compulsory trade with “to-the-letter enforcement.” During the in-person meetings, I heard more nuanced responses to this. Most people who spoke about this expressed a desire for a more policy-based enforcement approach, focusing on specific groups of people – untrained people and members of the underground economy – along with specific types of work with the potential to cause the greatest risk of harm if not performed by skilled tradespeople.
Often, this was expressed as being in direct opposition to enforcement involved in jurisdictional dispute matters.

“It is often said that the College should not serve the interests of any particular group or groups, but should focus on its safety purpose, especially in the area of enforcement.” (DR-54 – LIUNA Locals 625, 1059, and 1089)

“Those who argue against enforcement or regulatory oversight of the skilled trades are advocating, either by design or inadvertently, for an environment that would allow individuals to participate in the underground economy.” (DR-33 – International Union of Painters and Allied Trades, District Council 46)

“OCOT enforcement officers should not be enforcing jurisdictional issues, as these concerns are unique to unionized sectors and should be left with the OLRB in the event of a dispute. The OCOT’s enforcement officers should instead be concerning themselves with ensuring the safety and protection of workers and the public through enforcing the need for appropriate qualifications. Similar to previous recommendations regarding overlap of SoPs, we should anticipate a degree of overlap between peripheral elements of specific trades and these overlaps should be not be considered as evidence which negates the need for compulsory trade status, but rather as strong evidence to support the need for a classification change for those current voluntary trades which have significant and identifiable overlap with trades which have already been deemed to require compulsory certification. Standards should be raised which protect the public, tradespeople, and other workers on the job, and not lowered for convenience or to merely accommodate shared elements that some consider to be peripheral to a trade.” (DR-14 – Boilermakers National Training Trust Fund)

With regard to a consultation question on jurisdictional matters and which body should defer to which in clashes between the OLRB and College enforcement, 29 of the 40 submissions responding to this question said that the College should (at the very least) consider
OLRB jurisprudence, compared with those who felt that OLRB jurisprudence should not be considered at all.59

I heard the same at the in-person meetings: that at the very least the College should ensure the consideration of OLRB jurisprudence in its enforcement policy in order to maintain the stability of the trades system in the province and to reduce its involvement with jurisdictional disputes. The following statements are representative of those who lean towards recognition of a role for the OLRB and/or its jurisprudence:

“Generally, the College ought to consider and defer to the [Ontario Labour Relations] Board’s role as an expert labour relations construction tribunal … It is in the interests of the Province of Ontario that the College – which has a far narrower mandate – is not used as a vehicle to perform an end-run around the Board or to undermine the work of the Board.” (DR-17 – Iron Workers District Council of Ontario and its Locals 700, 721, 736, 759, 765 and 786)

“In our view, the OLRB’s existing jurisprudence provides a wealth of information and experience in terms of how work in the construction industry is assigned. While the OLRB’s jurisdictional dispute decisions are limited to work in the unionized sector, the decisions are an important source of information for employers, as they provide guidance and certainty on how work ought to be assigned. In particular, concrete and drain contractors have organized their work assignments and approach based on the OLRB’s case law in jurisdictional disputes. The OLRB has always served the public interest and has been mindful of public and worker safety in determining work-jurisdiction disputes.

It is our submission that the College must defer to the OLRB’s expertise on work-jurisdiction issues. There is no basis for the College’s enforcement regime to interfere with the Board’s expertise and its five decades of refined approach to dealing with these issues. The jurisdictional decisions made by the

59. From Dean Review Consultation Guide, January 2015. Consultation question 27 asked (in part) “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?” Available at: www.deanreview.com.
OLRB are based on the unique nature and requirements of the construction industry. The ability to involve stakeholders is a fundamental tenet of any consideration of work assignment disputes, including with respect to SoPs. The OLRB’s half-century of expertise in managing these multi-party inquires is another reason to defer to the OLRB and its jurisprudence.

Deferring to the OLRB ensures that the consistency of work assignments remains in place. This certainty would ensure the construction industry does not devolve into chaos, and will allow the industry to continue to thrive, which is an important public interest.

If the College defers to the OLRB and/or adopts the OLRB’s decisions, it would allow contractors to continue to operate in the manner that they have always operated, avoiding the uncertainty and potential for significantly increased labour costs and/or construction delays.” (DR-76 – Ontario Concrete and Drain Contractors Association)

“It is the view of Local 736 that the College should give a significant amount of weight and deference to the experience and decisions of the Ontario Labour Relations Board. SoPs do not drive work assignments in the real world. Rather, in the field, work assignments are driven by past practice, trade agreements, economy and efficiency concerns, skills and training issues, and collective agreement obligations. Increasingly, they are driven by the desire of employers to benefit from the skills of multiple trades performing work assignments in composite crews with members of multiple trades performing the very same work.

The OLRB deals with jurisdictional disputes between trades on a regular basis and its decisions ought to be factored into the scope of the SoPs. The College ought to use OLRB decisions in a number of ways and not simply with reference to exercising discretion in its enforcement matters.

The College ought to: include work found by the OLRB to be within the representational rights of a trade union that represents workers in a specific recognized trade
classification to be part of the elements of the SoP for that trade classification; consider the existing body of Board jurisprudence when considering trade classification reviews (in fact, the OLRB’s jurisdictional dispute decisions should be an express factor to consider when determining whether to make a voluntary trade a compulsory trade (and vice versa)); and consider the existing body of Board jurisprudence in considering enforcement.” (DR103 – International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 736)

College Enforcement Recommendations

Prior to the creation of the College of Trades, there was no dedicated enforcement of trades legislation and regulations. The job of enforcement was previously an adjunct responsibility of occupational health and safety inspectors working for the Ministry of Labour (MOL) who, perhaps understandably, focused on worker health and safety and conducting spot-checks for trade certificates. I am informed that MOL inspectors did not respond to complaints related to overlaps in the work of trades unless there was a demonstrable health-and-safety-risk issue. The reason for this was that there was (and still is) a dispute-resolution process designed to address these issues, which are largely between trade unions, at the Ontario Labour Relations Board (OLRB).

Originally, the Minister of Training, Colleges and Universities at the time of the establishment of the College did not plan for the College to adopt an enforcement function, beyond investigating complaints relating to professional misconduct, incompetence or incapacity (the functions now described in part V of OCTAA). This changed late in the process of government policy-making. Governing legislation mandated an enforcement function, under which offences are prosecuted under the Provincial Offences Act. Notwithstanding that both Armstrong and Whitaker spoke about enforcement in detail, the legislated mandated enforcement function caught some stakeholders off guard. It appears to have been made without much consideration as to how the prohibitions in OCTAA should be defined and how enforcement activity would be conducted and for what purpose. For example, there was no government policy guidance on the degree
to which enforcement activity should focus on high-risk activities or the underground economy which, due to concerns about the exploitation of workers, health and safety issues and significant revenue loss, has been identified as a provincial economic priority.

In the absence of government policy guidance, the College’s enforcement activities have been directed, in part, towards enforcing the prohibitions in OCTAA based on a “to-the-letter” reading of each trade’s full SoP on a provincial basis. This has included work that commonly overlaps with the work of other trades. This is being done without regard to the presence or absence of risk of harms. I am concerned about this for two reasons:

- This enforcement activity is inconsistent with pre-existing OLRB decisions in respect of disputes between trade unions about work assignments and with existing workplace-based agreements on the same matters. This has led to some disruption and a great deal of concern on the part of some trade unions and employers in the construction industry.

- I am inclined to ask whose interests this form of enforcement activity serving. I understand the rationale for this approach to enforcement, which is based on the view that “engaging in the practice” of a compulsory trade should be defined for the purposes of Part II (Prohibitions) of OCTAA based on a to-the-letter reading of the SoPs. In other words, performing any act described in the SoPs is considered equal to “engaging in the practice” of that trade and enforced, regardless of the risks associated with them. I can see the benefits of this for compulsory trades from the perspective of enforcing work falling within their jurisdiction, but I am not persuaded that a public interest is being served. The College’s resources may be better focused on ensuring training and certification for high-risk activities. Some voluntary trades and other College stakeholders take the view that this is another area in which the advocacy and regulatory roles of the College are perceived as being in tension.

My recommendations in this area call for the creation of an external advisory committee convened by the Board of the College to provide advice on enforcement policy and to identify emerging issues associated with enforcement practices. In his recommendations to government, Armstrong, too, emphasized the importance of involving industry, labour and management, in carrying out the
College’s enforcement activities. He also envisioned collaboration at the level of College governance, suggesting that the representatives from MTCU, and possibly MOL, MGCS, ESA and TSSA, would be ex-officio and non-voting members of the Board of Governors. I am also recommending a mechanism of appeal to the OLRB where a worker or employer challenges College enforcement actions that are inconsistent with previous OLRB decisions or workplace agreements, or which otherwise should properly be dealt with as a jurisdictional dispute. The College would have standing in these proceedings, and the challenged enforcement activity would be stayed until the matter is resolved.

**Desired Outcomes:**

- The College works to prevent unlicensed workers from practising compulsory trades through enforcement activities that target high-risk activities and the underground economy
- The College has a policy framework for compliance and enforcement that considers risk of harms and consumer protection
- There is improved collaboration with the stakeholder community and others
- Ongoing inconsistencies between OCOT enforcement and work assignment and previously addressed jurisdictional disputes are backstopped

**College Enforcement Recommendation 1.** The College should develop a policy-based approach to compliance and enforcement that considers risk of harms and consumer protection. The College Registrar could operationalize this through the issuance of directives, guidelines or other interpretive documents made publicly available on the College’s website and through any other means the College deems appropriate.

**College Enforcement Recommendation 2.** The College should establish a compliance and enforcement committee of the Board to assist with the development of a policy-based framework for compliance and enforcement. The majority of the membership of this committee should be representatives from employer and employee groups with knowledge of the trades or trade sectors and who are not members of the College’s governance structure. The Board may also consider the need for representatives of other regulators and the public.
College Enforcement and Ontario Labour Relations Board Decisions Recommendations

**OLRB Decision Recommendation 1.** Develop a mechanism that would allow individuals or their representatives or employers to appeal to the OLRB on the basis that the OLRB previously addressed the College enforcement action or it is the subject of an existing agreement.

In developing the mechanism for appeals, it is recommended that:

- The OLRB would first determine on a prima facie basis whether there are grounds for an appeal.
- Where the OLRB proceeds with an appeal, it would be directed to have regard to, among other things, the *Ontario College of Trades and Apprenticeship Act* and the College would have standing before the OLRB. Where an appeal is upheld, the matter would be nullified.
- Where the OLRB finds that an existing decision or agreement is relevant in an appeal but not determinative, it may designate the matter as a jurisdictional dispute, and it would be processed accordingly. In this case, the College would have standing before the OLRB. If the OLRB finds on behalf of the appellant, the matter would be nullified.
- The action of the College would be stayed until the OLRB releases a decision.
Suggested Implementation and Staging

While it is hoped that a review of this sort early in the life of a new organization is helpful in taking stock of progress and identifying challenges and opportunities, it can also be disruptive. I recognize that significant policy work, program development and regulatory activity are on hold pending the outcome of this report.

While many of these activities can now get back up to speed, the College and the Ministry of Training, Colleges and Universities (MTCU) will now also be involved in the implementation of any of my recommendations that the government and/or the College’s Board of Governors approve. Implementing change in busy and complex environments is challenging, particularly where there is a distribution of responsibility across two or more organizations. Ideas and plans for change are only as good as an organization’s capacity to implement them.

Key Factors for Implementation Success

I see seven factors (Figure 1) as key to successful implementation of any of my recommendations approved by the government and/or the College.

![Figure 1](image-url)
In essence, the College and MTCU must have clear objectives, the right leadership, appropriate resources and the tools to monitor and report on progress.

1. **Establish accountability and leadership.** It is important to establish a single point of accountability for the overall project of implementation, even if that person has a dual responsibility to the governors of both organizations. It would require an agreement between the College and MTCU on the specific parts of the review for which a project director (see below) has accountability. (For example, is this office responsible for overseeing the SoP review framework or only the legislative and regulatory processes that support the implementation of the recommendations?). In either case, it will require resources beyond the project director. Both the College and MTCU will need to understand that success will be contingent on collaboration across and between organizations.

2. **Governance supports collaboration.** Collaboration can co-exist with implementation managers in both organizations, but everyone has to know who is ultimately accountable for delivery. This must be a dedicated position with significant organizational stature (at least the director level in an Ontario Public Service context) and with the suggested title of Executive Director – Implementation. This person would report to both the deputy minister of MTCU and the Board of the College.

3. **Assign dedicated resources.** There should be a review of project management capacity in both organizations in order to make appropriate resources available to support the Executive Director. Both the College and MTCU should assign dedicated resources to implementation and protect these staff members from other day-to-day activities, as required.

4. **Identify key levers for change.** These might be processes, policies, resources, opinion leaders or key stakeholders.

5. **Provide more and timely information.** Feedback and communications on plans for, and the operationalization of, recommendations are critical and, too often, are under-utilized. Providing more information in a timely way to all interested parties is a key success factor.

6. **Have a timeline and target dates.** A trajectory or timetable for implementation is obviously important for planning, developing strategy and benchmarking progress.
7. **Know risks and constraints.** Those charged with implementation should identify and discuss risks and constraints and share them with the governing bodies of the two organizations. These might include resources, residual opposition, technical complexity and the legislative and regulation-making processes. These should be addressed at the front end, to the extent possible, with risk-mitigation strategies being developed as appropriate.

**Specific Implementation Considerations**

The role and accountability of the College and MTCU will vary based on each of the recommendations. The nature of each recommendation, its fit with College and ministry priorities and the depth of stakeholder interest and impact will drive the degree to which it is prioritized and resourced. In the event that these recommendations are approved, I would expect that prioritization and accountability would be distributed in the following way.

1. **Enforcement**

   There are a number of aspects of implementation to consider in this area.

   i. The College will first need to determine its approach to the development of a policy-based approach to its compliance and enforcement that considers risk of harm and consumer protection. Furthermore, it will be important that the College consider how it will use SoPs to support this policy framework, and specifically how SoPs will contribute to defining what it means to “engage in the practice” of a compulsory trade (OCTAA ss. 2 and 4).

   ii. If the College’s Board of Governors decide to establish the recommended Board committee on compliance and enforcement, it is entirely within their control to do that. The mandate for such a committee will require some policy decisions. There must be consideration of the committee’s breadth of representation and mode of operation. As noted earlier, this sort of committee could play an key advisory role to the Board on an important College function. It could also be a venue for identifying and discussing emerging enforcement issues and opportunities. A first step might be to engage in a discussion with trades and stakeholders about the role they would like to see a committee of this sort play.
iii. Certain College enforcement actions may be appealable to the Ontario Labour Relations Board (OLRB). This would require legislative changes, presumably led by MTCU in consultation with the Ministry of Labour, the College and the OLRB. Presumably, these legislative proposals will be in draft-amending legislation, together with any other proposed legislative changes flowing from this report (e.g., the establishment of an independent agency to manage classification reviews).

iv. The OLRB should/must/needs to consider the administrative procedures and rules through which it would process any such appeals.

2. Scopes of Practice Review

College officials have previously considered the importance of a comprehensive review of SoPs and are supportive of my recommendation on this matter. As a precursor to launching a review of SoPs, the College’s Board recently approved a program-evaluation process designed to measure the ongoing viability of trades and apprenticeship programs under OCTAA. Potential outcomes of the evaluation process include trade consolidation or de-prescription. It sensibly takes the view that this process would pave the way for a more focused and efficient review of the SoPs.

Design issues, such as how a review of SoPs might work and what components might be included in revised SoPs, will benefit from Ministry consideration and advice. However, the College will administer the review and leverage the expertise of College Trade Boards, industry and other stakeholders. This will require considerable planning, phasing and prioritization, especially in view of the recommendation that this should include discussion between Trade Boards on overlapping areas of work. It will require considerable staff support and potentially some third-party support to assist in bridging differences between various trades.

Adding to the complexity of this will be the possibility that some trades currently in the queue for a classification review will opt to see their SoPs reviewed prior to continuing with their classification review. In this case, their SoPs would be fast-tracked to the extent possible, potentially drawing other trades into the process earlier than they, or the College, might have assumed. I highlight this, because it provides a glimpse into the complexity involved in
getting this done. Having said that, recommendations arising from the other major areas of our review should not have the same degree of complexity and resource implications for the College as those arising in this area.

3. Classification Review Process

My recommendations in the area of trade classification reviews would effectively move this regulatory decision-making authority away from the College to an expert panel process housed, and supported by staff, in a small and focused agency. The policy and design work associated with such an agency, as well as enabling legislation and any associated regulations, would be the responsibility of MTCU, although ongoing consultation with the College would be important. While the weight here would be on the ministry, the College would also take on additional responsibility in supporting the reviews with information on training, apprenticeships and certifications and other information that could inform decision-making. This has resource implications for both organizations.

Some time will be required for legislative development and consideration by the provincial legislature. This will be in the hands of legislators, and I am hopeful that they will move forward expeditiously, since trades are waiting in the queue for reclassification reviews. In the interim, and pending the potential passage of enabling legislation, there is no reason why the ministry should not consult the College on the skills and experience required of potential experts, some initial identification of potential candidates and the further development of the revised classification process.

One option might see the minister appointing a person with reputational stature (such as a former university or college president or former deputy minister) to consult with the College and stakeholders on the required skills for panel members, and to identify potential candidates.

4. Journeyperson to Apprentice Ratios

While my recommendations in this area swing back towards the College, their impact is lighter, but there is some time sensitivity in readying for the next round of ratio reviews. The next cycle of ratio reviews is set to begin in 2016. With this in mind, the College
would need authority, even if temporary, to delay the next cycle in order to allow the College time to consult on and phase-in process changes and to educate stakeholders on the revised criteria and process steps. Given that my recommendations suggest parallels between the process rigour desirable in both the classification and ratio reviews, it is nonetheless important to have close consultation between the College and MTCU, as the ministry is designing a revised classification review process.
Conclusion

The College carries out its broad and complex mandate within an already multifaceted system, and with a long history of practices adopted by the trades in conducting their work. Similarly, the issues encompassed by my terms of reference have a long and complex history and have attracted a considerable degree of interest. It is understandable that there are tensions around the College’s structure and questions about its governance. I hope my review and recommendations provide the opportunity to improve College processes and clarify its mandate before these tensions become further entrenched. It is time for the College to grow further and to mature in delivering on its mandate.
Appendices

Appendix 1: Dean Review Terms of Reference (TOR)

FOR THE REVIEW OF ISSUES RELATED TO THE SCOPES OF PRACTICE AND THE CLASSIFICATION/RECLASSIFICATION OF TRADES

1. Background
The Government of Ontario is committed to supporting the Ontario College of Trades (College). In the 2014 Plan for Ontario (“Opportunity for All: A Jobs and Investment Plan for Ontario”), the Premier made the following platform commitment:

“To support the success of the College of Trades as it moves into its second year, we will appoint a special advisor to review the College’s application process and scope of practice of trades, including how the scope of practice relates to enforcement. We will pause the certification of new compulsory trades during this review.”

In light of his credentials and experience, and following thoughtful and careful consideration, Tony Dean is being appointed as Reviewer by the Lieutenant Governor in Council.

The College was established to give skilled tradespeople a voice and control over their own industries. The analysis, advice and recommendations of the Reviewer will support the continued success of the College and help modernize the skilled trades system in Ontario and maximize the effectiveness of the College in carrying out its objects and functions and fulfilling its duty to serve and protect the public interest under the Ontario College of Trades and Apprenticeship Act (OCTAA).

2. Mandate of the Reviewer

1. The Reviewer will provide the Minister of Training, Colleges and Universities (Minister), in consultation with the College, with
analysis, advice and recommendations during the term of the appointment on:

a) opportunities to clarify and improve:

i) the manner in which the College makes decisions on issues related to scopes of practice of trades and how scopes of practice are used to support the performance of objects and functions under OCTAA that include, but are not limited to, the following:

- enforcement of the prohibitions in Part II of OCTAA, including but not limited to decisions regarding skill overlaps between scopes of practice
- establishment of apprenticeship programs
- review and amendment of scopes of practice
- the process and criteria prescribed in O.Reg. 458/11 under OCTAA, including the process and criteria for the classification or reclassification of trades as compulsory or voluntary; and

b) what consideration the College should give, if any, to the decisions made by the Ontario Labour Relations Board (OLRB) in jurisdictional or work assignment disputes under the Labour Relations Act, 1995 (LRA).

2. The Reviewer will develop a detailed work plan in consultation with identified Ministry of Training, Colleges and Universities (ministry) and College staff.

3. In carrying out the mandate, the Reviewer will:

a) act impartially and independently from the Government of Ontario and the College; and,

b) be cognizant of the College’s objects and functions under OCTAA, as well as its duty to serve and protect the public interest in carrying out those objects and functions.

3. Support

The ministry and College will provide such administrative support to the Reviewer as agreed upon by the ministry, College and the Reviewer. The Reviewer will be able to access outside expertise, as approved by the Minister or his designate, and in accordance with
relevant directives, guidelines and policies of the Treasury Board/Management Board of Cabinet and the Ministry of the Attorney General.

4. Status Reports and Meetings
The Reviewer will:

• Provide regular progress reports to identified senior ministry and College staff as outlined in the detailed work plan. Such reports will include stakeholder consultation activities;
• Provide any interim analysis, advice and recommendations relating to the mandate that could provide assistance to the minister, deputy minister, the Chair of the College’s Board of Governors (Chair of the Board) and Chief Executive Officer/Registrar prior to the submission of the final report;
• Meet with the minister, deputy minister, Chair of the Board and Chief Executive Officer/Registrar at the discretion of the minister and Chair of the Board to discuss the progress of the review and emerging issues and ideas; and
• Meet with ministry and College staff at the discretion of ministry and senior College staff to receive briefings about matters relevant to the review, as well as relevant information and documentation.

5. Final Report
The Reviewer will submit a draft final report, which fully addresses the mandate of the reviewer, to identified senior ministry and College staff no later than August 2015, to enable the ministry and the College to provide any factual or editorial comments or corrections. The Reviewer’s draft final report will contain evidence-based analysis, advice and recommendations on the areas under review, in addition to a high-level implementation plan for any recommendations made.

The Reviewer will submit the final report, which fully addresses the mandate of the Reviewer, to the minister, deputy minister, Chair of the Board and Chief Executive Officer/Registrar no later than October 2015.
6. Ownership of Work
All work produced by the Reviewer is the property of the Crown in right of Ontario.

7. Term
These Terms of Reference will be in effect during the term of the appointment of the Reviewer and may be amended by a document in writing, dated and signed by the minister (in consultation with the College) and the Reviewer.

8. Release of Report
The Reviewer will not disclose any findings or proposed or final recommendations without the prior written authorization of the Minister. The Minister will release the final report to the public.
Appendix 2: Dean Review Consultation
Questionnaire

Section A – The Public Interest in this Review

1. What do you understand by public interest?

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

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

4. Is the College currently protecting the public interest?

5. How should the College advance the public interest?

Section B – Issues Related to Scopes of Practice (SoPs)

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

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

8. What should be the key elements of an SoP? In particular, should the SoP for a trade list all of 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.

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

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

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

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.

13. What is your understanding of what an overlap between SoPs is?
14. Do overlaps between SoPs in regulation have an impact on your daily work or on the way you conduct business? Please explain.

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?

Section C – Classification or Reclassification of Trades as Compulsory or Voluntary

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

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?

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?

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?

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.

21. How should expert opinion be obtained?

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

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

24. Are the existing criteria the right criteria?
Section D – Decisions of the Ontario Labour Relations Board (OLRB)

25. Do the scopes of practice (SoPs) in regulation reflect the way in which work is actually assigned in your trade or sector?

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

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.

Section E – General Response and Comments

28. Please provide additional comments below, if any.
Appendix 3: Dean Review Consultation
Participants

The following divisional boards, individuals and organizations participated in the province-wide consultations.

Divisional Boards
Motive Power
Service

Individuals
Peter Bagley
Del Boudreau
Trevor Cox
John Elliott
Robert Ferrier
Patrick Hacon
David Kavanagh
Randy Lee
Doug Leitch
Tony Lorini
Domenic Mattina
Dale McDonald
Chris McKaskell
Michael Miller
Brian Olsen
David Parke
Garwin Pitman
Thomas Reid
Daniel Riccio
Timothy Ridley
Frank Rizzuti
Rolf VanderZwaag
Peter Wynncyzuk
Organizations

Associated Earth Movers of Ontario
Automotive Aftermarket Retailers of Ontario
Barrie Construction Association
Boilermaker Contractors’ Association
Boilermakers National Training Trust Fund
Canadian Farm Builders Association
Canadian Manufacturers & Exporters
Canadian Union of Public Employees Ontario
Canadian Water Quality Institute
Carpenters’ District Council of Ontario, United Brotherhood of Carpenters and Joiners of America
Chemistry Industry Association of Canada
Christian Labour Association of Canada
Coalition of Compulsory Trades in Construction
Colleges Ontario
Collision Industry Information Assistance
Construction Labour Relations Association of Ontario
Council of Ontario Construction Associations
Curriculum Development Advisory Committee for the Welding Trades
Electrical Contractors Association of Ontario
Electrical Power Systems Construction Association
Electrical Safety Authority
Electricity Distributors Association
Facca Incorporated
Greater Durham Chamber of Commerce
Greater Oshawa Chamber of Commerce
Heating, Refrigeration and Air Conditioning Institute of Canada
Heavy Construction Association of Toronto
Human Resources Professionals Association
Hydro One Networks Inc.
Independent Unionized Landscape Contractors Association
Interior Finishing Systems Training Centre
Interior Systems Contractors Association of Ontario
International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 736
International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 786
International Association of Machinists and Aerospace Workers
International Association of Machinists and Aerospace Workers
LL1120
International Brotherhood of Boilermakers, Local 128 — Ontario
International Brotherhood of Electrical Workers
International Union of Painters and Allied Trades, District Council 46
Iron Workers District Council of Ontario and Locals 700, 721, 736, 759, 765 and 786
J & C Tool & Die Ltd.
KD Clair Construction Ltd.
Labourers’ International Union of North America, Local 183
Lanark Leeds Home Builders Association
Landscape Ontario
Labourers’ International Union of North America Canadian Tri-Fund
Labourers’ International Union of North America Local 183
Labourers’ International Union of North America Local 506
Labourers’ International Union of North America Locals 625, 1059, 1089
Masonry Contractors Association of Toronto
Mechanical Contractors Association of Ontario
Metropolitan Plumbing and Heating Contractors Association
Midhurst Refrigeration Ltd.
Millwright Regional Council of Ontario
Ontario Chamber of Commerce
Ontario Concrete and Drain Contractors Association
Ontario Construction Secretariat
Ontario Electrical League
Ontario Erectors Association Inc.
Ontario Formwork Association
Ontario General Contractors Association
Ontario Glazier Apprenticeship and Training Committee
Ontario Hairstylists Association
Ontario Home Builders’ Association
  » Greater Ottawa Home Builders’ Association
  » Hamilton Halton Home Builders’ Association
  » Kingston Home Builders’ Association
  » Lanark-Leeds Home Builders’ Association
  » London Home Builders’ Association
  » Sarnia Lambton Home Builders’ Association
  » Sudbury & District Home Builders’ Association
  » Thunder Bay Home Builders’ Association
Toronto – Humber (Waterloo Home Builders’ Association/Stratford Area Builders Association)
Toronto – Ryerson (BILD)
Ontario Masonry Contractors’ Association
Ontario Painting Contractors Association
Ontario Pipe Trades Council
Ontario Sewer and Watermain Construction Association
Ontario Sheet Metal Workers’ and Roofers’ Conference
Ontario Skilled Trades Alliance
Progressive Contractors Association of Canada
Quinte West Chamber of Commerce
Residential Carpentry Contractors Association of Greater Toronto
Residential Construction Council of Ontario (RESCON)
Residential Framing Contractors Association of Metropolitan Toronto and Vicinity
Residential Low-Rise Forming Contractors of Metropolitan Toronto and Vicinity
Residential Tile Contractors Association
Sarnia Construction Association
Sarnia Lambton Chamber of Commerce
Technical Standards and Safety Authority
The Canadian Federation of Independent Business
The Greater Kingston Chamber of Commerce
The Greater Sudbury Chamber of Commerce
The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied and Industrial Services Workers International
Thunder Bay Chamber of Commerce
Toronto and Area Road Builders’ Association
Tri-Mach Group
UA Local 787 Refrigeration Workers of Ontario and Independent
Unifor
Utility Contractor Association of Ontario
Vale Canada Limited
## Trade Boards

<table>
<thead>
<tr>
<th>Trade Board</th>
<th>Representing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appliance Service Technician</td>
<td>1 Trade</td>
</tr>
<tr>
<td>Arborist</td>
<td>1 Trade</td>
</tr>
<tr>
<td>Auto Body and Collision Damage Repairer</td>
<td>4 Trades</td>
</tr>
<tr>
<td>Automotive Service Technician</td>
<td>5 Trades</td>
</tr>
<tr>
<td>Baker-Patissier</td>
<td>2 Trades</td>
</tr>
<tr>
<td>Cabinetmaker</td>
<td>1 Trade</td>
</tr>
<tr>
<td>Construction and Maintenance Electrician Trade Board</td>
<td>2 Trades</td>
</tr>
<tr>
<td>Construction Boilermaker</td>
<td>1 Trade</td>
</tr>
<tr>
<td>Construction Craft Worker</td>
<td>1 Trade</td>
</tr>
<tr>
<td>Construction Millwright</td>
<td>1 Trade</td>
</tr>
<tr>
<td>Developmental Services Worker</td>
<td>1 Trades</td>
</tr>
<tr>
<td>Drywall Finisher and Plasterer and Exterior Insulated Finishing Systems Mechanic; Hazardous Materials Worker</td>
<td>3 Trades</td>
</tr>
<tr>
<td>Elevating Devices Mechanic</td>
<td>1 Trade</td>
</tr>
<tr>
<td>General Carpenter</td>
<td>1 Trade</td>
</tr>
<tr>
<td>Hairstylists</td>
<td>1 Trade</td>
</tr>
<tr>
<td>Heavy-Duty Equipment Technician</td>
<td>1 Trade</td>
</tr>
<tr>
<td>Heavy-Equipment Operator</td>
<td>4 Trades</td>
</tr>
<tr>
<td>Hoisting Engineers</td>
<td>3 Trades</td>
</tr>
<tr>
<td>Horticultural Technician</td>
<td>3 Trades</td>
</tr>
<tr>
<td>Industrial Electrician</td>
<td>1 Trade</td>
</tr>
<tr>
<td>Industrial Mechanic Millwright</td>
<td>1 Trade</td>
</tr>
<tr>
<td>Ironworker</td>
<td>2 Trades</td>
</tr>
<tr>
<td>Motorcycle, Marine, Small Engine Technician</td>
<td>4 Trades</td>
</tr>
<tr>
<td>Plumber/Steamfitter</td>
<td>2 Trades</td>
</tr>
<tr>
<td>Powered Lift Truck Technician</td>
<td>1 Trade</td>
</tr>
</tbody>
</table>
## Trade Board

<table>
<thead>
<tr>
<th>Trade</th>
<th>Representing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Powerline Technician</td>
<td>1 Trade</td>
</tr>
<tr>
<td>Precision Machining and Tooling</td>
<td>15 Trades</td>
</tr>
<tr>
<td>Refrigeration and Air Conditioning Systems Mechanic</td>
<td>2 Trades</td>
</tr>
<tr>
<td>Reinforcing Rodworker</td>
<td>1 Trade</td>
</tr>
<tr>
<td>Roofer</td>
<td>1 Trade</td>
</tr>
<tr>
<td>Sprinkler and Fire Protection Installer</td>
<td>1 Trade</td>
</tr>
<tr>
<td>Tractor Trailer Commercial Driver</td>
<td>1 Trade</td>
</tr>
<tr>
<td>Truck and Coach Technician</td>
<td>2 Trades</td>
</tr>
<tr>
<td>Utility Arborist</td>
<td>1 Trade</td>
</tr>
</tbody>
</table>

## Other Individuals and Groups

- MPP Garfield Dunlop
- MPPs Peggy Sattler and Monique Taylor
- Tim Armstrong, Chair, College of Trades Appointments Council
- Kevin Whitaker
- Bernie Fishbein, Chair, Ontario Labour Relations Board
- Hugh Laird, member, College of Trades Appointments Council
- Staff at the Ministry of Government and Consumer Services
- Staff at the Ministry of Health and Long-Term Care
- Staff at the Ministry of Labour
Appendix 4: Ontario College of Trades Legal Interpretation Principles on Overlapping Scopes of Practice

In order to determine whether section 2 (prohibition on engaging in the practice of a compulsory trade without being a member of the College) of the *Ontario College of Trades and Apprenticeship Act*, applies, it is necessary to consider whether an individual is engaged in the practice of a compulsory trade. Regulations 275/11, 276/11, 277/11 and 278/11 define the scopes of practice of each trade.

1. The practice of each trade involves engaging in work which is within the scope of practice of that trade. When the scope of practice of a *compulsory trade* is the only trade which contains particular work, then only a member of the College for that trade in the Journeyperson, Journeyperson Candidates or Apprentices Class may engage in that work.

2. When the work is contained in the scopes of practice of *two or more compulsory trades*, then only persons who are members of the College for one of those trades in the Journeypersons, Journeyperson Candidates or Apprentices Class may engage in that work.

3. When work is contained in the scope of practice of a *compulsory trade* and the scope of practice of a *voluntary trade*, then any person may engage in that work (even if the person is not engaging in the practice of the voluntary trade) and membership in the College is not required, provided that the person is not engaged in the practice of the compulsory trade while performing the work.

The College’s three legal interpretation principles on overlapping scopes of practice maintain the status quo as they carry over the three principles on overlapping skills that the Ministry of Training, Colleges and Universities (MTCU) had developed and applied under the previous trades legislation in Ontario. MTCU’s principles were meant to provide a method for dealing with overlaps where an express exemption was not prescribed in regulation. In carrying

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60. Ontario College of Trades. “Scopes of Practice.” Briefing Note provided to Reviewer, October 2014.
over MTCU’s principles on overlapping skills, the College only updated them to reflect the new terminology in the Ontario College of Trades and Apprenticeship Act (OCTAA) as well as the College’s membership system. In particular, the College’s legal interpretation principles reflect the fact that only members in good standing in the College in a compulsory trade are able to engage in the practice of that trade, subject to any applicable exemptions.