

Entrepreneurial Activities

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Purpose and Application

The [Ontario Colleges of Applied Arts and Technology Act, 2002](#) authorizes colleges to undertake a range of education- and training-related activities in carrying out their mandate to offer career-oriented, postsecondary education and training.

This binding policy directive is issued pursuant to the authority in the *Ontario Colleges of Applied Arts and Technology Act 2002*, which gives the Minister of Training Colleges and Universities the authority to issue binding policy directives in relation to the manner in which colleges carry out their objects or conduct their affairs.

The purpose of this binding policy directive, which applies to all colleges and their subsidiary corporations, including foundations, is to outline the types of entrepreneurial and commercial activities that colleges may undertake. It establishes the conditions under which the activities may occur including the necessary reporting requirements and the need for ministerial approval in certain cases. The [Corporations Act](#) also provides authority for colleges and may provide direction on activities not directly referenced in this directive.

For further information regarding this binding policy directive, click on the Contact link to consult with the appropriate [ministry contact](#), listed in the Contacts section on the web site.

Principles

Colleges are expected to be flexible, entrepreneurial, responsive, and market driven to better meet the needs of students, employers, and communities.

Partnership activities with business, industry, and professional associations will promote college programming more closely aligned to the needs of the workplace and more relevant for students.

In engaging in commercial activities, colleges must not, either by virtue of their access to public funds or by virtue of their not-for-profit status, compete unfairly with the private sector.

Glossary

Foundation: a non-profit corporation established under provincial or federal law to raise funds or property for scholarships or bursaries, or for the benefit of the college.

Subsidiary memorandum of agreement (MOA): an agreement authorized by the college board of governors and the board of directors of the subsidiary, signed by their respective authorized signing authorities, that sets out the relationship between the college and the subsidiary. A draft MOA to assist colleges in preparing this document is in [Appendix B](#).

Subsidiary: a corporate body, either partially or wholly owned, incorporated at the direction of the college, or effectively controlled by the college, but not including a corporate student government or a corporate body incorporated at the direction of, or effectively controlled by, a student government. Subsidiaries may be incorporated federally or provincially, depending on the requirements of the college. The mandate of a subsidiary may not be greater than or in conflict with that of the college. Examples include for profit, non-profit (either of these being share issuing or non-share issuing) and foundations.

Binding Policy Directive

- A. Colleges undertaking entrepreneurial activities are to do so in a manner consistent with their education and training mandate.**
- B. In pursuing entrepreneurial activities, the core businesses, as defined by the college, and assets of the college are to be protected and public funds utilized only to support grant-eligible activities.**
- C. Colleges will charge a minimum of fair market value when providing commercial services to the general public, including, but not limited to, services such as childcare, automotive repairs, and hospitality and restaurant operations.**
- D. When considering the operation of entrepreneurial activities that may bring the college in competition with the private sector, appropriate consideration must be given to the need for consultation with the community and issues management and communications strategies that will maintain the community's cooperation.**
- E. Processes associated with entrepreneurial and commercial activities such as tendering and purchasing are to be open and transparent.**
- F. The college's status, as a tax-exempt and not-for-profit corporation, must be maintained and protected.**

- G. Funds earned from entrepreneurial activities are to be returned to the college to support its core businesses within the education and training mandate.**
- H. A college board of governors may approve the creation of a wholly owned subsidiary corporation, including a college foundation, if it falls within the following parameters:**
- I. The activities of the wholly owned subsidiary corporation are consistent with the education and training mandate of colleges and contribute to the significant achievement of the strategic directions that a college has established.**
 - II. The mandate of a subsidiary corporation does not exceed or conflict with that of the college.**
 - III. The core businesses of the college and public funding are protected through appropriate limitations on the college's liability for the subsidiary's business endeavours (i.e., the college will not guarantee the subsidiary's debts and will not be liable for the underwriting of the subsidiary's business endeavours).**
 - IV. The risks associated with the establishment and operations of the subsidiary have been identified and the appropriate risk management strategies have been identified or pursued. The college's status as a tax-exempt and not-for-profit corporation is to be maintained.**
 - V. An MOA between the college and the subsidiary corporation will allow the board of governors to retain ultimate control over the subsidiary corporation with appropriate accountability mechanisms in place to allow the college the necessary oversight functions. (A sample MOA is provided in [Appendix B.](#))**
 - VI. The subsidiary operates consistent with the legislative, regulatory, and policy framework of colleges, including the [Financial Administration Act.](#)**
 - VII. The college has confirmation from the designated official of the ministry that the proposed subsidiary falls within these parameters prior to being approved by the board of governors. Colleges may present the business case that would go forward to the board of governors to the designated official of the ministry for review as the**

means of obtaining the necessary confirmation. See [Appendix A](#) for details on the information required and how to proceed.

- I. Colleges may establish subsidiaries, including partially owned subsidiaries, outside the parameters identified in item VII Section H above only with the prior written approval of the Minister of Training, Colleges and Universities. See [Appendix A](#) for details on the information required and how to proceed.
- J. The subsidiary, referenced in Section H, may have interests in various businesses and non-profit or profit projects and enter into cost- and revenue-sharing arrangements.
- K. Entrepreneurial activities, such as partnerships, subsidiaries, activities outside the province of Ontario, and ownership of other businesses, are to be included in the college's business plan and annual report.
- L. The following types of entrepreneurial activities are considered to be consistent with the education and training mandate of the colleges and include, but are not limited to:
 - I. **Ancillary Services**

Colleges may offer ancillary services for the primary use of students and faculty that support education and training activities such as parking lots, bookstores, and cafeterias; colleges may also rent out unused space or performance venues. Services may be delivered through contracts with third parties.
 - II. **Commercial Services**

Colleges may offer commercial services related to their training and education mandate. Learning enterprises such as childcare, photography, dental clinics, and printing may be offered to the general public at a fair market price and may return a profit to the college.
- M. Colleges do not require ministerial approval to engage in education and training activities through partnerships, strategic alliances, and contractual agreements with a wide variety of partners. These arrangements may be either a formal legal relationship between two or more partners contractually associated as joint principals or a less formal relationship

involving close cooperation between parties having specified joint rights and responsibilities. It is the responsibility of a college to seek appropriate professional advice (e.g., tax, accounting, and legal advice) in structuring these activities.

- N. Colleges may operate outside the province of Ontario consistent with the education and training mandate of the Ontario college system.**

It is the responsibility of the board of governors to obtain appropriate legal or other professional advice. Where a college chooses to use a subsidiary corporation for such activities, the directive for a subsidiary corporation applies.

- O. As a corporation without share capital under the *Corporations Act*, colleges cannot issue shares. While colleges themselves are restricted by law from issuing shares, subsidiaries incorporated under the *Corporations Act* may be share issuing or non-share issuing, in accordance with the provisions of that Act.**
- P. Colleges or their subsidiaries may issue debt securities such as, but not limited to, notes, bonds, debentures, and other evidences of indebtedness consistent with Section 3 (1) of the *Financial Administration Act*. Such offerings should not jeopardize core activities of the college or divert public funds. All such transactions should be reported in the college's business plan and annual report.**
- Q. Colleges may acquire an interest, or outright ownership, of an organization in an education- or training-related field. A board of governors is to give serious consideration to how such activity will contribute to achievement of the college's long-term strategic goals. Such operations should not jeopardize core activities of the college or divert public funds. All such transactions should be reported in the college's annual report.**

Colleges may own a portion of a company that is listed or intends to apply for listing on a stock exchange.

Summary of Responsibilities

Colleges of Applied Arts and Technology

The college is responsible for:

- Ensuring that the college mandate of education and training is achieved and that all activities in which the college engages are consistent with the mandate and strategic goals of the college.
- Entering into agreements or contracts consistent with its authority under the [Ontario Colleges of Applied Arts and Technology Act, 2002](#) and the [Corporations Act](#), and with all other applicable legislation and government policy.
- Obtaining professional advice before deciding on the most reasonable, efficient, and cost-effective form of conducting its entrepreneurial and commercial activities.
- Ensuring that risks associated with entrepreneurial and commercial activities have been identified and that appropriate strategies are in place to manage risks so that core businesses of the college and public funds are protected.
- Ensuring that appropriate consultation and communication strategies are in place to maintain the co-operation of the community.
- Communicating with the ministry regarding the establishment of entrepreneurial and commercial activities.

Ministry of Training, Colleges and Universities

The ministry is responsible for:

- Establishing clear expectations for colleges regarding parameters for entrepreneurial and commercial activities that do not unduly hinder the colleges in finding alternative resources to support their education and training mandate.
- Responding in a timely manner to a college in the establishment of subsidiary corporations or other inquiries with respect to entrepreneurial or commercial activities.

Appendix A: Subsidiary Corporations

Seeking Ministry Confirmation That the Proposed Subsidiary Corporation Needs Only College Board of Governors Approval

Colleges are required to obtain confirmation from the Ministry of Training Colleges and Universities (MTCU) that a proposed subsidiary is within the parameters identified for approval only by the college board of governors.

The following information is to be e-mailed to the designated ministry official at colleges.branch@edu.gov.on.ca to obtain that confirmation. To avoid duplication of effort, a college may submit to the ministry the business case that would be forwarded to the board for approval. However, the minimum information to be submitted includes the following:

Parameter 1

The activities of the subsidiary corporation must be consistent with the education and training mandate of colleges and contribute to the significant achievement of the strategic directions that a college has established.

- Describe how the subsidiary addresses the college's strategic plan and how its operation will contribute to and is critical to the achievement of the long-term goals and objectives established by the board of directors.
- Describe how the sphere of operation of the subsidiary will address the needs of the communities the college serves.

Parameter 2

The mandate of a subsidiary corporation must not exceed or conflict with that of the college.

- Identify the mandate of the subsidiary and how the mandate is consistent with the overall mandate of colleges and the specific mandate of the individual college.
- Identify the specific activities of the subsidiary and the related role for the college.

Parameter 3

The core businesses of the college and public funding must be protected through appropriate limitations on the college's liability for the subsidiary's business endeavours.

- Identify the alternatives, other than a subsidiary, that were considered and why a subsidiary corporation is necessary and is the best alternative for the college.
- Explain how the subsidiary, as a separate legal entity, would protect the college's interest and limit its liability.
- Identify the resource commitments from the college and potential liabilities for the college in establishing and operating the subsidiary. Describe the plan for addressing these liabilities and recovering resources and how the core businesses and public funding will be protected.

Parameter 4

The risks associated with the establishment and operations of the subsidiary have been identified and the appropriate risk management strategies have been identified or pursued. The college's status as a tax-exempt corporation must be maintained.

- Articles of incorporation or letters patent and an MOA must contain proper safeguards and establish that neither MTCU nor the college will guarantee the subsidiary's debts unrestrictedly and are not liable for the underwriting of the subsidiary's business endeavours. The college will provide the draft documents in this submission and follow up by providing the ministry with the final documents as they become available.
- A complete risk analysis and risk management strategy should be provided. As part of this analysis, the following financial tables should be included:
 - Outline investment requirements, risks, probable profits, timing, etc. (demonstrate subsidiary will be self-sufficient and making a profit within a reasonable time frame); display data in the table format provided ([Table 1](#) of this appendix).
 - Itemize actual commitments from any partners (both dollar amounts and other commitments); indicate amounts and all sources of start-up and ongoing funding, including in-kind contributions (e.g., equipment, personnel, accommodation/space, software, etc.).
 - Provide a table outlining past years' (if the enterprise is already in operation) and future multi-year annual projections of expenditures itemized by type, revenues by source, and net profits or losses (include

any start-up funds advanced by the college and other sources, itemized on an annual basis).

- Where a subsidiary is proposed to offer shares, provide details related to the share offer and how it will be operated.

Parameter 5

An MOA between the college and the subsidiary corporation will allow the board of governors to retain ultimate control over the subsidiary corporation with appropriate accountability mechanisms in place to allow the college the necessary oversight functions.

- Enclose a copy of the draft MOA that will be signed between the college and the subsidiary. Where an MOA other than the draft in [Appendix B](#) is utilized, the following content must be included:
 - The subsidiary's board of directors is subject to the approval by the college board of governors; and
 - The subsidiary is to submit an annual budget for the approval of the college board of governors; and
 - The subsidiary is to submit, at mutually agreed dates, status reports and an annual report to the college, including annual financial statements audited by the college's external auditor.

Parameter 6

The subsidiary must operate consistent with the legislative, regulatory, and policy framework of colleges, including the [Financial Administration Act](#).

The MOA identified above will address this provision.

Submission of Request for Confirmation

This material is submitted to the designated official in the Ministry of Training, Colleges and Universities. Colleges should anticipate that a response would take at least a month.

Seeking Approval of the Minister for a Proposed Subsidiary Corporation

A college may seek the Minister's approval for a subsidiary corporation that is outside the above parameters. The same information should be provided outlining why the above parameters cannot be met or are not applicable in the situation the college is proposing.

A letter addressed to the Minister of Training, Colleges and Universities from the chair of the board of governors of the college should accompany the information, along with a copy of the motion passed by the board of governors to approve the proposed subsidiary corporation. As this is a more complex situation and the approval of the Minister is required, colleges should anticipate a minimum of three months for a response.

Table 1: COLLEGE SUBSIDIARY FINANCIAL PROJECTIONS

| | Source of Income | | | Return | Profit for College |
|--------|-------------------------------------|-------------------|------------------|--------|--------------------|
| | College Current/ Future Activities* | Loan from College | Total Investment | | |
| Year 1 | 0 | 0 | 0 | | 0 |
| Year 2 | 0 | 0 | 0 | | 0 |
| Year 3 | 0 | 0 | 0 | | 0 |

* e.g., International activities include: short-term contract training in Canada and overseas, English language instruction, sale of courses/education materials, etc.

Appendix B: Draft Memorandum of Agreement

**[FOR USE BY SUBSIDIARIES OR FOUNDATIONS] AT THE DISCRETION OF THE
BOARD OF GOVERNORS**

MEMORANDUM OF AGREEMENT

BETWEEN:

THE BOARD OF GOVERNORS OF _____ COLLEGE OF
APPLIED ARTS AND TECHNOLOGY

(Hereinafter "College")

(OF THE FIRST PART)

- AND -

_____,
a corporation incorporated pursuant to the laws of the Province of Ontario

(Hereinafter "Subsidiary")

(OF THE SECOND PART)

WHEREAS the College is a corporation without share capital established by O. Reg. 34/03 under the *Ontario Colleges of Applied Arts and Technology Act, 2002*.

AND WHEREAS the Subsidiary is a [non-profit corporation without share capital] incorporated by letters patent under the *Corporations Act*, R.S.O. 1990, c. C.38, and is an agent of Her Majesty the Queen in Right of Ontario [incorporating authority may vary in specific cases];

AND WHEREAS the Subsidiary is established to [objects of subsidiary to be inserted here];

AND WHEREAS the Ministry of Training, Colleges and Universities requires that there be a memorandum of agreement between the College and the Subsidiary for the purpose of establishing the operating relationship between the parties hereto;

AND WHEREAS the Subsidiary's mandate and powers cannot exceed those of the College;

AND WHEREAS the Subsidiary is subject to government policies and directives in a manner similar to colleges

NOW THEREFORE THE PARTIES AGREE EACH WITH THE OTHER AS FOLLOWS:

I Roles and Responsibilities

(a) Objects

The objects of the Subsidiary as set out in its letters patent are as follows:

-
-
-

The Subsidiary shall be operated exclusively for the attainment of the above-noted objects and without the purpose of gain for any of its members and any profits or other accretions shall be used in promotion of its objects.

(b) Board of Directors

The Board of Directors of the Subsidiary shall consist of _____ (no.) members, all of whom shall be approved by the College.

The Board of Directors of the Subsidiary shall be responsible for the management and control of the affairs of the Subsidiary.

(c) By-Laws

The Directors of the Subsidiary may, subject to the approval of the College, make such by-laws as are necessary for:

- (i) the administration of the Subsidiary;
- (ii) any other matter necessary for carrying out the objects of the Subsidiary.

II Financial Arrangements

(a) Budget

The Subsidiary shall submit annually for approval by the College a proposed budget including evaluation and results of activities of the Subsidiary. The College shall not approve a proposed annual budget prepared in respect of a

fiscal year of a Subsidiary that would provide for a deficit at the end of such fiscal year. The Subsidiary shall not make any expenditures that are not within the financial limits set by the approved annual budget.

(b) Accounting Procedure

The Subsidiary shall maintain accounting procedures in a manner consistent with the College's accounting policies and practices and which are in accordance with generally accepted accounting principles. The College shall make all reasonable efforts to inform the Subsidiary of such policies.

(c) Revenues

The College shall identify what revenues are to be returned to the college and what revenues shall be retained by the Subsidiary to further the objects of the Subsidiary.

(d) Inspection and Audit

The books, accounts, and records of the Subsidiary shall be made available at all reasonable times for inspection and audit by representatives of the College, who may make copies thereof and take extracts there from and proper facilities for any inspection and audit shall be made available, together with reference to such books and records.

(e) Status Reports

The Subsidiary shall, from time to time, promptly furnish to the College such information relating to the operations and affairs of the Subsidiary as the College may from time to time require.

(f) Annual Report

The Subsidiary shall make a report annually to the College regarding the affairs of the Subsidiary and the College shall submit the report to the Minister of Training, Colleges and Universities.

(g) Audited Financial Statements

The Subsidiary shall include in its annual report to the College, the auditor's report and audited financial statements for each fiscal year, as prepared by the

College's external auditor, and the College shall include the Subsidiary's audited financial statements in the College's annual report to the Minister.

(h) Borrowing

When the Subsidiary proposes entering into any financial arrangements that could increase its liabilities, prior written approval must be obtained from the College.

(i) Investments

The Subsidiary shall adhere to s. 3 of the *Financial Administration Act*, R.S.O. 1990, c. F.12, and all related government policies and directives.

(j) Dissolution

Upon the dissolution of the Subsidiary and after the payment of all debts and liabilities, the remaining property of the Subsidiary shall be distributed or disposed of to and for the benefit of the College.

III Administrative Arrangements

(a) Consultation

The College shall meet with the representative(s) of the Subsidiary from time to time to discuss the affairs of the Subsidiary including such matters as budgets, objectives, plans, procedures, use of College resources, and other matters.

(b) Administrative Procedures

The Subsidiary shall establish and maintain administrative procedures that permit accurate recording and reporting of the operations of the Subsidiary and which maintain adequate administrative control.

(c) Conflict of Interest

In addition to the conflict of interest provisions of the *Corporations Act*, the Subsidiary shall adhere to the conflict of interest directive from the Ministry of Training, Colleges and Universities.

(d) Agreements

The Subsidiary may not enter into agreements with the private sector, governments, related agencies, and other bodies in furtherance of its objects without the prior approval of the College.

IV General(a) Insurance

The Subsidiary shall maintain adequate third party liability insurance.

(b) Review

This memorandum of agreement shall take effect on the date of signature of both parties and shall be reviewed on or before the expiration of five years from the date of signing, and shall be subject to review in the interim upon the request of either of the parties hereto.

(c) Amendment

No agreement purporting to amend or modify this agreement or any document, paper, or writing relating hereto or connected herewith is valid and binding unless it is in writing and signed and accepted in writing by both the College and the Subsidiary.

Agreed to this _____ day of _____, 200__.

BOARD OF GOVERNORS OF _____
COLLEGE OF APPLIED ARTS AND TECHNOLOGY

_____ Corporation

(on behalf of the "Subsidiary")
OF THE SECOND PART