

DEAN
REVIEW
CONSULTATION
GUIDE

The Ontario Public Service endeavours to demonstrate leadership with respect to accessibility in Ontario. Our goal is to ensure that Ontario government services, products, and facilities are accessible to all our employees and to all members of the public we serve. This document, or the information that it contains, is available, on request, in alternative formats. Please forward all requests for alternative formats to ServiceOntario at 1-800-668-9938 (TTY: 1-800-268-7095).

Une publication équivalente est disponible en français sous le titre suivant : *Examen par m. dean : Guide de consultation*

This publication is also available on the Ministry of Training, Colleges and Universities website, at www.ontario.ca/tcu.
14-212 • ISBN 978-1-4606-5091-2 (Print) • ISBN 978-1-4606-5092-9 (PDF) • © Queen's Printer for Ontario, 2015

Contents

Introduction	5
Mandate of the Review	7
What the Review Is About	7
What the Review Is Not About	7
Background	8
The Ontario College of Trades	8
The Public Interest in This Review	10
Issues Related to Scopes of Practice	12
Components of an SoP	12
Multiple Uses of SoPs	14
Overlaps between SoPs	15
Classification or Reclassification of Trades as Compulsory or Voluntary	17
Compulsory Certification	17
Process and Criteria in Ontario Regulation 458/11	19
Decisions of the Ontario Labour Relations Board	22
Participating in the Review	24
Written Submissions	24
Regional In-Person Consultations	25

Introduction

In her 2014 Plan for Ontario, Premier Kathleen Wynne made a commitment to support the success of the Ontario College of Trades by appointing an advisor to conduct a review. On October 23, 2014, I was appointed by the Honourable Reza Moridi, Minister of Training, Colleges and Universities, for one year to review specific aspects of the College's activities – namely, the manner in which the College makes decisions on issues related to scopes of practice (SoPs) for the trades (SoPs contain the description of the work of a trade). One issue related to SoPs is the process and criteria for the classification or reclassification of a trade as compulsory or voluntary. The classification of a trade as compulsory or voluntary tells us whether certification and membership in the College are mandatory for a particular trade.

During the review, I will be guided by my [terms of reference](#) and by the following [principles](#): the review will be independent, policy-based, informed by research and evidence, open and transparent, engaging, and iterative. In consultation with the College, I will provide the Minister with analysis, advice, and recommendations in a final report. I will be acting impartially and will be independent from both the Government of Ontario and the College in conducting the review.

Public engagement is central to this review, and I am inviting all stakeholders to participate in the written and oral consultations. I hope to work with and hear from tradespeople, apprentices, employers, sponsors, consumers, labour groups, and associations, as well as training delivery agents, other regulators, and members of the public.

This guide gives details on how to participate in the review. It provides background information on the College, its mandate, and relevant legislation, and then identifies a series of topics and questions on which I hope to obtain stakeholder insights and feedback. These topics and questions are based on my terms of reference. Specific guidelines on how to make a written submission and how to participate in the oral consultations are provided at the end of the guide. For now, I would like to emphasize that while the written submissions should, as a general rule, consider the topics and questions covered by this guide, it is not required that you answer all of the questions for your submission to be considered. Please feel free to choose which of the areas and questions in this guide you would like to address. Finally, I welcome advice and suggestions on matters I may have missed, provided that they fall within my terms of reference.

My review will build on existing knowledge and consider research and stakeholder feedback as I identify ways to clarify and improve the College's policies, processes, and criteria and make recommendations in the areas under review so that the College can better fulfil its duty to serve and protect the public interest and its mandate to regulate and promote the trades.

My plan is to move as quickly as possible with the review so it will be completed within one year. I expect to complete my work and submit my report to the Minister by October 2015.

Mandate of the Review

What the Review Is About

According to my terms of reference, the focus of the review and consultations will be on identifying opportunities to clarify and improve the College's policies, processes, and/or criteria related to the following:

- 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, 2009 \(OCTAA\)](#) 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
- 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, 1995.

You can find my terms of reference on my website, at www.deanreview.com.

What the Review Is Not About

This is neither a review of the College itself nor of its mandate. Accordingly, given the boundaries of my own mandate, some of the things that I *will not be considering* in this review are the following:

- the existence of the College
- redefining what a trade is
- amending the SoPs for specific trades
- reclassifying specific trades
- reopening decisions on journeyman to apprentice ratios (ratios) for specific trades

Background

The Ontario College of Trades

The Ontario College of Trades is an industry-driven, self-regulatory professional body for Ontario's 156 skilled trades. Through the creation of the College in 2009, for the first time in North America, decision making about the trades was put into the hands of those who are directly affected by those decisions. Like other self-regulatory professional bodies, such as the Ontario College of Teachers or Professional Engineers Ontario, the Ontario College of Trades has a duty to serve and protect the public interest in carrying out its legislated objects and functions.

Since opening its doors to members on April 8, 2013, the College has made progress on its mandate to regulate and promote the trades, register members and issue certificates of qualification and statements of membership, maintain a public register of members, establish apprenticeship training and curriculum standards and certification examinations, conduct trade equivalency assessments, conduct journey person to apprentice ratio (ratio) reviews and trade classification reviews, and carry out compliance and enforcement activities.

History

The College was established by legislation in 2009 and is largely the product of a series of recommendations in two major reports commissioned by the Government of Ontario; namely, Tim Armstrong's [Report on the Compulsory Certification Project \(Armstrong report\)](#) and Kevin Whitaker's [Report on the College of Trades](#).

These recommendations were largely adopted in the Ontario College of Trades and Apprenticeship Act, 2009 (OCTAA), a new piece of legislation passed in October 2009. In addition to establishing the College, OCTAA introduced new concepts for apprenticeship training and trades qualification. Although OCTAA replaced the Trades Qualification and Apprenticeship Act (TQAA) and the Apprenticeship and Certification Act, 1998 (ACA), it also drew significantly from them. Simply put, OCTAA is the result of merging two different regulatory frameworks for the trades (TQAA and ACA) with a framework for professional self-regulation in the public interest (see the section on the public interest on pages 10–11).

Over a two-year period, the College's Transition Board of Governors and inaugural Board of Governors held public consultations and developed regulations for ratio and trade classification/reclassification reviews, classes of members and registration, and professional misconduct. The College also launched a public register of its members and completed reviews for the 33 trades that are subject to ratios in its first year. In 2014, the College took over the responsibility for trade equivalency assessments from the ministry and is now working to implement the reclassification of the Sprinkler and Fire Protection Installer trade from voluntary to compulsory.

I am pleased to open this new chapter in the life of the College by building on existing work and expertise and identifying opportunities to address challenges and improve the efficiency, effectiveness, soundness, credibility, and quality of the College's decision-making processes as they relate to the areas under review.

The following sections provide contextual information on the public interest and on each of the areas under review. Specific questions to solicit your views are provided at the end of sections.

The Public Interest in This Review

My terms of reference require that I be cognizant, in carrying out my mandate, of the College's duty to serve and protect the public interest in carrying out its objects and functions under the Ontario College of Trades and Apprenticeship Act, 2009 (OCTAA). It is therefore essential that I explore the concept of public interest as the guiding lens through which this review is conducted.

The privilege of self-regulation granted to the trades comes with the responsibility of putting the interests of the public ahead of the interests of the trades. The duty to serve and protect the public interest is shared by other self-regulatory professional bodies in Ontario, such as the health regulatory colleges:

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 profession....¹

Alderson & Montesano, 2003

While the 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 only 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. Given the absence of legislated definitions or principles on how to make decisions in the public interest, it is up to the individual professional colleges to give meaning to the concept with reference to their legislated duties, powers, objects, and functions. Some professions have suggested

1. Douglas Alderson and Deanne Montesano, *Regulating, De-Regulating and Changing Scopes of Practice in the Health Professions: A Jurisdictional Review. A Report prepared for the Health Professions Regulatory Advisory Council (HPRAC)*, 2003, p. 4.

that there are many “publics” in the public interest, that the public may vary from issue to issue, and that the “publics” may have different and competing interests. Others have articulated the “interests” of the public by identifying values that must be safeguarded or protected: health and safety, consumer protection, environmental protection, and impact on the economy are among the most common ones. These values reflect – as the [Ontario College of Teachers](#) has noted – the political, cultural, or economic priorities of the time and will shift as the public’s needs and expectations change. While OCTAA does not expressly define the public interest, some of its processes make reference to values that may be helpful in informing its meaning.

Not surprisingly, the College’s duty regarding the public interest may not be sufficiently known or understood. I see opportunities to clarify and improve how the College interprets its duty to serve and protect the public interest, how the College assesses the public interest during its decision making, and how the College deals with competing interests. Recognizing that the public interest as a duty is new to the world of trades and that there may be different views on and interpretations of what it means and how to implement it, I am inviting stakeholder comment on the following questions to better understand the concept and inform the areas under 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?**

Issues Related to Scopes of Practice

My terms of reference require that I provide analysis, advice, and recommendations on opportunities to clarify and improve ways in which the College makes decisions on issues related to scopes of practice (SoPs) and ways in which SoPs are used to support the performance of objects and functions under the Ontario College of Trades and Apprenticeship Act, 2009 (OCTAA).

An SoP is a description of the work of a trade. 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. The SoPs were essentially carried over from the previous system as they were adopted from regulations and training documents under the Trades Qualification and Apprenticeship Act and/or the Apprenticeship and Certification Act, 1998.

Components of an SoP

The current SoPs were drafted independently at different times over the past several decades. As a result, they were not written following the same structure and approach. They display differing components and levels of detail with respect to content and are provided in different formats, as follows:

- *Content:* An SoP may contain a description of all of the work of a trade or only the work that is unique to the trade. This aspect of an SoP relates to the distinction between “core” and “peripheral” elements of a trade explored in the [Armstrong report](#): core elements are the essential, more complex components of a trade, and peripheral elements are the less essential, less complex, and non-hazardous functions of a trade. It is recognized, however, that this distinction may be somewhat artificial and that what is peripheral in one trade may be core in another.
- *Format:* An SoP may be limited to a general, high-level statement (typically one sentence), or it may be framed as a long, detailed list of specific activities. The former approach may leave greater room for interpretation whereas the latter should arguably aim at being comprehensive.

The College has heard from stakeholders that certain SoPs may need to be reviewed and amended. I will not be carrying out a review of individual SoPs for this review.

Reviewing and amending existing SoPs or drafting SoPs for any trades that might be prescribed in the future may be a challenging endeavour if there is not a common approach to the concept, structure, and format of SoPs. While consideration of these types of requests has been put on hold by the College until this review is completed and any relevant recommendations are implemented, the College will eventually need guidance on how to engage trades in the review of SoPs and, in particular, on what to include in or exclude from an SoP and what format to follow. This area of decision making falls within my mandate and will be part of the review.

More fundamentally, given the College's duty to serve and protect the public interest, the review should explore whether the inclusion or exclusion of activities in an SoP is consistently aligned with the protection of the public interest. For instance, should the SoP for a compulsory trade include all the work of the trade or only work that may pose a risk of harm to the public, tradespeople, or other workers on the job? This issue is closely linked to the matter of compulsory certification and the classification and reclassification of trades, to be discussed below.

Against this backdrop, I am inviting stakeholder comment on the following questions:

- 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 an SoP be carried out?

Multiple Uses of SoPs

SoPs are central to Ontario's trades system because they are used to support the performance of many of the College's objects and functions. The SoP for a trade is used in ways such as the following:

- *The SoP is the basis for apprenticeship training.* Apprenticeship training and curriculum standards should flow from the SoP for the trade, and apprentices in that trade should be trained to the full scope of the trade, as set out in the SoP.
- *The SoP is the basis for compliance and enforcement.* SoPs are used as the primary basis for determining compliance with the prohibitions against the unauthorized practice of compulsory trades, as outlined in sections 2 and 4 of OCTAA:
 - Section 2 prohibits an individual who is not a member of the College in good standing in a compulsory trade from engaging in the practice of that trade or holding themselves out as being able to do so.
 - Section 4 prohibits a person from employing or otherwise engaging an unauthorized individual to perform work or engage in a practice that constitutes engaging in the practice of a compulsory trade.
- *The SoP is one of the criteria considered by the review panels.* The SoP for the trade is one of multiple criteria that review panels must consider in determining:
 - the classification of a trade as compulsory or voluntary;
 - the appropriate ratio for a trade that is subject to ratios.

The very fact that SoPs are used as a necessary point of reference in the performance of such different functions begs the question as to whether an SoP can and should serve such diverse purposes. While all of the tasks in an SoP are relevant to apprenticeship training because apprentices are to be trained to the full scope of the trade, it is not necessarily clear that there is a public interest in enforcing every single activity in a compulsory trade SoP. For instance, there may be activities in a compulsory trade SoP that may not necessarily pose a risk of harm to the public, tradespeople, or other workers on the job, whereas there may be activities in a voluntary trade SoP that may pose a risk of harm to the public, tradespeople, or other workers on the job. Moreover, as one of the criteria considered by the review panels, an SoP may not be helpful to their decision-making process if it does not provide a complete and accurate picture of the work of the trade.

Against this backdrop, I am inviting stakeholder comment on the following questions:

- 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.

Overlaps between SoPs

There is an "overlap" when the same work or activity is contained in the SoPs for two or more trades. Overlaps between SoPs may have implications for an individual's ability to perform the overlapping work and are therefore crucial to determining whether an individual has breached section 2 and/or section 4 of OCTAA. The College has adopted a set of three legal interpretation principles on overlapping SoPs to determine the impact of overlaps. This legal interpretation of OCTAA was carried over from the previous system without substantive changes. The three principles are:

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 Journeyman, Journeyman 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 Journeymen, Journeyman 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. *[emphasis added in bold]*

The application of this legal interpretation presents some challenges. On the one hand, it is applied to SoPs that may be out of date. On the other hand, the third legal

interpretation principle has effectively opened up certain compulsory work to the public at large, including potentially unqualified individuals. Whether this principle poses a risk of harm to the public, tradespeople, or other workers on the job, and how the existence and magnitude of any such risk should be assessed, are matters that should be explored in this review.

Against this backdrop, I am inviting stakeholder comment on the following questions:

- 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?

Classification or Reclassification of Trades as Compulsory or Voluntary

My terms of reference require that I 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.

Compulsory Certification

Compulsory certification is the requirement that 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, 2009, the ability to engage in the practice of a compulsory trade is restricted to individuals who:

- hold a Certificate of Qualification in that trade in the College's Journeypersons Class that is not suspended,
- are apprentices in that trade working pursuant to a registered training agreement that is not suspended, or
- hold a statement of membership in that trade in the College's Journeyperson Candidates Class that is not suspended.

However, individuals may be permitted to perform certain compulsory work by virtue of an overlap between SoPs or an exemption in regulation. In this context, individuals are able to practise a compulsory trade without meeting one of the above requirements, and are able to do so through exemptions from the prohibitions against the unauthorized practice of compulsory trades.

One of the College's legislated objects is to determine whether a trade should have compulsory certification status. Currently, of the College's 156 trades prescribed in regulation, 22 are compulsory and 134 are voluntary. The current classification of trades as compulsory or voluntary was carried over from the previous trades legislation without review or change: trades were classified as compulsory or voluntary under the Trades Qualification and Apprenticeship Act, whereas under the Apprenticeship and Certification Act, 1998, compulsory trades were "restricted" and voluntary trades were "unrestricted." Today, the classification of a trade is important because the College ultimately regulates different aspects of a trade depending on its classification as compulsory or voluntary. For example, the College establishes apprenticeship programs, including training and curriculum standards and certification examinations,

for both compulsory and voluntary trades, whereas only the work of the compulsory trades is restricted to College members in good standing in those trades.

The College regulates the following areas exclusively for compulsory trades:

- prohibition against the unauthorized practice of a compulsory trade
- prohibition against employing or otherwise engaging unauthorized individuals to engage in the practice of a compulsory trade
- prohibition against holding oneself out as able to engage in the practice of a compulsory trade
- prohibition against the use of titles and abbreviations of compulsory trades
- deeming of Journeyperson Candidates as apprentices for the purposes of ratios and wage rates

In the current system, when a trade is classified or reclassified as compulsory, the entire SoP for the trade is deemed to be compulsory as opposed to particular activities within the SoP; it is an “all-or-nothing” approach. However, it is not always clear that this approach to reclassification is aligned with the College’s duty to serve and protect the public interest. Questions arise about whether every single activity in a voluntary trade SoP should become compulsory (and therefore restricted to members of the College) when a trade is reclassified from voluntary to compulsory, and vice versa. Greater clarity also seems to be needed regarding the purpose and objectives of compulsory certification, and the linkages between compulsory certification, SoPs, and the public interest.

Against this backdrop, I am inviting stakeholder comment on the following questions:

- 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?

Process and Criteria in Ontario Regulation 458/11

Under OCTAA, the classification or reclassification of trades as compulsory or voluntary is established by a Board of Governors (Board) regulation following a decision by an independent review panel. A review panel decision is not subject to appeal. In other words, the Board must make a regulation prescribing the new classification once a review panel decision is made.

Notwithstanding that OCTAA carried over the classification of trades from previous legislation, the process and criteria for determining the classification or reclassification of trades are the responsibility of the College and are set out as follows in [Ontario Regulation 458/11](#), which is a Board of Governors regulation:

- *Process:* The Board initiates a review by a review panel when there is a request by the Trade Board representing the trade or, where there is no Trade Board for the trade, on the request of the Divisional Board for the sector to which the trade belongs. Other than a process requirement that a request be made in writing, no additional information – including rationale – is required at the time of a request. After a request is made, the Board is required to post information on the College’s website as soon as practicable after receiving the request. It also is required to establish a review panel within 60 days after receiving the request, or since the regulation was amended, “as soon thereafter as is practicable.” *[This provision was amended in the summer of 2014 to give the College time to review its regulatory framework before proceeding with any other classification reviews.]* Review panels are composed of three members drawn from a Roster of Adjudicators who shall be capable of, and shall act in, a neutral and impartial manner. A review panel must determine the classification of a trade solely on the basis of the written and oral submissions received in the time period specified by the review panel. The review panel members must make their decision within 120 days of their appointment.
- *Criteria:* A review panel must review the written and oral submissions received against the seven criteria set out in the regulation:
 - i. The scope of practice of the trade
 - ii. How the classification or reclassification of the trade may affect the health and safety of apprentices and journeypersons working in the trade and the public who may be affected by the work
 - iii. The effect, if any, of the classification or reclassification of the trade on the environment

- iv. The economic impact of classification or reclassification on apprentices, journeypersons, employers, and employer associations and, where applicable, on trade unions, employee associations, apprentice training providers, and the public
- v. The classification of similar trades in other jurisdictions
- vi. The supply of, and demand for, journeypersons in the trade and in the labour market generally
- vii. The attraction and retention of apprentices and journeypersons in the trade

In October 2011, the College of Trades Appointment Council (the agency that also makes the appointments to the College's Board of Governors, divisional boards, and trade boards) began recruitment of the Roster of Adjudicators based on the Board's decision to use the Ontario Labour Relations Board model for adjudication – that is, a neutral chair with an employee and an employer representative.

Very early in its mandate, the College was required under OCTAA to initiate the review of ratios for the 33 trades subject to ratios. This first round of ratio reviews began in April 2012 and concluded in June 2013; all review panel decisions were posted by September 2013. (The ratio review process is initiated every four years, and will begin again in 2016.)

Shortly after the completion of its first round of ratio reviews, the College launched a reclassification review for the trade of Sprinkler and Fire Protection Installer (SFPI) – the first and only classification review completed under OCTAA to date. Early in the SFPI classification review, the College received calls to halt all classification reviews and initiate an evaluation of the review process. Amidst the calls for reform, the SFPI classification review proceeded and, on April 23, 2014, the review panel released its decision to change the classification of the SFPI trade from voluntary to compulsory. The College is currently working to implement this classification change by Board regulation. As noted above, Ontario Regulation 458/11 was amended to give the College some flexibility regarding the establishment of review panels to determine whether a compulsory trade should be reclassified as a voluntary trade or a voluntary trade should be reclassified as a compulsory trade.

The College has identified a number of potential opportunities for improvement that build on valuable feedback already received from stakeholders. For instance, concerns have been expressed with respect to the process for requesting a classification review, the lack of sufficient empirical evidence, insufficient clarity concerning criteria and proof (e.g., who must offer proof and to what threshold), and the inability of review panels to consider information from sources other than the submissions received.

Determining whether a trade should have compulsory certification status is a College object that must be carried out with the public interest in mind. However, the public interest is not articulated in the criteria for review panel decisions on trade classification or reclassification requests, and it is unclear what the existing criteria are intended to measure (e.g., which aspects of an SoP are to be considered for a trade classification review). Moreover, relevant items may be missing from the criteria; for instance, consideration of overlaps with the SoPs for other trades is not an explicit criterion.

Here, it may be helpful to look at how analogous requests are made in other professions. For example, the Health Professions Regulatory Advisory Council has established a set of public interest criteria and a series of questions that a profession must address with supporting documentation when making a request for regulation. Furthermore, clarity is needed on the role and function of a trade board in initiating a request and the role and function of written and oral submissions received during the process.

Against this backdrop, I am inviting stakeholder comment on the following questions:

- 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?**

Decisions of the Ontario Labour Relations Board

My terms of reference require that I provide analysis, advice, and recommendations on what consideration the College should give, if any, during the course of its enforcement activities, 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, 1995 (LRA).

Jurisdictional disputes typically arise when one trade union disagrees with an employer's assignment of work to another trade union. They are about resolving a labour relations issue under the LRA and are, as such, limited to unionized workplaces. Their purpose is to have the OLRB determine whether an employer's assignment of specific work to the members of a trade union in a particular work site or geographic area is correct on the basis of factors that include employer practices and collective and jurisdictional agreements and understandings between trade unions and employers.

The OLRB's decisions in jurisdictional disputes may intersect with the College's enforcement activities when members of a trade union who are not certified in a compulsory trade are performing compulsory work following an OLRB decision that has assigned the work to them. Although performing this work may breach sections 2 and 4 of the Ontario College of Trades and Apprenticeship Act, 2009 (OCTAA) and the College may be justified in pursuing enforcement action, the workers performing the work, their union, and/or their employer may have different expectations and may ask the College to defer to the OLRB decision and abstain from enforcing OCTAA.

As part of my mandate, I will explore what the role of the College is in relation to the OLRB in light of its legislated mandate and processes as well as the limits of that mandate and processes. Mindful of the fact that there may be longstanding industry practices and understandings about how the work of the unionized trades is assigned on the ground, I will explore what deference to the OLRB's decisions may mean for the trades involved and for the trades system as a whole. I will also explore what the implications of deference may be not only for non-parties to those proceedings (particularly tradespeople and employers in non-unionized workplaces) in other

parts of the province, but also for the College's duty to serve and protect the public interest and the integrity of both compulsory certification and the prohibitions against unauthorized practice.

Against this backdrop, I am inviting stakeholder comment on the following questions:

- 25) Do the SoPs in regulation reflect the ways 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.

Participating in the Review

Written Submissions

On the review website, you will find a [fillable PDF form](#) that you can save to your desktop. This form must be used for your submission. All written submissions must be in either English or French and must be sent by **e-mail** to tonydean@deanreview.com. You may send relevant material as a Word or PDF file with your submission form.

All submissions are due by **Friday, March 13, 2015, at 4:00 p.m.** Submissions will not be accepted after this deadline.

Please also note the following:

- Written submissions that do not meet all of the above requirements may not be considered in the review.
- Only one written submission per person or organization will be accepted as part of the review.
- Anonymous written submissions will not be considered.

If you provide your permission, your full name and organizational affiliation will be posted on the review website along with your submission. Please review the privacy statement in the fillable PDF form. All submissions will be posted on the review website in the official language in which they were received.

The reviewer reserves the right not to display or use any feedback or other material that is unlawful, defamatory, obscene, abusive, inflammatory, harmful, or otherwise objectionable, or that violates the rights of any party.

You are not required to answer all of the questions. Please feel free to choose which of the areas and questions you would like to address. Please keep the following in mind when preparing your submission:

- Submissions should consider the topics and questions covered by this consultation guide.
- An effective written submission will address the topics and questions provided, using appropriate examples, data, and evidence.
- If you have any additional comments that fall within the areas under review as set out in my terms of reference, please feel free to provide them in your submission.

If you have any questions about the written consultation, please contact Tony Dean or his staff by e-mail at tonydean@deanreview.com or by telephone at 416-212-0303.

Regional In-Person Consultations

I am open to meeting with stakeholders for the duration of my year-long review. I hope to meet with stakeholders across Ontario in a series of regional, in-person consultation sessions that will be held in April 2015.

These sessions are open to individuals or representatives of organizations who provided a written submission by the deadline. Only those persons or organizations that have provided a written submission will be eligible to attend the in-person consultation sessions.

The purpose of the oral consultation sessions is to provide an opportunity for those who have sent a written submission to clarify or expand on points made in their submission and to allow me to seek any required clarifications.

More information about these sessions will be available on the review's website, at: www.deanreview.com.

Thank you in advance for your participation. I look forward to receiving your feedback.