

Compliance & Enforcement Policy

1.0 Introduction

1.1 About the College

The Ontario College of Trades (the “College”) is a professional regulatory body that regulates and promotes Ontario’s 156 trades in the public interest. Established by legislation, the College has a 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” or “the Act”). Operating at arm’s length from government, the College is under the regulatory and administrative oversight of the Ontario Ministry of Labour (“MOL”).

One of the College’s objects is to address compliance and enforcement (“C&E”) issues in respect of matters within the jurisdiction of the College, including promoting compliance with the prohibitions established by sections 2, 4 and 8¹ of OCTAA, and taking appropriate enforcement action. In carrying out its C&E object, the College has an obligation to consult with other entities, including ministries of the Government of Ontario that have legislative authority relating to C&E issues.

1.2 Prohibitions against the unauthorized practice of compulsory trades

The unauthorized practice of compulsory trades is prohibited by 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 a practice that constitutes engaging in the practice of a compulsory trade.

Under the Act and its regulations, an unauthorized individual is an individual who:

¹ Practice, compulsory trades

2. No individual shall engage in the practice of a compulsory trade or hold himself or herself out as able to do so unless the individual holds a certificate of qualification in that trade that is not suspended or unless the individual is an apprentice in that trade and is working pursuant to a registered training agreement that is not suspended. 2009, c. 22, s. 2.

Work of compulsory trades

4. No person shall employ or otherwise engage an individual to perform work or engage in a practice that constitutes engaging in the practice of a compulsory trade unless the individual holds a certificate of qualification in that trade that is not suspended or unless the individual is an apprentice in that trade and is working pursuant to a registered training agreement that is not suspended. 2009, c. 22, s. 4.

Ratios

8. No sponsor of apprentices in a trade for which a journeyman to apprentice ratio has been prescribed under section 60 shall permit an apprentice to work except in accordance with that ratio. 2009, c. 22, s. 8.

- (a) does not hold a Certificate of Qualification in a compulsory trade in the College's Journeypersons Class that is not suspended;
- (b) is not an apprentice in that compulsory trade working pursuant to a registered training agreement that is not suspended;
- (c) does not hold a statement of membership in that compulsory trade in the College's Journeyperson Candidates Class that is not suspended; and
- (d) is not otherwise authorized under the Act to engage in the practice or performance of work of that compulsory trade.

1.3 The C&E Policy

This Policy, made under the authority of section 11.1 of the Act, has been approved by the College's Board of Governors ("Board") and requires the Board's approval of any amendments before such amendments can be implemented. Subsection 11.1(1) of the Act requires that the C&E Policy contain the following minimum components:

- A description of what constitutes a Risk of Harm and of how such risks will be accounted for in the enforcement of sections 2 and 4 of OCTAA;
- An annual identification of risks that will be the enforcement focus for a compulsory trade for the year; and
- A description of how the College will fulfill its duty to consult with other entities, including ministries of the Government of Ontario that have legislative authority relating to C&E issues, in carrying out its C&E object.

This C&E Policy is central to the College's C&E function: it must be considered by the College's Inspectors² prior to issuing a notice of contravention under section 59.1, and by the Ontario Labour Relations Board in conducting a review of a notice of contravention under section 59.2 of the Act.

2.0 Purpose

² Registrar's inspections

54. (1) The Registrar may appoint inspectors for the purpose of determining compliance with Part II or a Board regulation made under subparagraphs 3 i to iv of subsection 72 (1). 2009, c. 22, s. 54 (1).

[...]

Notice of contravention

59.1 (1) If the Registrar or an inspector appointed under section 54 believes that a person has contravened section 2 or 4, the Registrar or inspector may issue a notice of contravention to the person setting out his or her belief and requiring the person to pay the administrative penalty prescribed by a Lieutenant Governor's regulation for the contravention in question. 2016, c. 37, Sched. 17, s. 11.

[...]

The purpose of this Policy is to set out the principles and C&E framework to be applied by the College as it undertakes C&E activities.

3.0 Scope

The provisions of this Policy and associated procedures apply to:

- Activities being considered or undertaken by the College in the administration and management of C&E activities under the Act and regulations.
- College employees and anyone with the authority to act on behalf of the College, involved in developing C&E strategies or in carrying out activities to ensure compliance with the Act and regulations, and particularly with sections 2, 4 and 8 of OCTAA.

4.0 Objectives

The objectives of this Policy are to:

- Establish a risk-based framework for C&E that considers Risk of Harm and consumer protection and that is based on the most relevant data available.
- Guide decision-making and actions by College staff in relation to C&E activities by identifying principles to be followed in such decision-making.
- Promote compliance with legislative and regulatory requirements in a way that fosters and maintains public and trade confidence in the regulatory scheme and the College as a regulator.
- Ensure that Certificates of Qualifications issued by the College are valued and respected.
- Provide transparency to how the College makes decisions related to C&E.
- Otherwise fulfill the requirements of section 11.1 of the Act.

5.0 Policy Content

5.1 Policy Statement

It is the policy of the College to achieve optimal compliance with the Act and its regulations in the most effective, transparent, consistent, and proportionate manner, by using a risk-based and evidence-based approach that is committed to serving and protecting the public interest.

5.2 Guiding Principles

Key principles guiding C&E activities at the College are that such activities be:

- **In the Public Interest** – aimed at enhancing safety and protecting the public, individual tradespeople and other workers from harm
- **Targeted/Risk-Based/Evidence-Based** – strategic enforcement in areas that present the highest demonstrable Risk of Harm or that undermine confidence in the College as a regulator



- **Consistent** – predictable and consistent approach to ensure similar circumstances lead to similar compliance outcomes
- **Flexible/Proportionate** – proportional to seriousness and/or to recurrence of non-compliance in a sector
- **Transparent** – the C&E Policy is a public document

5.3 Approach to Compliance

5.3.1 Risk of Harm

This Policy understands Risk of Harm as the likelihood of an adverse consequence (harm) occurring because of an unauthorized individual's performance of work or engagement in the practice of a compulsory trade, where the harm may occur to:

- (a) the public;
- (b) the individual performing the work or engaging in the practice of the compulsory trade; and/or
- (c) other workers.

The workers to whom a harm may occur need not be workers present at the site at the time the work is being performed.

Risk of Harm is understood broadly to encompass the various facets of public interest under the Act:

- *Direct* Risk of Harm includes risk of bodily harm (including physical and mental harm) as well as economic or financial harm to consumers of skilled trade services and members of the public at large.
- *Indirect* Risk of Harm includes risk of harm to things valued by the Ontario public, such as: confidence in the trades and the College as regulator, consumer protection, the fair functioning of the marketplace, property, public health and safety, the environment, the economy, and the trades system as a whole.

5.3.2 Responses to Non-Compliance

Compliance with the law is mandatory. When there is evidence of an alleged infraction, it is up to the College's Inspectors to determine what enforcement action is appropriate in the circumstances. The range of compliance tools that may be used individually or in combination include:

- Education or advice
- Warnings
- Inspections/audits
- Notice of Contravention
- Compliance Order (Superior Court of Justice)

- Prosecution under Part III of the *Provincial Offences Act* (“POA”)

5.3.3 Approach to C&E

In exercising their discretion and determining the appropriate compliance tool to be used in response to a breach of the Act and regulations, and particularly in response to a contravention of sections 2, 4 or 8 of the Act, the College’s Inspectors will consider factors that include, but are not limited to, the following:

- **Risk of Harm** – existence of a potential Risk of Harm, including its likelihood, immediacy and severity;
- **Public Interest and Public Confidence** – whether failure to pursue enforcement action would undermine the public’s confidence in the College as regulator;
- **Culpability** – whether the individual or person acted with indifference or premeditation and whether there are any mitigating or aggravating circumstances, including whether the individual or person was in a position of authority or responsibility with respect to the work site, how the work is performed and/or by whom;
- **Previous Record** – compliance history of the individual or person; and
- **Recognized Past Practice** – whether the individual is performing the work or engaging in the practice of a compulsory trade based on a well-established past labour practice that is prevalent, significant, and supported by trade/labour agreements or decisions of relevant administrative tribunals such as the Ontario Labour Relations Board.

5.4 Annual Enforcement Focus

In 2017, and until such time as this Policy is reviewed by the C&E Committee and any amendments thereto are approved by the Board, the College has identified the underground economy in the trades as a primary area of risk. For the purposes of this Policy, the College understands the ‘underground economy’ as a business environment designed to avoid the oversight of public authorities. By circumventing the requirements set out in OCTAA and its regulations, the underground economy undermines the regulatory regimes intended to protect workers and the public and creates an unfair and illegal advantage for those who fail to comply with the law.

Mindful of the breadth of the underground economy and the interests and mandates of other regulators relating to this issue, the College will focus its compliance and enforcement activities on promoting workers’ health and safety, safeguarding vulnerable workers (including young workers and newcomers to Canada), enforcing Journeyman-to-Apprentice Ratios under section 8 of the Act, and generally protecting the public. The College’s institutional decision to focus its enforcement efforts in this area is not meant to fetter the Inspectors’ discretion or to prevent the College from pursuing enforcement action where it is determined—in application of the factors set out in section 5.3.3 of this Policy—that it is in the public interest to pursue enforcement action. Specifically, the College’s institutional focus described above is without prejudice to the Registrar’s and the Inspectors’ discretion to target other risk areas based on their analysis of College incident data.

5.5 Duty to Consult with Other Entities

The College will continue to foster and strengthen its existing working relationships with other entities across the regulatory spectrum. Specifically, in carrying out its C&E object, the College will fulfill its duty to consult with other entities, including ministries of the Government of Ontario, that have legislative authority relating to C&E issues by meeting with relevant regulatory partners to:

- (a) explore ways to jointly mitigate Risk of Harm in areas of shared responsibility;
- (b) explore ways to adopt a co-ordinated approach to enforcement;
- (c) explore how relevant risk data could be identified, collected, generated and/or exchanged for the purposes of the College's C&E Policy, particularly in areas where such data does not currently exist or is not available to the College; and
- (d) discuss ways to exchange information relevant to C&E, including the designation of OCTAA under the *Regulatory Modernization Act, 2007*—the legislation meant to increase cooperation and information-sharing between Ontario's Ministries and regulatory agencies.

6.0 Implementation

To truly modernize and improve regulatory compliance, the principles and approach set out in the C&E Policy must be understood and applied by all staff at the College. All staff within the C&E Division of the College will be required to complete training on the contents of the Policy within 120 days from the date the Policy is approved by the College's Board of Governors. This Policy will be communicated to the public in accordance with a communications protocol developed by the College.

7.0 Review and Amendment

This Policy and its implementation by the College shall be reviewed by the C&E Committee as often as it considers necessary and, in any event, not less than annually. To that end, the College will provide the C&E Committee with integrated quarterly reports regarding how the College's relevant areas have operationalized and applied this Policy, and will include, to the extent possible, statistics and metrics. The C&E Committee may develop recommendations regarding amendments to this Policy at any time the Committee determines is necessary, but any such amendments must be approved by the Board before they are implemented. All amendments shall be sent to the Minister of Labour and made public promptly upon approval.

8.0 Approval

This Policy has been recommended by the C&E Committee and approved by the College's Board of Governors on April 25, 2017, and shall become effective upon publication on the College's website.