



**ONTARIO COLLEGE OF TRADES**  
**ORDRE DES MÉTIERS DE L'ONTARIO**

**SUBMISSION TO THE MINISTRY OF  
TRAINING, COLLEGES AND  
UNIVERSITIES:  
PROPOSED MINISTER AND LIEUTENANT  
GOVERNOR-IN-COUNCIL REGULATIONS**

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**REGULATORY REGISTRY POSTING NUMBER: 12-TCU003**

**PREPARED BY:**

**ONTARIO COLLEGE OF TRADES**

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## 1. Context

The Ontario College of Trades (the College) is pleased to submit a response to the Ministry of Training, Colleges and Universities' (MTCU) posting on the Ontario Regulatory Registry pertaining to proposed Minister and Lieutenant Governor-in-Council (LGIC) regulations. The comments in this submission have been approved by the College's Board of Governors (the Board).

## 2. Introduction

The Ontario College of Trades was established in 2009 under the *Ontario College of Trades and Apprenticeship Act, 2009* (OCTAA), becoming the first independent, industry-driven regulating body for the trades in North America. Once the remaining parts of OCTAA are proclaimed in 2013, OCTAA will replace previous legislation in the province governing the trades system, namely the *Trades Qualification and Apprenticeship Act* (TQAA) and the *Apprenticeship and Certification Act* (ACA).

On September 26, 2012, the Board approved the *Strategic Plan 2012-2015*. As the College's first strategic plan, it is based on provisions outlined in OCTAA, and lays out the College's vision and values, mission and operating principles. It stresses the importance of creating an organization that elevates the status of the trades, ensures a level playing field through enforcement, is self-regulating, protects the public and presents career opportunities in the trades for youth, foreign-trained workers and underrepresented groups.

As part of the *Strategic Plan 2012-2015*, the College has identified Operating Principles that are vital to achieving these goals:

- **Value to members**
- **Transparency, openness and accountability**
- **Integrity, trustworthiness and honesty**
- **Proactive and innovative**
- **Objective, fair and balanced**
- **Consultative and responsive to members**
- **Financially viable and sustainable**
- **Collaborative and professional**

It is in the spirit of these Operating Principles that this submission is made to MTCU in response to the proposed Minister's and LGIC regulations.

The College recognizes the intention of the Minister and LGIC regulations as they are proposed. These provisions were important elements of the TQAA and ACA. However, with the introduction of OCTAA, the College believes that several elements of these proposed regulations may no longer be required or make sense for the trade and apprenticeship system of the future. In particular, the exemption provisions for the Ontario Youth Apprenticeship Program (OYAP), Pre-Apprenticeship Training Program (Pre-AP) participants, permanent employees in industrial plants, Quebec workers and the Water Meter

Installer skill set present challenges for the College under the OCTAA system. We are also providing comments on the removal of members from the College's governing structure and the delegation of authority proposed LGIC regulations.

The College understands the importance of ensuring a seamless transition from the TQAA and ACA trades system to the OCTAA system, and is committed to working closely with MTCU to ensure this. As the voice of trades in Ontario, the College is also committed to ensuring that we meet the objectives and goals that have been determined by our stakeholders, our future members and our governing structure.

### 3. Proposed Minister's Regulations – Exemptions

#### *The College's Position:*

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- The College supports the proposed exemption for OYAP and Pre-AP students once OCTAA is proclaimed, and intends to continue to work closely with MTCU and the Ministry of Education (EDU) to promote the trades among youth in Ontario.
- The College will support the introduction of an exemption for permanent employees of industrial plants to ensure workers can continue to work legally once OCTAA is proclaimed. However, the College intends to undertake an in-depth review of the exemption later in 2013.
- The College asks that the exemption for Water Meter Installer be delayed until the proposed scope of practice amendment can be considered by the College's governing structure.
- The College asks that the exemption for Quebec workers be delayed until a full-scale evaluation of the 2006 *Agreement on Labour Mobility and Recognition of Qualifications, Skills and Work Experience in the Construction Industry between Ontario and Quebec* is conducted, and the possibility of renegotiating the agreement is explored.

#### 3.1 Participants in the Ontario Youth Apprenticeship Program and Pre-Apprenticeship Training Program

The College recognizes the importance of OYAP and Pre-AP as gateways to the trades for young people. Encouraging youth to enter the trades is an important part of the College's work to promote skilled trades in Ontario, and the College believes these programs are vital to achieving this objective.

The College is excited about the potential of the OYAP and Pre-AP programs to introduce youth to the trades system and College membership. We want to collaborate with MTCU and EDU to ensure participants in these programs have the best experience possible and consider the trades as viable and

exciting career options. We are interested in learning more about the outcomes of these programs, and are of the opinion that compiling completion data could help to identify opportunities for improvements to the programs. We are committed to partnering with all parties involved, including MTCU, EDU, school boards, parents, Training Delivery Agents and employers, to ensure these programs meet their objectives of promoting the trades and providing youth with the opportunity to embark on a successful career path. Future collaboration should focus on understanding more about participants' experiences and completion rates, and how to ensure these programs are effective and responsive to the needs of both participants in these programs, and employers in Ontario.

### **3.2 Permanent Employees of Industrial Plants**

The College is committed to ensuring that any and all individuals who work in trades in Ontario are able to work safely and legally under the new system once the remaining provisions of OCTAA are proclaimed. For this reason, the College understands the rationale for carrying over the exemption for permanent employees in industrial plants as it was outlined in TQAA. Indeed, without carrying over this provision, many workers in Ontario would find themselves working illegally under OCTAA. Once the regulation has been passed, the College will ensure that an operational policy is in place that defines what the exemption means under OCTAA and who is covered.

However, the College finds the industrial plant exemption complicated, complex and problematic for the vision of the trades system in Ontario that OCTAA sets out. Tim Armstrong, in his review of compulsory certification in Ontario that led to the establishment of the College, found that the exemption is controversial among stakeholders and recommended that the exemption be reviewed to ensure that all issues associated with the provision are 'fully aired and assessed'.<sup>1</sup>

As the regulator of the trades in Ontario, the College intends to create a panel to explore Armstrong's recommendation regarding a review of the exemption of permanent employment in industrial plants, the extent of what is included in the definitions, the history of the exemption and the implications of carrying the exemption over into the new OCTAA system. This panel could be made up of representatives from the Industrial Sector, including employers, employee groups, industry associations, industrial unions, and other interested parties. The College is also committed to acting upon Armstrong's recommendation to have this panel chaired by an independent third party. We are looking forward to working closely with MTCU and our stakeholders to better understand the nature of the exemption.

### **3.3 Quebec Workers**

The College recognizes the importance of labour mobility and greatly values the contribution of workers coming from other provinces and territories. The College acknowledges that the Minister is proposing to carry forward exemptions under the *Trades Qualification and Apprenticeship Act* (TQAA) in order to comply with an Agreement made between the Province of Quebec and Ontario (more specifically, the 2006 *Agreement on Labour Mobility and Recognition of Qualifications, Skills*

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<sup>1</sup> T.E. Armstrong Consulting, "Compulsory Certification Project" (28 April 2008), p. 109, online: <http://www.collegeoftrades.ca/wp-content/uploads/7-The-Armstrong-Report1.pdf>.

*and Work Experience in the Construction Industry between Ontario and Quebec* (“2006 Agreement”). However, the College questions the legal necessity for MTCU to enact the proposed exemptions and has serious concerns regarding the exemptions themselves.

The 2006 Agreement was signed prior to the creation of the College. As such, provisions that may have made sense more than half a decade ago do not align with the College’s mandate to regulate and modernize the trades in Ontario. One of the underlying principles of the 2006 Agreement is Ontario and Quebec’s respective right to regulate their construction industries in their own way. In the absence of statutory approval, an intergovernmental agreement is only binding on its signatories, and does not create rights or obligations for third parties. The College believes that MTCU is not legally required to enact the proposed exemptions intended to comply with the 2006 Agreement.

It is important to note here that there are two newer labour mobility agreements in existence, the 2009 pan-Canadian *Agreement on Internal Trade* (AIT) and the 2009 *Trade and Cooperation Agreement between Ontario and Québec*. Under these two newer agreements, any worker certified for an occupation by a regulatory authority of one province will, *upon application*, be certified for that occupation by the relevant regulatory authority of the other province without any requirement for additional training, experience or assessments. An example of a practical application of this involves those trades regulated by the TSSA. In this instance, workers from Quebec must register with TSSA and pay a fee prior to commencing work in Ontario. The College believes that these 2009 agreements should prevail over the labour mobility provisions of the 2006 Agreement, for skilled workers, as they recognize the role of regulatory authorities in protecting public safety and provide for adequate administrative, dispute settlement and compliance mechanisms.

If MTCU chooses to voluntarily enact these proposed exemptions based on the 2006 Agreement, there would be several negative implications. For instance, without the requirement for registration, the College would be incapable of tracking the number or location of these workers. In addition, the most alarming consequence would be the College’s inability to regulate Quebec individuals working in eleven compulsory construction trades in Ontario.<sup>2</sup> Since the exempted individuals would not be required to become members, the College would not be able to enforce the prohibitions in OCTAA against them or act on issues of discipline, specifically professional misconduct, incompetency and incapacity with respect to these Quebec workers, thus compromising the College’s ability to serve and protect the public interest. Furthermore, it is not clear whether anybody in Quebec would be able and willing to hear complaints or conduct disciplinary proceedings against Quebec workers for work performed in Ontario. If no body assumes this role, the exempted Quebec workers would virtually be unregulated by any governing body while working in Ontario. Clearly this would place the College in an untenable position at a critical time in its evolution.

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<sup>2</sup> Electrician – Construction and Maintenance, Electrician – Domestic and Rural, Hoisting Engineer – Mobile Crane Operator Branch 1, Hoisting Engineer – Mobile Crane Operator Branch 2, Hoisting Engineer – Tower Crane Operator, Plumber, Refrigeration and Air-Conditioning Mechanic, Sheet Metal Worker, Residential (Low Rise) Sheet Metal Installer, and Steamfitter.

Carrying forward these proposed exemptions would also mean that the 2006 Agreement would no longer be reciprocal in nature as **all** workers are required to join a representative association before working in Quebec. If the Minister's proposed exemptions are put in place, an Ontario apprentice and/or journeyman would have to meet more requirements to work in Ontario than a worker from Quebec who currently has virtually unfettered access to Ontario's construction sector.

Aside from the consequences described above, the College notes that the 2006 Agreement has never been updated and does not reflect recognition of many new and existing trades in Ontario. Thus, there are large numbers of Ontario C of Q holders who are not recognized by Quebec under this Agreement the most recent being the trade of residential sheet metal worker. The College would also like to emphasize that certain provisions in the 2006 Agreement have never been met, including the requirement to conduct and write a comprehensive review on the effectiveness of the Agreement every five years and the exemption from writing qualifying exams in Quebec for Ontario Electrical Contractors.

As stated earlier, the College is committed to labour mobility and the recognition of qualifications; however we believe that Quebec workers should be regulated by the College while working in Ontario and meet the same requirements as all other apprentices and/or journeymen working in Ontario. Applying principles of the AIT to all workers in Ontario, including Quebec, would be consistent with how Quebec currently regulates Ontario workers practicing in Quebec.

Recognizing that the 2006 Agreement touches on historical and political sensitivities, the College is concerned with rushing through proposed exemptions and providing the Agreement with the force of law. Therefore, the College asks that the Minister hold the carrying over of these proposed exemptions so that MTCU, the Ministry of Labour, the College, and our Quebec counterparts can engage in an overdue evaluation of the 2006 Agreement. If the proposed exemptions are carried over, the College strongly recommends that the Province of Ontario renegotiates necessary amendments to the 2006 Agreement with the Province of Quebec at the earliest opportunity.

### **3.4 Water Meter Installer**

Many existing regulations from TQAA and ACA were carried over to OCTAA and its regulations, including the Scopes of Practice for the Construction sector trades. As a result, the Water Meter Installer skill set is currently listed as being outside of the Plumber Scope of Practice.

We understand that MTCU is currently administering a separate water meter installation training program and would like to move skills pertaining to water meter installation to the Scope of Practice of the Plumber trade. However, the Scope of Practice is set out in a Board regulation (Ontario Regulation 275/11, section 29), and therefore, the proposed Minister's regulation is contingent on the Board amending the Plumber Scope of Practice.

Given its commitment to its operating principles of being open and transparent, consultative and responsive to those it represents, the College feels that it has not had the opportunity to do its due diligence by bringing the issue of amending a Board regulation through its governing structure to ensure there is stakeholder support for the regulatory amendment. The College firmly stands behind its arm's

length and self-governing structure, and feels it is necessary that it be given the opportunity to consult with Trade and Divisional Boards and stakeholders before making the regulation change.

The College understands that OCTAA provides the Minister with the power to require the Board to make, amend or revoke any Board regulation. However, in the interest of collaboration and due process, the College requests that this power not be invoked and that MTCU not circumvent the College's governing structure. The College is committed to bringing the matter to its Trade and Divisional Board process and conducting public consultation as quickly as possible.

## 4. Lieutenant Governor-in-Council Regulations

### *The College's Position:*

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- The College supports the proposed list of criteria for the removal of Board members and other members of the College's governing structure, and proposes that the College Board of Governors be granted the authority to remove members.
- The College does not support the delegation of authority regulation. Rather, the College believes there may be a more appropriate instrument, such as a Memorandum of Agreement, to describe how MTCU will support the College with the trade and experience equivalency assessments.

### 4.1 Removal of Board Members

The College recognizes the need for a regulation that would provide for the removal of members from the College's governing structure. We support the set of circumstances proposed by the ministry, but would like to take this opportunity to state our position on who should have the authority to remove members from the governing structure.

Given the industry-led nature of the College, it is crucial that the authority to remove members from the governing structure be arm's length from the government. We believe that the College's Board should have the authority to remove members in order to support the College's core function as a self-regulated and independent body. No other party, including the Appointments Council, is involved in the administration of the affairs of the College. As such, other parties would likely not have knowledge regarding the occurrence of any proposed circumstances that would necessitate the removal of a member. Furthermore, the College's unique governing structure was based on the community college sector (as set out in the *Ontario Colleges of Applied Arts and Technology Act, 2002*). Under that model, every community college board of governors had the authority to create their own by-laws setting out the removal members of the governing structure – including members appointed by the College

Compensation and Appointments Council. We trust the ministry will support our position when it finalizes the regulation.

## 4.2 Delegation of Authority

As the transition from MTCU to the College progresses, our two organizations have been working closely through several committees to determine business processes that will be in place once the College begins accepting members. These discussions include the College delegating its authority to temporarily conduct equivalency assessments to MTCU while the College, as a new organization, builds its capacity to do so independently.

It is not uncommon for arm's length organizations to have non-legislated agreements with levels of government to formalize arrangements such as temporary delegation of authorities. To this effect, the College does not believe that a LGIC regulation is required to delegate the equivalency assessment activities to MTCU.

The arrangement outlined in the proposed regulation is intended to be temporary in nature, and not a permanent process. The College appreciates MTCU's support and willingness to conduct the equivalency assessments on our behalf but we are confident that once we begin accepting membership fees and have made it through the initial intake of members, we will develop the internal capacity to perform these functions independently. Setting this temporary arrangement out in regulation is unnecessary as the regulation would need to be revoked once the College is able to conduct these assessments on its own.

The College trusts the ministry will acknowledge that the proposed LGIC regulation is not necessary in order to formalize the temporary arrangement with MTCU. The College recommends that the arrangement be formalized in a Memorandum of Agreement instead. If MTCU chooses to proceed with the LGIC regulation, the College requests that the regulation provide a sunset clause to clearly set out an end date for the temporary arrangement.

## 5. Conclusion

The College looks forward to continuing to work with MTCU as we transition into the new trades system in Ontario. We are confident that the feedback the MTCU receives during this consultation will provide direction that eases this transitional period.

As outlined above, the College is in support of the Minister's proposed exemptions related to:

- OYAP and Pre-AP students - Once OCTAA is proclaimed, we intend to continue to work closely with MTCU and EDU to promote the trades among youth in Ontario;
- An exemption for permanent employees of industrial plants to ensure workers can continue to work legally once OCTAA is proclaimed. However, the College intends to explore Tim Armstrong's recommendation that the exemption be reviewed; and

- The proposed list of criteria for the removal of Board members. The College also proposes that the College Board of Governors be granted the authority to remove members from the College's governing structure.

However, the College has reservations and concerns regarding:

- Water Meter Installer skill set – the College asks that the proposed exemption be delayed until the proposed scope of practice adjustment can be considered by the College's governing structure; and
- Delegation of Authority – The College does not support this proposed regulation. The College recommends that a Memorandum of Agreement between the College and MTCU is a more appropriate instrument. Should MTCU proceed with the LGIC regulation despite the College's position on the matter, the regulation must include a sunset clause.
- Exemption for Quebec Workers – The College does not support the proposed exemption of Quebec workers for several reasons. First, the College would be unable to regulate these workers and protect public safety in Ontario. Second, the 2006 Agreement is out of date and is no longer reciprocal in nature. Third, there are other labour mobility agreements in place that account for the role of regulatory bodies and provide mechanisms for dispute resolution. Fourth, the College is concerned with providing the agreement with the force of law, given that the requirement for a review of the 2006 Agreement has never been met.