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A Joint Submission by

**Ontario Road Builders' Association**

**Progressive Contractors Association of Canada**

**RESCON**

**Ontario General Contractors Association**

To the Ontario College of Trades

Regarding Compulsory Trade Certification

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November 2010

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## **Introduction**

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In fall 2010, the Ontario College of Trades invited feedback and comments from stakeholders dealing with the issue of compulsory trade certification. Specifically, the College requested feedback on the following items:

1) Criteria

The College identified seven key factors that should be considered by the Review Panel in making its determination of certification status.

2) Application Process

The College identified seven components to the application process for compulsory certification of a trade.

3) Review Panel Decision Making Process

The College identified seven components to the Review Panel decision making process.

The Ontario Road Builders' Association ([www.orba.org](http://www.orba.org)), the Progressive Contractors Association of Canada ([www.pcac.ca](http://www.pcac.ca)), RESCON ([www.rescon.ws](http://www.rescon.ws)) and the Ontario General Contractors Association ([www.ogca.ca](http://www.ogca.ca)) have come together to submit a joint response to the request for feedback.

Within this submission, we will:

- 1) Identify Guiding Principles we believe are critical to making decisions regarding compulsory trade certification.
- 2) Provide specific feedback and suggestions on the Criteria, Application Process and Review Panel Decision Making Process outlined in the consultation paper.

## Executive Summary

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Together, the member companies of the Ontario Road Builders' Association, the Progressive Contractors Association of Canada, RESCON and the Ontario General Contractors Association employ tens of thousands of highly skilled Ontarians in the construction sector in communities across the province. These workers build and maintain critical public and private infrastructure that supports our economy and the low and high rise buildings that support population growth. Our respective organizations are committed to the highest standards of professionalism and to maintaining a safe and healthy work place for all Ontarians employed in the construction sector.

Compulsory trade certification has a significant impact on our province:

1. It affects our province's ability attract and retain the skilled workers it needs to ensure our future prosperity;
2. It affects overall workplace productivity and business and industrial competitiveness in Ontario, ultimately impacting the future prosperity of the province; and
3. It affects the ability of our member companies to effectively manage their businesses and provide high quality, skilled jobs for Ontarians.

The College of Trades is an opportunity to modernize the process for compulsory trade certification review, to bring a new level of integrity to the process and its outcomes and to ensure all decisions are made in an objective manner and in the best interests of Ontarians. Within our submission, we make specific recommendations on how to improve the proposed process, including the following critical recommendations to achieve these objectives:

- The principle of public transparency and openness to all stakeholders should be enshrined in the compulsory certification review process similar to the manner in which public participation in government decision-making is enshrined in the *Environmental Bill of Rights*, 1993.
- All decisions regarding compulsory trade certification should be evidence-based and not based on the false assumption that the only "skilled workers" are those who have completed a formal apprenticeship.
- Review Panel members should have no vested interest in the review process or the outcome of the decision.

- There should be consultation on all applications for compulsory trade certification conducted by the Review Panel and open to members and non-members of the College of Trades.
- All compulsory trade certification decisions should be subject to a “sunset review” within 5 years of the decision.
- Any jurisdictional issues between trades (i.e. which trade can perform which tasks) should be resolved prior to consideration of an application for compulsory trade certification.

## About Us

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The **Ontario Road Builders' Association** (ORBA) is the voice of the majority of road building contractors who build and maintain our provincial highway system and Ontario's municipal roads and bridges. The Association also represents over 80 Associate Members who manufacture, distribute and/or supply products, equipment and services to the road building industry. ORBA's members employ over 30,000 workers during peak season.

The objectives of the Association have changed little since ORBA was founded in 1927:

1. To develop and maintain the highest standards of construction and business methods in the road building industry.
2. To raise awareness of the importance of worker health and safety and to develop training, education and awareness programs that will reduce lost time injuries and fatalities in the road building industry. Also, to promote legislation that will enhance worker health and safety.
3. To promote investment and development in roads, bridges, highways infrastructure and other types of civil construction work performed by members.
4. To encourage improved methods, specifications, forms of contract or other means to assist members in eliminating and/or managing financial risk.
5. To represent contractors in consultations with owners about the fairness, practicality, effectiveness and general suitability of contracts, specifications and surety instruments.
6. To promote and facilitate technological change that will result in greater value to owners and contribute to the efficiency, productivity and advancement of the industry.
7. To promote co-operative liaison and a better relationship between its members and the owner of construction.
8. To promote better understanding and goodwill between the general public and the contractors of our industry.
9. To raise awareness of and promote best practices in environmental stewardship by member companies.

10. To encourage innovation in the use of products, construction approaches and methods, materials, equipment and management practices that support the broad goal of environmental sustainability through reduced consumption of resources, reduced impact on the environment and reduced waste.



**Progressive Contractors Association of Canada (PCAC)** is the voice of progressive unionized employers in Canada's construction industry. PCAC member companies employ over 20,000 skilled workers across Canada, represented primarily by the Christian Labour Association of Canada (CLAC).

These companies apply progressive labour relations practices that are unique in four critical ways:

- Principled – honesty, transparency and respect in all relationships
- Cooperative – partnership between the employer and employees
- Productive – “open site” labour practices that enhance productivity
- Safe – highest standards of safety across the construction workplace

PCAC works to ensure fair access to work opportunities for its members by promoting a legislative framework and industry practices that result in a level playing field for all construction industry participants.



RESCON is an association comprised exclusively of high rise and low rise residential builders operating in the Central Ontario region and represents the interests of its members in matters pertaining to:

- Government Policy and Legislation affecting the residential construction industry
- Workplace Disruptions
- Housing Supply (including affordable housing)
- Innovation in construction developing technologies improve product quality, reducing costs while increasing safety
- Labour supply, training, and labour relations issues in the residential sector
- Workplace Health and Safety & WSIB Issues
- Building Code and Regulatory Reform Initiatives



Founded in 1939 by a group of eleven general contracting firms, the Ontario General Contractors Association (OGCA) has developed into the largest representative association in the construction industry. General contractors have relied on OGCA for up-to-date, reliable advice on handling contracts and working with architects, engineers and owners.

OGCA members have daily access to trendsetting, leading-edge information vital to their business success. They receive timely updates on changes to government rules and regulations, the introduction of new tools and training for site safety, and trends in best practices.

OGCA supports its 206 members with a proven Early Dispute Resolution Program that is a proactive means for nipping trouble in the bud. Members also enjoy the support, camaraderie and joint venture opportunities that are a natural result of OGCA's province wide network of contractors and suppliers. Each member is committed to delivering construction excellence.

## Guiding Principles

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Our organizations strongly believe the criteria and processes to be used in making decisions regarding compulsory trade certification should adhere to the following guiding principles.

- 1) The criteria, review and decision-making processes should be completely open, inclusive and transparent to all stakeholders and businesses.
- 2) Decision-making processes should be rigorously evidence-based, assumptions should be tested and opportunities available for stakeholder cross-examination of research provided by the College of Trades Research Staff.
- 3) The government's current definition and understanding of a "skilled worker" is far too narrow. There are many "skilled workers" who have not completed an apprenticeship. Decisions on compulsory certification should not be made based on the false assumption that the only "skilled workers" are those who have completed a formal apprenticeship.
- 4) The criteria for making decisions with respect to compulsory certification should be flexible and/or flexibly weighted to ensure applicability to a specific trade.
- 5) All compulsory certification decisions should be subject to a "sunset review" (i.e. an evaluation of whether a trade should remain compulsory) within 5 years of the decision. During this 5 year period, no formal ratios should be established for the trade and the need for ratios should be evaluated during the "sunset review".

## Comments on Proposed Criteria

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### 1. Scope of Practice

In looking at this factor, the College should consider what impact compulsory certification will have on the quality of the work experience for the employee. This is critical to avoid “commoditizing” workers by being overly specific on what an employee can and can’t do and not allowing an employee to broaden his/her base of experience on the job site. The College should also avoid “trade splitting” in the sense of compulsory certifying a “split trade”; and consider the impact of creating trade silos within the workplace. Furthermore, the College should take into account the risk of jurisdictional disputes and labour relations disruptions as a result of creating a new compulsory trade.

The College should further adopt, through regulation, a policy that requires trade unions to resolve any internal jurisdiction issues between trades (i.e. resolve which trades can perform which tasks) before any application for compulsory status can be considered and approved by the College of Trades. An application for compulsory trade certification should not be the solution to jurisdictional disputes amongst trade unions.

### 2. Health and Safety of Workers, the Public and the Environment

As was acknowledged in the April 2008 report of the *Compulsory Certification Project* (The Armstrong Report), there is no evidence that compulsory trade certification contributes to the health and safety of the workplace (Page 92) and the general public. In our view, this should not be a factor in determining the compulsory status of most trades.

Notwithstanding this view, should this factor remain as part of the criteria, we offer the following comments:

- i) Ontario has well-established building codes, engineering standards, public health, safety and environmental regulations and monitoring agencies in place with the specific intent to safeguard public safety and environmental protection. Identifying gaps in these regulations, codes and safeguards should be part of any review of a certification application.

As part of each compulsory certification review, an objective assessment should be undertaken to determine if any regulatory gaps exist and to determine if addressing the regulatory gaps will rectify the safety concern. If it is established that addressing the regulatory gap will rectify the safety concern, the gap should be addressed and no further decision on compulsory certification should be taken for three years from the effective date of the regulatory change. This period will

allow for sufficient time for the regulatory change to take effect and to measure its effectiveness in rectifying the safety concern.

- ii) Similarly, a thorough review of worker safety regulations and safeguards should be conducted and gaps addressed prior to a review. And any decisions in favour of compulsory certification based on worker health and safety arguments should be rooted in current, objective statistical evidence. We cannot afford to make such important economic and labour supply decisions on the basis of mere speculation and hyperbole.
- iii) According to the Armstrong Report, the WSIB has clearly stated “that there is no reliable evidence from WSIB records to enable a comparison to be made between the health and safety records of persons in the compulsory and voluntary trades employed by employers insured under *The Workplace Health and Safety Act*” (Page 92). We agree. The number of WSIB claimants and level of WSIB premiums are not appropriate factors as these items may be affected by a variety of factors (including insurance driven data) and not simply on whether or not the trade is certified.

### 3. Registrations & Completion Rates

It is not at all appropriate to use registrations and completion rates data to evaluate whether or not a trade should be compulsory.

The consultation paper suggests completion rates are the only way to measure whether you have a high calibre, skilled worker. We disagree. The definition of a high calibre, skilled worker should not be interchangeable with a “Certificate of Qualification journey person”. As previously suggested in this document, we do not agree that a skilled worker is limited to those that complete full apprenticeships. Such an attitude pre-supposes employees can only have a meaningful work experience if they complete an apprenticeship.

Furthermore, comparing the completion rates for voluntary versus existing compulsory trades is not reasonable given the current status and choices of voluntary trades versus compulsory. Apprentices in compulsory trades must complete their apprenticeship in order to work in a compulsory trade. On the other hand, workers in voluntary trades have a choice to utilize the skills most relevant to their work experience and are not legally required to complete an apprenticeship.

To use registrations and completion rates data as a factor to determine compulsory trade certification ignores the fact that comparing data from the voluntary trades to the compulsory trades is not an apples-to-apples comparison. Registrations and completion rates for compulsory certified trades will be higher due to the legal requirement to complete an apprenticeship in order to work in a compulsory certified trade. Any comparison will automatically result in an inaccurate and misleading bias in favour of compulsory certification.

#### 4. Economic Impact

In reviewing this factor, the College should consider the impact compulsory certification will have on workplace productivity and furthermore, business and industrial competitiveness:

- i) How will compulsory certification impact the flexibility of workers on the job site to do different tasks and ultimately, how does this impact the productivity of the job site? We suggest the College of Trades undertake a study that compares the productivity of a flexible workplace (where employees may be involved in multiple tasks on a job site) versus a workplace that is “commoditized” and employees are restricted to a specific task on a job site.
- ii) What are the potential negative impacts on collaboration in the workplace, the workplace’s overall culture and the potential for jurisdictional disputes between trades?
- iii) How will this affect the employer’s ability to effectively and efficiently manage his/her workforce and overall business?

Prior to considering any application for compulsory status, the College should review other Canadian jurisdictions to assess the impact of compulsory certification on Ontario’s comparative business productivity and industrial competitiveness.

#### 5. Potential Impact on Ratios

By virtue of the fact there are no legally enforced ratios in voluntary trades, this factor should be removed from the review criteria.

#### 6. Labour Mobility

The College should complete a review of other provincial jurisdictions to determine the impact of compulsory certification on labour mobility. The College should also evaluate what impact compulsory certification may have on labour supply (i.e. the ability to attract and retain labour) in Ontario.

Further to a review of other provincial jurisdictions, we also suggest labour mobility on the job site (i.e. the ability to move from task to task without artificial barriers preventing such movement) is an issue as well. The college should further take into account how compulsory certification will affect labour mobility on the job site.

#### 7. Implementation

Any review for compulsory certification should include an effective and credible implementation plan. The implementation plan should address grandparenting

requirements for existing workers to deal with the significant risks in this area and enforcement of grandparenting requirements.

The implementation plan should ensure workers, members, non-members and the public are informed of the decision, at a minimum, through announcements in industry newspapers, industry trade journals, other industry publications and via the College of Trades website.

We further believe a “sunset review” should be conducted within 5 years following a decision to designate a trade compulsory.

### Proposed Additional Factor

Our organizations propose that an eighth factor be added to the criteria.

#### 8. Impact on Labour Supply

Data from the Construction Sector Council and other respected sources clearly show Ontario is facing a massive impending labour shortage and some of the current compulsory trades (i.e. crane operator) are facing some of the largest labour supply shortages.

Compulsory certification will create a significant new disincentive for young or immigrant workers to join the trades, and as a province, we cannot afford to erect significant barriers during this period of economic recovery.

Rigorous research should be undertaken to assess the impact of compulsory certification of a trade on the immediate, short and long term labour supply of the trade.

## Comments on the Proposed Application Process

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### General Comments

- As we have identified in the Guiding Principles and our comments on the Criteria, evidence-based analysis and research should inform the decision-making processes related to compulsory trade certification. As a result, the Ontario College of Trades requires a robust Research Department with sufficient resources in place to properly review and research applications prior to panel reviews

Research resources should be used effectively, should be impartial and objective, and research should be available to all interested parties.

In addition, stakeholders should have the opportunity to cross examine research to ensure the evidence is reviewed comprehensively and with integrity.

- As proposed, Trade Boards will evolve from Provincial Advisory Committees (PACs) which are currently primarily union and union-employer dominated. As a result, Trade Boards do not represent the broader industry and should not be the entity that decides how consultation should take place, including who should be consulted. Throughout the process, a Trade Board has a vested interest in compulsory certification, and as such, is not the appropriate vehicle to conduct consultation.
- Once an application for compulsory certification is submitted, the application should be made public via the College of Trades website, the business community should be notified within a specific period of time and there should be consultation with stakeholders and the public.
- Consensus decision-making should be the rule and any decision in favour of compulsory certification should be the consensus decision of the panel.
- Review Panel members should have no vested interest in the process or the outcome.
- There should be an appropriate balance in the review panel composition:
  - Employer and employee representatives should reflect a balance of representation across sectors including union versus non-union and regions (i.e. if a unionized employer is represented, there should be a non-unionized employee).
  - The third member may be from the general public, public sector or educational sector and need not necessarily be familiar with the trade. Through an initiation process and with support from the College's Research Department, panel

members can become sufficiently knowledgeable about the merits of the application and can make informed decisions.

- Although it is apparent in the legislation, we wish to re-state that the Minister of Training, Colleges and Universities should have the authority to overrule a final adjudication decision.
- In addition to developing a process to consider an application for compulsory trade certification, the College should initiate consultations with all stakeholders to develop a process to consider an application to de-certify a trade. The de-certification process should allow groups outside the Trade Board to submit an application.

### Application Process

Specific changes to the following sections (deletions in strikethrough, additions in red):

3. The Trade Board makes the official application to the Divisional Board to change the certification status of a trade. ~~The Trade Board must demonstrate that consultation with College of Trades' members and potential non-members has taken place including findings.~~ The Divisional Board is responsible for ensuring that information required by the Review Panels (see section on Criteria) is provided in its entirety and is factual and without bias.

Note – in our view, the Review Panel should be responsible for consulting with College of Trades' members and non-members.

6. The Divisional Board and Board of Governors have up to 60 days from the receipt of the final application to strike a Review Panel. Review Panel members shall have no vested interest in the applications process **and the outcome of the panel's decision. Once a Review Panel is struck, notice is posted immediately on the College of Trades website.**

## Comments on Proposed Review Panel Decision Making Process

Specific changes to the following (deletions in strikethrough, additions in red):

3. ~~At the discretion of~~ The Review Panel members ~~may~~ shall receive oral and/or written presentations by parties (Applicant, other Trade Boards, members, ~~non-members~~, unions, associations, the general public, etc.), similar to an intervenor status.
4. Review Panels will consider the merit of the Trade Board application based on the information provided by the Trade Board and organizations noted in 3. above.
5. The Review Panel makes its decision. It should be expected that the Review Panel has no vested interest in the trades or the outcome of the application.
6. Once a Review Panel has made a determination of the certification status of a trade, the Panel will provide the Board of Governors with a report on its decision within 10 days. The report shall also set out the rationale for the decision and be made public.
8. There shall be a formal, open and transparent process to request an appeal of a decision by the College to certify a trade including the appointment of a tribunal by the Minister to conduct an appeal.
9. All compulsory certification decisions by the College of Trades shall be subject to a “sunset review” after 5 years with a review of the College’s decision using evidence-based research based on the criteria used to initially make the decision and taking into account new factors such as technology development, new health and safety regulations and other regulations designed to protect the public and the environment.

## Contact Us

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