

# Ontario College of Trades Releases New Compliance and Enforcement Policy



By: Patrick Ganley

On December 8, 2016, the Ontario Legislature passed Bill 70 which amended the Ontario College of Trades and Apprenticeship Act (“OCTAA”). Among other significant changes, Bill 70 required the Ontario College of Trades (“College”) to create a Compliance and Enforcement Policy (“Policy”). The Policy was approved by the College Board of Governors on April 25, 2017 and made public on May 19, 2017, the same day it became effective.

The Policy has the potential to significantly impact the manner in which Compliance and Enforcement (C&E) is conducted by the College. It will be considered by College Inspectors when carrying out enforcement activity, and by the Ontario Labour Relations Board (“OLRB”), when enforcement activity is appealed.

## Purpose and Guiding Principles

The Policy’s stated purpose is to “set out the principles and C&E framework to be applied by the College as it undertakes C&E activities,” with specific focus on the following guiding principles:

- **The Public Interest:** A risk-based framework that considers “risk of harm” to members of the public, tradespeople and others
- **Targeted, Risk-based, Evidence-based Enforcement:** Strategic enforcement based on evidence and data
- **Consistency:** Consistent, rational enforcement
- **Flexibility and Proportionality:** Compliance and enforcement proportional to the seriousness of the non-compliance, and/or recurrence
- **Transparency:** Fostering public and trade confidence in how the College carries out its mandate

The Policy’s commitment to “evidence-based” strategic enforcement is welcome news. However, at present, the Policy does not provide a great deal of insight as to how and from where evidence will be gathered.

## “Risk of Harm”

Specific focus is placed on the unauthorized practice of compulsory trades, and ratio requirements. Under OCTAA and its Regulations, an “unauthorized” individual is an individual who:

- a) Practices a compulsory trade without a Certificate of Qualification (“CoQ”) in the College’s Journeypersons Class that is not suspended
- b) Practices a compulsory trade and is not an apprentice in that trade working pursuant to a Registered Training Agreement that is not suspended
- c) Does not hold a Statement of Membership in the College in that compulsory trade that is not suspended
- d) Is not otherwise authorized under the OCTAA to engage in the practice or performance of work of that compulsory trade

The Policy’s definition of “Risk of Harm” is its cornerstone. It is defined as “the likelihood of an adverse consequence (harm) occurring because of an unauthorized individual’s performance of

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work or engagement in the practice of a compulsory trade, where the harm may occur to: the public, the individual performing the work or engaging in the practice of the compulsory trade, and/or other workers.” The term includes workers (present and future) and the public, and considers both direct (physical, mental, economic) and indirect harm, including harm to confidence in the College as regulator, consumer protection, the environment and the fair functioning of the marketplace, among others.

This definition will not only guide C&E activities, but as mandated by Bill 70, will be a key consideration in future trade classification reviews including whether an entire trade should be compulsory or voluntary, as well as whether a task within a trade’s Scope of Practice (such as laying conduit) should be compulsory.

## Non-Compliance

Where there is evidence of a violation of OCTAA, an Inspector has discretion to determine the appropriate enforcement action, which may include:

- Education or advice
- Warning
- Inspections/audit
- Issuing a Notice of Contravention
- Issuing a Compliance Order
- Prosecution under Part III of the Provincial Offences Act

In exercising this discretion, the Inspector will, at least, consider the following factors:

- **Risk of Harm**
- **Public Interest and Public Confidence** – whether failure to pursue enforcement would undermine the public’s confidence in the College as regulator
- **Culpability** – whether the person acted with indifference or premeditation and whether there are mitigating or aggravating circumstances, including whether the person was in a position of authority or responsibility with respect to the work site, how work is performed and/or by whom
- **Previous Record** – compliance history
- **Recognized Past Practice** – whether the person 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 OLRB.

Time will tell whether, and to what extent certain of these factors will carry more weight than others. We can assume “risk of harm” will figure prominently. Significantly, this is the first indication C&E will consider established past practice, trade agreements and OLRB decisions, leaving open the possibility a trade agreement (and presumably a collective agreement) and/or industry practice may be used as part of a due diligence defence.

### 2017 Enforcement Focus

For 2017, the primary area of risk is the “underground economy in the trades” described in the Policy as “a business environment designed to avoid the oversight of public authorities.” The College will therefore focus its enforcement activities in this area toward “promoting workers’ health and safety, safeguarding vulnerable workers (including young workers and newcomers to Canada), enforcing [ratios], and generally protecting the public.”

Special attention should be paid to the mention of ratio enforcement. Particularly as ratios are considered and enforced on an organization-wide basis (not site by site), this may lead to a greater number of requests for payroll or other documentation to determine whether ratios are in compliance.

### Consultation

The College will work with other regulatory authorities to carry out C&E and explore ways to “jointly mitigate Risk of Harm” and “adopt a coordinated approach to enforcement.” This may include the sharing of information between regulatory authorities pursuant to the Regulatory Modernization Act, 2007, including the Electrical Safety Authority, pursuant to its authority under the Electricity Act,

1998. Sherrard Kuzz LLP will monitor these developments and keep the OEL membership up to date.

### Enforcement Tips for Employers

- **Prepare a Jobsite Binder:** In it consider keeping a copy of every employee’s CoQ, Registered Training Agreement and Statement of Membership, so they are readily available to an Inspector.
- **Conduct a Self Audit:** Proactively identify and remedy areas of non-compliance. Do not wait for a Notice of Contravention.
- **Understand the Purpose of an Inspector’s Visit:** You are entitled to ask a College official for identification and whether they are attending the site as an Inspector or Investigator. If the latter, be sure to ask who and what they are investigating, and ensure information provided is relevant only to that investigation. If possible, consult your lawyer before participating in the investigation to ensure you understand your rights and obligations.
- **Be Prepared to Take Control of an Enforcement Visit:** Identify a point-person on site to meet (and stay with) an Inspector during a visit. The point-person should be prepared to answer questions and provide relevant documentation. When in doubt, offer to follow up with more information. Once again, if possible, consult your lawyer to ensure you understand your rights and obligations.

To learn more, contact the construction employment and labour law experts at Sherrard Kuzz LLP. ☎

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## Customers and Hydro One

### Hydro One Flips the Switch on Better Service

*Submitted By: Hydro One Networks Inc.*

Earlier this year 28 Hydro One senior executives – including Mayo Schmidt, President and CEO, Hydro One – joined the Customer Contact Centre team to speak directly with more than 800 customers, answer questions, get feedback and commit to action.

As a result, the Company has announced major changes to some of its customer-facing policies which included eliminating security deposits for residential customers and significantly reducing deposit requirements for its business customers. The Company also expanded its relief measures to help its customers that accumulated balances on their accounts over the winter.

The changes to Hydro One’s customer-facing policies include:

- Eliminating residential security deposits
- Reducing deposit requirements for businesses
- New customer relief measures to help the most vulnerable customers that are at risk of disconnection
- Doubling the funding to the United Way’s Low-Income Energy Assistance Program
- Extending the winter moratorium until June 1, 2017

The relief measures for the Company’s most vulnerable customers will include: home energy audits, enrolment in all

available financial and conservation programs, programmable thermostats and flexible payment arrangements. These measures aim to help customers better manage their electricity usage to get back on track and avoid any future disruption to their electricity service.

The Company is also putting value back into the hands of its customers by eliminating all residential security deposits, returning existing deposits and reducing deposit requirements for businesses. To help Hydro One’s most vulnerable customers the company will also contribute an additional \$2.2 million to the United Way for the Low Income Energy Assistance Program.

In addition, Hydro One’s Customer Contact Centre is now open on Saturdays for the busy spring/summer season from 9 a.m. to 3 p.m. Hydro One is the first electricity service provider in Ontario to open to customers on Saturdays. The Centre is also open extended hours on weekdays from 7:30 a.m. to 8 p.m. and 24 hours a day for power outages and other emergencies.

Learn more at [hydroone.com/fliptheswitch](http://hydroone.com/fliptheswitch). ☎

