

## Ontario College of Trades and Apprenticeship Act, 2009

### CLASSIFICATION ROSTER DETERMINATIONS UNDER PART XI.1 OF THE ACT

#### DRAFT REGULATION FOR POSTING ON THE REGULATORY REGISTRY

This consultation draft is intended to facilitate dialogue concerning its contents. Comments received during consultation will be considered during the final preparation of the regulation. The content, structure, form and wording of the consultation draft are subject to change as a result of the consultation process and as a result of review, editing and correction by the Office of Legislative Counsel.

#### Interpretation

1. (1) In this Regulation,

“associate chair” means the associate chair of the Classification Roster;

“panel chair” means a person appointed as chair of a classification panel under paragraph 1 of subsection 63.6 (1) of the Act;

“referral” means the referral of a trade to the Classification Roster by the Minister under clause 63.4 (3) (b) of the Act or by the Board under section 63.5 of the Act;

“requester” means,

- (a) in the case of a referral by the Board under subsection 63.5 (1) of the Act, the person who, under O. Reg. xx/17 (*insert name of Board regulation made under para. 21.0.1 of subsection 72(1) of the Act*), requested that the Board refer the trade.
- (b) in the case of a referral by the Board under subsection 63.5 (2) of the Act, a person designated by the Board in accordance with subsection (2).
- (c) in the case of a referral by the Minister under clause 63.4 (3) (b) of the Act, a person designated by the Minister in accordance with subsection (3).

(2) For the purposes of clause (b) of the definition of “requester”, the Board may designate any person who, in the Board’s opinion, is an appropriate person to make oral

submissions to a classification panel under clause 4 (2) (a) because of that person's affiliation with the trade or role in reviewing the scope of practice for the trade.

(3) For the purposes of clause (c) of the definition of "requester", the Minister may designate any person who, in the Minister's opinion, is an appropriate person to make oral submissions to a classification panel under clause 4 (2) (a) because of that person's affiliation with the trade or role in seeking to have the trade prescribed under the Act.

#### **Referral and appointment of panel**

2. (1) Within 15 days of the referral of a trade to the Classification Roster, the associate chair shall acknowledge receipt of the referral to the Board or the Minister, as the case may be.

(2) The associate chair shall appoint a classification panel as soon as practicable after receiving a referral and in the order in which referrals are received.

(3) After appointing a classification panel, the associate chair shall notify the Board or the Minister, as the case may be, and shall ensure that the following information is made public:

1. Information concerning the referral to the classification panel, including the trade that has been referred and the matters on which the panel may make a determination.
2. The names of the members who have been appointed to the classification panel.

#### **Written submissions**

3. (1) A classification panel shall invite written submissions respecting the matters on which it may make a determination or recommendation, including an effective date for the panel's determination, the transitional issues specified in section 7, and whether there should be a period of repose, being the minimum period of time that must elapse before the matter may again be referred to the Classification Roster and, if so, how long the period of repose should be, up to the maximum of four years.

(2) Written submissions in response to an invitation may be made by any person other than the following:

1. The College or an employee of the College.
2. The Board, an individual member of the Board or an employee of the Board.

3. A divisional board referred to in section 19 of the Act or an individual member of a divisional board.
4. The roster of adjudicators or an individual member of the roster of adjudicators.
5. A Minister or Ministry of the Government of Ontario.

(3) A written submission shall be sent to an address specified by the associate chair and shall include,

- (a) the submitter's name, contact information, and organizational or trade affiliation, if any; and
- (b) the submitter's views on how a classification panel should determine a matter before it.

(4) A written submission may also include any supporting information or documentation that would aid the panel in making its determination, including, but not limited to,

- (a) qualitative or quantitative studies;
- (b) expert opinions;
- (c) literature reviews;
- (d) surveys or results of consultations with networks or groups;
- (e) information about similar trades in other jurisdictions; and
- (f) jurisprudence.

(5) A classification panel shall make public,

- (a) an invitation for written submissions under subsection (1);
- (b) a period during which written submissions will be accepted, which shall be at least 60 days;

(c) any written submissions received during the period referred to in clause (b).

(6) If the panel chair considers it appropriate in the circumstances, he or she may authorize the classification panel to accept a written submission after the period referred to in clause (5) (b), and any submission so accepted shall be made public.

#### **Oral submissions**

4. (1) A classification panel shall hear oral submissions after written submissions have been made public under clause 3 (5) (c).

(2) A classification panel,

(a) shall invite the requester to make oral submissions; and

(b) may invite any person who made written submissions to make oral submissions.

#### **Panel may consult**

5. A classification panel may, at any point in the duration of a matter, seek additional information from a person who has made a written submission and may consult and seek information from any other person to aid it in its determinations, including a person who is precluded from making a written submission under subsection 3 (2).

#### **Criteria for making a determination**

6. (1) In making a determination under subsection 63.6 (3) of the Act, a classification panel shall consider the written submissions, oral submissions and any additional information obtained under section 5 in accordance with this section.

(2) As required under subsection 63.6 (15) of the Act, the panel shall consider whether there is a risk of harm to an individual performing the work or engaging in the practice of the trade, to other workers or to the public.

(3) The panel shall consider,

(a) health and safety conditions in the trade, including applicable occupational health and safety legislation, industry standards of practice and standards of training;

- (b) the extent to which the health and safety conditions protect workers; and
  - (c) the extent to which the health and safety conditions, when considered in light of any risks of harm identified under subsection (2), suggest that the trade should be classified as voluntary or compulsory or that engaging in a practice should constitute engaging in the practice of the trade, in the case of a compulsory trade, for the purposes of sections 2 and 4 of the Act, as the case may be.
- (4) The panel shall consider,
- (a) whether, if the trade were classified as compulsory or voluntary or engaging in a practice were to constitute engaging in the practice of the trade, in the case of a compulsory trade, for the purposes of sections 2 and 4 of the Act, as the case may be, there would be an impact on the public interest with respect to:
    - (i) access to the trade and to labour mobility,
    - (ii) consumer protection,
    - (iii) the environment,
    - (iv) apprenticeship programs, and
    - (v) the economy;
  - (b) the extent to which an impact identified under clause (a), when considered in light of any risks of harm identified under subsection (2), suggests that the trade should be classified as voluntary or compulsory or that engaging in a practice should constitute engaging in the practice of the trade, in the case of a compulsory trade, for the purposes of sections 2 and 4 of the Act, as the case may be.

#### **Transitional Issues**

7. A classification panel shall consider whether, in the case of a trade that it determines should be classified or reclassified as compulsory, any persons currently performing work in the trade should be exempt from registration requirements for a certificate of qualification or statement of membership and, if so, how long an exemption should apply.

### **Continuity of classification panels**

**8.** The following rules apply if a member of a classification panel resigns, is unable or unwilling to continue to serve on the panel, or whose appointment expires or is terminated before the matter before the classification panel has concluded:

1. If the panel chair ceases to serve on the panel, the associate chair shall appoint a person to serve as panel chair for the duration of the matter.
2. If a member other than the panel chair ceases to serve on the panel, the associate chair,
  - i. shall, if oral submissions have not begun, appoint a replacement member to serve on the panel for the duration of the matter, and
  - ii. may, if oral submissions have begun, appoint a replacement member to serve on the panel for the duration of the matter.
3. If more than one member other than the panel chair ceases to serve on the panel at any time, the associate chair shall appoint replacement members to serve on the panel for the duration of the matter so that the panel has at all times at least three members other than the panel chair.
4. In appointing a replacement member under paragraphs 1 to 3, the associate chair shall appoint a person with the same qualifications as described in subsection 63.6 (1) of the Act as the member who has ceased to serve on the panel.

### **Time**

**9.** (1) Subject to subsections (2) and (3), a classification panel shall report to the Minister under subsection 63.6 (8) or (12) of the Act within 120 days [*or 180 days*] of being appointed under subsection 63.6 (1) of the Act.

(2) The associate chair may, on the request of the panel chair, extend the period referred to in subsection (1) for up to an additional 120 days if a member of the panel, including the panel chair, is replaced under section 8 or for any other reason he or she considers appropriate in the circumstances.

(3) A matter before a classification panel shall be paused during any period in which a classification panel is without a panel chair or has fewer than three members other than the panel chair. The period of pause shall not be included in the 180 day period referred to in subsection (1) or any extension period made under subsection (2).