College of Opticians of Ontario

BRIEFING NOTE

TO: **Council**

FROM: **Governance Committee**

DATE: **May 28, 2019**

SUBJECT: **14.2 CNO's Vision 2020 Governance Reform Initiative**

Purpose:

To determine what elements of the College of Nurses of Ontario Vision 2020 Governance Reform initiative submission to the Ministry of Health the College wishes to support

Background:

There has been an ongoing call to modernize the oversight of regulatory bodies around the world. Most recently in Ontario, Bill 87, the *Protecting Patients Act* laid down important groundwork for modernization. This includes the government's ability to establish the composition and functions of all College statutory committees.

On October 1, 2018, The College of Nurses (CNO) presented highlights of their governance transformation strategic plan to the College. The CNO conducted a top-to-bottom review of its governance operations and structure to make sure it was keeping pace with the public's changing needs. The task force reviewed global governance trends, best practices and expert advice. It also shared how to apply these to the College's governance. The findings and recommendations were published in a report called *Final Report: A vision for the future*.

On January 28, 2019, Council requested that the CNO's Vision 2020 plan be put before the Governance Committee for further review.

The main recommendations of the CNO Task Force were as follows:

- Reducing the size of Council (from 37 to 12)
- Increasing the proportion of public members on their Council to 50% (currently there are 21 professionals and 16 public on the CNO's Council);
- Appointing (not electing) all members of Council based on competencies;
- Eliminating the requirement for an Executive Committee
- Removing the obligation for Council members to be on statutory committees; and
- Remunerating, from College funds, all Council members equally – Government would no longer fund public members.

The College of Nurses sent their legislative submission to the Minister of Health and Long-Term Care (MHLTC) on January 8, 2019 as a confirmation of their commitment to this endeavor. Thus far, informal feedback from the Ministry shows a positive reception to this initiative and an indication that other colleges should strongly consider similar changes. At this time, 21 of 24 health regulatory colleges that responded to a survey indicated that they are discussing governance changes, and most are at various stages of modernizing their governance structures having given their support to the CNO.

Regulators in British Columbia are also facing the potential overhaul of the way health professional regulation is conceived and delivered. On April 11, 2019, the long-awaited report of the Professional Standards Authority (PSA) (headed at the time it was written by Harry Cayton) on the "*Inquiry into the Performance of the College of Dental Surgeons of British Columbia*" was released. On the same day, the Minister of Health gave the B.C. College 30 days to deliver an implementation plan for the recommendations directed at it. Mr. Cayton also cited a litany of problems with respect to health regulation in B.C., saying the regulatory colleges lack transparency, are fragmented and fail to put patients first. The Minister is also considering a number of sweeping short term and long term proposals for regulatory reform for all B.C. health regulators. These recommendations closely mirror the CNO's Vision 2020 Report.

Additional Background Reading:

Cayton, H. (2019). *Does Governance Matter?* Professional Standards Authority Conference.
Professional Standards Authority. (2011). *Board size and effectiveness: Advice to the Department of Health Regarding Health Professional Regulators.*
Professional Standards Authority (2013). *Fit and Proper? Governance in the Public Interest.*

For Consideration:

1. That Governance Committee recommends the following governance reforms to Council in keeping with the spirit of the CNO 2020 Governance Initiative.

2. The Committee also recommends that the College submit a letter confirming our full support of the CNO's vision to modernize regulatory governance to the Ministry of Health and Long-Term Care.

Proposed College of Opticians of Ontario Governance Reform Initiative

Current State	Proposed Governance Changes	COO By-law or Legislation Change Required (or policy)
Terminology		
Council of the College	Board of Directors of the College	RHPA, *Opticianry Act, 1991*, by-laws (can be achieved informally via Council policy decision; would also require website changes and changes to various College documents)
Council member(s)	Director(s)	
President of Council	Chair of the Board of Directors	
Vice-President Council	Vice-Chair of the Board of Directors	
Members	Registrants	
Size, Composition and Function of the Board/Council		
The governance literature says the best size for boards is 6-12 members. Smaller boards make more effective decisions and operate more efficiently. A board comprised of more than 50% members of the profession being governed has the potential to undermine public confidence that decisions are always made in the interest of the public and cause the public to believe that interests of the profession may be influencing decisions.		
12-18 council members	Phase one: 14 directors Phase two: 12 directors	*Opticianry Act, 1991*, by-laws
8 Elected/5-8 public members	Phase one: 7 professional /7 public Phase two: 6 professional /6 public	
Executive Committee	Executive Committee: redefine the terms of reference (What is urgent or considered an emergency) This should be re-examined in the future	RHPA, by-laws
Procedures for the Board of Directors		

Elections based on regions are not, for the most part, aimed at selecting people whose skills match the needs of the board. In certain situations they can be seen as more of a popularity contest. While some people who pursue a seat on a regulatory body's board have many skills that are very relevant to the governance role, it is not assured. Members are not on council to represent the membership or a select group of the membership. They are on council to protect the public interest. A process which determines and appoints council members based on competencies rather than just technical expertise, would ensure that people at the table, as a group, have the necessary skills to effectively govern the profession. **Public confidence will be enhanced if required skills and competencies are transparent.**		
Council members elected by peers Public council members appointed by Lt. Gov. in Council	Goal: All directors (public and professional) be a competency-based appointment <u>Transition phase for elected members</u> 1. Removal of electoral districts 2. Current elected members will finish out their terms 3. As current terms end, candidates eligible to run at large 4. Set up a nominating/adhoc committee to screen persons first for competencies in order to be eligible to run	*RHPA, Opticianry Act, 1991,* by-laws
Terms of office will ensure appropriate transition and succession. Appointment rather than election ensures that strong directors are retained and those with new perspectives regularly join the board. Term limits support bringing needed new competencies and backgrounds to the board.		
Council members: serve (3) 3-year terms of office: 9 consecutive years; No term limits exist for public Council members	Council members serve: (2) 3-year terms of office consecutively with a 3-year cooling off period (Must apply again to the College)	RHPA, by-laws
One day cooling off period coming from the association to the College	Mandatory 3 year cooling off period for any person coming from the association to the College	By-Laws

Expenses and remuneration of: · Council members are paid by the College in accordance with the by-laws, while · Public Council members are paid by the Minister in amounts determined by the Lt. Gov. in Council. The amounts paid by the College and the Minister are unequal	Remunerating, from College funds, all Council members equally	RHPA, by-laws, honoraria and expenses policy
Council is led by: The President and Vice-president They are elected annually by the Council from among the Council's members.	Board of Directors is led by: The Chair and the Vice-Chair They are appointed annually by the Board on the basis of competencies.	RHPA, *Opticianry Act, 1991*, by-laws
Composition of Statutory Committees		
The group that sets policy should not be making statutory decisions. There is a potential to bring bias and perceptions of bias from the board to statutory committees and vice versa. With separate board and statutory committee members, individuals can develop expertise in specific roles.		
Panels of the following statutory committees currently must include Council members: Registration Committee Inquiries, Complaints, and Reports Committee Discipline Committee Fitness to Practice Committee	Directors on the Board do not sit on statutory committees	RHPA, by-laws (note no RHPA amendments needed to make this change to the composition of the Patient Relations Committee or the Quality Assurance Committee)

College of Opticians of Ontario

BRIEFING NOTE

TO: COUNCIL

FROM: MICHELLE KUSHNIR, GENERAL COUNSEL

DATE: APRIL 22, 2019

SUBJECT: HARRY CAYTON REPORT ON BC DENTISTS AND BC HEALTH PROFESSIONS ACT

Purpose: To summarize Harry Cayton's December 2018 report entitled "Inquiry into the performance of the College of Dental Surgeons of British Columbia and the Health Professions Act" (of British Columbia).

Overview:

On April 11, 2019, the provincial government of British Columbia (BC) made public Mr. Cayton's report on the performance of the College of Dental Surgeons of British Columbia (CDSBC) and the BC Health Professions Act. On the same day, the BC government ordered the CDSBC to implement all of Mr. Cayton's recommendations and provide an implementation plan within 30 days.

Some key recommendations for the CDSBC are that the CDSBC and its board:

- Continue to pursue plans to reduce the size of its board, increase the number of public members on its board, and appoint board members.
- Introduce new election eligibility requirements, including a three-year cooling off period after holding an officer position for an association before serving on the board.
- Transform the relationship between the board and staff, recognizing that the role of its expert staff is to run the College, and the board's role is to govern it and oversee its performance.
- Improve its own performance evaluation and measurement, including by adding an "action log" to meeting minutes and improving its data collection.
- Improve public engagement by developing communications and engagement strategies, improving response rates to surveys, and opening board meetings to public questions.

Some key recommendations with respect to the BC Health Professions Act (Act) are that:

- Governance changes should be made to the Act in line with the College of Nurses of Ontario's "Vision 20/20" plan (boards should be fully appointed, be reduced to 8-12 members, have equal public and professional members, and board members should serve a maximum of two 3-year terms).

- The government should encourage (but not impose) mergers of colleges.
- There should be a common register for all health colleges.
- All colleges should have a single code of ethics.
- A new oversight body should be responsible for a range of matters including: reviewing certain registration decisions, investigating the performance of colleges (at the Minister's request), giving advice on practice improvements, supporting voluntary amalgamation of colleges, approving a more flexible arrangement for colleges to change their own bylaws, establishing a common dataset for all colleges to report on, making recommendations for whether regulation is necessary based on risk of harm, and creating and overseeing an independent appointment process for professional and public members.

Background: The context for the Harry Cayton report

As of the date of Mr. Cayton's report, the CDSBC regulated 3800 dentists, 6500 dental assistants, and seven dental therapists in BC. Like Ontario, BC also has separate colleges of dental hygienists, dental technicians, and denturists. These are amongst the 21 health regulatory colleges in BC, which Mr. Cayton seems to view as too many and impractical (resulting in, amongst other things, high annual fees in the smaller professions).

In 2016, a "slate" of six professional candidates stood for election to the CDSBC board, with a stated intention of replacing the sitting president and bringing Registrar "under control". The "slate" had concerns about some of the proposals of the previous board, including the attempted introduction of new standards for the treatment of family members and for advertising, as well as a proposal to appoint directors to the board rather than electing them. The slate was elected. The view of at least one public member was that the new president's agenda was focused on the benefit of dentists, and that the new "slate" would always vote as a slate. The report highlights many examples of lack of trust between board members and between the board and staff throughout and after this leadership transition, including the fact that approximately 20 "private" board meetings were held from 2016-2018 that were not attended by college staff.

Perhaps adding to concerns about public confidence in the CDSBC was a 2015 discipline case described in the report, where a young patient was permanently brain damaged as a result of a dentist's deliberate acts, and the dentist received only a three-month suspension and a fine.

In addition to making various recommendations, Mr. Cayton's report also measured the CDSBC against 28 "Standards of Good Regulation" and found that the CDSBC met 17 standards and did not meet 11 standards. These standards are appended to the report.

Some of the key concerns raised in Mr. Cayton's report about the CDSBC were:

- a misunderstanding of the role of a regulator as serving the public rather than the profession, including an excessive focus on "democratic elections";
- lack of transparency in Ministry appointments of public members;
- lack of trust between board members, and between the board and the college staff;
- inadequate record keeping of board actions and decisions;
- lack of clarity over what is or is not a standard of practice;
- inadequate means of monitoring and measuring performance (with an excessive focus, instead, on measuring "activity");
- concerns with the complaints and discipline process, including lack of independence of the Inquiry Committee (similar to ICRC) from the board and from staff, delays in complaint processing, and lack of transparency with respect to discipline outcomes and reasons for decisions;
- over-reliance on volunteerism on committees who receive limited training; and
- an improperly close relationship between the association and the CDSBC.

Mr. Cayton noted that many of the CDSBC's challenges were rooted in problems with the Health Professions Act, which does not adequately focus on safety, requires elections, provides for an overly complex complaints process, and excessively promotes resolution of complaints through voluntary consent and remediation. In conversations with patients, he observed a lack of patient confidence in the colleges and in health regulation.

The following is a summary of the recommendations made with respect to the CDSBC and the BC Health Professions Act.

(1) Recommendations for BC dental college:

Governance, conduct and probity

1. The Board should continue with its plans to reduce its size, increase the representation of public members and to appoint its officers from within its membership. An induction programme should be required for anyone wishing to stand for election.
2. No one who has held an officer position in a dental association should be allowed to stand for election until at least three years has passed since they held that office.
3. No dentist about whom a complaint is under investigation should stand for election or be appointed to a committee until the complaint has been resolved in their favour. No dentist against whom a complaint has been upheld should be a member of the Board or any committee of the CDSBC.
4. Any dentist who is a member of the Board or a committee of the CDSBC who has a complaint under investigation should stand down until the complaint is resolved.
5. The Board should reduce the number of college committees to make the CDSBC's decision-making more stream-lined and effective. [At the time of the report, there were 15 different CDSBC committees and working groups.]

6. The Board officers, the Registrar and CDSBC staff should improve their monitoring of work progress and recording of the implementation of decisions, by adding an "action log" to meeting minutes.
7. The CDSBC should create a risk register to track financial, legal, and reputational risk.
8. The Board should continue increasing transparency as much as possible and being ready to be held accountable to the public. The Board should limit the number of meetings held without any staff present to those dealing with HR matters. It should always make, approve and retain formal minutes of those meetings.
9. The CDSBC should renew its commitment to proper procurement policies and should conduct its legal contracts though its General Counsel (not though individual Board officers). It should consider introducing an internal audit function. Board officers should not attend the Audit Committee except when invited to do so.
10. The Board must stop seeing itself as the college and recognise that its role is to govern the CDSBC and oversee its performance but that the CDSBC is run and managed by its professional staff. The Board and staff need to form a constructive and respectful partnership.

Performance of the College

1. The CDSBC should significantly improve its internal data collection and performance management so that it knows how it is performing against its own procedures and can demonstrate that it is effective in all areas of its work.
2. Standards should be gathered together into a single document, and they should be clearly mandatory. All guidelines ("guidance") should be gathered into one place or publication. The word 'policies' is reserved for internal college 'policies and procedures'.
3. The board should remove itself from involvement in the complaints process and should not attempt to influence or interfere in complaints in any way.

External Relationships

1. The CDSBC should develop a stakeholder mapping and communications strategy to ensure that proper attention is paid to all its stakeholders and in particular to engagement with patients and the public through a public engagement strategy.
2. The CDSBC should work to improve the reach and response rate of its annual complaints survey. It should consider how it could use the patients who contact it as a resource for learning and engagement.
3. The CDSBC should continue with its plan to open part of its Board meeting to questions and comments from members of the public.
4. The CDSBC should aim to build a relationship with its dentist registrants of both mutual respect and distance, through its thorough approach to consultation.
5. The CDSBC should commit greater time, respect and interest to both Dental Assistants (CDAs) and Dental Therapists.
6. The College should encourage better and more regular engagement with the three other dental colleges to promote the safety of patients and public protection.
7. The CDSBC currently collects fees for the association. This should be done more transparently.

8. Ultimately CDSBC should stop collecting fees for the association.

(2) Recommendations for reforming or replacing the Health Professions Act

1. Colleges' mandates should be changed to focus primarily on safety, standards of clinical care, and the health needs of patients.
2. The term "member" should be replaced with "registrant".
3. Boards should be fully appointed, and be equal part professional and public. [However, in Mr. Cayton's view, the current appointments process in BC is not independent, transparent, and competency based so cannot be relied upon at present time to take on this role.]
4. In the interim, colleges should introduce an effective nominations process, with published competencies. The chair and vice-chair should be elected by the Board. The audit chair should continue to be nominated through the public appointment process.
5. The government should ensure the appointment process for public members is more transparent with public criteria and competencies and attention paid to mixed skill on boards.
6. Boards should be reduced in size to 8-12 people.
7. Terms of office should be three years, extendable for a further three years.
8. The number of statutory committees should be reduced to "audit and risk", "registration", and "inquiry and discipline". Committee appointments should be competence and merit-based.
9. Colleges should have more freedom to change their own rules and bylaws.
10. Associations should be independent from regulators and not have special influence.
11. Board and committee members should be adequately compensated.
12. The board should have no involvement with complaints and discipline. Inquiry and discipline committees should be independent and separately appointed.
13. The Ministry should actively encourage and facilitate mergers, especially of smaller less well-resourced colleges (but should not mandate mergers). This could involve groupings around services (e.g., dentistry) or by creating a multi-occupation college. There should also be a moratorium on new colleges.
14. There should be some clarifications made to the definitions of "professional misconduct", "unprofessional conduct", and "fitness to practice" and related terms.
15. The outcomes of complaints and discipline should be guided by the purpose of these processes: to protect patients and reduce harms, secure public trust in professions and promote professional standards.
16. The complaints and discipline system should be reformed in a number of ways, including clearly separating a complaints acceptance stage, an investigation stage, and an adjudication stage. Fines should only be used for financial misdemeanors or for failure to cooperate with the regulatory process or deliberate delay tactics during the discipline process.
17. Board meetings should include a time reserved for visitors to ask questions or comment.
18. Colleges should publish the maximum information possible about complaints.

19. The Minister of Health should specify information and performance data to be included in each college's annual report. This should include:
    - Information on revised or new standards and guidelines ("guidance")
    - Information on current registrants, new registrants, international registrants and appeals
    - The number of complaints received, the number progressing to Inquiry Committee, the number progressing to a disciplinary panel
    - The median length of time taken to resolve complaints
    - The outcome of complaints including remediation and sanctions imposed
    - The College's approach to learning from complaints and what it has learned
    - The College's information security and data protection policy and any breaches
    - The College's commitment to diversity and equalities and to First Nations healthcare
20. The Health Professions Review Board's role should be amended:
    - Remove its role in reviewing adherence to statutory time limits for complaints
    - It should publish guidance for all colleges to improve complaints performance
    - It should be able to review complaint decisions without a referral.
21. Colleges should be reconstituted as bodies responsible for setting standards and licensing professionals (which could include two or more occupations within one college).
22. Colleges should agree on a single code of ethics and conduct.
23. Colleges should remain responsible for:
    a. setting clinical standards and issuing guidance,
    b. issuing licenses to those who met character and clinical competence requirements,
    c. assuring continuing competence and assessing registrants prior to annual renewal, and
    d. investigating complaints.
24. Colleges should not be responsible for adjudicating complaints. This should be done by an independent "registration and adjudication body".
25. All registrants should be named on a single register.
26. A new oversight body should be established, which would be responsible for:
    a. Approval of the shared Standards for Ethics and Conduct and imposition of that Standard if all colleges are unable to agree
    b. Approval of the range (although not the content) of standards of practice
    c. Approval of a revised and more flexible arrangement for colleges to change their rules and bylaws
    d. Establishment of performance Standards of Good Regulation to be applied to both the colleges and to the registration and adjudication body
    e. Establishment of the dataset to be reported on by all colleges and for the compilation, analysis and publication of that information with the purpose of comparing performance, improving patient safety and reducing harm.
    f. Encouragement and support for the voluntary amalgamation of colleges

g. Absorbing the functions of the HPRB to review on request certain registration decisions by the colleges and Inquiry Committee dispositions by the adjudication body
h. Conducting reviews and investigations into the performance of colleges at the request of the Minister
i. Advising colleges and the Minister on improvements in regulatory practice
j. Assessing the risk of harm to patients and the public of healthcare occupations and to make recommendations to the Minister as to whether or not statutory regulation is necessary and if it is which college should be responsible
k. Creating and overseeing an independent appointment process for professional and public members of college boards based on open competition, published competencies and relevant experience; and making recommendations to the Minister

27. Introduce a risk-based model for determining who should be regulated. This includes a policy commitment that no new colleges are created; encouraging amalgamation especially of smaller colleges; and implementing an evidence-based risk-assessment process for making recommendations for regulation of professions.

For information only.