

# BRIEFING NOTE

**TO:** Board of Directors

**FROM:** Governance Committee

**DATE:** March 1, 2022

**SUBJECT:** 7.1 Proposed Amendments to Election and Appointment Eligibility Criteria

For Decision

For Information

Monitoring Report

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**Purpose:**

To consider whether to recommend amending certain election/appointment eligibility criteria to ensure they are in line with governance best practices.

**Background:**

Over the last several years, the board has done extensive work in the area of governance reform, and in particular with respect to board elections and committee appointments. These efforts have positioned the COO as a leader in governance excellence, and in substantial compliance with the standards established by the Ministry of Health under the College Performance Measurement Framework (CPMF).

*Cooling off periods*

Cooling off periods help ensure that individuals who seek election to the board or appointment to committees are doing so for the right reasons – i.e., to further the COO’s statutory mandate of regulating opticianry in the public interest, and minimizing the risk that individuals hold a personal agenda or conflict of interest, whether real or perceived.

In 2020 the board amended the by-law to articulate minimum periods before an individual can be elected to the board or appointed to a committee after holding a position that could create an actual or perceived conflict of interest (i.e., cooling off periods). A 3-year cooling off period was implemented for opticians who previously held positions with professional associations, and a 3-month waiting period was implemented for former COO staff members.

The by-laws also articulate cooling off periods following certain events relating to professional conduct issues and/or other potentially adverse interactions with the COO. These cooling off periods range from 1 to 6 years.

**For Consideration:**

Cooling off periods are used as part of a robust governance framework to minimize the risk that individuals seeking election or appointment have a real or perceived conflict of interest.

Additional election/appointment eligibility criteria have been identified for potential amendment in order to ensure that the COO is meeting governance best practices. These are:

Criteria	Existing Cooling off Period	Proposed Cooling Off Period	Rationale
Discipline Committee or Fitness to Practice Committee orders	n/a	6 years	<p>Currently, registrants are not eligible for nomination if they have a finding of professional misconduct or incompetence made against them in the preceding 6 years.</p> <p>The provision will provide added assurance that the candidate has also complied with all aspects of any orders that had been made with respect to those findings.</p>
COO Staff	3 months	3 years	<p>The current cooling off period may not be sufficient to adequately reduce the risk of conflicts of interest between a staff position and a board or committee position.</p> <p>Extending this provision to 3 years would make it consistent with the cooling off period for individuals who worked at professional associations.</p>
Legal proceeding against the COO	1 year	6 years	<p>The current cooling off period may not be sufficient to adequately reduce the risk of conflicts of interest where a candidate had recently initiated, joined, continued or materially contributed to a legal proceeding against the COO or any committee or representative of the COO.</p> <p>Extending this provision to 6 years would make it consistent with the cooling off periods for registrants with previous findings of professional misconduct, incompetence, or those who were previously suspended, revoked or disqualified.</p>

Draft by-law amendments that correspond to these proposed changes are attached for the Committee's review.

**Public Interest Considerations:**

There is a strong public interest in ensuring steps are in place to reduce the risk of conflicts of interest for board and committee members. This has most recently been recognized in the standards established under the College Performance Measurement Framework. It is therefore incumbent on the COO to ensure that eligibility criteria for board and committee positions meet governance best practices.

**Diversity, Equity and Inclusion Considerations:**

The Board should consider whether the proposed by-law amendments raise any concerns from a diversity, equity or inclusion perspective.

**Recommendation:**

That the Board approve the proposed by-law amendments relating to the eligibility criteria for board and committee members as recommended by the Governance Committee.

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Current Language	Proposed Language	Rationale/Explanation
<b>1.1 Definitions</b>		
n/a	<a href="#">“Screening Committee” means the Screening Committee of the College;</a>	The addition of a definition to support the creation of the Screening Committee as a new non-statutory standing committee of the College.
<b>6.3 Eligibility for Election</b>		
6.3 A registrant is eligible for election to the Board in an electoral district if, on the deadline for the receipt of nominations and up to and including the date of the election:	6.3 A registrant is eligible for election to the Board in an electoral district if, on the deadline for the receipt of nominations and up to and including the date of the election:  <a href="#">(f) a period of at least six years has elapsed since the Registrant complied with all aspects of an order imposed by the Discipline Committee or the Fitness to Practice Committee or by a similar committee of a body that governs a profession inside or outside Ontario;</a>	Currently, registrants are not eligible for nomination if they have a finding of professional misconduct or incompetence made against them in the preceding 6 years.  The provision will provide added assurance that the candidate has also complied with all aspects of any orders that had been made with respect to those findings.
(i) the Registrant has resigned, at least three months before being nominated for election, any employment with the College;	(i) the Registrant has resigned, at least three <del>months</del> <a href="#">years</a> before being nominated for election, any employment with the College;	One of the most important duties of board members is to hold the Registrar (and by extension all staff) accountable for ensuring that the College upholds its public interest mandate. The fact that a registrant was recently an employee of the College may give rise to a real or perceived conflict of interest between their former role and their duties as a board member.  This amendment will reduce the risk of such conflicts of interest by bringing the cooling off period in this section in line with the cooling off period for registrants who recently held other positions that may give

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		<p>rise to conflicts, such as professional associations.</p> <p>This provision will only apply to full time employees of the College and not persons who were engaged by the College as contractors or a temporary or casual basis (e.g. peer assessors, examiners, etc.).</p>
<p>(o) the Registrant has not initiated, joined, continued or materially contributed to a legal proceeding against the College or any Committee or representative of the College within one year from the deadline for the receipt of nominations;</p>	<p>(o) the Registrant has not initiated, joined, continued or materially contributed to a legal proceeding against the College or any Committee or representative of the College within <del>one</del><u>six</u> years from the deadline for the receipt of nominations;</p>	<p>Board members have a fiduciary duty to act in the best interest of the College and its public protection mandate. The fact that a registrant has a recent history of adverse interactions with the College may give rise to a real or perceived conflict of interest with that fiduciary duty.</p> <p>This amendment will reduce the risk of such conflicts of interest by bringing the cooling off period in this section in line with the cooling off period for registrants with previous findings of professional misconduct, incompetence, or those who have been suspended, revoked or disqualified.</p>
<p>(s) the Registrant has been determined by the Governance Committee, or a sub-committee of the Governance Committee, to meet the pre-election competencies as may be established by the Board from time to time.</p>	<p>(s) the Registrant has been determined by the <del>Governance Committee, or a sub-committee of the Governance Committee</del><u>Screening Committee</u>, to meet the pre-election competencies as may be established by the Board from time to time.</p>	<p>This amendment will shift responsibility for assessing pre-election competencies from the Governance Committee to a newly constituted Screening Committee.</p>
<b>6.4 Registrar's Electoral Duties</b>		
<p>(a) The Registrar, or, if the Registrar so requests, the Registrar with the assistance of an ad hoc committee struck by the Board or the Executive</p>	<p>(a) The Registrar, or, if the Registrar so requests, the Registrar with the assistance of <del>an ad hoc committee struck by the Board or the Executive</del></p>	<p>This amendment will recognize the Screening Committee as the committee that will assist the Registrar with carrying out their electoral duties, if requested.</p>

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<p>Committee, shall supervise and administer the nomination and election of candidates to the Board and, without limiting the generality of the above, for the purpose of carrying out such duties the Registrar may, subject to this by-law and the guidelines established by the Board:...</p>	<p><del>Committee</del> <u>the Screening Committee</u>, shall supervise and administer the nomination and election of candidates to the Board and, without limiting the generality of the above, for the purpose of carrying out such duties the Registrar may, subject to this by-law and the guidelines established by the Board:</p>	
<b>6.5 Nomination Procedure</b>		
<p>(b) The nomination of a candidate for election as a Director shall be in writing, on a form provided by the Registrar and shall be submitted along with a photograph of the candidate. If desired, a brief biographical statement of the candidate, without reference to platform, may also be submitted. The nomination must be received by the Registrar not less than 60 days before the day of the election.</p>	<p>(b) The nomination of a candidate for election as a Director shall be in writing, on a form provided by the Registrar and shall be submitted along with a photograph of the candidate. If desired, a brief biographical statement of the candidate, <del>without reference to platform,</del> may also be submitted. <u>The biographical statement must not be inconsistent with the College's public interest mandate and may not include reference to the candidate's platform.</u> The nomination must be received by the Registrar not less than 60 days before the day of the election.</p>	<p>This amendment will clarify the requirements with respect to biographical statements to ensure they do not include messaging that is inconsistent with the College's public interest mandate.</p>
<p>(b.2) Any biographical statement and photograph that is not deemed acceptable by the Registrar shall not be included in the materials sent to the Registrants under Article 6.6(c). At the Registrar's request, an ad hoc committee struck by the Board or the Executive Committee shall determine whether the biographical statement and photograph meet the election guidelines.</p>	<p>(b.2) Any biographical statement and photograph that is not deemed acceptable by the Registrar shall not be included in the materials sent to the Registrants under Article 6.6(c). At the Registrar's request, <del>an ad hoc committee struck by the Board or the Executive Committee</del> <u>the Screening Committee</u> shall determine whether the biographical statement and photograph meet the election guidelines.</p>	<p>This amendment will recognize the Screening Committee as the committee that will assist the Registrar with carrying out their electoral duties, if requested.</p>

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(d) The candidate shall sign the nomination form accepting the nomination, and complete and return a conflict of interest questionnaire and confirmation of eligibility in the form provided by the Registrar and by the deadline set by the Registrar.	(d) The candidate shall sign the nomination form accepting the nomination, and complete and return a conflict of interest questionnaire, <del>and</del> confirmation of eligibility, <u>and proof of completion of the Pre-Election Training Module</u> in the form provided by the Registrar and by the deadline set by the Registrar.	This amendment will clarify the information that must be returned by candidates as part of the nomination process.
n/a	<u>(d.1) The Registrar shall review the nomination form and other information submitted by the candidate. All candidates who are determined by the Registrar to meet the eligibility criteria set out in Article 6.3, other than Article 6.3(t), shall be required to participate in an interview conducted by the Screening Committee. The interview may be conducted in person, by telephone or by other electronic means.</u>	This amendment clarifies that the Registrar will conduct a preliminary review of a candidate's eligibility to stand for election, while the Screening Committee will be responsible for holding an interview to assess whether the candidate meets the pre-election competencies.
(d.1) Upon the Registrar's request, an ad hoc committee struck by the Board or the Executive Committee shall determine a candidate's eligibility for election.	<del>(d.1) Upon the Registrar's request, an ad hoc committee struck by the Board or the Executive Committee shall determine a candidate's eligibility for election.</del> <u>2) The decision as to whether a candidate meets the pre-election competencies within the meaning of Article 6.3(t) is within the sole discretion of the Screening Committee. The Screening Committee's decision is final and not subject to challenge.</u>	This amendment clarifies that the Screening Committee's decision on whether a candidate meets the pre-election competencies is final and cannot be challenged.
<b>6.14 Emergency Nomination and By-Election Procedures</b>		
(a)(iii) the nomination of a candidate for election as a Director shall be in writing, in a form provided by the Registrar, and shall be submitted along	(a)(iii) the nomination of a candidate for election as a Director shall be in writing, in a form provided by the Registrar, and shall be submitted along	This amendment is made for consistency with Article 6.5.

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<p>with a photograph of the candidate. If desired, a brief biographical statement of the candidate, without reference to platform, may also be submitted. The nomination must be received by the Registrar, not less than 20 days before the day of the by-election;</p>	<p>with a photograph of the candidate. If desired, a brief biographical statement of the candidate, <del>without reference to platform,</del> may also be submitted. <u>The biographical statement must not be inconsistent with the College’s public interest mandate and may not include reference to the candidate’s platform.</u> The nomination must be received by the Registrar, not less than 20 days before the day of the by-election;</p>	
	<p><u>(v) the requirements set out in Article 6.3(d.1) and (d.2) apply with respect to by-elections;</u></p>	<p>This amendment is made for consistency with Article 6.5</p>
<p><b><u>11.4 Screening Committee</u></b></p>		
<p>n/a</p>	<p><u>(a) The Screening Committee shall be composed of at least four (4) Committee Members, being:</u></p> <p style="padding-left: 40px;"><u>(i) all Appointed Committee Members who are not Registrants;</u></p> <p><u>(b) The Screening Committee shall not include any Elected Directors or Appointed Committee Members who are Registrants.</u></p> <p><u>(c) Where fewer than four (4) Appointed Committee Members who are not Registrants are available, the Board may appoint Public Directors to the Screening Committee.</u></p> <p><u>(d) The Screening Committee shall:</u></p> <p style="padding-left: 40px;"><u>(i) determine whether candidates for election meet</u></p>	<p>This amendment sets out the requirements to form a new non-statutory standing committee, the Screening Committee, including committee composition and primary responsibilities.</p> <p>The purpose of the Screening Committee is to establish a neutral, objective panel that can assess whether candidates for election or appointment meet board-approved competencies. The committee will be composed of individuals who are neither board members nor members of the opticianry profession in order to best ensure fairness and objectivity. In the event, however, that there are not enough members available to meet the minimum committee composition requirements, the board may appoint Public Directors to the committee.</p>

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	<p><a href="#">the pre-election competencies as required by Article 6.3(t); and</a></p> <p><a href="#">(ii) make recommendations to the Board on the appointment of Appointed Committee Members.</a></p>	
<p><b>12.2 Eligibility for Appointed Committee Members</b></p>		
<p>(a) A Registrant of the College is eligible for appointment as an Appointed Committee Member if, on the date of the appointment:</p>	<p>(a) A Registrant of the College is eligible for appointment as an Appointed Committee Member if, on the date of the appointment:</p> <p><a href="#">(v) a period of at least six years has elapsed since the Registrant complied with all aspects of an order imposed by the Discipline Committee or the Fitness to Practice Committee or by a similar committee of a body that governs a profession inside or outside Ontario;</a></p>	<p>This amendment is made for consistency with Article 6.3.</p>
<p>(ix) the Registrant has resigned, at least 3 months before being appointed, any employment with the College;</p>	<p>(ix) the Registrant has resigned, at least 3 <del>months</del><a href="#">-years</a> before being appointed, any employment with the College;</p>	<p>This amendment is made for consistency with Article 6.3.</p>
<p>(xi) the Registrant has not initiated, joined, continued or materially contributed to a legal proceeding against the College or any committee or representative of the College within the preceding one year;</p>	<p>(xii) the Registrant has not initiated, joined, continued or materially contributed to a legal proceeding against the College or any committee or representative of the College within the preceding <del>one</del><a href="#">-six</a> years;</p>	<p>This amendment is made for consistency with Article 6.3.</p>
<p>(xv) the Registrant has been determined by the Governance Committee, or a sub-committee of the Governance Committee, to meet the pre-appointment competencies as may be established by the Board from time to time.</p>	<p>(xvi) the Registrant has been determined by the <del>Governance Committee, or a sub-committee of the Governance</del><a href="#">Committee, Screening Committee</a>, to meet the pre-appointment competencies as may be established by the Board from time to time.</p>	<p>This amendment is made for consistency with Article 6.3.</p>

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<p>(b) A person who is not a Registrant is eligible for appointment as an Appointed Committee Member if, on the date of the appointment:</p> <p>(v) they have resigned, at least 3 months before being appointed, any employment with the College;</p>	<p>(b) A person who is not a Registrant is eligible for appointment as an Appointed Committee Member if, on the date of the appointment:</p> <p>(v) they have resigned, at least 3 <del>months</del> <u>years</u> before being appointed, any employment with the College;</p>	<p>This amendment is made for consistency with Article 6.3.</p>
<p>(vii) they have not initiated, joined, continued or materially contributed to a legal proceeding against the College or any committee or representative of the College within the preceding one year;</p>	<p>(vii) they have not initiated, joined, continued or materially contributed to a legal proceeding against the College or any committee or representative of the College within the preceding <del>one</del> <u>six</u> years;</p>	<p>This amendment is made for consistency with Article 6.3.</p>
<p>(x) they have been determined by the Governance Committee, or a sub-committee of the Governance Committee, to meet the pre-appointment competencies as may be established by the Board from time to time.</p>	<p>(x) they have been determined by the <u>Governance Screening Committee</u>, <del>or a sub-committee of the Governance Committee</del>, to meet the pre-appointment competencies as may be established by the Board from time to time.</p>	<p>This amendment is made for consistency with Article 6.3.</p>
<b>Schedule B</b>		
<p>Non-statutory or ad hoc Committees are composed of a minimum of three members. containing a cross-section of Elected Directors and Public Directors, with at least one Public Director on each committee.</p>	<p>Non-statutory or ad hoc Committees are composed of a minimum of three members. <u>With the exception of the Screening Committee, non-statutory or ad hoc committees will</u> contain<del>ing</del> a cross-section of Elected Directors and Public Directors, with at least one Public Director on each committee.</p>	