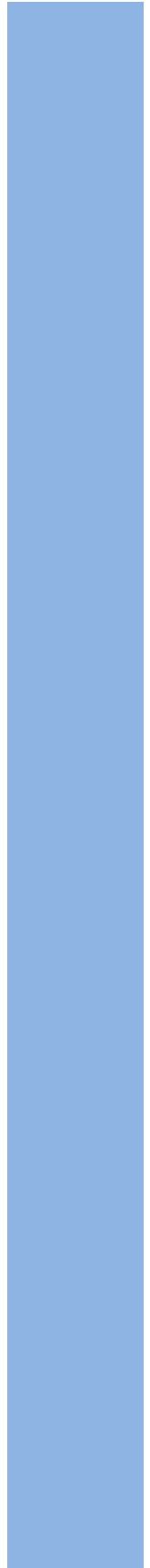




College of Naturopaths of Ontario

# Governance Report Implementation Plan

July 2020



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## INTRODUCTION

The purpose of this Implementation Plan is to set out the processes to implement changes based on the College Council's governance decisions that are outlined in the document *Governance Report: A Mandate for Change, April 2020*. There are three specific types of implementation steps set out in this plan:

1. College Changes – these are changes that the College can undertake on its own in order to implement the decisions;
2. Interim Changes by the College – these are changes that the Council or the College can undertake as an interim step until such time as legislative changes can be made to give full effect to the Council decisions.
3. Legislative Changes – these are changes to statute or regulations that would need to be made by the Government of Ontario in order to give full effect to the Council's decisions.

The implementation plan reflects the sections in the Governance Report and the decisions are numbered consistently with the sections of that report.

## Risk-based Regulation

The Council made two decisions regarding risk-based regulation. They are:

1. A more formal risk-based approach to regulation will be developed by the College through the development of a tool for use at the Committee level and which will be published on the College's website.
2. A mediation process will be considered allowing for a formal negotiated settlement to complaints that pose less risk to the public thereby allowing the College to focus its resources on matters posing a more serious risk.

## Discussion - Risk-based Regulatory Approach & Tool

At this time, it is believed that no health regulatory College in Ontario has created a formal risk-based regulatory approach and/or any related tools. This can be confirmed through the Health Profession Regulators of Ontario (HPRO, formerly the Federation of Health Regulatory Colleges of Ontario). However, research from the United Kingdom (*Right Touch Regulation*, Professional Standards Authority) and from the United States (Malcolm Sparrow, *Character of Harms*) on the topic is available. These can guide the development of a program and associated tool.

Additionally, it is recommended that the profession and professional associations be consulted in the development of the approach and assessment of risks of harm from naturopathic treatments.

This approach might also contain elements of the prior discussions of the Council surrounding an accountability framework. Such a framework sets out which organizations from amongst the regulator, professional associations and education program, are responsible for acting on information gleaned from regulation of the profession.

## Discussion - Mediation Process

Section 25.1 of the Health Professions Procedural Code (HPPC) sets out the authority of the Registrar to refer a matter to an Alternative Dispute Resolution (ADR) process. The College presently does not have such a program enabled although several of the other health regulatory Colleges in Ontario do have such a program. There are also a number of external mediators available to the College to create the program.

### Implementation Recommendation(s):

- a. That the College initiate the development of a risk-based regulatory approach and tool using available research to guide the work.
- b. That the risk-based regulatory approach be developed in consultation with external stakeholders, including Members, the professional association and educational program.
- c. That the risk-based regulatory approach include elements from an accountability framework.
- d. That Council be kept abreast of the developments and presented with a final framework for approval.
- e. That the Registrar develop an Alternative Dispute Resolution (ADR) program for the College, including necessary policies and procedures and present the program, including financial costs, to the Council for approval.

## Role of Council

The Council made one decision regarding its role:

3. The role of Council should be more clearly defined in statute and be focused on governance of the organization and strategic directions and priorities.

## Discussion

As noted in the *Governance Report: A Mandate for Change* (the Report), the role of the Council is not presently defined in legislation. This would be the goal in the long term. However, interim steps could be taken by the Council to review the College by-laws and the Council's policies to ensure that the role of the Council is adequately and properly set out.

Harry Cayton, when undertaking his review of the College of Dental Surgeons of British Columbia, identified the role of Council as:

- ensuring compliance with the regulator's mandate and the legislation;
- setting strategy for the regulator and monitoring performance; and
- appointing the Registrar/CEO and holding them accountable for their performance.

This is consistent with the other scholars on Board governance and with the work of John Carver, the originator of the Policy Governance Model which the Council follows.

#### Implementation Recommendation(s):

- f. That the Council President correspond with the Minister of Health recommending that the role of the Council be properly enshrined in the Health Professions Procedural Code (HPPC).
- g. That the Registrar undertake a review of the College by-laws to ensure consistency with the role of the Council as set out in the Report and make recommendations about changes or additions required.
- h. That the Council undertake a review of its Governance Policies to ensure that the role of the Council set out is consistent with the role as articulated in the Report.

## Size of Council

The Council made one decision surrounding the size of Council:

- 4. That the Council size should not be reduced from the current complement as set out in the legislation.

## Discussion

The *Naturopathy Act, 2007* sets out the parameters of the Council as follows:

- a minimum of six and no more than nine Members of the profession; and
- a minimum of five and no more than eight public members appointed by the Government.

As a result, under the current legislation, the Council could have as few as 11 individuals and as many as 17 individuals. In practice, the Council has eight Members of the profession, one from each district in the Province elected by the Members and, by general agreement with the Ministry of Health, seven public members appointed by the Government, thereby ensuring a one-person majority for the profession. More recently, the number of Government appointments has varied from as few as five to as many as seven.

### Implementation Recommendation(s):

Given that the Council is of the view that its current size is appropriate, there are no implementation recommendations required.

## Composition of Council and Committees

Council made three recommendations regarding the composition of Council and its Committees:

5. composition of statutory committees should be reduced to one sitting Council/Board member on each committee, although the same need not apply to non-statutory committees;
6. the Discipline function should be removed entirely from the regulatory authorities; and
7. that the Council should have an equal representation from the profession and the public.

### Discussion – Committee Composition

The HPPC establishes parameters for panels of some Committees. These include panels of the:

- Registration Committee, which must have one person appointed to the Council by the Government (s. 17(2));
- Inquiries, Complaints and Reports Committee, which must have one person appointed to the Council by the Government (s. 25(2));
- Discipline Committee, which must have at least two persons appointed to the Council by the Government (s. 38(2)); and
- Fitness to Practise Committee, which must have one person appointed to the Council by the Government (s. 64(2)).

As a result, the Registration Committee; Fitness to Practise Committee; and Inquiries, Complaints and Reports Committee must always have at least one Public Member on Council appointed to them and the Discipline Committee must always have at least two Public Members on Council appointed to it. Where there is the minimum allotment of Public Members, there is a risk that the panels cannot be formed when these individuals are not available.

It should be noted that the HPPC was recently amended to provide the Minister with the power to make regulations governing the composition of Committees and panels. No regulations have been made to date.

The Council did not discuss whether Committees should have equal representation of the public and profession.

## Discussion – Discipline Committee

Discipline hearings are held by the College under the authority of sections 38 to 56 of the HPPC. As noted in the Report, the Council was of the view that all Council members may be in a conflict of interest when they sit on panels of the Discipline Committee because they both make the rules governing the profession and then adjudicate cases where a breach of those rules is alleged. To be clear, this is somewhat imposed by legislation as the HPPC requires that certain members of Council sit on discipline panels.

In addition, the individuals on panels are appointed infrequently and have little experience to rely on. When they are appointed to panels, NDs are not permitted to use their knowledge of the standards but must rely on evidence.

As a result, the Council was of the view that the discipline function should be removed from the College (and all Colleges) and ideally placed in a separate entity, as has been proposed in British Columbia.

## Discussion – Council Composition

In its governance review discussions, the Council adopted the position that several other regulatory bodies in Ontario and around the world have taken, namely that the Council should have an equal number of public members and professional members.

### Implementation Recommendation(s):

- i. That the President correspond with the Minister of Health recommending that the HPPC be amended to remove the requirement that public members on the panels of the various committees be public members appointed to Council, thereby allowing public members engaged as volunteers by the College to be used to meet public representation requirements.
- j. That the President correspond with the Minister of Health recommending that the HPPC be amended to remove the discipline function from the health regulatory requirements and that these requirements be placed in a separate entity.
- k. That the Registrar review the By-laws and recommends to the Council changes to reduce the number of districts from eight to seven.
- l. That the President correspond with the Minister of Health setting out the College's intent in (k) and ask the Minister to appoint a full complement of public members (seven in total) to establish parity between public and professional Council members.

## Selection of Council Members

In its Report, the Council decided:

8. that elections of professional Members cease and
9. that the Council be constituted through a competency-based appointment process for both professional and public members.

### Discussion - Ending Elections of Professional Members

Currently, eight Members of the profession are elected to the Council with elections staggered over a three-year period. Each district elects one person. Experience of all health regulatory Colleges has been that Members believe those elected to the Councils “represent their interests” at Council. All Council members are there to protect and serve the public interest. Based on its concerns, and in a manner that is consistent with other regulatory reforms being undertaken, the Council determined that the elections process should be replaced.

Elections are authorized pursuant to paragraph (a) of section 6.(1) of the *Naturopathy Act, 2007* which establishes the composition of the Council as at least six and no more than nine Members of the College “elected in accordance with the by-laws”. In addition, paragraphs (d.1) through (d.3) of section 94 (1) of the HPPC allows the Council to make by-laws governing the election of Council members, qualification and terms and conditions for disqualifying elected Council members. It should be noted that the by-law making authority is not mandatory but permissive, therefore its removal is not absolutely necessary.

### Discussion - Competency-based Appointments

As noted in the research used to inform the governance review report, best practices are for Council/Board members to be appointed based on the competencies necessary for them to be effective Council/Board members. As noted in the Report, Canada is unique in still permitting professions to elect members onto regulatory Councils where most other jurisdictions have moved to competency and skill-based appointments for both lay and professional members.

The Council has previously seen a preliminary version of competencies for Council and Committee appointments on which it has provided feedback to the Registrar & CEO.



### Implementation Recommendations:

- m. That the President correspond with the Minister of Health recommending that the *Naturopathy Act, 2007* be amended to remove reference to the election of professional members of Council.
- n. That the President correspond with the Minister of Health recommending that section 94(1) the HPPC be amended to remove the by-law making authority for Councils governing the elections of professional members and adding by-law making authority for Councils governing the appointment of professional members;.
- o. That the President correspond with the Ministry of Health noting that the Council will be moving to a competency-based process and that she consider the competencies developed by the Council in her future appointment of public members to the Council.
- p. That the Registrar & CEO review the competencies developed for Council and Committee appointments and present them to the Council for approval and adoption.
- q. That the Registrar & CEO continue the development of a comprehensive volunteer program and that necessary policies be presented to Council for approval (or acceptance as the case may be) no later than the April 2021 Council meeting.
- r. That the Registrar & CEO review the Terms of Reference for the Nominations and Elections Committee and make recommendations to the Council for changes, in name and substance of this Committee, such that it will assume responsibility for nomination, selection and appointment process for the Council and Committees.
- s. That the Registrar & CEO, in association with Legal Counsel and other relevant partners, develop an induction (boot camp) program as set out in paragraph (xvi) of section 10.05 of the College's by-laws for implementation.
- t. That competency-based assessments and the induction program be implemented as soon as practicable but not later than necessary for use in the next cycle of Council elections and Committee appointments.

## Need for an Executive Committee

The Council made one decision regarding the need for an Executive Committee:

- 10. that the Executive Committee be eliminated.

### Discussion

As noted in the Report, the need for Executive Committees has been waning as the size of Council/Boards have been reduced over time. As best practices today are suggesting a Council/Board of six to nine members, there is arguably no need for an Executive Committee.

The Council also noted a variety of approaches to the roles of Executive Committees among the health regulatory Colleges. Some committees approach their role as a vetting one for materials intended to go to Council while others see a very limited role, leaving decisions to the Councils themselves.

In this College, a middle of the road approach has been taken such that the Executive Committee undertakes work on behalf of the Council on some occasions, will approve matters that are deemed to be urgent and unable to wait for the next Council meeting, and provides feedback to the Registrar & CEO on matters as requested.

The authority for the Executive Committee is set out in the HPPC. Paragraph 1 of section 10 (1) of the HPPC establishes the Executive Committee as a statutory committee and section 12 sets out the powers of the Executive Committee to act with the full authority of the Council (except to make, amend or revoke a by-law or regulation) between meetings of the Council.

#### Implementation Recommendations:

- u. That the President correspond with the Minister of Health recommending that the HPPC be amended to repeal paragraph 1 of section 10(1) and to repeal section 12.
- v. That the President correspond with the Minister of Health recommending she remove the by-law making authority for Councils governing the elections of the President.
- w. *Struck.*
- x. That, as an interim step, the Registrar & CEO reviews the Terms of Reference of the Executive Committee and makes recommendations to the Council on amendments to limit the Executive Committee's authority to urgent matters at the discretion of the Chair.
- y. That, also as in interim step, the Registrar & CEO revises the Council meeting schedule as soon as possible such that the Council meets approximately every 60 days to facilitate timely decision making in the absence of the Executive Committees authority.

## Role of the President/Chair

The Council made the following decisions with respect to the President and Vice President positions:

11. that the Council of the College move away from the President terminology and adopt the term Council Chair and
12. that the position of Vice President be eliminated.

## Discussion – President

All Ontario health regulatory colleges have a President position. It is often confused with the role of the senior staff position of the College as the title implies greater authority over the College. Best practices today are to move away from that title for the senior elected official and instead, implement the position of Chair.

## Discussion – Vice President

The primary role of the Vice President is to be prepared to assume the responsibilities of the President, either temporarily if they are not in attendance at a meeting or permanently should they no longer be able to serve.

The Council was of the view that in the absence of a Vice President (or Vice Chair position), the Council would select a person to chair a meeting in the absence of the President/Chair and, should the President/Chair no longer be able to serve in that position, then the Council should elect new President/Chair from among its members.

It is important to note that all operations of the College are delegated by the Council to the Registrar & CEO. In a time when the President had greater authority over the operations of an organization, having a second person ready to step into the role mattered more. In the context of the College's operations, the position is less relevant.

## Discussion – Legislative Parameters

Section 7 of the *Naturopathy Act, 2007* states that the Council shall have a President and Vice President. Therefore, formally altering the title of the President and eliminating the position of Vice President cannot be accomplished without amendments to this statute.

It is also worth noting that paragraph (e) of section 94(1) of the Code provides the Council with by-law making authority governing the election of the President and Vice President of the College. Again, this is permissive language such that the Council is not required to make such by-laws if, in their circumstances, they are not needed. However, an amendment may be needed in the long term to effect the change in title of the President position.

### Implementation Recommendations:

- z. That the President correspond with the Minister of Health recommending that the *Naturopathy Act, 2007* be amended to remove the position of Vice President and amend the title of President to Chair in section 7.
- aa. That the Registrar & CEO prepare a by-law amendment for the approval of Council adding a definition of Council Chair and Council Vice Chair as being equivalent as the terms President and Vice President respectively in the *Naturopathy Act, 2007* and the HPPC. Said by-law changes will also amend all references to these two titles in all cases to become Chair and Vice Chair.
- bb. That effective immediately, all communications of the College shall refer to the Council Chair and Vice Chair as opposed to the President and Vice President respectively.

## External Audit

The Council made three recommendations regarding an external performance audit, including:

- 13. that the Council adopt a formal annual evaluation process that includes a Council/committee performance evaluation, an individual self-assessment for Council and committee members, and an assessment of each Council and committee member by their peers;
- 14. that an external third party will be retained to receive, consolidate and present the findings to each member of Council and Committees; and
- 15. that a summary report of the evaluation will be released publicly by the College.

### Discussion – Annual Performance Evaluation

For the purposes of this discussion, annual performance evaluation is in the context of the Council's performance. College organizational performance and the Registrar & CEO's performance are addressed in formal policies of the College, which are under review by the Executive Committee.

The Council of the College has had mixed success with its performance review process. Its most recent process had greater participation likely because it was a simplified approach. An earlier version which used a three-part evaluation process engendered lower participation.

Notwithstanding the difficulties in the past, the Council has accepted much of the research which suggests that a multi-faceted performance review process is important to the overall functioning of the Council. Several versions have been developed and used in the past by other organizations, the most notable being the Ontario Hospital Association. Most versions include the following:

- i. an assessment by each Council member on general Council performance as a whole;
- ii. an individual self-assessment by each Council member of their own performance; and
- iii. an individual assessment by each Council member of every other Council member's performance.

There are several reasons for this extensive review. First, the Council gets an indication as an entity on how well it is doing on specific parameters from (i) above. Second, each Council member completes an assessment of themselves on different parameters from (ii) above. Finally, each Council member receives aggregate information on how all of the other Council members rated them on the same parameters based on (iii) above. This allows individuals to check their own evaluation (how they see themselves) against the evaluations of others (how others see them).

## Discussion – External Third Party Support

The challenge with the process above is to ensure that it is kept confidential and individuals are not exposed to criticism or ridicule, although that would be highly uncommon. To ensure confidentiality, fairness, and openness, best practices are that the assessments and comparisons are conducted by a neutral third party. In this way, the details are retained outside the College and a neutral person will meet with each Council member and provide the feedback. This also saves the President/Chair from having to provide potentially negative feedback to a colleague on Council.

## Discussion – Public Release of the Report

Accountability and transparency suggest that the aggregate reports be made publicly available. At a time when the public is losing confidence in the regulatory authorities, information that shows how well they are doing, where improvements are needed and where improvements have been accomplished will serve to improve the public perception. As a public agency that serves the public interest, providing meaningful evaluation information is important and increases transparency.

### Implementation Recommendations:

- cc. That the Registrar & CEO issue a Request for Proposals to interested third parties who can assist the Council in the development and delivery (over the first three years) of this new performance evaluation process.
- dd. That the Registrar & CEO work with the successful vendor in the development of the evaluation policies, procedures and tools for presentation to the Council for approval.
- ee. That the new evaluation process be ready for implementation for the Council whose term ends in April 2021.

## Terminology

The Council made several decisions regarding terminology used by the College:

- 16. that the name of the regulatory authorities should be changed away from “College”;
- 17. that the name of the governing body of the regulatory authority should be referred to as a “Council” as opposed to a Board;
- 18. that the senior staff official appointed by the Council should be referred to as the “Chief Executive Officer (CEO)” as opposed to “Registrar”, “Registrar & CEO” or “Executive Director”;
- 19. that the individuals that the regulatory authority regulates should be referred to as “registrants” as

- opposed to “Members”; and
20. that the individuals that the regulatory authority regulates should be referred to “registered to practice” as opposed to “licensed”.

## Discussion – Terminology

The rationale for these changes in terminology or nomenclature are set out in the Report.

### Implementation Recommendations:

- ff. That the President correspond with the Minister of Health asking that the Naturopathy Act, 2007 and the HPPC be amended to cease referring to the “College” of Naturopaths of Ontario.
- gg. That as interim step to legislative change, the College highlight in its communications that the College of Naturopaths of Ontario is the regulatory authority for naturopathic doctors in Ontario.
- hh. That the title of the Chief Staff Officer be immediately altered from Registrar & CEO to Chief Executive Officer (CEO). All legal communication will note that the Chief Executive Office has been appointed by the Council as the registrar pursuant to section 9(2) of the HPPC. This change will be made throughout all Council and College documents.
- ii. That the President correspond with the Minister of Health recommending that the reference to Members in the Code be amended to refer to Registrants.
- jj. That the College, effective immediately, ceases to refer to its Members but rather to its Registrants in all communications and that all policies and by-laws of the College be updated to reflect this change.

## Standards Committee

The Council made one decision relating to the Standards Committee:

21. that standard setting (development and approval) should be mandated to a statutory committee in the legislation, either the Quality Assurance Committee or a separate authorized Standards Committee.

## Discussion – Standards Committee

As noted in its Report, the Council has some concern that the role of standard setting is not clearly assigned to any particular group within the College and does not generally fall within the revised role of the Council.

Currently, the Quality Assurance Committee of the College is charged with the process of developing the standards of practice, however, these are brought before the Council for approval. Council members then sit on panels of the ICRC or Discipline Committee where they adjudicate performance of Registrants against those standards. Until such time as the discipline process is removed from the College, the most effective means of addressing this inherent conflict is to remove the role from the Council.

### Implementation Recommendations:

- kk. That the President correspond with the Minister of Health asking that the role of setting standards of practice be assigned to a new or existing statutory committee in the HPPC.
- ll. That, as an interim step, the CEO review the Terms of Reference of the Quality Assurance Committee and make recommendations to Council for changes that would provide the authority for the QAC to set and approve the standards of practise.
- mm. That the CEO, working with the QAC, determine the necessary competencies of Committee members to enable informed decision-making surrounding the standards of practice.
- nn. That no professional member on the QAC be appointed to a panel of the Discipline Committee (DC) of the College unless and except a) the standards of practice are not at issue<sup>1</sup> in the matter being brought before the panel, or) the appointment is absolutely necessary, in the discretion of the DC Chair, to the timely disposition of the matter.

## Number of Colleges

The Council made one decision relating to the overall number of Colleges:

- 22. that the College Council begin proactively contemplating this question as part of its planning processes.

### Discussion

Given proposed changes in British Columbia and given the various discussions among regulatory stakeholders, it is likely that at some time, Ontario will consider the amalgamation of health regulatory authorities. In preparation for these discussions, the Council was of the view that it should proactively contemplate the matter as part of its planning process.

### Implementation Recommendations:

- oo. That the CEO undertake research as to the various potential models for amalgamation of health regulatory authorities in Ontario and present those models to the Council, along with the advantages, disadvantages and consequences of each model for the consideration and planning discussions of the Council.

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<sup>1</sup> A Standard of Practice is not at issue in a hearing before the panel if a) the matter is uncontested by the Registrant or b) the allegations set out in the Notice of Hearing do not allege violation of any standards.