College of Naturopaths of Ontario

Governance Report: A Mandate for Change

July 2020

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SUMMARY OF DECISIONS

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.
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.
4. That the Council size should not be reduced from the current compliment as set out in the legislation.
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.
7. That the Council should have an equal representation from the profession and the public.
8. That elections of professional Members cease;
9. The Council be constituted through a competency-based appointment process for both professional and public members.
10. That the Executive Committee be eliminated.
11. That the Council of the College would move away from the President terminology and adopt the term Council Chair;
12. That the position of Vice President would be eliminated;
13. That the Council adopts 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. An external third party will be retained to receive, consolidate and present the findings to each member of Council and Committees;
15. That a summary report of the evaluation will be released publicly 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 a "registrants" as opposed to "Members";
20. That the individuals that the regulatory authority regulates should be referred to "registered to practice" as opposed to "licensed";
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.
22. That the College Council begin proactively contemplating this question as part of its planning processes.

INTRODUCTION

The Council of the College of Naturopaths of Ontario (the College) has been monitoring discussions in a large number of sectors and jurisdictions about self-regulation versus professional regulation and the future of regulation as a whole. The Council has set as one of its strategic goals to demonstrate excellence and leadership in regulation. It is within this context that the Council determined that a proactive consideration of these issues, outside of any imposed Government change, was the right thing for the Council and the College to undertake at this time.

There have been a myriad of issues over the past several years that, when viewed collectively, lead to a natural questioning of the governance model for regulated health professions. These issues have included transparency, accountability, public trust and the perspective that regulatory organizations protect their own. While the College itself has not been the focus of attention for its approach to regulation, it is not immune to the broader issues surrounding public trust and confidence in regulators of all stripes.

Add to this the ever-growing research on regulation around the globe and research that has been identified in a white paper developed for the Council, one can see there has been and remains a healthy and respectful questioning of key governance issues, including:

- The selection, role and size of a Council/Board;
- The role of the Chair of a Council/Board;
- A separation between those who govern on a Board and those who regulate through the Committee structures; and
- The evolving nature of regulation (self-regulation vs profession-directed regulation).

REVIEW PROCESS

THE COLLEGE followed a process that would allow it to derive maximum benefit from the excellent work of other organizations in Ontario and across many jurisdictions. The College also reached out to its stakeholders, including Members, naturopathic organizations, the Citizens Advisory Group and Ontarians, to ascertain their respective points of view. In this regard, the College:

- Undertook an extensive literature review;
- Received presentations from the College of Nurses of Ontario, the College of Physicians and Surgeons of Ontario, and the Ontario College of Teachers about their governance work and outcomes;
- Met with key naturopathic stakeholders;
- Surveyed Members of the College;
- Surveyed members of the public and the Citizens Advisory Group, as representative of the public.

This information was assembled and provided to the Council to allow advance work. Council met on January 28, 2020 and January 29, 2020 to debate key governance concepts in an open meeting. This report summarizes the discussions of the Council and the decisions and recommendations relating to modernization of the regulatory model for naturopathy in Ontario.

KEY AREAS FOR CHANGE

Based on the information placed before the Council, including the literature review, best practices identified and stakeholder feedback, the Council considered the following key areas for change and made the following decisions and recommendations.

Risk-based regulation

Traditional regulation models involve a series of rules implemented by the regulator. It is a reactive system and is triggered by a complaint or identification of harm.

Regulators have been encouraged to abandon the traditional approach and adopt a risk-based approach under which all decisions and activities are viewed through the lens of risk. Regulators would look to the risks within their profession and invest time and resources to try and reduce (or eliminate) those risks to the public. This would require regulators to look to data and trends to identify the existing and emerging risks. It would also require regulators to identify what poses a risk to the public as opposed to focusing solely on the reputation of the profession. It would require regulators to be nimble and flexible and not rely on mere rules and regulations.

THE COLLEGE was set up as a traditional regulator. It has fixed registration practices, mandatory reporting requirements, and investigation and enforcement measures. However, it also has elements of risk-based regulation in that it creates its own standards, collaborates with other professions and educators, and ensures that its Members remain current to the regulatory landscape.

The Council was of the view that the College presently uses a risk-based approach in many of its regulatory processes including those described below.

- Complaints/reports data and regulatory guidance inquiries inform outreach communications and advisories to the profession.
- Discipline data also informs outreach communications and advisories to the profession.
- Within the limits set by the legislation, the Inquiries, Complaints and Reports Committee (ICRC) does prioritize complaints and Registrar Investigations that involve matters posing a great risk.
- The ICRC uses a risk-based decision-making tool when evaluating complaints to determine the appropriate outcomes.
- The College staff use right touch regulation on matters that come to their attention by prioritizing situations representing risk to the public to the ICRC and addressing those with less risk one-on-one with the Members directly.
- Registration data relating to character is used to assess additional education and training that may be required prior to entry-to-practise.
- Type 1 and type 2 occurrence reports under the Inspection Part of the General Regulation inform inspection outcomes and risks posed by intravenous infusion therapy (IVIT).
- The Quality Assurance Program contemplates risks both generally for the profession but also specifically to the practitioner through the Peer & Practice Assessment process.

- Council's briefing materials always contemplate risks associated with its decision-making.

Nonetheless, the Council acknowledged that a formal process of risk-based regulation does not exist in the College.

Consultations undertaken by the College with all stakeholders found:

- Sexual abuse, and incompetent or unauthorized practitioners are seen to pose the highest risk to patients. Other high-risk procedures/treatments raised include misdiagnosis, IVIT, harmful treatment plans, treating without consent and failure to conduct a proper patient intake.
- While generally seen to be lower in risk, advertising and inappropriate website content can be high risk for patients seeking a cure as they may be more vulnerable to treatments they might not otherwise consider or need.
- Ways to identify and rank risk included:
    - Using high quality aggregate data in conjunction with current and resolved complaints information.
    - Claims data collected from insurance companies can be a helpful source of information in terms of risks and issues.
    - Using existing data and research from other provinces, states or countries (particularly because there is limited data available in Ontario alone as to high risk procedures/treatments).
    - Consulting other regulators could be helpful as well.
    - Consulting the profession to provide input, including new grads, because they have expertise, knowledge, and personal experience to share.
    - Consulting patients.
    - Ensuring open sharing of data between the key naturopathic stakeholders, e.g., schools, associations, regulators.
    - Ensuring the process used to determine which treatments and procedures are high risk is evidence-informed and evidence-based.
    - There should be an agreed upon/understood intensity of risk among NDs, THE COLLEGE, and citizen/patient groups.

It was also suggested that the public be informed about what activities and treatments are considered high risk by the College.

Decision(s):

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.

Reasons:

Although the development of a mediation process will result in added costs to the College, at least initially, the overall benefit of such a program will be to allow the more formal process of the ICRC to focus on matters of greater risk.

The adoption of a more formalized approach to risk-based regulation is a logical next step given the degree to which the approach is used within the College. Overall, the approach of identifying and mitigating risk before issues occur as a means to reducing the need for complaints benefits the public because the complaints process can be onerous to complainants.

Role of Council

Currently, the role of the Council is not well defined in the legislation. In his report on the College of Dental Surgeons of British Columbia, Harry Cayton identified that the role of the Board or Council is to:

- ensure compliance with the regulator's mandate and the legislation;
- set strategy for the regulator and monitor performance; and
- appoint the Registrar/CEO and hold them accountable for their performance.

Having a clearly defined role might enhance the process of filling vacancies on the Council, both in terms of professional and public member positions. Noticeably absent from this role is any reference to standard setting, an area that is currently identified by most regulatory Councils in Ontario as being of primary importance.

Given the role for the Council as proposed by Cayton, the individuals selected to sit on this body may need a different set of skills and experiences that make them fit for this purpose.

During consultations undertaken by the College, there was general agreement that Council's primary role should be governance-focused, including establishing policy and setting standards. Its core responsibilities should be to ensure compliance, set strategy/direction, and appoint and hold the Registrar accountable. Respondents also stressed the importance of protecting the public interest and regulating the profession from that point of view. They also see it as Council's responsibility to maintain accountability, transparency, integrity, and to enforce key principles.

Decision(s):

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.

Reasons:

Best practices for a Council/Board are to clearly define its role and to identify that role as described by Harry Cayton and others. Its primary object is organizational stewardship, good governance and strategic direction setting. With a clearly defined role, the competencies of Council/Board members

can also be more clearly defined and the expectations of those who wish to sit on the Council/Board managed.

Size of Council

The research indicates that many Councils are simply too large. Board sizes vary across jurisdictions from eight members (National Chiropractic Board in Australia) to 12 members (most of the health regulators in the UK) to 33 members (College of Physicians and Surgeons of Ontario). Research indicates that the perfect size is between six and nine.[1] This is a reflection that once the size exceeds the range, human nature takes over. "Loafing" occurs when certain members do not do their fair share and trust the other members to do the work. Once a council or board exceeds this size it is more difficult to get together quickly when needed. It has been determined that as long as there is diversity amongst the six-nine members, sufficient perspective will be brought to the table, thereby resulting in the additional voices being redundant.

However, despite the ideals of a "perfect" limit of nine, 12 members seem to work well. This is small enough to allow it to be nimble and large enough to involve a range of opinions.

The *Naturopathy Act, 2007* set out the parameters of the College 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.

Consultations conducted by the College found overwhelming support for a Council/Board of between eight and 12 individuals. There was recognition that while having more board members potentially allows for greater diversity of opinion, it comes with trade-offs including reduced board effectiveness, efficiency, and the ability to ensure that all members have a voice. Individual board members should represent a variety of stakeholders, which can be achieved with a smaller board, particularly if the board uses advisory groups for input on specific topics/issues.

Decision(s):

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

Reasons:

[1] Vision 2020, College of Nurses of Ontario

The Council did not believe that size differential between what the research found and the Council's current legislative framework was significant. The primary benefit of maintaining the current structure was having a sufficient number of Council/Board members to place on each statutory committee, a decision made earlier in the process by the Council.

Composition of Council and Committees

Currently, members of the Council are also members of various committees. In certain situations, members of Council must sit on certain panels of certain committees (e.g.. Discipline Committee). Therefore, they not only set the standards (as a member of Council) but also decide as to whether a Member breaches a standard (as a member of a panel of the Discipline Committee).

However, there is concern that having members of Council sit on committees is not appropriate nor a good use of resources. For example, by dedicating Council members to Council work, it would alleviate the workload of such members and also provide opportunities for other members of the public and the profession to populate such committees. Further, cleaving the role of the Council from any adjudication would remove any inference of blurring of roles. Council members could act as a proper Board and focus their decisions on policy making and overseeing the College as a whole.

Committee members should focus their efforts and allegiances to the mandate of the committee. Their separation from Council may also provide sufficient "distance" so as to allow the committee to flag trends and issues emerging within their committee for Council to address. This has been identified as a best practice in Ireland, the UK, Australia and New Zealand.

Recent proposed changes in British Columbia include not only a separation of the roles of Council/Board members from Committees but also a cleaving off of discipline processes from the regulatory authorities. In other jurisdictions, complaints and discipline processes are removed from the regulatory authority.

There is also a significant trend to creating parity between the number of professional and public members of Councils/Boards. This reflects the mandate of the regulator – to serve and protect the public interest. It also reflects a concern that the public voice has not been given sufficient volume and that the professional voice has been too loud.

In the UK, health regulatory councils are balanced equally between public and professional. In Ireland, the public members have a one-person majority.

There is no research to prove that a more equal composition results in better decisions. But there is qualitative research to indicate that the public believes that councils or committees with lay majorities are more likely to make decisions that better serve the public interest than those with professional majorities. Ginny Hanrahan of CORU in Ireland (the regulator of health and social care professionals) states that "the belief that a lay majority governance model dispels the sometime public belief that

self- regulating bodies look after the profession first, ahead of public protection."[2]

At the time of these discussions, the Council has five public members appointed by the Government. The *Naturopathy Act, 2007* mandates that it must have, at a minimum, five public members and no more than eight public members. The Act also stipulates that the number of professional members must be between six and nine.

Arguably, if it is the desire of Council to have parity between professional and public member representation, it could be achieved with a Council of 12 (six of each), 14 (seven of each), or 16 (eight of each).

The consultations undertaken by the College determined that there should be equal or near-equal representation of the public and the profession. In other words, if not completely equal then a one-person majority for the profession. There was also agreement among those consulted that there is a need to ensure the competency of all Council/Board members and there must be clear recognition that the Council/Board members are to act in the public interest, regardless of whether they are public or profession representatives.

Decision(s):

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.
7. The Council should have equal representation from the profession and the public.

Reasons:

There are advantages and disadvantages to a complete separation of Council members from Committees. The advantages of complete separation include:

- removes any real or perceived conflict of interest or bias in a Council/Board member who makes the rules also sitting on an adjudicative panel;
- reduced roles may result in better preparation for participating in the committee work or Council/Board work;
- being on both the Council/Board and one or more committees involves a great deal of work on the part of the "volunteers"; and
- having more people involved in committees benefits both the profession and the public by broadening perspectives on regulatory processes.

The disadvantages of complete separation include:

- by sitting on both the Council/Board and committees, participants have a better understanding of the organization and its strategic direction, making it easier to move forward;

[2] *To investigate the Impact of Public/Lay Majorities on Governing Bodies of Regulators for Health and Social Care Professions in Ireland*, V. Hanrahan, 2016

- the College Council/Board members benefit from the learning experience on Committees;
- the College presently has difficulties finding a sufficient number of people to sit on its Committees, a situation that might be worsened should a complete separation occur.

Although there is good rationale for a clear separation of Council/Board and committee composition, the benefits of having some small degree of overlap allows for the realization of many advantages of both models.

In its consideration of the disciplinary processes, it was clear that when a Member of the profession participates on a discipline panel, they are not permitted to use their own knowledge of the profession. For example, if a Member is alleged to have breached a standard of the profession, THE COLLEGE needs to tender evidence of the standard. No one on the panel can rely on their own opinion or experience as to the appropriate standard. As a result, because ND knowledge is generally not required, and in fact is often excluded, removing NDs from the discipline process makes sense.

Other benefits of the separation of discipline from all regulatory authorities is the removal of any real or perceived conflict of interest as well as a likely benefit of the public not seeing the adjudicative process as a profession arguably "covering for their own".

Discipline is a costly exercise that is duplicated 26 times over in Ontario. A benefit of a standardized pool of experienced lay people to sit on discipline panels and the savings across many regulatory authorities stand out.

In terms of public and professional representation, as a body that works in the public interest, the Council was of the view that there should be equal representation of the public and the profession on the Council. However, this requirement should not result in an inability to govern should the full complement of public members not be appointed. The Council was reflecting its own experience whereby the number of public appointments to the Council has, in the past, fallen below the minimum set out in the *Naturopathy Act, 2007,* resulting in the Council not being properly constituted and therefore unable to convene a meeting and make decisions. It was also reflecting on the fact that the current complement of five public appointees is below the expected number.

Selection of Council Members

Currently, the professional members of Council are elected. This is the model utilized in the other 25 health colleges and most other regulators in Ontario (lawyers, teachers, architects, etc.). Canada is one of the last jurisdictions that still uses this model.

There has been growing concern that those elected are merely the most popular or those who can fund an expensive and effective campaign. Further, there is concern that the election model creates an incorrect assumption on the part of the successful candidate that they "represent" the profession that elected them. This is despite of the fact that the only constituency that a professional – or public – Council member has is the public. Finally, there is concern that the election model does not result in

the necessary diversity of perspectives and experiences.

There is also concern that certain public members are being appointed without sufficient experience in regulatory environments and that they are expected to defer to the professional members of Council.

Therefore, the trend has been to recommend the abandonment of elections and select professional members. The selection would occur by the regulator. The selection would be based on publicly available competencies. These competencies could include accounting, legal, and regulatory experience. The selection of a candidate would only occur after the candidate had successfully completed a boot camp or induction program thereby ensuring that the candidate was aware of the mandate of the College and of their fiduciary duties to the College.

These competencies and induction programs would also be required for public members. Although the government would still appoint the public members, the government would only do so after they were informed by the regulator of the propriety of such an appointment.

Based on the College's consultations, there is general support for the regulator to select/appoint Council/Board members. There is also very strong support for a competency and skills-based approach. A screening process makes sense but must be realistic enough to be implemented, particularly because there may not always be an adequately sized pool to fill the number of vacant positions. It was also suggested the College proactively market the benefits of serving on Council to potentially attract more Members to run for election.

Succession planning and self-regeneration of the Board are important considerations in the recruitment of potential members. Committee membership can also be a good source to identify and groom people for Council positions, though the election process may make this difficult to follow through on.

Whatever method(s) are used, they must be transparent and use an established process that undergoes regular scrutiny to ensure all the steps were followed. Ensuring candidates and appointees have the required competencies is essential, along with clear job/role descriptions, and the provision of training and education for all Council members.

Decision(s):

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

Reasons:

The Council agreed with the research that the election of public members is not guaranteed to bring about the participation of people with the correct competencies to perform their role. Furthermore, confusion as to whether professional members "represent their constituencies" is something that many Council members have experienced, though probably to a lesser degree than other regulators.

The Council was not convinced that the current model of electing one individual from each of eight districts accomplished the most optimal and diverse representation. It questioned whether there might be fewer districts or more representation from larger urban centres, although it felt that rural representation on Council was important due to concerns surrounding access to care.

Need for an Executive Committee

The literature indicates that the need for an Executive Committee is waning in light of smaller Council/Board sizes. The smaller size of a Council/Board allows for more frequent meetings and an ability to convene a meeting on an emergency basis. This is not possible with Councils/Boards in the sizes as has been seen in some regulatory bodies, including some in Ontario.

Currently, the College has an Executive Committee that is made up of five individuals: the President and Vice President and three Officers-at-large, all of whom are elected by the Council from among its members. The Council meets once every quarter while the Executive Committee also meets quarterly. The schedule enables a meeting of Council or the Executive Committee to occur approximately every six weeks.

There are a wide variety of approaches taken by Executive Committees of professional regulators. Some are quite active and make many decisions between Council meetings and prepare strong recommendations for Council ratification. Other Executive Committees tend to view themselves as servants of Council, who make few decisions on their own and who primarily facilitate Council decision making on policy issues. There is no right approach. The approach taken depends on many factors including the culture of the organization, the size of the Council, its volume of work and the timeline available for most decision making. So long as the approach adopted leads to effective decision making and is generally accepted within the organization, it is acceptable from an overall governance perspective.

The Executive Committee of the College does exercise the authority of the Council between meetings, as the legislation identifies; however, they have tended to act more commonly on matters that are seen as pressing or urgent. Not all matters that go before the Council come to the Executive Committee initially, unless it is a matter that the Council has asked the Executive Committee to examine and make recommendations.

This topic drew mixed responses from stakeholders. Those in favour of keeping an Executive Committee believe it to be useful in handling business between Council meetings and add that it must have very clear terms of reference. They also cited it as a valuable “training ground” for succession planning. However, if there is a smaller board/council that could meet six times/year instead of four this could reduce the need for an Executive.

A strong majority of online respondents were against the need for an Executive Committee, saying it is redundant, adds another layer of bureaucracy, defeats the point of having a smaller board, slows down efficiency, they have no real power on financial decisions, makes no sense, and is an additional expense.

Decision(s):

10. That the Executive Committee be eliminated.

Reasons:

As noted above, the Council is presently within or close to the size range that the literature would suggest is optimal. As noted above, the Council would reduce its size from 15 to 14 to accommodate parity between public and profession representation. At this size, the Council could readily meet more frequently, negating the need for an Executive Committee to act on behalf of the Council between meetings.

It was also noted that the Executive Committee is made up of one-third of all Council members making it not that much smaller than the Council itself. Further, there was a sense that the role might clarified it if it were to remain in place; however, the Executive Committee does tend to create a hierarchy within the Council and the potential for an "us vs. them" mentality.

Role of the President/Chair and Vice President/Vice Chair of Council

Across jurisdictions, regulatory governance is conducted through either Councils or Boards. But in almost all leading jurisdictions, the Council or Board leadership are referred to as Chairs, not Presidents. Their focus is on the functioning of the Board. They act as a liaison to the Registrar/CEO to ensure clear communication between the policy and operational arms of the College.

A further best practice is identified where the Chair is selected through a separate recruitment and screening process, upon demonstration of experience and desired competencies needed in an effective Chair.

In Ireland, the Chair of health regulatory councils is an appointed member of the public.

Currently, the College Council elects a President and Vice President from among its members. The duties of the President are set out in the College by-laws as follows:

- presides as Chair at all meetings of the Council unless the President designates an alternate Chair, including persons not on Council who would act as a non-voting Chair, for all or any portion of the meeting;
- serves as Chair of the Executive Committee;
- performs the duties assigned to the President in the by-laws; and
- performs all duties and responsibilities pertaining to their office and any other duties decided by Council.

The primary role of the Vice President is to assume the responsibilities of the President if the latter cannot be present at a meeting. The Vice President automatically becomes the President should the sitting President be unable to serve.

Consultations suggested that the role of President can be confusing and can imply or involve more responsibility and greater hands-on involvement. In general, the term Chair makes sense for a governance-focussed Board/Council and makes it easier for people to understand the person's role. The role itself must be clear and clarified for all stakeholders.

Training in how to be a successful chair is essential and the Council/Board should have a way of ensuring the person who is selected for this role has the competencies and skills to fulfill what the role requires. Competency is essential, along with a mechanism to replace the person in the role if it is not working. Succession planning can be helpful to grow someone into the role of Chair/President.

It is very important to have conversations with potential Chairs/Presidents about what to expect, what training the person will have to undertake, and what the role requires. This needs to happen in advance of any election/appointment.

Decision(s):

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

Reasons:

The Council agrees with the research and the sentiments of most stakeholders that the term President is confusing to the public and profession alike as it implies a larger degree of hands-on responsibility and authority than is the reality. Adopting the term Council Chair is clearer to all interested parties and more properly reflects the role as set out in the by-laws, despite the terminology.

The Vice President's role is small and is intended to serve only if the President is not available. That mandate can be fulfilled by any sitting member of the Council. Should the Chair not be available, then the Council would elect a person to chair a meeting until the Chair is in attendance. If the Chair steps down, then the Council should more properly elect a new Chair from among its members.

External Audit

As set out in much of the research, there is an increasing trend for regulators to proactively seek independent/external regulatory reviews to evaluate performance overall. Evaluative processes to assess regulatory performance and effectiveness of the organization, but also of Council, committees and the individuals who serve on them, are identified as important best governance practices. This approach has been adopted by Ontario hospitals, among others, with some success.

Public reporting on the evaluation process that highlights successes but also identified areas for improvement - along with the College's plans for improving - demonstrates commitment to accountability and builds public trust.

Currently, the Council is required in its own policies to, at least every two years, evaluate its own performance as a whole and the individual contribution that members make in relation to the responsibilities highlighted in our *Governance Process Policies* and *Council-Registrar Linkage Policies*. The Council does not currently conduct external evaluations or reviews of its performance.

The consultation process indicated very strong support for the evaluation of Council to be conducted by an external group/person. Evaluation should consider both how the College performed against set measures in addition to how well it acted to protect the public. Many respondents suggested that stakeholders be given an opportunity to participate in the evaluation (public/patients, stakeholder organizations).

Consultations also revealed that what is evaluated is equally as important as how it is done. The areas for evaluation should be meaningful and relevant. The process must be clear, as should information about how the College will deal with areas that need improvement. Results should be publicly available along with a plan for how Council/the College will improve. Nearly half of online respondents believe the evaluation should be applied to operations of the College in addition to Council. One-third believe the evaluation should also be applied to statutory committees.

Decision(s):

13. That the Council adopts 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. An external third party will be retained to receive, consolidate and present the findings to each member of Council and Committees.
15. That a summary report of the evaluation will be released publicly by the College.

Reasons:

It was noted that an individual self-assessment is of questionable value unless it is validated by one's peers. Having an individual outside the organization collect and assemble the feedback ensures confidentiality within the Council and relieves the President/Chair of having to deliver potentially difficult information to a Council/Board member. Although the process may be expensive, conducting it annually allows for year-over-year comparisons of performance and ensures that people who have been selected for Council and committees are meeting expectations, performing well and, if not, are given an opportunity to improve their performance.

Releasing the performance report publicly allows the public to see how the Council/Board is performing and to track whether improvements develop over time. Overall, public confidence in the regulatory bodies can be improved upon by the ability of the public to see how well the Council/Board is performing.

Terminology

Canada is unique in referring to its regulatory bodies as "Colleges". They are called State Boards in the US, National Boards in Australia, Boards in New Zealand, General Councils in the UK, and Councils or

Boards in Ireland. The Canadian and Ontario experience of using the term “College” has resulted in confusion as several health education institutions also use the term “College.”

In many other jurisdictions, the chief executive officer is not called the Registrar. In the UK and Ireland they are referred to as the “Executive Director” or the “Chief Executive”. In many Canadian regulatory organizations, the staff leader is referred to as the Registrar and CEO. In the US, they are commonly called the Executive Director. In Ontario, the Council is required under the legislation to appoint a staff person to act as “registrar” although it does not mandate the use of that title.

Canada is also unique in referring to registered professionals as “members”. In most other leading jurisdictions, registered professionals are referred to licensees or registrants. It would be considered best practice to eliminate the potential for confusion that is created by ‘members’, thereby disabusing the belief that the regulator is a club for professionals or a member service organization. Other best practices address changing the name of “Council” to “Board” in order to clarify its role and reinforce its policy-making role.

The role of the leader of the governing board is called “Chair”. Their focus is on the functioning of the Board and liaison with the Registrar/CEO to ensure clear communication between the policy and operational arms of the College.

The College’s consultations found the following:

- Name of College - Almost all online survey respondents are in favour of Ontario’s regulatory colleges changing their names [instead of being called Colleges] to more accurately reflect their role. Respondents said:
    - few people understand what “College” means and confuse it with an educational institution,
    - most people understand “licensing board” and are very confused by “college”,
    - the term College is very confusing for people who are not affiliated with a regulator, and
    - changing the name would better reflect the role of the organization.
- “Members” or “Registrants” - 67% of online respondents somewhat to strongly agreed that NDs should be referred to as “registrants” instead of “members”.
- “Board” or “Council” - Among online survey respondents, a clear majority favour using “Board” to describe the governing body rather than “Council”. They view the term “Board” to be clearer, more definitive, better understood by lay people, and more authoritative. Stakeholders commented that “Board” is more applicable for a role that is purely policy focused. However, there was some concern that changing the name from Council to Board may be overly confusing for the profession.
- “Chair” or “President” - Chair makes sense for a governance-focussed Board/Council and makes it easier for people to understand the person’s role. The role must be clear and clarified for stakeholders.

Decision(s):

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 a "registrants" as opposed to "Members".
20. That the individuals that the regulatory authority regulates should be referred to "registered to practice" as opposed to "licensed".

Reasons:

Much of the rationale for the Council's decisions is set out above. A "college" causes confusion with educational institutions, CEO is less confusing than the title of Registrar, again in part because that language is associated with educational institutions. Referring to those who are regulated as "members" implies belonging to a club or voluntary association and provides the public with the wrong impression. Being registered to practise versus licensed is more consistent with "registrant" and Council Chair is clearer to the public than President.

With respect to referring to the governing body of the regulatory authority as a Council as opposed to a Board, the Council saw no significant difference in one usage over the other.

Standards Committee

Earlier in the discussions it was identified that the role of the Council, as described by Cayton and others is to:

- ensure compliance with the regulator's mandate and the legislation;
- set strategy for the regulator and monitor performance; and
- appoint the Registrar/CEO and hold them accountable for their performance.

Absent from this is discussion as to how standards of practice of the profession are established. Under the current the College model, the Standards are developed by the Quality Assurance Committee, consulted upon by the Committee and presented to the Council for final approval. Such a process does not fall explicitly within the mandate of the Council/Board.

Decision(s):

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.

Reasons:

In light of the proposed changes to the role of the Council/Board, it is important that clarity surrounding standards setting also be established. As such, a committee with the statutory authority to set standards is required. This could be a function of the Quality Assurance Committee or a separately mandated committee on its own.

Number of Colleges

The Council of the College was aware of the recent proposal in British Columbia to amalgamate the 20 BC regulatory authorities into five entities. The question was raised as to whether a similar suggestion should be made in Ontario. Specifically, the question was "does every health profession need a regulatory authority"?

Prior to the BC proposal, the McMaster Health Forum considered this question and which approach would best be taken to combine regulators to reduce the overall number. Should professions be combined based on risk of harm or on competencies? Other research contemplates different approaches, such as areas of care, e.g., oral health, eyes, etc., or synergies in scopes of practice, e.g., prescribing, compounding, etc.

In his report, Harry Cayton noted that:

> "That there are 21 regulatory Colleges in British Columbia does raise questions about the durability and indeed common-sense of setting up separate regulators for every occupation regardless of its numerical strength or its risk profile. The colleges in BC cover about 118,000 registrants. The smallest has only 78 registrants (podiatric surgeons), the largest, BC College of Nursing Professionals, 55,000. The highest annual fees are paid by registrants of the smaller regulators'; optometrists (805) pay $1390, midwives (228) pay $2340, while Nursing Professionals pay between $450 and $650. This is in line with research findings for both the UK and Australia which show that the larger the register, certainly up to 100 thousand registrants, the greater the economies of scale101. Another less direct factor in a multiple college system is that, on balance, the lower paid occupations pay a higher proportion of their income to be registered than higher paid occupations. Well paid physicians and surgeons pay $1685 to their College, while low paid denturists $1249 each year."[3]

In other words, the smaller the profession, the larger the regulatory burden of paying the costs of being regulated in a single regulatory authority. As Cayton noted, his findings are consistent with research findings in both the United Kingdom and Australia.

Decision(s):

22. That the Council begin proactively contemplating this question as part of its planning processes.

[3] An inquiry into the performance of the College of Dental Surgeons of British Columbia and the Health Professions Act. December 2018, p. 71.

Reasons:

Although there is no certainty that amalgamation of health regulatory authorities will occur in Ontario, there is sufficient research to suggest that some reduction may be in order. Arguably, amalgamation to some degree may very well be in the public interest, in terms of knowing about the regulators and who to contact but also in terms of overall costs of the health care system and the professions. If the professions cannot afford regulation, the regulatory bodies are not sustainable thereby raising the prospect of not being able to properly regulate.

The Council was of the view that how amalgamation occurs could be on any number of potential models noted above and that proactive consideration among the Colleges might enable a model that makes the most sense as opposed to a model imposed by Government.

NEXT STEPS

It had been anticipated that the Council would review the report as part of its April 2020 meeting; however, due to the COVID-19 pandemic and emergency measures put in place, the Council could not meet in person to have a discussion.

In early June 2020, the Executive Committee decided to send the draft report out to the Council for comments and feedback. In the event that there are no substantive issues raised, the Council could address the draft report in July via its video meeting. If substantive issues are raised, then the draft report may need to wait for an in-person meeting or a special meeting on this topic alone.

One the draft report is adopted by the Council, it will be forwarded to the Ministry of Health along the College's implementation plan and a series of recommendations for legislative changes.