



Executive Committee Meeting (Public)

Friday, June 9, 2023 – 10:00 a.m. to 12:30 p.m.

Hybrid Meeting held at HUB 601

175 Bloor Street East, North Tower, Suite 601, Toronto, ON M4W 3R8

Teleconference via Zoom & YouTube Live Stream

Please contact the College at info@denturists-cdo.com
to receive the meeting access information.

AGENDA

Item		Action	Page #
1.	Call to Order		
2.	Land Acknowledgement We acknowledge that the land we are meeting on is the traditional territory of many nations including the Mississaugas of the Credit, the Anishnabeg, the Chippewa, the Haudenosaunee and the Wendat peoples and is now home to many diverse First Nations, Inuit and Métis peoples. We also acknowledge that Toronto is covered by Treaty 13 with the Mississaugas of the Credit.		
3.	Approval of Agenda	Decision	1
4.	Declaration of Conflict(s) Comments on Conflict of Interest by Rebecca Durcan, <i>College Counsel, Co-Managing Partner, Steinecke Maciura LeBlanc (SML)</i>	Declaration	
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	Deanna Williams, <i>Dundee Consulting Group Ltd.</i>		
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13.	Other Business		
	• Acknowledgement of outgoing Council members		
14.	Next Meeting Date		
	➤ 112 th Council Meeting – Friday, September 29, 2023		
	➤ 113 th Council Meeting – Friday, December 8, 2023		

15. Adjournment		
Lunch Break		



MISSION STATEMENT

The mission of the College of Denturists of Ontario is to regulate and govern the profession of Denturism in the public interest.



MANDATE AND OBJECTIVES

Under the *Regulated Health Professions Act 1991*, the duty of each College is to serve and protect the public interest by following the objects of the legislation. The objects of the College of Denturists are:

1. To regulate the practice of the profession and to govern the members in accordance with the health profession Act, this Code and the *Regulated Health Professions Act, 1991* and the regulations and by-laws.
2. To develop, establish and maintain standards of qualification for persons to be issued certificates of registration.
3. To develop, establish and maintain programs and standards of practice to assure the quality of the practice of the profession.
4. To develop, establish and maintain standards of knowledge and skill and programs to promote continuing evaluation, competence and improvement among the members.
 - 4.1 To develop, in collaboration and consultation with other Colleges, standards of knowledge, skill and judgment relating to the performance of controlled acts common among health professions to enhance inter-professional collaboration, while respecting the unique character of individual health professions and their members.
5. To develop, establish and maintain standards of professional ethics for the members.
6. To develop, establish and maintain programs to assist individuals to exercise their rights under this Code and the *Regulated Health Professions Act, 1991*.
7. To administer the health profession Act, this Code and the *Regulated Health Professions Act, 1991* as it relates to the profession and to perform the other duties and exercise the other powers that are imposed or conferred on the College.
8. To promote and enhance relations between the College and its members, other health profession colleges, key stakeholders, and the public.
9. To promote inter-professional collaboration with other health profession colleges.
10. To develop, establish, and maintain standards and programs to promote the ability of members to respond to changes in practice environments, advances in technology and other emerging issues.
11. Any other objects relating to human health care that the Council considers desirable. 1991, c. 18, Sched. 2, s. 3 (1); 2007, c. 10, Sched. M, s. 18; 2009, c. 26, s. 24 (11).



111th Council Meeting Teleconference

Held via Zoom

Friday, March 10, 2023 – 10:00 a.m. to 12:30 p.m.

MINUTES

Members Present:

Lileath Claire
Kristine Bailey
Abdelatif Azzouz
Avneet Bhatia
Norbert Gieger
Elizabeth Gorham-Matthews
Aisha Hasan
Garnett A. D. Pryce
Gaganjot Singh

- President
- Vice President

Regrets:

Christopher Reis

Absent:

Michael Bakshy
Paul Karolidis
Adam-Christian Mazzuca

Legal Counsel:

Rebecca Durcan, Steinecke, Maciura and LeBlanc

Staff:

Roderick Tom-Ying, Registrar and CEO
Megan Callaway, Manager, Council and Corporate Services
Tera Goldblatt, Manager, Quality Assurance and Sexual Abuse Liaison
Elaine Lew, Manager, Registration and Qualifying Examinations
Catherine Mackowski, Manager, Professional Conduct

1. Call to Order

The President acknowledged that the land we are meeting on is the traditional territory of many nations including the Mississaugas of the Credit, the Anishnabeg, the Chippewa, the Haudenosaunee and the Wendat peoples and is now home to many diverse First Nations, Inuit and Métis peoples. It was also acknowledged that Toronto is covered by Treaty 13 with the Mississaugas of the Credit.

The President called the meeting to order at 10:03 a.m.

2. Approval of Agenda

MOTION: To approve the Agenda as presented.

MOVED: G. Singh

SECONDED: A. Azzouz

CARRIED

3. Declaration of Conflict(s)

Comments on conflict of interest were made by Ms. Rebecca Durcan, College Counsel. No conflicts of interest were declared.

4. College Mission and Mandate

The President drew Council members' attention to the College Mission and the College Mandate, which were provided.

5. Consent Agenda

MOTION: To accept the Consent Agenda as presented.

MOVED: K. Bailey

SECONDED: A. Hasan

CARRIED

6. Registrar's Report

The Registrar provided an update on operational activities which occurred since the last Council meeting on December 9, 2022. A report on financial activity for the period of April 1, 2022 to February 28, 2023, including a projection to year-end of March 31, 2023, was also provided.

7. 2023 Elections (General Election & By-Election)

The Registrar provided a report on the regular election to be conducted on Wednesday, June 7, 2023 for Professional Members of Council in Districts 3, 4, and 5, as well as the need to call a by-election to fill the vacancy in District 7.

MOTION: To ratify the decision of the Executive Committee, dated February 23, 2023, to direct the Registrar to hold a By-Election for District 7 in accordance with the CDO By-Laws.

MOVED: A. Hasan

SECONDED: E. Gorham-Matthews

CARRIED

8. College Performance Measurement Framework (CPMF) Report

The Registrar provided an update on the College Performance Measurement Framework (CPMF) reporting process, as well as the current list of Action Items. It was noted that staff are currently working on completing the reporting tool for the period of January 1 to December 31, 2022, which will be submitted to the Ministry of Health by the March 31, 2023, deadline.

9. By-Law Amendments

The Registrar presented proposed amendments to the By-laws of the College of Denturists of Ontario including alignment of the registration year-end with the fiscal year-end, updates to the common valid expense rates, and alignment of the term limits for the President and Vice-President with the *Denturism Act*, which stipulates bi-annual elections for these officer positions (every two years). A separate discussion of each proposed amendment took place.

Regarding the criteria for expense reimbursement for train or bus and automobile travel, it was suggested that "by the most direct route" be removed as the most direct route may not always be the most efficient.

Regarding the term limits for the President and Vice-President, it was noted that the President would remove herself from the discussion of this item and that the discussion would be facilitated by College Counsel. Council members were asked to consider whether the current term served by the President and Vice-President ought to count towards the new term limit should the proposed amendment to these term limits be implemented. A poll was conducted and the majority were in support of the current one-year term served counting towards the two-year term limit.

MOTION: To approve the By-law amendments as amended for Schedule 6: Common Valid Expenses and Schedule 5, amendments to President and Vice-President's term limits, and to circulate for 60-day public consultation the proposed amendments to the registration year end.

MOVED: N. Gieger

SECONDED: A. Azzouz

CARRIED

10. 2023-2024 Draft Budget

The Registrar presented a draft budget for the fiscal year ending on March 31, 2024, and responded to questions and comments.

MOTION: To approve the 2023-2024 Draft Budget as presented.

MOVED: G. Pryce

SECONDED: G. Singh

CARRIED

11. Other Business

No other business was raised.

12. Next Meeting Dates

The following workshop and meeting dates were provided for information:

- Strategic Planning Workshop – Saturday, April 15, 2023
- 112th Council Meeting – Friday, June 9, 2023
- 113th Council Meeting – Friday, September 29, 2023
- 114th Council Meeting – Friday, December 8, 2023

13. Adjournment

MOTION: That the meeting be adjourned.

MOVED: A. Hasan

SECONDED: E. Gorham-Matthews

CARRIED

The meeting was adjourned at 11:58 p.m.

Lileath Claire
President

Date

Roderick Tom-Ying
Registrar and CEO

Date



Special Council Meeting Teleconference

Held via Zoom

Wednesday, April 26, 2023 – 11:00 a.m. to 12:00 p.m.

MINUTES

Members Present:

Lileath Claire
Kristine Bailey
Abdelatif Azzouz
Michael Bakshy
Avneet Bhatia
Norbert Gieger
Elizabeth Gorham-Matthews
Aisha Hasan
Paul Karolidis
Garnett A. D. Pryce
Gaganjot Singh

- President
- Vice President

Regrets:

Adam-Christian Mazzuca
Christopher Reis

Legal Counsel:

Rebecca Durcan, Steinecke, Maciura and LeBlanc

Staff:

Roderick Tom-Ying, Registrar and CEO
Tera Goldblatt, Manager, Quality Assurance and Sexual Abuse Liaison
Elaine Lew, Manager, Registration and Qualifying Examinations

1. Call to Order

Called and convened in accordance with section 22.16 of the CDO By-laws with formal notice given in accordance with section 22.17, the Special meeting was called to order at 11:02 a.m.

2. Approval of Agenda

It was noted that the agenda includes only those items of business that were contained in the formal notice of the Special meeting.

MOTION: To approve the agenda as presented.

MOVED: A. Hasan

SECONDED: G. Singh

CARRIED

3. Declaration of Conflict(s)

Comments on conflict of interest were made by Ms. Rebecca Durcan, College Counsel. No conflicts of interest were declared.

4. College Mission and Mandate

The President drew Council members' attention to the College Mission and the College Mandate, which were provided.

5. Registration Regulation, Emergency Class of Registration

The Registrar and Ms. Rebecca Durcan, College Counsel, presented the 2023 draft Registration Regulation and the consultation feedback received from stakeholders. A discussion took place.

Michael Bakshy departed the meeting at 11:25 a.m.

MOTION: To approve the Registration Regulation (Emergency and 2021 amendments) as presented for formal submission to the Ministry of Health.

MOVED: N. Gieger

SECONDED: E. Gorham-Matthews

ROLL-CALL VOTE:

Abdelatif Azzouz – In Favour
Kristine Bailey – In Favour
Avneet Bhatia – In Favour
Lileath Claire – In Favour
Norbert Gieger – In Favour
Elizabeth Gorham-Matthews – In Favour
Aisha Hasan – In Favour
Paul Karolidis – In Favour
Garnett A. D. Pryce – In Favour
Gaganjot Singh – In Favour

CARRIED

6. Next Meeting Date

It was noted that the 112th Council Meeting will be held on June 9, 2023.

7. Adjournment

MOTION: That the meeting be adjourned.

MOVED: A. Hasan
SECONDED: A. Azzouz

CARRIED

The meeting was adjourned at 12:14 p.m.

Lileath Claire
President

Date

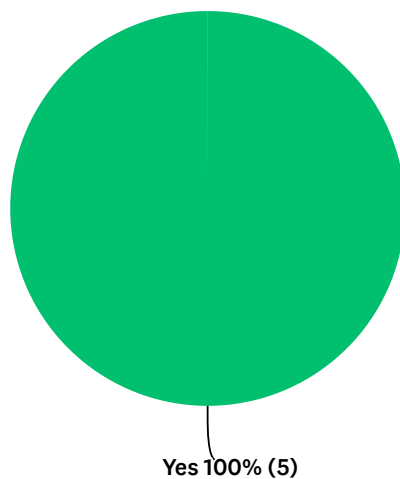
Roderick Tom-Ying
Registrar and CEO

Date

DRAFT

Q1 I received appropriate, supportive information for this Council meeting.

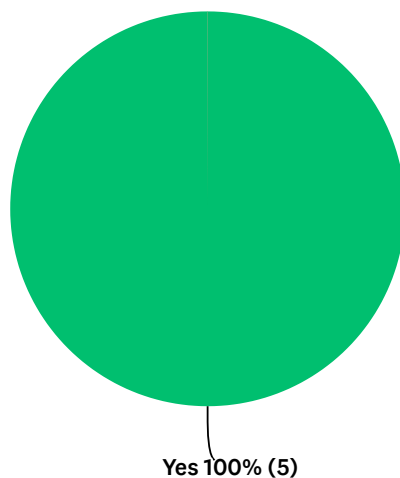
Answered: 5 Skipped: 0



#	COMMENTS	DATE
	There are no responses.	

Q2 I received this supportive information in a timely manner.

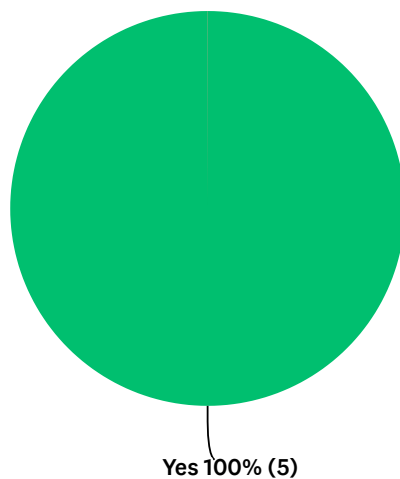
Answered: 5 Skipped: 0



#	COMMENTS	DATE
	There are no responses.	

Q3 I was prepared for this meeting.

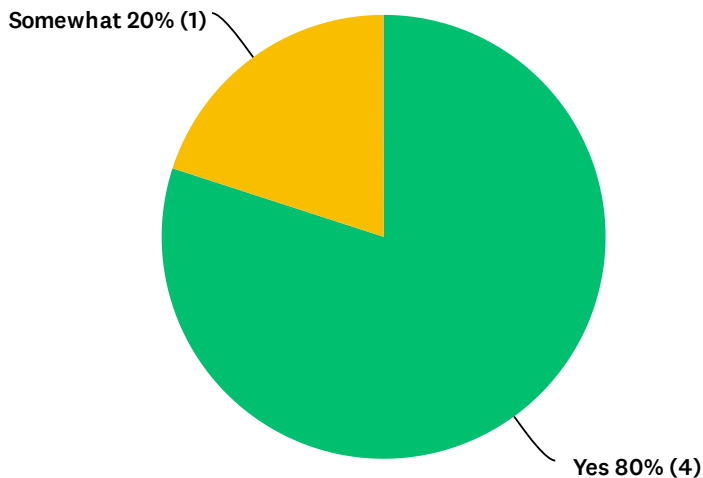
Answered: 5 Skipped: 0



#	COMMENTS	DATE
	There are no responses.	

Q4 All Council members appeared prepared for this meeting.

Answered: 5 Skipped: 0



#	COMMENTS	DATE
1	Would have liked to see greater participation from a wider cross section of members.	3/12/2023 8:02 PM

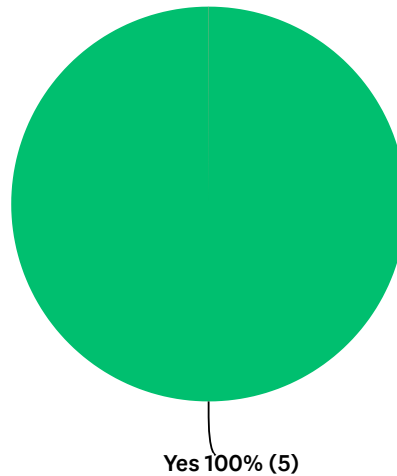
Q5 List any additional supports or resources that would have helped you better prepare for this meeting.

Answered: 0 Skipped: 5

#	RESPONSES	DATE
	There are no responses.	

Q6 This meeting was effective and efficient.

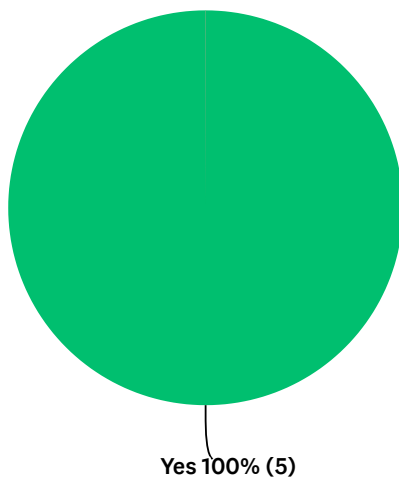
Answered: 5 Skipped: 0



#	COMMENTS	DATE
	There are no responses.	

Q7 The objectives of this meeting were achieved.

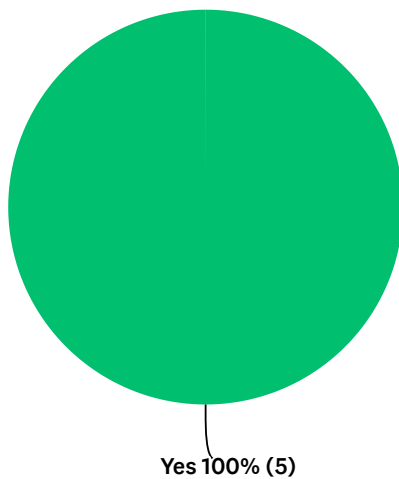
Answered: 5 Skipped: 0



#	COMMENTS	DATE
	There are no responses.	

Q8 The President chaired the meeting in a manner that enhanced Council's performance and decision-making.

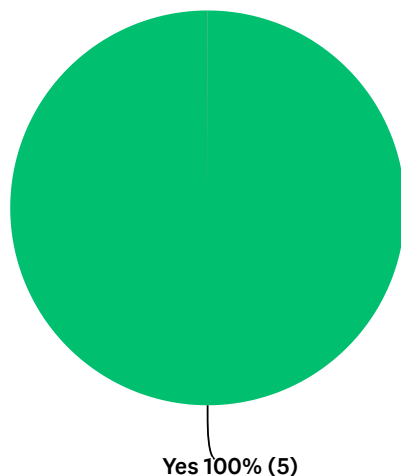
Answered: 5 Skipped: 0



#	COMMENTS	DATE
	There are no responses.	

Q9 I felt comfortable participating in the Council discussions.

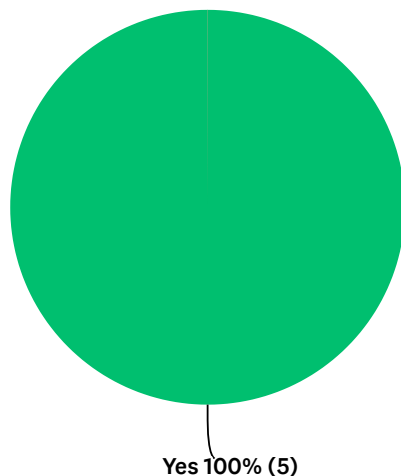
Answered: 5 Skipped: 0



#	COMMENTS	DATE
	There are no responses.	

Q10 The public interest was considered in all discussions.

Answered: 5 Skipped: 0



#	COMMENTS	DATE
	There are no responses.	

Q11 List two strengths of this meeting.

Answered: 3 Skipped: 2

#	RESPONSES	DATE
1	1. Efficiency. Meeting completed within the scheduled time. 2. Clarity of the briefing notes and presentations.	3/12/2023 8:02 PM
2	made a Mutual Agreement together. Feeling included to voice opinions.	3/10/2023 3:04 PM
3	clear agenda and active participation	3/10/2023 12:53 PM

Q12 List two ways in which the technical aspects of this meeting could have been improved.

Answered: 2 Skipped: 3

#	RESPONSES	DATE
1	Simpler way of presenting the By-law changes proposed.	3/12/2023 8:02 PM
2	Improve audio and video quality. members need to come up with their own devices which are not up to the current have zoom meeting requirements and end up consuming too much battery or visual/graphic cards. Provide technical support.	3/10/2023 12:53 PM

Q13 List two ways in which Council meetings could be improved.

Answered: 2 Skipped: 3

#	RESPONSES	DATE
1	Option to be virtual.	3/10/2023 3:04 PM
2	Improve communication and collaboration. also enhancing involvements	3/10/2023 12:53 PM

Q14 Additional Comments

Answered: 0 Skipped: 5

#	RESPONSES	DATE
	There are no responses.	

Q15 Other Questions that Council should be asking in a feedback survey?

Answered: 0 Skipped: 5

#	RESPONSES	DATE
	There are no responses.	



COMMITTEE REPORT TO COUNCIL

Name of Committee: **Executive Committee**

Reporting Date: **June 9, 2023**

Number of Meetings since
last Council Meeting: **0**

The Executive Committee did not meet since its last report to Council on March 10, 2023; however, three Clinic Name Registration Applications were considered electronically by the Committee.

Respectfully submitted by Ms. Lileath Claire
President and Chair of the Executive Committee



COMMITTEE REPORT TO COUNCIL

Name of Committee: **Inquiries, Complaints and Reports Committee**

Reporting Date: **June 9, 2023**

Number of Meetings since
last Council Meeting: **3**

Role of the Committee

The Inquiries, Complaints and Reports Committee supports the College’s commitment to the public interest in safe, competent and ethical care and service. It receives and considers complaints and reports concerning the practice and conduct of Registered Denturists.

Executive Summary

Since the March 10, 2023 Council meeting, the ICRC has considered 10 complete investigations and made final dispositions in 8 matters (8 complaints investigations).

Decisions Finalized:

Complaints	8
Registrar’s Reports	0
Total	8

Dispositions (some cases may have multiple dispositions or multiple members)

No Further Action	5
Advice/Recommendation/Reminder	2
SCERP (incl. Coaching and Training)	1
Deferred	2



COMMITTEE REPORT TO COUNCIL

Name of Committee: **Discipline Committee**

Reporting Date: **June 9, 2023**

Number of Meetings since
last Council Meeting: **0**

Introduction: Role of the Committee

The Discipline Committee supports the College's commitment to the public to address concerns about practice and conduct.

Executive Summary

Since the March 10, 2023, Council meeting, the Discipline Committee has not met, although a pre-hearing conference and contested hearing is scheduled in June 2023 for two referred matters.

Respectfully submitted by Ms. Elizabeth (Beth) Gorham-Mathews
Chair of the Discipline Committee



COMMITTEE REPORT TO COUNCIL

Name of Committee: **Fitness to Practise Committee**

Reporting Date: **June 9, 2023**

Number of Meetings since
last Council Meeting: **0**

Activities during the quarter:

There is no activity to report in this quarter.

Respectfully submitted by Mr. Norbert Gieger
Chair of the Fitness to Practise Committee



COMMITTEE REPORT TO COUNCIL

Name of Committee: **Patient Relations Committee**

Reporting Date: **June 9, 2023**

Number of Meetings since
last Council Meeting: **0**

The Patient Relations Committee did not meet since its last report to Council on March 10, 2023.

Respectfully submitted by Ms. Kristine Bailey
Chair of the Patient Relations Committee



COMMITTEE REPORT TO COUNCIL

Name of Committee: **Quality Assurance Committee**

Reporting Date: **June 9, 2023**

Number of Meetings since
last Council Meeting: **2**

Role of the Committee

The Quality Assurance Committee considers Peer & Practice Assessment reports as an indicator of whether a member's knowledge, skill and judgement meet the Standards of Practice for a Registered Denturist. The Committee also monitors member compliance with the (Continuing Professional Development (CPD) program and develops tools, programs, and policies for the College's Quality Assurance Program.

Meeting: April 4, 2023

Requirement Considered	Result
2020-2021 Peer & Practice Assessments	<ul style="list-style-type: none">• 1 – Remedial action required
2021-2022 Peer & Practice Assessments	<ul style="list-style-type: none">• 4 – Satisfactory• 1 – Remedial action required
2022-2023 Peer & Practice Assessments	<ul style="list-style-type: none">• 1 – Satisfactory

Meeting: May 18, 2023

Requirement Considered	Result
2021-2022 Peer & Practice Assessments	<ul style="list-style-type: none">• 1 – Remedial action required

2023-2024 Peer & Practice Assessments

39 registrants (5% of the total membership) have been randomly selected for PPA's and will be assigned to assessors.

Peer & Practice Assessment Report Summary:

There are a total of 12 registrants who have a Peer & Practice Assessment relation open on their profiles. They will remain open until a full Peer & Practice Assessment has been completed. The explanations range from members who are currently suspended to members who are not currently seeing patients but have successfully undergone a modified assessment, as well as a variety of other reasons.

Program Development:

The QAC carried a motion to introduce a Guideline for Treatment Plans, which will be developed over the summer.

2023 Peer Circle Facilitator Training

On May 13, 2023, twelve Peer Circle Facilitators underwent a full day of facilitator training in preparation for the upcoming Peer Circle event at the DAO conference in June 2023.

Respectfully submitted by Mr. Abdelatif (Latif) Azzouz
Chair of the Quality Assurance Committee



COMMITTEE REPORT TO COUNCIL

Name of Committee: **Registration Committee**

Reporting Date: **June 9, 2023**

Number of Meetings since
last Council Meeting: **2**

Activities during the Quarter:

The Registration Committee has met twice on March 24th, 2023 and April 10th, 2023, since its last report to Council on March 10th, 2023.

At its March 24th, 2023, meeting, the Committee met to consider one academic assessment, one confirmation of terms, conditions and limitations on a Certificate of Registration and three retired status applications.

At its April 10th, 2023, meeting, the Committee met to consider one application for a Certificate of Registration referred to the Committee.

Respectfully submitted by Ms. Elizabeth Gorham-Matthews
Chair of the Registration Committee



COMMITTEE REPORT TO COUNCIL

Name of Committee: **Qualifying Examination Committee**

Reporting Date: **June 9, 2023**

Number of Meetings since
last Council Meeting: **1**

Activities during the Quarter:

The Qualifying Examination Committee has once on March 20th, 2023, since its last report to Council on March 10th, 2023.

At its March 20th meeting, the Qualifying Examination Committee reviewed the item analysis prepared by Dr. Anthony Marini. In his analysis, there were 8 items from the OSCE exam that were presented to the Committee for further review, of which 6 items were deleted to ensure the validity of the candidate's scores. Items identified as problematic were presented and reviewed by the Committee for deletion or kept in scoring.

Examination results were released on April 5, 2023. Candidates who were unsuccessful on the OSCE component of the QE were provided with a detailed performance report.

February 2023 Multi-Jurisdictional MCQ Qualifying Examination

The College of Denturists of Ontario along with the College of Alberta Denturists, and the College of Denturists of British Columbia hosted a common Multi-Jurisdictional MCQ examination for the February 2023 administration.

The MCQ examination was administered remotely in an online format with mandatory (online) remote proctoring. The online format allows the MCQ examination to proceed regardless of changes in the dynamics of the COVID-19 pandemic.

The MCQ was administered on February 17, 2023, with a total of 38 candidates attempting the examination. Of the 38 candidates, 29 candidates were from Ontario, 3 candidates from Alberta, and 6 candidate from British Columbia.

February 2023 MJMCQ Results

February 2023	New	Repeat	Total
Number of candidates	22	16	38
Number of successful candidates	14	6	20
Pass rate (expressed as a percentage of all candidates)	52.6%		
Pass rate (expressed as a percentage of all <u>new</u> candidates only)	63.6%		

February 2022 OSCE Qualifying Examination

The College hosted its February OSCE examination on February 25th and 26th at the David Braley Centre in Hamilton.

February 2023 OSCE Results

February 2023 – All Schools Results	New	Repeat	Total
Number of candidates	18	9	27
Number of successful candidates	13	8	21
Pass rate (expressed as a percentage of all candidates)	77.8%		
Pass rate (expressed as a percentage of all <u>new</u> candidates only)	72.2%		

Respectfully submitted by Mr. Abdelatif (Latif) Azzouz
Chair of the Qualifying Examination Committee



COMMITTEE REPORT TO COUNCIL

Name of Committee: **Qualifying Examination Appeals Committee**

Reporting Date: **June 9, 2023**

Number of Meetings since
last Council Meeting: **0**

Activities during the Quarter:

The Qualifying Examination Appeals Committee has not met since its last report to Council on March 10th, 2023.

Respectfully submitted by Ms. Lileath Claire
Chair of the Qualifying Examination Appeals Committee



To: **Council**

From: **Lileath Claire**

Date: **June 9, 2023**

Subject: **President's Report**

I am pleased to provide this report to Council, representing selected activities, events, and accomplishments of the College during the period from the last Council meeting March 10th, 2023.

Personnel Matters

The CDO's by-laws requires a fully constituted Council consisting of seven (7) professional members on Council. Due to one resignation and an unfilled vacancy for District 7, as of May 23rd the CDO Council is formally un-constituted. The Registrar and CEO has implemented contingency measures for continued business, minimizing any disruptions during this period and a plan for reconstitution of Council in time for the September 2023 Council Meeting.

Adam Christian Mazzuca resigned from council to focus on his young family and business. We thank Adam for his service and wish him the very best on his continued journey.

2023 Registration Regulation Amendments Submission Package

On April 28th, 2023, the CDO formally submitted to the Ministry of Health, Health Workplace Regulatory Oversight Branch, its Registration Regulation Amendments Submission, including the Ministry of Health mandated Emergency Class of Registration. The Ministry of Health is expected to have specific detailed requirements in effect on **August 31, 2023**.

CDO Council Strategy Workshop – April 14-15, 2023

CDO Council and staff supported by facilitator Deanna Williams had a productive session addressing current SWOT analysis, defining top priorities, and identifying opportunities of success. In addition, the two days included a tour of Hub 601, in-person networking for Council Members & staff and individual & group portrait sessions.

Indigenous Peoples, Reconciliation, and Anti-Bias Workshop – May 26, 2023

Council members from four Oral Health Colleges; CDO, CDTO, CDHO and RCDSO, attended a full day joint session delivered by the *First Peoples Group*, and facilitated by Heather Watts. The day focused on

highlighting key aspects of the history, practices of Indigenous Peoples and who they are. The 'Big Idea' centered on continued reconciliation efforts moving forward and areas requiring additional focus.

HEALTH PROFESSION REGULATORS OF ONTARIO

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The Health Profession Regulators of Ontario (HPRO) is a not-for-profit organization, incorporated in 1998 as the Federation of Health Regulatory Colleges of Ontario. Its members are the *Regulated Health Professions Act's (RHPA's)* 26 Colleges and the Registrars, who make up the Board of Directors. Collaboration and consensus are key for HPRO, helping its members live out its statement of purpose, "advancing excellence in public safety through collaboration of Ontario's health profession regulators". That is achieved through the following:

- Collaborating to develop common principles, guidelines, and tools to advance the regulation of health professions in the public interest
- Providing education and tools for training Councils, Committees, and Staff
- Sharing resources, approaches, and expertise, providing support for members and mentoring for new Registrars
- Providing a central point of contact for key stakeholders, e.g., Ministry of Health
- Engaging the public, informing them about the role of the regulator in the public interest

HPRO's leadership is thankful to all who support the work of HPRO, making a definitive difference in health profession regulation in Ontario.

WINDING DOWN—COVID-19 PANDEMIC

For the first time since March 3, 2020, HPRO's Board held an in-person meeting - Strategic Planning, facilitated by Deanna Williams (at the College of Chiropractors of Ontario on February 9th). The World Health Organization's May 5th statement that COVID-19 no longer constitutes a public health emergency of international concern, now allows everyone to reflect on that experience and to find ways to implement positive change for themselves and the greater good.



**Management
Committee Members:**

- Elinor Larney, Chair
- Dan Faulkner, Vice-Chair
- Judy Rigby, Treasurer
- Shenda Tanchak,
Member (Past President)
- as of October 6, 2022
- Maureen Boon, Member
- Joe Jamieson, Member -
as of October 6, 2022
- and
- Rod Hamilton, Member
until his passing on
August 11, 2022
(see Page 7)

CHAIR & MANAGEMENT COMMITTEE REPORT

This report covers HPRO’s corporate year from the June 1, 2022, Annual Meeting, reporting to the May 19, 2023, Annual Meeting.

STRATEGIC PLANNING

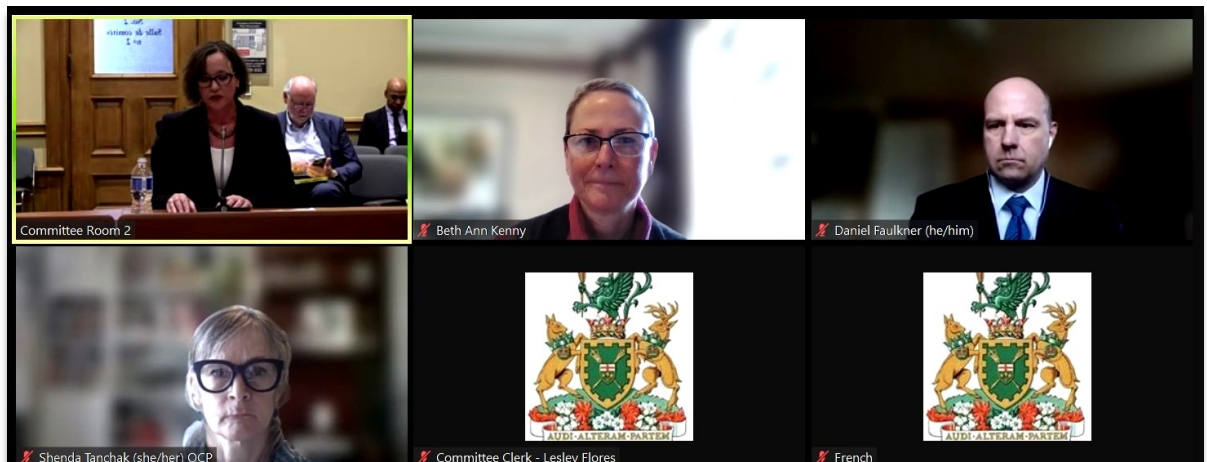
HPRO’s Board of Directors was able to dedicate time to strategic planning (see photo on first page). This follows priority planning preparation and an extensive review and update to HPRO’s By-Laws, ensuring consistency with the *Ontario Not-for-Profit Corporations Act* which took effect on October 19, 2021. Thanks are extended to Deana Williams of Dundee Consulting Group Ltd. For facilitating the session and continuing to share her expertise.

FOCUS ON LEGISLATION

The 2022-2023 corporate year included many meetings and discussions related to new or potentially amended legislation in Ontario. Trends across Canada were also being monitored, particularly noting major changes to regulated health professional registration. Some of HPRO’s focus on legislation is highlighted below.

PRESENTATION TO STANDING COMMITTEE ON SOCIAL POLICY RE. BILL 60, YOUR HEALTH ACT, 2023

On March 21, 2023, Management Committee representative Maureen Boon presented in person to the Standing Committee on Social Policy on Bill 60, *Your Health Act, 2023*, with virtual support of Dan Faulkner and Shenda Tanchak. The presentation focused on certain aspects of the “as of right” provisions, sharing, “HPRO’s goal is to ensure that patients can be confident that the health professionals they see are safe, competent and professional, and that if something goes wrong, there is clear accountability.” HPRO’s support was offered with the hope to work with Government on regulations as the legislative process continues.



CHAIR & MANAGEMENT COMMITTEE REPORT (CONT.)

FEEDBACK ON BILL 106, PANDEMIC AND EMERGENCY PREPAREDNESS ACT, 2022

On June 9, 2022, HPRO wrote to the Ministry of Health's Assistant Deputy Minister Sean Court regarding re. its Bill 106, *Pandemic and Emergency Preparedness Act, 2022*, regulation consultation, focusing on section six and issues such as language proficiency, timely registration decisions, and emergency class of certificates of registration. At the time of publication of this edition of "Highlights", Colleges are completing their public consultation and internal regulation approval processes to include an "emergency class" of registration. HPRO's Chair Elinor Larney wrote, "Be assured that HPRO's member Colleges are committed to preventing any barriers to registration for healthcare professionals, recognizing the paramount need for regulators to fulfill their mandate to protect the public."

COLLEGE PERFORMANCE MEASUREMENT FRAMEWORK (CPMF)

HPRO wrote to the Ministry of Health on December 7th to offer feedback on the 2022 CPMF reporting tool in anticipation of Colleges' third annual submission of their CPMF reports which are made publicly available by each College as of March 31st each year. These reports were designed to help the public understand how well regulatory Colleges are doing their job and to help continually improve accountability, transparency, and oversight. A network of HPRO members met weekly to share information about their CPMF reports and how to adopt commendable practices, such as governance modernization reforms, from October 28, 2022, to March of 2023.

ANTI-RACISM IN HEALTH REGULATION PROJECT

The Anti-Racism in Health Regulation Project, led by Judy Rigby and supported by a nine-member Steering Committee and a Project Management Team from Graybridge Malkam, continued to advance the Project to assist Colleges in their work related to equity, diversity, and inclusion (EDI). A grant from the Federal Government's Community Support, Multiculturalism, and Anti-Racism Initiatives (CSMARI) Program, announced on November 25, 2022, supports three areas:

1. An equity, diversity, and inclusion (EDI) framework and strategy to support sustainable current and future (EDI) initiatives and structural change in regulation;
2. An EDI self-assessment checklist and reporting tool; and
3. The development of an EDI toolkit, including internal training components for colleges.

As noted in the announcement, "This work will reach hundreds of college staff, Board and committee members, and ultimately, (hundreds of thousands of) regulated health professionals and their patients/clients." Additionally, HPRO has committed share the outcomes of this project with other provinces and territories to support their health profession regulators in their EDI journeys.

Thanks are extended to the Steering Committee members (see right panel), who have dedicated their time, energy, and expertise over the last two years.

Anti-Racism in Health Regulation Project Steering Committee:

Judy Rigby (CDTO), Chair
 Deborah Adams (CRPO)
 Brian Fehst (CKO)
 Naakai Garnett (CMTO)
 Zahra Grant (CMO)
 Tim Mbugua (COTO)
 Kevin McCarthy (CNO)
 Brian O'Riordan
 (CASLPO)
 Delia Sinclair Frigault
 (OCP)

CHAIR & MANAGEMENT COMMITTEE REPORT (CONT.)

MEETINGS WITH REGULATORY SECTOR ORGANIZATIONS/PRESENTATIONS :

- ADM Sean Court and ADM Karima Velji, Director Allison Henry, Manager Stephen Cheng, Manager Jason Maurier and others re. proposed legislation, the CPMF, governance modernization, and other government priorities
- David A. Wright, Ontario Physicians and Surgeons of Ontario Discipline Tribunal (OPSDT) Chair, on the newly formed process for hearings
- Christine Elliott, Counsel, Fasken re. insights on health regulatory sector
- Presentation by Richard Steinecke on “Reflections on Retirement”

HPRO MEMBER STAFF KEY AREA NETWORKS

Staff have access to Networks of College areas of activity, including:

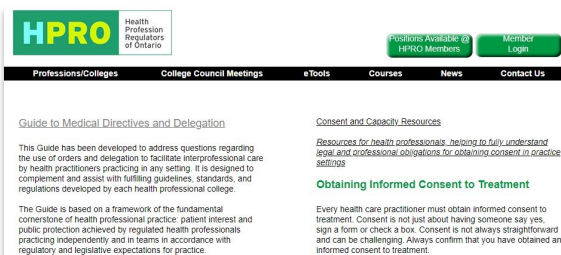
- Communications
- Compliance Monitoring
- Corporate Services
- Deputy Registrars
- Executive Assistants
- Investigations and Hearings
- Practice Advisors
- Quality Assurance
- Records Management
- Registration

EDUCATIONAL OPPORTUNITIES

HPRO’s members’ Boards/Councils, committees, and staff are provided with resources for orientation, education, and training, including:

- Governance Training (*see page 6*)
- Discipline Orientation Workshops (*see page 6*)
- Education for Health Professional Regulators of Ontario (EHPRO) (all aspects of the *RHPA* available online for members)
- Training Videos about Patient Sexual Abuse (available online for members)
- Communicators’ Day Conference (*see page 5*)

HPRO’S ONLINE RESOURCES



- **Interprofessional Guide on the Use of Orders, Directives and Delegation for Regulated Health Professionals in Ontario**
- **Consent and Capacity Resources**
- **Positions available at HPRO Member Colleges**
- **Information on College Board of Directors/Council Meeting dates**

COMMUNICATIONS COMMITTEE

HPRO’s Communications Committee, led by Chair Ryan Pestana, continues to focus on encouraging public use of HPRO’s public-facing website - www.ontariohealthregulators.on.ca (OHR) - which provides links to Colleges, specifically their public registers, information about complaints, and public consultations. This work is consistent with Colleges’ duty to promote and enhance relations between Colleges and the public. Included on that site are a number of featured stories that share trusted information about “regulated health professionals and the organizations that oversee them”. These articles and more are also featured through media outlets such as “Zoomer Marketing” and social media through Facebook.

In addition to that work, Colleges’ communications teams are supported through a Network for information-sharing and an annual Communicators’ Day Conference, which was held on December 1, 2022. This conference offered sessions on governance communications lessons (Ontario College of Teachers), using the CPMF as a new communications tool, genuine EDI communications, and Accessibility for Ontarians with Disabilities Act (AODA) compliance and accessible/inclusive communication.

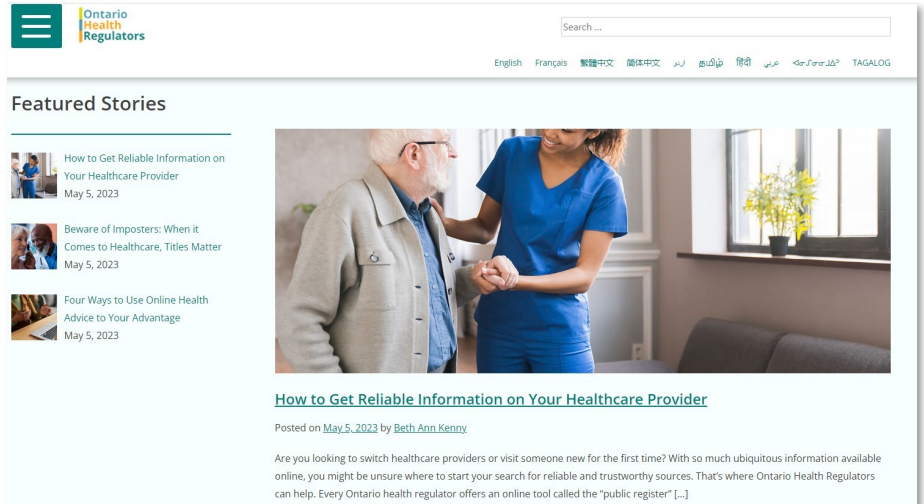
Communications Committee :

- Ryan Pestana, Chair (CMTO)
- Dave Bourne (OCP)
- Lynn Butler (CKO)
- Jef Ekins (CMRITO)
- Michelle Price (CMLTO)
- Mark Sampson (CPSO)
- Taylor Turner (College of Physiotherapists of Ontario)

Communicators’ Day Planning Subcommittee :

- Ryan Pestana, Chair (CMTO)
- Lynn Butler, CKO
- Michelle Price, CMLTO
- Taylor Turner (College of Physiotherapists of ON)

The OHR website features stories , written to inform the public about regulated health professionals and the organizations that oversee them



NOMINATIONS COMMITTEE

The Nominations Committee facilitated the call for nominations for HPRO’s Officers and Management Committee members as well as HPRO’s Committee membership appointments for the 2023-2024 year. As recognized each year, the dedication of volunteers and support from member Colleges is a most important and valued resource.

Nominations Committee:

- Linda Gough (CMRITO), Chair (to February 28, 2023)
- Carole Hamp (CRTO)
- Anne Zeng (CTCMPAO)

DISCIPLINE ORIENTATION COMMITTEE

Discipline Orientation Committee Members:

- Tina Langlois (CMRITO), Chair
- Genevieve Plummer (OCP)
- Ravi Prathivathi (CNO) (to August 2022)

Discipline Orientation Faculty:

- Luisa Ritacca (Stockwoods, LLP)
- Richard Steinecke (Steinecke Maciura LeBlanc) to December 31, 2022
- Julie Maciura (Steinecke Maciura LeBlanc) as of January 1, 2023

The Discipline Orientation Committee continues to deliver quality education and training programs, providing comprehensive orientation for regulatory adjudicators who will be panel members or chairs of discipline hearings. With virtual training options now available, HPRO is able to offer more opportunities for these training sessions.

Fall 2022 Workshops

- October 14 – Basic Session 46 registrants (18 Colleges represented)
- October 7 – Advanced Session 27 registrants (11 Colleges represented)

Spring 2023 Scheduled Workshops

- May 26 – Basic Session
- June 9 – Advanced Session

REASONS WRITING WORKSHOP

This is the second year that HPRO has provided an interactive workshop based on feedback from the Discipline Orientation sessions to enhance attendees’ abilities to write reasons for regulatory decisions. The session covers the identification of issues that need to be addressed, developing deliberation styles that provide content of the reasons, providing explanations for the decision made and wording those explanations persuasively, and more.

Sessions were held on June 20, 2022 (30 registrants from 11 Colleges) and October 7, 2022 (20 registrants from 10 Colleges).

GOVERNANCE TRAINING FOR RHPA COLLEGES



This webinar for College Staff, Council, and Committee Members focuses on Colleges’ core public interest functions, providing a comprehensive understanding of governance for regulators. Sessions were held on the mornings of November 3 and 10, 2022 (20 registered from 8 Colleges).

Richard Steinecke, past Faculty for HPRO’s Governance Training Workshops

TRANSITIONS

HPRO MEMBERS:

- **College of Denturists of Ontario: Roderick Tom-Ying** was appointed Registrar & CEO as of December 12, 2022, following a term as Acting Registrar when **Glenn Pettifer** became Registrar of the College of Dental Hygienists of Ontario (January 3, 2022).
- **College of Medical Radiation and Imaging Technologists of Ontario: Pree Tyagi** was appointed Registrar & CEO as of March 1, 2023, following the retirement of **Linda Gough**, effective February 28, 2023. Linda Gough had served as HPRO's longest-serving Past President - eight years in total.
- **College of Nurses of Ontario: Silvie Crawford** was appointed Executive Director & CEO, effective September 8, 2022. **Carol Timmings** has served as Acting Executive Director & CEO, effective April 1, 2022, following **Anne Coghlan's** retirement.
- **College of Physiotherapists of Ontario: Anita Ashton** was appointed Interim Registrar upon the passing of **Rod Hamilton** on August 11, 2022. It was announced on April 4, 2023, that **Craig Roxborough** would become Registrar, effective May 23, 2023.
- **College of Psychologists of Ontario: Tony DeBono** was appointed Registrar & Executive Director following **Rick Morris's** retirement, effective February 27, 2023.

REGULATORY SECTOR PARTNERS AND ORGANIZATIONS:

- **Richard Steinecke**, Steinecke Maciura LeBlanc, HPRO's legal counsel, retired on December 31, 2022. **Julie Maciura** was appointed counsel as of January 1, 2023.
- **Ministry of Health: Sylvia Jones** was announced as Ontario's Deputy Premier and Minister of Health following the June 2022 provincial election. On July 7th, **Karima Velji** was appointed Assistant Deputy Minister and Chief of Nursing and Professional Practice, replacing Sean Court.

RECOGNIZING THE PASSING OF ROD HAMILTON

It was with profound sadness that HPRO learned of the passing of Rod Hamilton on August 11, 2022. Having served on the Board for many years, Rod had joined the Management Committee on June 1st, and we were looking forward to his contributions, recognizing his extensive experience in regulation and his gentle, sincere, and straightforward way of sharing his knowledge and valued opinions.

This photo of Rod was taken during HPRO's last pre-pandemic meeting (March 3, 2020), when Rod shared his thoughts about the potential for major disruptions to life as we knew it. This was just another demonstration of Rod's insight and foresight, something we continue to miss, organizationally and individually.





Members:

College of Audiologists and Speech-Language Pathologists of Ontario (CASLPO)

College of Chiropodists of Ontario (COCOO)

College of Chiropractors of Ontario (CCO)

College of Dental Hygienists of Ontario (CDHO)

College of Dental Technologists of Ontario (CDTO)

College of Denturists of Ontario

College of Dietitians of Ontario

College of Homeopaths of Ontario (CHO)

College of Kinesiologists of Ontario (CKO)

College of Massage Therapists of Ontario (CMTO)

College of Medical Laboratory Technologists of Ontario (CMLTO)

College of Medical Radiation and Imaging Technologists of Ontario (CMRITO)

College of Midwives of Ontario (CMO)

College of Naturopaths of Ontario (CONO)

College of Nurses of Ontario (CNO)

College of Occupational Therapists of Ontario (COTO)

College of Opticians of Ontario

College of Optometrists of Ontario

College of Physicians and Surgeons of Ontario (CPSO)

College of Physiotherapists of Ontario

College of Psychologists of Ontario

College of Registered Psychotherapists Therapists of Ontario (CRPO)

College of Respiratory Therapists of Ontario (CRTO)

College of Traditional Chinese Medicine Practitioners and
Acupuncturists of Ontario (CTCMPAO)

Ontario College of Pharmacists (OCP)

Royal College of Dental Surgeons of Ontario (RCDSO)

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Legislative Update – What Happened in February 2023?

From Julie Maciura

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 There were no relevant regulations this month. 3

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Legislative Update – What Happened in February 2023?

Ontario Bills

(www.ola.org)

Bill 60, Your Health Act, 2023 – (Government Bill, second reading debate) Bill 60 will replace the *Independent Health Facilities Act* with a new regulatory regime, complete with standard setting, inspections, and complaints mechanisms, for the provision of health services (likely mostly diagnostic and procedures). The Bill will also make several statutory amendments to enable the creation, by regulation, of the As of Right proposal. The details are not included in the Bill. However, the Bill does pave the way for individuals to practise the following professions without registering with the relevant Ontario College: medical laboratory technologists, physicians, nurses, and respiratory therapists. Presumably the *Regulated Health Professions Act* already authorizes regulations to be passed exempting those individuals from performing controlled acts. The Bill will also expand the scope of practice of pharmacists “to include the assessment of conditions for the purposes of providing medication therapies.”

Bill 61, Making Psychotherapy Services Tax-Free Act, 2023 – (Private Members’ Bill, first reading) Bill 61 “provides that the Minister of Health shall take all necessary steps, including introducing legislation if necessary, to ensure that the tax treatment of psychotherapy services provided in Ontario by psychotherapists, registered psychotherapists and registered mental health therapists within the meaning of the *Psychotherapy Act, 2007* is the same as the tax treatment of those services provided by other practitioners.”

Bill 67, Temporary Nursing Agency Licensing and Regulation Act, 2023 - (Private Members’ Bill, first reading) Bill 67 “adds a new licensing requirement for operators of temporary nursing agencies. Applications for these licences must be submitted to the Registrar appointed under the Act. The applications must contain a credentialling and monitoring plan as well as a compliance plan. Licences are subject to several terms and conditions. These include a predictable fee requirement, a prohibition on unconscionable prices, limitations on work assignment and recruitment practices and certain disclosure obligations. Contravention of the Act or the regulations is an offence and is punishable on conviction by a fine.”

Proclamations

(www.ontario.ca/search/ontario-gazette)

There were no relevant proclamations this month.

Regulations

(<https://www.ontario.ca/laws> Source Law - Regulations as Filed)

There were no relevant regulations this month.

Proposed Regulations Registry

(www.ontariocanada.com/registry/)

Bill 60, Your Health Act, 2023 – Three separate consultations have been initiated for the three main aspects of Bill 60 (i.e., enacting the *Integrated Community Health Services Centres Act*, facilitating interjurisdictional mobility, and authorizing pharmacists to perform “assessments of conditions for the purposes of providing medication therapies”). Comments are due by March 23, 2023.

Psychology and Applied Behaviour Analysis Act, 2021 – Proposed registration, general, and professional misconduct regulations to implement the inclusion of behavioural analysts into the College are included. Comments are due by March 23, 2023.

Various Profession Specific Acts under the RHPA – Several consultations are ongoing related to emergency classes of registration. They have various comment due dates.

Regulated Health Professions Act, 1991 – The proposal would amend the controlled acts regulation “to exempt respiratory therapists from the prohibition on the controlled act of applying soundwaves for diagnostic ultrasound when acting under the order of a physician or nurse practitioner.... to check for fluid in the lungs and to assess the ideal placement of chest tubes and catheters.” Comments are due March 10, 2023.

Fixing Long-Term Care Act, 2021 – Proposed regulations would make several changes including permitting pharmacists to administer drugs to long-term care residents. It would also allow personal support workers to administer over the counter drugs. Comments are due March 5, 2023.

Freedom of Information and Protection of Privacy Act – The proposal would permit external agencies access to personal information, including personal health information, for the purposes of planning, delivering and evaluating government programs. Currently these activities seem to be done only by government employees. Comments are due March 23, 2023.

Bonus Features

These include early drafts of some of the items that will appear in our blog:

[\(www.sml-law.com/blog-regulation-pro/\)](http://www.sml-law.com/blog-regulation-pro/)

The Regulators' Role in Complaints Matters

It is sometimes difficult for complainants to appreciate the role of regulators of professions when dealing with their complaints. In [Gao v. Health Profession Appeal and Review Board](#), 2023 ONSC 742 (CanLII), the Divisional Court took some time to explain that role to a self-represented complainant.

In that case the complainant was concerned about a registrant's (a nurse's) conduct related to the death of the complainant's elderly mother. The complainant alleged that the registrant had improperly administered an ice pack and that this error had contributed to the mother's death. The regulator (and indirectly the independent review Board) concluded that while the ice pack had been left on too long, in the circumstances (e.g., "staffing levels, demands on her time by all residents in the facility and supervision and processes within the care facility"), no action was warranted. They also concluded that the ice pack had not contributed to the mother's death.

The Court upheld the findings as reasonable. The Court indicated the role of the regulator was to assess whether the alleged conduct of the registrant warranted regulatory action based on misconduct or incompetence concerns. It was not for the regulator to determine if there had been negligence, which is a different legal concept. The Court suggested that it was not even the regulator's duty to assess whether the registrant's conduct contributed to the death of the mother. However, the Court was sympathetic to the limited assessment of the regulator and the review Board on the point. Indeed, The Court made its own observations that, based on the available information, the death of the mother was not related to the administration of the icepack.

The Court also confirmed that the role of the review Board was to review the information in the record before the regulator. In fact, the Court declined to admit additional evidence submitted by the complainant on the basis that it was neither properly proffered (e.g., a collection of articles and lay opinions) nor relevant to the issues. A review is different from a rehearing or even an appeal.

The Court also gave an example of a finding of fact that was open to the complaints screening committee. Because such committees do not conduct hearings, they can only make limited findings of fact. The Court indicated that it was appropriate for the committee to conclude based on the record that "the ice packs were left on too long, though not so long as Ms Gao alleged".

The judicial review was dismissed. Significant costs were awarded to the registrant payable by the complainant.

Reconciling Open Court with Confidential Health Information

Courts have emphasized the importance of open hearings to Canadian society, which transparency includes prompt access to hearing exhibits. That public access sometimes results in private embarrassment is the price of a free and democratic society. However, the privacy of personal health information is also a basic value in our society. Those values often conflict in discipline hearings and appeals. The Ontario Divisional Court recently balanced these competing concepts in a more detailed than usual decision that will likely provide the framework for this type of analysis by discipline panels and courts for years to come.

In [*Khan v. College of Physicians and Surgeons of Ontario*](#), 2023 ONSC 848 (CanLII), the registrant (a physician) appealed a discipline decision. The regulator sought to protect the personal health information of the patients whose records formed exhibits at the hearing. Their proposal was that the exhibits consisting of health records be sealed so that the public would not have access to them and that the other exhibits be redacted to remove identifying information. The regulator also proposed that the publication ban imposed at the discipline hearing, preventing the identifying of patients, would also be continued. The registrant opposed those measures, arguing that merely redacting the information would be adequate, and would be preferable so that the “conduct” of the regulator could be fully scrutinized by the public.

The Court characterized disclosure of personal health information as more than mere personal embarrassment. It was a threat to the dignity of individuals that revealed core aspects of their private lives. The information was protected by targeted health privacy legislation. That regulators had legal access to this information and could use it for their investigations and as evidence in discipline hearings, often without the consent or even knowledge of patients, reinforced the need to effectively protect it. There would be a public expectation that information obtained in this manner would remain confidential.

Thus, the issue was not whether the information would ordinarily be protected but, rather, what protective measures would best balance the competing considerations. In this case, redacting 4,500 pages of patient records “would be time-consuming, subject to error and would delay the hearing of the appeal”. The sealing of the patient records, while redacting the other documents, including the hearing transcript, would still enable the public to effectively follow and understand the appeal proceedings, which would still be open to the public. The Court also noted that the patient records contained technical information that would not materially advance the ability of the members of the public to follow the proceedings.

The Court rejected the registrant’s argument that the fact that one of the documents was already in the public domain, apparently contrary to the publication ban, altered the analysis. The Court also did not find persuasive the suggestion that access to the patient files would be a source of instruction to the medical community.

Regulators will want to adapt this contextual analysis when dealing with issues of access to their hearing exhibits.

Adequate Investigations

Regulators investigate complaints. Many regulators investigate a lot of complaints. A recurring issue is how thorough those investigations need to be. Courts have repeatedly said that such investigations do not need to be exhaustive, just adequate. In [*Kastner v. Health Professions Appeal and Review Board*](#), 2023 ONSC 629 (CanLII), Ontario’s Divisional Court gave guidance on what constitutes an adequate investigation. In that case, a third party made a complaint based in part on an investigative report by the *Globe and Mail*, summarized as follows:

The complaint against Dr. Duic fell into two categories of allegations. First, that for 16 years, Dr. Duic used his authority as Emergency Department Chief at two major Ontario hospitals to block the hiring of women doctors and encouraged a workplace that was openly hostile to women. Second, that in order to increase department profitability, Dr. Duic demanded that the physicians in his department use involuntary psychiatric detention (Form 1) and driver’s licence reviews (MTO reports) against vulnerable patients, without medical justification.

The newspaper article contained statistical information supporting both concerns. In addition to providing a hyperlink to the article, the complainant also provided correspondence with the Chief of Staff of one of the hospitals that, while disputing the concerns, provided some data supporting the gender discrimination allegation. All 31 of the emergency physicians at that hospital were men, which was quite disproportionate to the percentage of female emergency physicians in the province, generally, and at other comparable hospitals. The complainant also provided a list of 12 witnesses who would be willing to provide information on the concerns to the regulator, but not to the complainant. He also provided a will-say statement of another physician supportive of some of the concerns. The complainant also provided a copy of an email sent by the registrant (Dr. Duic) to his colleagues that was supportive of the second concern.

The regulator conducted what the Court called a “limited investigation”. While the registrant was interviewed, no other witnesses were. An assessor reviewed 30 files containing forms and found concerns with six of them, but accepted the registrant’s explanations for them based on information that was not in the charts. The registrant had 19 prior complaints, 11 of which related to completion of forms.

The regulator took no action on the complaint, in part because the allegations were “not supported” and because it accepted the registrant’s explanations. The review Board upheld the decision. The Court determined that it was unreasonable to call the investigation adequate and sent the matter back for further inquiries. The Court made the following observations:

- There is no absolute rule as to whether a witness needs to be interviewed. In some cases, it is unnecessary. It is not the role of the screening committee to make findings of fact or resolve issues of credibility. However, in other cases involving serious allegations, witnesses may not voluntarily come forward to provide written statements for fear of retaliation or for other reasons. Actively approaching them for a statement may provide

Legislative Update – What Happened in February 2023?

valuable information. This is especially true where the witnesses are registrants who have an obligation to cooperate with the regulator.

- An important consideration as to whether to conduct a more intensive investigation is the seriousness of the allegations, particularly where there is some basis to support them. The Court characterized these complaints as very serious:

... gender discrimination that was alleged to have persisted over 17 years at two major hospitals and improper or fraudulent billing that could have a devastating impact on vulnerable patients. Detaining a person on a Form 1 takes away a person's liberty and autonomy and depriving someone of the right to drive could impact on their ability to maintain their employment or perform the normal tasks of daily living.

- It is particularly risky for a regulator to accept a registrant's explanation where the witnesses with contrary information have not been interviewed or given a comprehensive written statement.
- Regulators should generally treat hyperlinked documents as part of the complaint. They should be considered where they are reasonably relevant to the issues.
- It is not a defence for an inadequate investigation to characterize interviewing witnesses as a "fishing expedition". That phrase applies to situations where there is no basis for concern in order to find a problem. Where there is a basis for concern, witnesses who are in a position to have relevant information can properly be approached.
- Where there are multiple aspects to a complaint, a regulator should not rely on the apparent explanation to one of the concerns as establishing that the other concerns are unfounded. The Court noted that the investigation focussed on only one of the two hospitals identified.
- Beware of template language in one's reasons for decision. A template phrase frequently used by the review Board that "it is unlikely that any information provided by those witnesses would have changed the outcome of the Committee decision" was found by the Court to be unreasonable on the facts of this case.
- Where a complaint involves an allegation of systemic discrimination, there may be more of an onus to investigate whether the individual in power contributed to the result. A denial by that registrant may be insufficient to address the concern.
- The Court sidestepped the issue of whether the complainant should have been given an opportunity to respond to the registrant's submissions to the regulator. The Court simply indicated that, if there was unfairness, it was cured by the opportunity for the complainant to respond fully to the review Board.

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Even in returning the matter to the regulator, the Court did not prescribe the precise nature and extent of the investigation required. However, this decision should still provide guidance to anyone conducting investigations.

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Quickly Correcting Missteps

Where a tribunal makes a procedural error, prompt correction can permit the hearing to continue without immediate challenge. In [Hemminger v. Law Society of British Columbia](#), 2023 BCCA 36 (CanLII), the registrant (a lawyer) faced discipline for various alleged infractions of her trust fund obligations. The finding phase of the hearing ended and closing arguments were about to begin, but the registrant then asked to make a motion for the hearing to be reopened as she wanted to introduce expert evidence on her mental illness. Without hearing argument, the panel refused her request. Within two days, after the registrant indicated that she was going to seek judicial review, the panel reconsidered its refusal and proposed to hear the registrant's motion. The registrant declined the offer and continued with her application for judicial review.

The lower Court held that the judicial review application was premature as the registrant should first make their motion to the hearing panel. The lower Court did not accept that the registrant had established an appearance of bias by the panel's initial refusal, given the entire context. As such, the registrant had not established there were exceptional circumstances warranting the Court's intervention. The Court of Appeal upheld the lower Court's decision.

Courts recognize that a tribunal's reconsideration of a decision that already appears to have been made raises concerns as to whether it truly has an open mind: [Fox North Bay Inc. v. Registrar \(Alcohol and Gaming Commission of Ontario\)](#), 2022 ONSC 5898 (CanLII). However, as this case illustrates, quickly offering to reconsider a matter can often cure a procedural misstep.

Prejudice Not Required to Refuse an Adjournment

Refusing an adjournment is a tricky business for a regulator. Where a reviewing court determines that the adjournment should have been granted, the resulting hearing will be set aside. The Divisional Court recently indicated that even if neither party would suffer prejudice, an adjournment can still be refused: [Venneri v. College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario](#), 2023 ONSC 864 (CanLII).

In that case, an applicant for registration appealed the denial of his application. The applicant argued that the assessment of his qualifications as a traditional Chinese medicine practitioner and acupuncturist had unfairly failed to recognize his competencies. He asked for an

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adjournment before the Appeal Board in order to have more time to prepare his case, including obtaining an independent expert opinion. The regulator, while opposing the request, conceded that it would not be prejudiced by an adjournment. The Appeal Board refused the adjournment request, indicating that the applicant had not taken timely steps to line up an expert and that, despite his claim, the disclosure was provided in a timely fashion.

The Court described its role on the adjournment issue as follows:

In the administrative law context, this court has held that decisions of a hearing panel are discretionary as an inherent aspect of a tribunal’s power to control its own processes. These decisions are usually accorded deference unless they amount to a breach of natural justice or procedural fairness. The court should examine whether the decision maker exercised its discretion in an unreasonable or non-judicious fashion in light of all the competing interests it had to balance and the interests of justice. *[citation omitted]*

The Court did not find error in the Appeal Board’s determination that disclosure by the regulator was made in a timely manner. Similarly, the regulator’s refusal to provide further disclosure about the criteria used in the prior learning assessment process was reasonable because it would undermine the integrity of that process. The balancing of the competing factors, including the value in moving the process along, did not demonstrate error.

Interestingly, the Court also said:

Nor is there any merit to the Appellant’s submission that the Board erred by underappreciating the importance of registration for the Appellant’s livelihood. The Board’s role was to determine whether the Appellant did not meet the requirements as a TCM practitioner and acupuncturist, not whether the registration was important for his livelihood.

The denial of registration stood.

Ideological, Cultural and Linguistic Discrimination

Ever since the mathematics proficiency test for Ontario teacher candidates was found to be discriminatory for racialized (and other, e.g., candidates whose first language was not English or French) candidates in [Ontario Teacher Candidates’ Council v. The Queen](#), 2021 ONSC 7386 (CanLII), regulators have wondered how their own entry-to-practise examinations might be challenged. The recent Ontario Court of Appeal case provides some guidance. In [Shaulov v. Law Society of Ontario](#), 2023 ONCA 95 (CanLII), a candidate to become a lawyer completed most of the registration requirements except for the Barrister Licensing Examination, which he failed for the maximum number of attempts. The candidate sued, alleging discrimination in the structure, process, and method of evaluation of the examination. [See the [June 6, 2022, blog](#) for a discussion of the lower court decision].

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The Court upheld striking the action on most of the grounds raised as disclosing no reasonable cause of action. In particular, there was no possible infringement of s. 7 of the *Canadian Charter of Rights and Freedoms* as membership in a profession is not protected under the concepts of life, liberty and security of the person within the meaning of that provision. Further, no basis was pleaded to establish discrimination on the basis of race, ethnic and cultural background under either s. 15 of the *Charter* or under the provisions of the *Ontario Human Rights Code*, but the candidate was permitted to amend this part of his claim.

However, the Court found that the candidate should also be permitted to proceed with properly particularized pleadings as to whether the examination was discriminatory in a broader sense. There was a possibility that the candidate could establish that the structure and contents of the examination discriminated against applicants who come from a different ideological, cultural, and linguistic background. The Court did not expand on these concepts, but they may relate to the candidate's background with different legal systems and where his first language was not English or French. The Court further suggested that there could be some leeway in the particulars required of the candidate at this early stage in the litigation process, especially where the regulator limited access to the examination materials. The Court left open the possibility that greater access to the examination materials may become available during the civil discovery process.

While the Court emphasized that the candidate had achieved very limited success, the decision leaves regulators with a level of uncertainty as to when their registration examinations might be challenged on the basis of discrimination.

Uncontested Submissions of Counsel

Ontario's Divisional Court has again affirmed the deference shown towards disciplinary decisions on sanction (penalty). In [Ontario \(College of Pharmacists\) v. Mourid](#), 2023 ONSC 1221 (CanLII), the registrant (a pharmacist) acknowledged submitting false and misleading billings to the Ontario Drug Benefit Plan in the amount of \$68,000. The hearing panel ordered a one-year suspension and significant other measures. The regulator appealed because the panel did not include in its order restrictions imposed in most other similar cases, including a three-year prohibition against owning a pharmacy. The regulator appealed on three carefully crafted issues:

1. The apparent minimization of the concerns in the panel's reasons on sanction (e.g., characterizing it as sloppy record keeping rather than unethical conduct);
2. Lack of proportionality to ten previous similar cases where such restrictions were ordered; and
3. Statements made by the panel in their reasons without supporting evidence, including the financial impact of the restrictions.

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The Court repeated that its role is to intervene only where there is an error in principle or where the order is unfit. On each of the issues, the Court found that this test was not met. Reading the reasons as a whole, the panel had not lost sight of the breach of trust aspect of the registrant's conduct. The prior decisions did not act as a "straitjacket" on the panel. The panel explained why it was departing from the past precedents in this case. The Court also held that it was reasonable for the panel to rely on the "uncontested submissions" of counsel as to the registrant's personal circumstances including that the registrant "was effectively a single mother with three children and that the pharmacy was the only business she owned, and her only source of income".

This decision highlights the importance of regulators carefully considering (and possibly objecting to) the submissions made by registrant's counsel about the registrant's personal and financial circumstances where the registrant does not testify on those issues.

Procedural Fairness for Registration Assessments

The assessment of the competencies of applicants for registration is "high stakes". As such, regulators (or third-party examiners or assessors) must demonstrate a relatively high degree of procedural fairness. Alberta's highest court discussed those requirements in [Sandhu v College of Physicians and Surgeons of Alberta](#), 2023 ABCA 61 (CanLII). In that case, an internationally trained physician was removed from, and given an unsatisfactory rating for, a three-month Practice Readiness Assessment after only two weeks because of performance concerns. The applicant challenged the outcome as being procedurally unfair and unreasonable.

The Court upheld a lower court ruling (see our [Regulation Pro Blog](#) for July 22, 2021) dismissing the applicant's challenge. The Court found that the regulator's communications with the applicant in advance of the assessment provided sufficient detail as to the nature of the assessment and its evaluation criteria. The regulator was not required to refer to or apply other assessment guidelines. The applicant was provided with sufficient orientation to the assessment process and additional orientation was the responsibility of the applicant to obtain. The applicant was given sufficient preliminary feedback of concerns even though not all of the proposed evaluation tools were applied. In any event, this was an evaluation, not an educational program where feedback was required. The assessor and the regulator had a sufficient basis to determine that the applicant's performance was unsatisfactory and placed patients at risk. There was no obligation to provide the full three-month assessment in those circumstances and the candidate knew that this was a possibility.

While one could argue that, from a policy perspective, regulators should be offering comprehensive assistance to internationally trained applicants, the failure to do so does not constitute procedural unfairness from a legal perspective.

Procedural Fairness When Screening Complaints

There seems to be a flurry of cases recently on the procedural fairness requirements for committees that investigate and screen complaints. The most recent offering is from Newfoundland and contains some interesting propositions.

In [*Gulliver v. Law Society Complaints Authorization Committee*](#), 2023 NLSC 23 (CanLII), a client complained against a registrant (a lawyer) for failing to follow the client's instructions in a highly charged family law matter. The registrant disputed the instructions claimed to have been given by the complainant. The screening committee determined that a referral to discipline was not warranted because some of the circumstances (e.g., the client's failure to attend a hearing and a text message from the client's father to the registrant) supported the registrant's position. Under this legislation there was a statutory right of appeal to the Court. The complainant was particularly concerned that the screening committee had not interviewed them or their father. The Court upheld the screening committee's decision. In doing so, the Court indicated the following:

1. There is a distinction between the screening committee making findings of credibility (which it was not doing) and determining that the evidence did not support a referral to discipline (which it was doing).
2. Since more was at stake for the registrant than for the complainant, the procedural rights afforded to the registrant could exceed that afforded to the complainant (e.g., whether to conduct an interview).
3. While there may be some circumstances in which a complainant or their proffered witnesses needed to be interviewed, this was not one of them.
4. That the appellate standard of review (i.e., palpable and overriding error) applied to issues of procedural fairness on an appeal. This is a different framing of the approach than what is taken in Ontario (see [*Matheson v. College of Physicians and Surgeons of Ontario*](#), 2021 ONSC 7597 (CanLII)), although it seems that the difference in framing did not result in a difference in approach.

This decision provides an interesting counterbalance to the decision of [*Kastner v. Health Professions Appeal and Review Board*](#), 2023 ONSC 629 (CanLII), where the failure to interview key witnesses proffered by the complainant amounted to a breach of procedural fairness (albeit on very different facts).

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Ontario Bills

(www.ola.org)

Bill 79, Working for Workers Act, 2023 (Government Bill, passed second reading, referred to the Standing Committee on Finance and Economic Affairs) Bill 79 will, among other things, expand the mandate of non-health regulators to consult with the government to ensure that “the people of Ontario have access to adequate numbers of qualified, skilled and competent regulated professionals”.

Bill 76, Respecting Workers in Health Care and in Related Fields Act, 2023 (Private Members’ Bill, first reading) Bill 76 would require certain minimum protections, compensation and benefits for health care workers.

Bill 60, Your Health Act, 2023 (Government Bill, passed second reading, referred to the Standing Committee on Social Policy) Bill 60 will replace the *Independent Health Facilities Act* with a new regulatory regime, complete with standard setting, inspections, and complaints mechanisms, for the provision of health services (likely mostly diagnostic and procedures). The Bill will also make several statutory amendments to enable the creation, by regulation, of the As of Right proposal. The details are not included in the Bill. However, the Bill does pave the way for individuals to practise the following professions without registering with the relevant Ontario College: medical laboratory technologists, physicians, nurses, and respiratory therapists. Presumably the *Regulated Health Professions Act* already authorizes regulations to be passed exempting those individuals from performing controlled acts. The Bill will also expand the scope of practice of pharmacists “to include the assessment of conditions for the purposes of providing medication therapies.”

Proclamations

(www.ontario.ca/search/ontario-gazette)

There were no relevant proclamations this month.

Regulations

(<https://www.ontario.ca/laws> Source Law - Regulations as Filed)

Personal Health Information Protection Act – Regulation will require custodians to provide personal health information in a prescribed electronic format for patients who request access to it. The regulation takes effect on July 1, 2023.

Law Society Act – Regulation permits the appointment of chairs to the discipline and hearing tribunals of a person that is not also a Bencher (director) (Ontario Regulation 47/23).

Proposed Regulations Registry

(www.ontariocanada.com/registry/)

Various Profession Specific Acts under the RHPA – Several consultations are ongoing related to emergency classes of registration. They have various comment due dates.

Veterinarians Act – The proposal would modernize the regulation of veterinary services including by better defining them, updating the complaints and discipline system, including veterinary technicians within the regulatory regime, and developing a formal quality assurance program. Comments are due May 30, 2023.

Law Society Act – The proposal would permit the permanent chair of the discipline tribunal to be a panel member in place of one of the spots on the panel reserved for elected Benchers (Board members). In addition, the proposal would permit motions before the discipline tribunal to be heard by one member panels. Comments were due March 17, 2023 (two weeks after posting). The regulation has been made since then, at least in part (see above).

Bonus Features

These include early drafts of some of the items that will appear in our blog:

(www.sml-law.com/blog-regulation-pro/)

Police Check Requirements

Many regulators require applicants for registration (and sometimes even current registrants) to obtain a police check to ensure their suitability to practise the profession. A recent court decision raises important issues about such requirements and the process for obtaining them: [*Khorsand v. Toronto Police Services Board*](#), 2023 ONSC 1270 (CanLII).

In that case, an applicant applied for a position as a Special Constable to work for Toronto Community Housing. A successful security check with the Toronto Police Services Board (TPSB) was required. The applicant was denied clearance. He was not given reasons for the decision or the information upon which the decision was based.

The Court held that there was a sufficiently public aspect to this decision that it was subject to judicial review. The entities involved (i.e., Community Housing and the TPSB) serve public interest purposes. While the facts of this case are different than for applicants for registration with a statutory regulatory body, it

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is quite possible that a refusal of registration by an applicant because of an unsatisfactory police check would also be subject to judicial review. A significant factor in this case was concern that racialized people are “highly over-represented” in police contacts. A freedom of information request indicated that the applicant had extensive contact with the police that raised no concerns about his conduct, but which mentioned his racialized status repeatedly. The Court said: “This raises serious questions about what information was relied on in coming to the conclusion that he failed his background check and how systemic issues may have informed and affected the TPSB’s decision-making on this issue.”

Another comment by the Court may also be applicable to regulators:

The decision at issue affects not only [the applicant]’s rights. It also affects the public’s right to have confidence in the agencies who administer law enforcement in the community and to have those agencies made up of people who are representative of the communities they serve.

The Court concluded that procedural fairness was required in the circumstances:

Weighing all of these factors and the circumstances surrounding the decision at issue, I find that the TPSB breached its minimal duty of procedural fairness, which was (1) to give [the applicant] notice of the reasons why he failed his pre screen background check and copies of the information it was relying on making that decision (subject to a process to protect sensitive law enforcement information) and (2) an opportunity to dispute those reasons and information. Because the decision at issue was a pre screen decision, to comply with its duty of procedural fairness the TPSB must provide [the applicant] with the reasons why he failed his background check and a copy of the information relied upon to justify that failure.

While the decision applied to the TPSB, regulators requiring police checks are also likely to be affected by these considerations.

Has Vavilov Made a Difference?

The Supreme Court of Canada’s decision in [Canada \(Minister of Citizenship and Immigration\) v. Vavilov](#), 2019 SCC 65 (CanLII), [2019] 4 SCR 653, fundamentally altered the criteria for judicial scrutiny of administrative decisions. Three years in, it’s fair to ask: Has it made a difference?

Some involved in professional regulation speculated that *Vavilov* would have a significant impact. Disciplinary findings of professional misconduct or incompetence might be particularly vulnerable as they are typically subject to a statutory right of appeal, and *Vavilov* changed the way in which such appeals would be determined. Following *Vavilov*, legal issues including the interpretation of the enabling statute would now be reviewed on a correctness standard rather than the more deferential reasonableness standard. Would reasons for decision of a disciplinary panel, generally drafted by non-lawyers, be subject to more intense scrutiny? There were also questions about whether more or less deference would be given to factual issues on appeal, since these would now be subject to the palpable and overriding error test (instead of being reviewed for reasonableness).

In order to gauge the level of impact, we compared pre- and post-*Vavilov* disciplinary appeal decisions of the Ontario Divisional Court. A quantitative review of decisions of this Court in a defined area of law over the past three years compared to the three years before *Vavilov* should provide some information as to the degree that the altered standard of review has impacted administrative law.

Methodology

The Divisional Court of Ontario is a quasi-specialist court that, among other things, hears almost all statutory appeals from professional discipline decisions. There is a degree of continuity for judges sitting on the Court that helps ensure a level of expertise in this area. The Court routinely cites *Vavilov* in its decisions on appeal from disciplinary findings when discussing the standard of review.

To minimize extraneous factors, we used the following criteria:

- Only statutory appeals were considered.
- Only discipline decisions from statutory regulators of professions were included.
- Only appeals of decisions on the issue of finding were counted. The test for reviewing penalty (sanction) decisions (namely, whether the order is unfit, or contains an error in principle) was unchanged by *Vavilov*.
- Appeals of rejected joint submissions were excluded as there is a different legal test for scrutinizing them.
- Appeals by the regulator (there were very few) were disregarded to avoid any implicit hesitancy to reverse a panel's conclusion in favour of a registrant.
- Where a decision was appealed to the Court of Appeal or the Supreme Court, we used the decision of the highest level of court.
- Where an appeal was partially successful, these were characterized as a reversal by the Court. We made one exception (for a pre-*Vavilov* decision) where the appeal was substantially unsuccessful.

Findings

We located 30 qualifying decisions post-*Vavilov* (to February 14, 2023). Of those, 27 (90%) were upheld and three (10%) were reversed in whole or part. Of those reversed, two (6.7%) contained both errors of law and errors of fact. One (3%) was reversed on the basis of procedural unfairness.

In the three years immediately prior to *Vavilov*, of the 30 most recent qualifying decisions, 24 (80%) were upheld and six (20%) were reversed. In five of the reversed decisions (17%) the ground was unreasonableness. For one of those five decisions, there was also an error of law. In the remaining reversed decision (3%) there was procedural unfairness.

As a comparison, we examined Divisional Court decisions on the issue of penalty (sanction) before and after *Vavilov*. As noted, the test for scrutiny of penalty decisions did not change. In the three years since *Vavilov* we located 20 decisions, of which only one (5%) was reversed. However, of the 20 most recent decisions on penalty before *Vavilov*, there were five (25%) reversals. Therefore, in both appeals of the findings and penalty appeals, there were fewer reversed decisions post-*Vavilov* than before. A possible

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alternative explanation for the decrease in penalty reversals is that, shortly before *Vavilov*, the Court of Appeal reversed the Divisional Court and reinstated a disciplinary penalty in the case of [College of Physicians and Surgeons of Ontario v. Peirovy](#), 2018 ONCA 420 (CanLII), which might have reduced any interventionist tendencies on penalty matters.

Interestingly, the Alberta Court of Appeal has reversed a much higher percentage of disciplinary appeals since *Vavilov* than in Ontario (but fewer cases were heard than in Ontario). The Alberta Court of Appeal has decided seven cases since *Vavilov*, of which three (43%) were reversed. Of the seven most recent such cases before *Vavilov*, only one (14%) was reversed. Obviously, that is a very small sample. However, if this pattern holds, *Vavilov* may have had more of an impact in Alberta.

Discussion

Even with the Ontario data, the sample sizes are small. In addition, a quantitative review can only tell part of the story. Each case is decided on its own facts and circumstances. Thus, it is difficult to make any definitive statements about the impact of *Vavilov* on statutory appeals of professional discipline decisions. However, based on this data, the concerns about disciplinary decisions becoming more vulnerable on appeal do not seem to have borne out. If anything, deference may even be enhanced in Ontario post-*Vavilov*, with 90% of disciplinary decisions being upheld, compared to 80% pre-*Vavilov*.

Whether factual issues, including credibility assessments, are being scrutinized more closely remains an open question and is not clear from a purely quantitative review (Professor Paul Daly has written that the palpable and overriding error standard is more deferential than reasonableness, and also that there may be a push for the two standards to converge: Paul Daly, *Unresolved Issues after Vavilov*, 2022 85-1 Saskatchewan Law Review, 2022 CanLII Docs 1412). The Divisional Court has made a point of emphasizing that the palpable and overriding error test is different from reasonableness review (for example in [Houghton v. Association of Ontario Land Surveyors](#), 2020 ONSC 863 (CanLII), and [Miller v. College of Optometrists of Ontario](#), 2020 ONSC 2573 (CanLII)). However, under both standards, a high level of deference will be shown to the initial decision-maker's assessment of a witness' credibility.

It is also worth monitoring whether the scrutiny of disciplinary decisions is variable across Canada. If so, there may be further evolution over the short term.

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Another Unfair Investigation

Courts give significant deference to the investigative choices of regulators. However, twice in just over one month, Ontario's Divisional Court has found a regulator's investigation to be procedurally unfair. In late January there was the case of: [Kastner v. Health Professions Appeal and Review Board](#), 2023 ONSC 629 (CanLII), discussed in our [February 8, 2023, blog](#). In early March the Court released [Watson v. Law Society of Ontario](#), 2023 ONSC 1154 (CanLII).

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In the latter case, serious allegations were raised about the registrant's (a lawyer) misappropriation of funds and falsifying of documents. Three of the allegations could even be characterized as constituting criminal conduct. The registrant insisted that he was primarily a business partner with the complainant (rather than their lawyer) and was owed the money kept. After a 56-day hearing, the allegations were withdrawn and dismissed because the extensive cross-examination of the complainant raised so many credibility concerns that there was no longer a reasonable prospect of a finding. The registrant sought his costs from the regulator, which request was denied.

The Court found that the investigation was one-sided and unfair. Basic corporate and financial documents, that upheld the registrant's position that they were a business partner of the complainant entitled to payment, were not sought or analyzed when obtained. The most obvious example was not obtaining the officially filed version of corporate documents that disproved the complainant's allegation that they had been altered and fraudulently filed by the registrant. The Court said: "Merely taking the complainant's word at face value without testing it by reference to documents other than the ones she herself provided, is not consistent with procedural fairness."

The Court was troubled by the investigator filing a final report before interviewing the registrant. The subsequent interview did not include seeking the registrant's explanation for some of the more serious allegations and did not result in a supplementary report. This concern was aggravated by the regulator's failure to disclose relevant information and failure to agree to reasonable production requests (from the complainant). The Court also commented on the regulator taking the legally incorrect position that its disclosure obligations only applied to evidence intended to prove the allegations and not also to evidence that would support the registrant's defence, including evidence going to the credibility of the complainant.

The Court disagreed with the regulator's reliance on its policy for investigating allegations of a sexual nature to justify not critically assessing the credibility of the complainant nor seeking corroboration of the allegations. While the policy was an appropriate stance for allegations of a sexual nature, where there often are no other witnesses and few documents, that approach was entirely inappropriate for the type of allegations in this kind of "documents" case.

Despite these deficiencies, the Court found there was no palpable and overriding error in denying the registrant's costs on the basis that the referral to a hearing was unwarranted. There was sufficient evidence of serious concerns warranting a hearing to assess the credibility issues even if an adequate investigation had been conducted. On this point, the Court indicated that the tribunal should assess all of the information in the reasonable possession of the regulator, and not just the information provided to the screening committee.

However, under the applicable provisions for this regulator, costs could also be awarded to the registrant on the basis that the regulator had acted with undue delay, negligence or other default. Given the gaps in the investigation and the questionable positions taken by the regulator during the hearing, the Court returned that issue to be determined by a differently constituted panel.

While Courts still afford significant deference to regulatory investigations, they must be even-handed, balanced, proportionate to the circumstances, and fair to the registrant.

Amendment to the Council Elections By-Law Upheld

The value of a sound policy-making process was demonstrated in the recent decision of [Hardick v. College of Chiropractors of Ontario](#), 2023 ONSC 1479 (CanLII). In that case the regulator amended its election by-law to extend the period, from three years to six years, of disqualification for being elected to the Council after having been disciplined. The change was made after the registrant, who had been disciplined five years previously, indicated an interest in running for election. The registrant brought an application for judicial review challenging the validity of the by-law and sought a stay to enable him to seek office in the upcoming Council election. He argued that the by-law was amended in bad faith and for an improper purpose. He also argued that the by-law had an impermissible retrospective effect.

The Court refused to issue the requested stay. The Court found that the amendment was a good faith attempt to adopt best practices and that the Council had expressly turned its mind to whether it should apply to the upcoming election. For more details see the upcoming April issue of [Grey Areas](#).

Sanctioning Guidelines

An Alberta judge’s comments on the need for courts to develop sentencing guidelines in criminal matters may have application for professional regulators. In [R v Quintero-Gelvez](#), 2023 ABCA 64 (CanLII), the court was wrestling with the length of a prison term for the defendant who engaged in sexual assault. While the entire court upheld the lower court’s decision for a period of incarceration of 4.5 years, one judge wrote at length about the need for courts to establish more sentencing guidelines.

The judge wrote that guidelines:

provide sentencers with a rational analytical sentencing framework that introduces “a common methodology” and ultimately produces more consistent sentencing patterns – offenders who are similarly situated and commit similar crimes receive similar sentences. Parliament and reasonable informed members of the public expect nothing less of our sentencing process. “Without guidelines, sentencers following generally accepted sentencing principles produce erratic and irrational sentencing patterns”. This is inevitable. And it undermines public confidence in the administration of justice. [citations omitted]

Given the failure of Parliament to issue such guidelines, it was left for appeal courts to do so. The judge, who had developed such guidelines in the past, stated it was a “task that requires hundreds of hours of the architect’s time”.

The judge suggested that ordinarily three subsets of ranges were optimal: egregious, more egregious, and most egregious. The judge then looked at indicators that would place the conduct within each of the three subsets. In the context of sexual assault of an adult, certain forms of non-consensual contact would generally be viewed as intrusive and typically causing greater physical and psychological harm. Other forms of contact would generally be considered less intrusive and harmful. Still other action would fall between those extremes. The judge gave explicit examples of actions falling within each of the three ranges.

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The judge then looked for a maximum and minimum range for all of the subsets. The maximum, ten years, was set by legislation. While there was no minimum, the judge assessed that it would likely be about four years for the most egregious subset. The judge then assessed the minimum and maximum range for each subset. The ranges overlapped. For example, the top of the range for the middle subset (five years for more egregious sexual assaults) was higher than the lowest part of the range for the highest subset (four years for the most egregious sexual assaults). This part of the judge's analysis might be viewed as controversial in the context of sexual assault.

The judge then discussed how aggravating and mitigating factors can be considered to adjust the sentence within the range. In some circumstances, extraordinary mitigating factors might even adjust a sentence downward below the usual floor of the range.

The judge indicated that the suitability of the sentence should still be assessed by considering the goals of sentencing. For example, does the overall sentence adequately denounce the conduct, provide general deterrence, and adequately protect the public? These considerations might affect the form of the sentence (e.g., prison, home confinement, etc.). The judge also identified a guilty plea as a separate and significant consideration.

Given that professional discipline proceedings rely on the expertise of a specialist tribunal, it likely is not appropriate for courts to establish sanctioning guidelines for those cases. Also, the types of sanctions available (reprimands, restrictions, remediation, ongoing supervision, in addition to suspensions) are not within the expertise of courts. The judge in this case suggested that it is challenging for an adjudicator in an individual case to perform all the work necessary to establish a guideline. As a result, if this approach is to be adopted by regulators, guidelines probably need to be developed by staff and regulators' discipline tribunals through a policy-making process.

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Ontario Bills

(www.ola.org)

Bill 98, Better Schools and Student Outcomes Act, 2023 – (Government Bill, passed second reading and referred to the Standing Committee on Social Policy) Bill 98 has received significant media attention related to its proposed authority for the government to direct school boards on certain matters. However, the Bill will also amend various provisions related to the College of Early Childhood Educators and the Ontario College of Teachers. For example, the complaints screening committees will be able to direct registrants to attend for a caution or to complete mandatory remediation. Funding for students who have been sexually abused is expanded to circumstances where the abuser did not supervise the student. Education for registration, including in mathematics, can be required of candidates for registration.

Bill 95, Making the Patient Ombudsman an Officer of the Assembly Act, 2023 – (Private Members' Bill, first reading) Bill 95 would make the Patient Ombudsman an officer of the Legislative Assembly rather than a government appointee.

Bill 92, Transparent and Accountable Health Care Act, 2023 – (Private Members' Bill, first reading) Bill 92 would require major health sector organizations and suppliers (which are persons or entities that receives directly or indirectly at least \$1 million in public funds in a year from major health sector organizations or from other publicly-funded suppliers) to comply with public sector salary disclosure rules.

Bill 91, Less Red Tape, Stronger Economy Act, 2023 – (Government Bill, passed second reading and referred to the Standing Committee on Justice Policy) Schedule 29 of Bill 91 removes the word "Private" from the name of private career colleges, provides for a review of the legislation every five years, and facilitates enforcement of administrative financial penalties (e.g., for illegal operation).

Bill 79, Working for Workers Act, 2023 – (Government Bill, second reading, under consideration by the Standing Committee on Finance and Economic Affairs) Bill 79 will, among other things, expand the mandate of non-health regulators to consult with the government to ensure that "the people of Ontario have access to adequate numbers of qualified, skilled and competent regulated professionals".

Bill 60, Your Health Act, 2023 – (Government Bill, Third Reading Vote deferred) Bill 60 will replace the *Independent Health Facilities Act* with a new regulatory regime, complete with standard setting, inspections, and complaints mechanisms, for the provision of health services (likely mostly diagnostic and procedures). The Bill will also make several statutory amendments to enable the creation, by regulation, of the As of Right proposal. The details are not included in the Bill. However, the Bill does pave the way for individuals to practise the following professions without registering with the relevant Ontario College: medical laboratory technologists, physicians, nurses, and respiratory therapists. Presumably the *Regulated Health Professions Act* already authorizes regulations to be passed exempting those individuals from performing controlled acts. The Bill will also expand the scope of practice of pharmacists "to include the assessment of conditions for the purposes of providing medication therapies."

Proclamations

(www.ontario.ca/search/ontario-gazette)

There were no relevant proclamations this month.

Regulations

(<https://www.ontario.ca/laws> Source Law - Regulations as Filed)

Health Protection and Promotion Act – Regulations authorize a Medical Officer of Health to require a laboratory to test whether a dead animal had contagious rabies and contemplates the administration of a rabies vaccination by a delegate of a veterinarian, not just a veterinarian, and includes administration in other jurisdictions in the United States and Canada (Ontario Regulations 67/23 and 68/23).

Proposed Regulations Registry

(www.ontariocanada.com/registry/)

Various Profession Specific Acts under the RHPA – Several consultations are ongoing related to emergency classes of registration. They have various comment due dates.

Veterinarians Act – The proposal would modernize the regulation of veterinary services including by better defining them, updating the complaints and discipline system, include veterinary technicians within the regulatory regime, and develop a formal quality assurance program. Comments are due May 30, 2023.

Better Schools and Student Outcomes Act, 2023 – Consultation on Bill 98, related to education and educational professionals, will occur in parallel to the Bill's enactment. Comments are due May 16, 2023.

Private Career Colleges Act, 2005 – Consultation on Schedule 29 of Bill 91, related to career colleges that removes the word "private" from their name, requires more frequent reviews of the legislation, and permits better enforcement of administrative penalties. Comments are due May 18, 2023.

Bonus Features

These include some of the items that will appear in our blog:

(www.sml-law.com/blog-regulation-pro/)

Understanding Retrospectivity

A good way to watch someone's eyes glaze over is to discuss the concept of retrospectivity of legislation. However, the concept is an important one for regulators whose legislation is frequently amended. Do the new regulatory provisions apply to events that occurred before their enactment? A recent Divisional Court case provides a relatively accessible overview of the principles that apply: [Grimstead v. Ontario College of Teachers](#), 2023 ONSC 1801.

The registrant, a teacher, was convicted in 2008 for common assault of a 17-year-old student. It was agreed that the physical contact was of a sexual nature. In 2009, the regulator suspended the teacher's certificate for two years for the sexual abuse of the student. There were also terms and conditions for reinstatement including obtaining the opinion from a psychologist that there was no risk of harm if the teacher was reinstated. The teacher's certificate was reinstated in 2011, and the teacher obtained a pardon of their criminal conviction in 2019.

In 2020, the applicable regulatory legislation was amended requiring the automatic revocation of the teacher's certificate because of the finding of sexual abuse. (To complicate things further, the teacher's certificate was temporarily reinstated pending the hearing because of another provision in the legislation addressing teachers who had been pardoned.) The teacher was required to demonstrate to the discipline panel that they were a suitable candidate for reinstatement. The panel concluded that reinstatement was not in the public interest and again revoked the teaching certificate.

The teacher argued that the 2020 statutory amendments did not apply retrospectively to prior conduct. The Court disagreed, making the following points:

1. There is a rebuttable presumption that legislation is not intended to apply to conduct that occurred before its enactment.
2. However, that presumption can be rebutted by express language or necessary implication where it appears that the legislature has turned its mind to the unfairness of applying the new provisions to past conduct and determined that the benefits of public protection outweighed the unfairness.
3. Even where the presumption is not rebutted by the wording of the enactment, the provisions may have retrospective effect where the new prejudicial consequence is designed to protect the public rather than add punishment to the prior event.

In this case, the Court held that point two, above, was most relevant. The language of the legislative amendments made it obvious that the new rule was intended to apply to the teacher's circumstances. This language distinguished this case from others in which the presumption against retrospectivity was found to apply. The Court also held that the two previous reinstatements of the teacher did not create an acquired right or entitlement.

The Court also did not find the panel's application of the public interest to be unreasonable. The conduct in issue was among the most serious form of misconduct a teacher can commit. The teacher's evidence of good character and rehabilitation did not demonstrate that the teacher had fully addressed the issues that contributed to the misconduct. Concerns about lack of insight and accountability remained. Also, reinstatement would negatively affect the public's trust and confidence in the teaching profession.

The revocation stood.

Leeway

There are certain core principles for tribunals when they write reasons for their decisions. The bad news is that it is easy to violate those principles. The good news is that reviewing bodies and courts give a bit of leeway if, overall, the reasons for decision provide justification, transparency, and intelligibility for the outcome.

For example, in [Eley v. Ontario Securities Commission](#), 2023 ONSC 2168 (CanLII), a regulator found that a registrant had altered, directed the altering of, or was wilfully blind to the alteration of client documents in an investment context. The regulator’s decision was upheld by the reviewing tribunal, and the tribunal’s decision was upheld by the Court. The challenges to the regulator’s decision were based largely on the wording of their reasons for it.

The first argument was that the regulator had reversed the burden of proof when it said that the registrant’s evidence had not persuaded it that the registrant had not participated in or knew about the altered documents. Reversing the burden of proof is a serious and fundamental legal error. While the language used was unfortunate, the tribunal and Court found that “a fair and contextual reading of the reasons as a whole” demonstrated that the burden had not been reversed. The regulator was simply saying that it did not find the registrant credible in his denial of involvement.

Similarly, the reviewing tribunal and Court found that the regulator had not made a legal error in finding that the registrant was not credible. The registrant’s lack of credibility did not automatically mean that the allegations had been proven. The regulator appreciated that even if it did not believe the registrant’s explanations, the allegations still had to be established by positive evidence. In this case, there was ample evidence to do that.

The reviewing tribunal and Court also found that the regulator had drawn reasonable and logical inferences about the registrant’s involvement in the altered documents based on the direct and circumstantial evidence tendered during the hearing. This evidence included the documents themselves, where the alterations were so obvious that the registrant must have recognized them, even if he did not directly or indirectly make them himself.

The regulator also made some factual errors which are often a basis for reversing a decision. Here, during the sanctioning phase of the hearing, the regulator referred to conduct that was not part of the statement of allegations. The regulator also referenced some items that it found to be innocuous and part of acceptable industry practice when discussing the registrant’s “pattern of behaviour”. However, these mistakes were related to peripheral items and there were so many established illustrations that the errors did not detract from the overall findings on the merits or on the sanctions imposed.

Reasons do not need to be perfect.

Unanswered Questions

Every now and then there are cases raising important legal and regulatory issues in which the decision does not satisfactorily address the concerns. [College of Chiropractors of British Columbia v Health Professions Review Board](#), 2023 BCSC 529 (CanLII), is such a case. There, a registrant filed two complaints

against two other registrants who were on the board of directors of the regulatory body. The complaints were filed on the eve of an election to the board. The respondents to the complaint were running for re-election. The by-laws provided that a candidate was ineligible for election if they were the subject of a complaint investigation. The complaints, about statements on the respondents' website, appeared to have some substance.

The Registrar for the regulator processed the complaints, on a very expedited basis, through a summary procedure and decided to take no action because they did not raise a serious matter (i.e., something that would likely result in terms and conditions or a suspension if it went to discipline). Under the legislation, the summary decision stood unless the screening committee intervened. After taking no action, the Registrar took some informal, educational measures, to encourage the respondents to consider making changes to their websites.

This scenario raises serious questions, including the following:

1. Should the public complaints process enable the disruption of the elections to the board of directors through the mere filing of a complaint?
2. Could the complaint be viewed as an abuse of process?
3. Should the complaints summary procedure process be used for a complaint made against members of the board of directors?
4. Should the Registrar be the person to review a complaint made against what is, in effect, the Registrar's boss? If so, should the Registrar involve a statutory committee, with publicly appointed members on it, to foster transparency and accountability?

The complainant sought a review before an independent tribunal. The tribunal reversed the Registrar's decision on the basis that the investigation was inadequate and that the decision was unreasonable, primarily because the Registrar had not involved the screening committee before deciding to take no action. The regulator sought judicial review. The Court reversed the tribunal's decision and reinstated the decision of the Registrar to take no action on the complaints.

The Court's decision was based on a highly technical analysis. The Court focused on the degree to which the complainant raised bias concerns in their original complaint, the legal structure of the summary complaints procedure, and the limited authority of the reviewing tribunal to assess the adequacy of the investigation and the reasonableness of the decision. For the most part, the Court sidestepped the broader issues raised by the scenario. The Court also did not address the issue of whether the decision-maker (rather than the parties to the complaint) should take the lead in defending its own decision.

The Court did discuss the value of a summary procedure for complaints:

The dispositions permitted the registrar to address matters that were not serious, as the legislation defines serious matters, without the spectre of disciplinary sanctions creating a fraught or adversarial atmosphere that interfered with a proactive and constructive approach.

However, regulators are left to deal with the broader issues raised by the case on a policy basis. Perhaps election and complaints procedures can be designed to avoid or reduce the unfortunate appearances of these kinds of situations.

Use of Unconventional Procedures

Physician regulators have historically struggled with the question of whether to restrict or sanction non-traditional activities by their registrants. In fact, in Ontario, the [enabling legislation](#) for the physician regulator was amended in 2000 to state:

5.1 A member shall not be found guilty of professional misconduct or of incompetence... solely on the basis that the member practises a therapy that is non-traditional or that departs from the prevailing medical practice unless there is evidence that proves that the therapy poses a greater risk to a patient's health than the traditional or prevailing practice.

A recent decision provides some guidance on the issue: [Khan v. College of Physicians and Surgeons of Ontario](#), 2023 ONSC 2096 (CanLII). In that case the registrant, a physician, used several unconventional procedures to assess and treat cancer patients. After an 18-day hearing, the registrant was found to have engaged in professional misconduct and to be incompetent. In dismissing the registrant's appeal, the Court made the following points:

1. Expert witnesses could be qualified to express opinions even if they did not use the procedures in issue. Being knowledgeable of conventional procedures, familiar with the unconventional ones, and having researched the unconventional ones was sufficient.
2. A finding could be made that the registrant fell below the accepted standard of practice of the profession even though no specific standard was enacted in the regulations.
3. On a related note, the Court viewed the regulator's policy on Complementary/Alternative Medicine as "guidance as to the standard against which the actions of physicians will be assessed" even though it was not prescribed by law. Reliance on the policy in conjunction with the expert evidence was not an error in law.
4. The Court supported the hearing panel's discounting of anecdotal evidence, especially the registrant's conversation with another physician who used some of the procedures, as an insufficient basis for using the procedures.
5. There was no loss of jurisdiction or appearance of bias because two of the three physicians on the five-person panel were unable to complete the hearing.
6. The Court also supported the hearing panel's findings related to the registrant failing to obtain informed consent and the impropriety of billing of treatment services as palliative care.

In this case the Court found that there was a significant amount of evidence to support the findings of the discipline panel and that the panel's 269-page decision adequately explained the basis of its findings. Undoubtedly, the factual context, including the treatment of patients with diagnosed cancer and providing overly optimistic assurances to patients inconsistent with conventionally available test results, played a significant role in the outcome.

Another Option to Prevent Harassment of Regulatory Staff

The harassment of the staff of regulators has become a major issue in recent years. The genesis of such harassment varies but has included opposition to the regulator's activities related to the pandemic, aggressive tactics to defend against regulatory investigations and enforcement (the best defence is a good offence), and possibly the mental health status of the harassing individuals. Tactics have included posting personal information (e.g., names and pictures of staff) online, posting hateful comments about staff online, and even making reports of illegal conduct by staff to the police (e.g., describing the regulatory removal of files for an investigation as theft or burglary).

Regulators, like all employers, have a legal duty to protect their workers from harassment. Doing so is also essential for retaining good staff. A first line response can be administrative. Many regulators now have secured entrances to their physical premises, preventing harassers from entering anywhere but the reception area. Harassers have been limited to communicating in writing and with only one staff person. Some regulators have even restricted access to public meetings and hearings to virtual attendances. Remote work can also help reduce the stress, so long as the harasser does not obtain (or threaten to obtain) staff members' home addresses. In those circumstances, regulators have sometimes offered to pay for security measures for staff residences. Some regulators have even begun to withhold the names of staff members on communications and the identities of decision-makers in reasons for decision where harassment is reasonably foreseeable.

However, such measures do not protect against online or outside-of-the-office physical harassment where identities are known. An obvious option is to respond to social media and other public statements with factual information to rebut the allegations of the harasser. However, such a response often provokes more harassment. A communications response can also come across as unseemly for a public regulator and can create an appearance of bias.

Regulators have several legal options at their disposal, none of which are completely effective. Perhaps the most common legal option is to investigate and bring discipline (or incapacity) proceedings where the harasser is a registrant. See for example: [Zuk v Alberta Dental Association and College](#), 2018 ABCA 270 (CanLII). Such proceedings can take time, generate a constitutional freedom of expression argument, and can, again, result in allegations of an appearance of bias on the part of the regulator.

Another option can be to seek criminal harassment charges or a peace bond. However, as a practical matter, that option often requires persuading stretched law enforcement officers to take on the case. While the scope of criminal harassment is expanding, its focus tends to be on threats of violence or intimidation, or of stalking behaviour (physical or online). Some harassers are becoming increasingly sophisticated in not quite crossing that line (e.g., stating that they do not condone violence but would not be surprised if someone was pushed beyond the breaking point).

Another option is for the regulator to bring an action for defamation. However, anti-SLAPP legislation creates hurdles that may make it difficult for regulators to overcome. See, for example, [Ontario College of Teachers v. Bouragba](#), 2019 ONCA 1028 (CanLII). Courts have been protective of the right of registrants and others to make public statements about regulators that are false or unwelcome. For example, in [College of Physicians and Surgeons of Ontario v. O'Connor](#), 2022 ONSC 195 (CanLII), the Court refused to protect the identities of regulatory staff and investigators despite multiple postings by supporters of a

registrant that were angry in tone and threatened them with Nuremberg-type and criminal prosecutions for their actions. The Court viewed regulatory staff as being analogous to public servants. The values of an open and democratic society allow for criticism, even unfair criticism. Threatening legal action, even unfounded legal action, needed to be endured unless the postings threatened violence or “actual intimidation”.

A recent Alberta decision might suggest another legal option for regulators whose staff face harassment: [*Alberta Health Services v Johnston*](#), 2023 ABKB 209 (CanLII). The opening paragraph of that case reads as follows:

Kevin J. Johnston enjoyed a moment of notoriety as candidate for mayor of Calgary in 2021. During his mayoralty campaign, on his eponymous online talk show, and anytime there was a microphone nearby, Mr. Johnston spewed misinformation, conspiracy theories, and hate. Among his favourite targets were Alberta Health Services (“AHS”) and Sarah Nunn, who was employed by AHS as a public health inspector.

The Court gave the following example about Ms. Nunn:

On several occasions, Mr. Johnston engaged in rants on his show about Ms. Nunn. His rants about Ms. Nunn, were accompanied by pictures of Ms. Nunn and her family that he acquired from her unlocked social media accounts. His rants belittled Ms. Nunn and her husband and were filled with pejorative descriptions. His favourite description for Ms. Nunn was “terrorist”. At one point, he said that Ms. Nunn’s husband “looked retarded.” He reproduced pictures of Ms. Nunn’s family with the faces of her children obscured. The following screed is representative of his statements about Ms. Nunn:

If you’re friends with this Sarah Nunn person, when I’m mayor, you’re going to be investigated as well.... I intend to make this woman’s life miserable, I intend to destroy this woman’s life like she has destroyed the lives of Calgarians

In a lengthy analysis, the Court found that the AHS was a government actor that could not sue for defamation. This seems to go further than the protections offered under Ontario’s anti-SLAPP legislation.

However, the Court found that Ms. Nunn was in a different position. While the Court was not prepared to apply a tort of invasion of privacy or assault in these circumstances, the Court was willing to apply, and clarify, the tort of civil harassment. The elements of the tort are described by the Court as follows:

- (1) engaged in repeated communications, threats, insults, stalking, or other harassing behaviour in person or through or other means;
- (2) that he knew or ought to have known was unwelcome;
- (3) which impugn the dignity of the plaintiff, would cause a reasonable person to fear for her safety or the safety of her loved ones, or could foreseeably cause emotional distress; and
- (4) caused harm.

While the Court in this case found that the postings of Mr. Johnston did incite his followers to violence, as noted above, the Court also indicated that the tort would be available in other circumstances. Citing the Ontario case of [Caplan v. Atas](#), 2021 ONSC 670 (CanLII), the Court indicated that the tort was also available for where the statements “cause fear, anxiety, emotional upset or to impugn the dignity of the plaintiff, and the plaintiff suffers such harm”.

In addition to an injunction, the Court awarded a total of \$650,000 for damages under various headings, including \$100,000 general damages for the tort of harassment.

Regulators may now have a good precedent for another option in protecting their staff from harassment.

This article was originally published by Law360 Canada, part of LexisNexis Canada Inc, at [Law360 Canada](#).

Accommodations Require Evidence

Regulators frequently deal with accommodation issues related to a registrant experiencing disabilities. The issue can relate to procedure (e.g., requests for extensions and adjournments) and substance (e.g., a disability may have contributed to the conduct). In [Ballam v. Justices of the Peace Review Council](#), 2023 ONSC 2502 (CanLII), the Court held that regulators can require evidence to support requested accommodations.

In that case, a Justice of the Peace (JP) was on long-term disability leave. She was found to have engaged in the practice of law on three occasions without a licence, without insurance, and without having first resigned as a JP. The hearing panel recommended that she be removed from judicial office.

On judicial review, she argued that the hearing panel was procedurally unfair in proceeding with the hearing in the face of her disability. The Court found there had been no unfairness. The JP received multiple accommodations throughout the process including several extensions and adjournments and conducting the hearings intermittently on shortened and non-consecutive days. The panel offered to provide breaks as needed. The JP provided assurances during the hearing as to her ability to conduct the hearing. No recent evidence of ongoing inability to participate in the hearing was provided. There was no obligation on the hearing panel to inquire further as to the JP’s ability to participate in the hearing.

Similarly, the Court rejected the JP’s assertion “that although the Panel had significant evidence before it that she was not at full cognitive capacity when these acts occurred, it analyzed her conduct through the lens of an able-bodied person with full cognitive function.” The Court noted that “there is no reliable medical evidence to suggest that any cognitive disability was a significant contributing factor to her misbehaviour.” In addition, the JP’s “advocacy during both the misconduct and penalty hearings – while ultimately not successful – was lucid and relevant. Her written submissions following the hearing were capable and coherent. There was nothing of significance to suggest a cognitive deficit. To the extent her strategy during the litigation may be questioned, that does not signify lack of cognitive function but, at most, possible poor judgment.”

While there may be some circumstances in which it is incumbent upon regulators to inquire into a registrant’s capacity, this case was not one of them.

Another Investigation Proceeds

There have been several reported cases where registrants have been unsuccessful in trying to prevent an investigation of their conduct by their regulator. The most recent example is [Kustka v. College of Physicians and Surgeons of Ontario](#), 2023 ONSC 2325 (CanLII).

In that case, the registrant (a physician) was investigated for issuing two questionable medical exemptions from COVID-19 masking requirements and prescribing ivermectin to an elderly patient for the purpose of treating COVID-19. The registrant did not cooperate with the regulator and was subject to an interim order restricting and monitoring their practice and a separate investigation for failing to cooperate. The registrant and several patients brought judicial review applications challenging the investigation (including a challenge to the regulator obtaining access to the patient records) and the interim order. They relied on sections 7 and 8 of the *Canadian Charter of Rights and Freedoms* to challenge the validity of the enabling provisions. In dismissing the application, the Court made the following points:

- The patients did not have “private interest” standing (i.e., authority) to bring the application. Following [Kilian v. College of Physicians and Surgeons of Ontario](#), 2022 ONSC 5931 (CanLII), the Court found that the regulatory investigation was between the regulator and the registrant and patients had no direct interest in it. The patients’ expectation of privacy in their health records “is subject to the higher need to maintain appropriate standards in the profession”. That position has since been reaffirmed in [College of Physicians and Surgeons of Ontario v. Kilian](#), 2023 ONCA 281 (CanLII).
- Similarly, the patients did not meet the test for “public interest” standing to bring their application.
- Even though the registrant was challenging the constitutionality of the provisions authorizing the regulator’s actions, the application was premature. There is no right to prevent such an alleged *Charter* breach before it occurs.
- “The test for determining whether reasonable and probable grounds exist to appoint investigators under s. 75 of the Code is not rigorous.” It is lower than the “prima facie case” test, especially since the decision is only to commence an investigation. The complaint in this case “was sufficiently detailed as to be beyond mere suspicion”.
- In appointing the investigators, the regulator was entitled to rely on guidelines from government and health profession organizations about mask-wearing exemptions and the use of ivermectin.
- In imposing the interim restrictions, three instances were sufficient for the regulator to be reasonably concerned that the registrant was exposing patients to harm. This decision was reinforced by the registrant’s failure to cooperate fully with the investigation, which escalated the litigation and delayed the proceedings before the regulator.

The applications for judicial review were dismissed with costs of over \$4,000 ordered against the patients and almost \$25,000 ordered against the registrant.

Ministry of Health

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June 1, 2023

MEMORANDUM TO: Registrars and Executive Directors

FROM: Dr. Karima Velji, Chief of Nursing & Professional Practice and
Assistant Deputy Minister

RE: Ontario Regulation 508/22 (Registration Requirements) made
under the *Regulated Health Professions Act, 1991* (RHPA)

As a follow up to my December 14, 2022, memo, I want to thank the Colleges for submitting your Emergency Class regulation proposals to the Ministry. I know this required great effort to quickly draft regulations, launch consultations and, in some cases, schedule special Council meetings. Your efforts will help Ontario's health system facilitate quicker registration to help safeguard the health workforce supply in the event of future emergencies.

A number of Colleges have taken the opportunity to make additional amendments to their registration practices and to remove additional registration barriers. In order to meet the August 31, 2023 deadline for the Emergency Class regulations, the Ministry will only be proceeding with the Emergency Class provisions at this time.

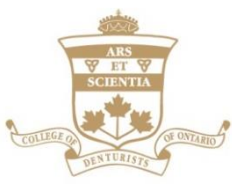
The remaining proposals will be brought forward beginning this Fall. I would ask for your patience as these will take some time to work through, given the complexity of some of the proposed changes. However, you have my commitment that we will process these other proposals as expeditiously as possible.

Thank you for your continued involvement and cooperation during this process. You may contact Allison Henry and her team should you have any questions.

Sincerely,

Dr. Karima Velji

c: Allison Henry, Director, Health Workforce Regulatory Oversight Branch, Nursing and Professional Practice Division, Ministry of Health



Registrar's Report and Update

Since the last Council meeting on March 10th 2023:

- Strategic Planning Workshop held on April 14 - 15, 2023
- HPRO Board of Directors meeting – May 19, 2023
 - Management Committee Elections
 - Audited Financial Statements
 - Strategic Plan – Increased Focus on Government Relations
- Joint Indigenous Peoples, Reconciliation, and Anti-Bias Workshop on May 26, 2023
 - Joined by Council Members and Senior Staff of RCDSO, CDHO, CDO, and CDTO
- MOH Update:
 - Emergency Class amendments only for August 31, 2023
 - Local Registration Regulation amendments beginning in the Fall.
- Ongoing member portal upgrade
- Website colours refresh launched May 15, corporate style guide
- Un-constituted Council as of May 23, 2023

Operational Activity

From March – May 2023

- CPMF submitted March 31
- April 21 - 23, Chief Examiner & Item Writer in Calgary, Alberta to represent Ontario in a national MCQ item writing workshop
 - Joined by item writers from Alberta, British Columbia, Saskatchewan, Manitoba, and New Brunswick
- Peer Circles Facilitator Training, Saturday, May 13, 2023
- MCQ and OSCE Exam June 24-25, 2023
- Staff continued integration with HUB 601 A/V training



*Pictured above:
Peer Circle
Facilitators at
training session*



*Pictured left:
CDO Chief
Examiner and Item
Writer in Alberta for
Multi-Jurisdictional
MCQ Item Writing
workshop*



BRIEFING NOTE

To: **Executive Committee**
From: **Roderick Tom-Ying, Registrar and CEO**
Date: **June 9, 2023**
Subject: **Financial Report: April 1, 2023 – April 30, 2023**

Public Interest Rationale

The College of Denturists of Ontario's mandate is to protect the public by ensuring Registered Denturists provide safe, ethical, and competent denturism care and service in Ontario. As part of that mandate, the College Council has the overall responsibility of ensuring prudent financial stewardship of the College's financial resources as part of its core principle of good governance. Implementation of regulatory best practices, strategic planning, performance monitoring, fiscal management, external compliance, and reporting forms some of these core principles. Council must ensure that the College has a fiscally responsible and strategic operating budget each year. As part of this commitment, Council and the Executive Committee acting on behalf of Council, review the financials of the CDO on a quarterly basis.

Statement of Operations for period April 1, 2023 – April 30, 2023

I direct your attention to the column "YTD as Percentage of Budget" which indicates the percentage of the budgeted amount that has been spent (or, in the case of income, received). Since this report covers only the first month of the fiscal year, consequently, the anticipated expenses will be quite low into the new fiscal year. However, not every line item adheres to this because some expenses are not expensed over time but are lump sum payments.

On the revenue side, in previous years most of the College's Registration renewal revenue is captured by the end of the renewal period, April 14. In keeping with the two-installment payment plan option instituted during the pandemic, the renewal period extends to September 15, 2023 when the second installment of the Registration renewal fee is due. The first installment or the option to pay in full, was due by April 14, 2023. As of April 30, 2023, the revenue received for Registration Fees represented 78% of our projected budget.

Potential areas for further scrutiny as the year unfolds include the budget accounts related to the Qualifying Examination and Complaints and Discipline. As noted to Council in earlier meetings, the qualifying examination is seeing a significantly reduced number of candidates attempting the exam in calendar year 2023 resulting in significantly reduced revenues. A deficit for this budget line item

is anticipated and accounted for. The CDO anticipates the complaints and discipline budget account to be exceeded this year due to extraordinarily complex complaints before the ICRC and greater than usual number of referrals to the Discipline Committee. College Staff anticipates that any excess related to complaints and discipline will be funded by either efficiencies found in the operating budget throughout the year, or to be funded by the College's reserve funds dedicated to complaints and discipline. The current restricted reserve funds for therapy and counselling is at \$152,630 in the reserve funds. The current restricted reserve funds for Discipline cases is at \$360,000. These two restricted reserve fund amounts are in addition to the unrestricted reserve fund of \$1,320,405.00

There are no other items of note or concern in this variance report. Most items are within target for the first month of the fiscal year.

Strategic Initiatives Budget for period April 1, 2023 – April 30, 2023

The Strategic Initiatives Budget was first allocated with an initial amount of \$150,000 that came from excess unrestricted net reserves. Various strategic projects have been identified under this budget including the three phases of upgrades for the CDO database, governance improvements with an external governance consultant, the first year of leasing costs for HUB 601 (the second year onwards will be shifted over to the Operating Budget), and expenses related to CDO Council's Strategic Planning workshop.

The Strategic Initiatives budget has now been used to fund expenses related to the database upgrade, monthly lease for HUB 601, and most recently expenses related to the Strategic Planning Workshop.

There are no areas of variance or concern related to this budget. All items are within budget and in line with the estimates and invoices received that were previously agreed upon.

College of Denturists of Ontario

Income Statement (April 1, 2023-April 30, 2023)

YTD Budget to Actual	2023-2024 BUDGET	April 30/23 YTD Totals	YTD as Percentage of Budget	Remainder or In Excess of Budgeted Amount*
REVENUE				
Professional Corporation Fees	\$ 67,000.00	\$ 63,650.00	95%	\$ 3,350.00
Registration Fees	\$ 1,309,000.00	\$ 1,015,774.00	78%	\$ 293,226.00
Other Fees	\$ 4,500.00	\$ 2,438.50	54%	\$ 2,061.50
Qualifying Examination Fees	\$ 203,750.00	\$ -	0%	\$ 203,750.00
Other Income	\$ 15,000.00	\$ 5,814.43	39%	\$ 9,185.57
TOTAL REVENUE	\$ 1,599,250.00	\$ 1,087,676.93	68%	\$ 511,573.07
EXPENDITURES				
Wages & Benefits	\$ 632,000.00	\$ 47,552.03	8%	\$ 584,447.97
Professional Development	\$ 40,000.00	\$ 1,856.21	5%	\$ 38,143.79
Professional Fees	\$ 150,000.00	\$ 10,395.83	7%	\$ 139,604.17
Office & General	\$ 155,000.00	\$ 24,824.06	16%	\$ 130,175.94
Rent	\$ 141,300.00	\$ 9,647.00	7%	\$ 131,653.00
Qualifying Examination	\$ 300,000.00	\$ 5,900.00	2%	\$ 294,100.00
Council and Committees	\$ 40,000.00	\$ 4,264.50	11%	\$ 35,735.50
Quality Assurance				
QA Panel A	\$ 10,000.00	\$ 499.00	5%	\$ 9,501.00
QA Panel B	\$ -	\$ -	0%	\$ -
QA Assessments	\$ 35,000.00	\$ -	0%	\$ 35,000.00
Complaints & Discipline				
Complaints	\$ 30,000.00	\$ 7,935.20	26%	\$ 22,064.80
Discipline	\$ 25,000.00	\$ -	0%	\$ 25,000.00
Capital Expenditures	\$ 15,000.00	\$ -	0%	\$ 15,000.00
TOTAL EXPENDITURES	\$ 1,573,300.00	\$ 112,873.83	7%	\$ 1,460,426.17
NET INCOME	\$ 25,950.00	\$ 974,803.10		

College of Denturists of Ontario

Income Statement (April 1, 2023-April 30, 2023)

YTD Budget to Actual	2022-2023 BUDGET	Anticipated Costs	Prior Year Costs	30-Apr-23 YTD Totals	Remainder or In Excess of Budgeted Amount*
STRATEGIC INITIATIVES					
	\$ 150,000.00				
Phase 1: Member Portal Upgrade - 50% Upfront Costs		\$ 23,730.00	\$ 23,730.00	\$ -	\$ 126,270.00
Phase 2: Member Portal Upgrade - Remaining 50% Costs		\$ 23,730.00	\$ -	\$ -	\$ 126,270.00
Phase 3: Member Portal Upgrade - Compliance Centre D		\$ 27,120.00	\$ -	\$ -	\$ 126,270.00
Strategy/Governance - Project 1 & 2		\$ 8,475.00	\$ -	\$ -	\$ 126,270.00
Strategy/Governance - Project 3		\$ 9,040.00	\$ -	\$ -	\$ 126,270.00
Regulatory Hub - 2023 Lease Costs		\$ 10,466.67	\$ -	\$ 833.33	\$ 125,436.67
Strategic Planning Workshop Expenses		\$ 10,000.00	\$ 480.68	\$ 12,072.15	\$ 112,883.84
TOTAL STRATEGIC INITIATIVES	\$ 150,000.00	\$ 112,561.67	\$ 24,210.68	\$ 12,905.48	\$ 112,883.84



BRIEFING NOTE

To: **Executive Committee**

From: **Roderick Tom-Ying, Registrar & CEO**

Date: **June 9, 2023**

Subject: **Annual Declaration: Conflict of Interest and Confidentiality**

Public Interest Rationale

All Council Members have a duty to act solely in the best interest of the College, consistent with the mandate of the College to act in the public interest, and to maintain the trust and confidence of the public in the integrity of the decision-making processes of Council. As part of this commitment, Council members must always declare any conflicts of interests, actual or perceived, and to maintain confidentiality as required by the Regulated Health Professions Act.

Background

Currently, all persons retained, appointed, or employed by the CDO are required to undergo onboarding orientation including review and acceptance of the CDO Confidentiality Agreement along with the Letter of Understanding for Conflict of Interest.

Both formal documents outline the legal requirements and obligations under the *Regulated Health Professions Act, 1991*, to maintain the secrecy of confidential information with respect to all matters and materials that are provided and reviewed under the course of their duties. The intent of the Letter of Understanding for Conflict of Interest is to determine and identify circumstances in which a conflict of interest may arise for members of Council and Committees and set out a procedure so that members may declare conflicts and avail themselves of an appropriate method of dealing with it.

The CDO takes the protection of confidentiality and conflict of interest seriously. In addition to the annual requirement of re-signing and reviewing the two formal documents, before each Council and Committee meeting, the Chair or College Legal Counsel reminds all participating members of their duties and reiterates the process for declaring a conflict.

As well, the CDO Council has a code of conduct embedded in its College By-Laws that reiterates provisions of Conflict of Interest.

CPMF Action Item – Annual Questionnaire and Addition to Council Meeting Packages.

As part of the Ministry of Health's CPMF report, the Ministry sets out best practices and standards used as hallmarks of a successful regulator that meets its duties and obligations in regulating in the public interest.

One action item identified by College Staff as a way to further enhance CDO's commitment to transparency on conflict of interest and protecting confidentiality is the incorporation of its two formal annual documents as part of the public Council meeting packages.

Ms. Rebecca Durcan, College Legal Counsel, has developed annual declaration forms and questions related to Conflict of Interest and Confidentiality. All elements from these newly developed forms would then be incorporated into an online digital form for all Council and Committee members to complete on an annual basis. The completion of the declaration questions and forms would then be included as an appendix to a Council meeting package.

Options

1. To approve both the annual declaration forms for Conflict of Interest and Confidentiality as **presented** for immediate implementation.
2. To approve both the annual declaration forms for Conflict of Interest and Confidentiality as **amended** for immediate implementation.

Attachments

1. Confidentiality Agreement (Draft)
2. Conflict of Interest Declaration (Draft)



Confidentiality Agreement

Annual Declaration for Council and Committee Members and Volunteers

Name:

- Public Appointee¹ Public Representative² Elected Member Non-Elected Member

As a member of Council and/or a committee of the College:

- I have read, considered, and understand [section 28 of the College's by-laws](#) on Confidentiality, and agree to abide by its provisions.
- I have also read and understood [subsection 36\(1\) of the Regulated Health Professions Act](#) about when disclosure is permitted in specific circumstances.

I agree to take all reasonable steps to avoid any breach by:

- Ensuring that all the information I receive in the course of discharging my duties will be held in the strictest confidence
- Acknowledging that if disclosure is permitted, it is authorized by Council or subsection 36(1) of the RHPA
- Agreeing to seek advice if I am in doubt about whether an exception applies to my duty to not disclose
- Agreeing that my obligations regarding confidentiality continue after my term as Council and/or committee member expires

I acknowledge and agree that breaching confidentiality is a breach of my fiduciary and statutory duties.

I recognize that breaching this duty could discredit and create liability for myself and the College.

I understand that breaching this duty may result in a governance complaint and possible remedial action, censure or my removal from office. It could also result in a provincial prosecution and conviction.

¹ A member of the public appointed to the Council by Order-in-Council.

² A member of the public appointed by the Council or Executive Committee to College Committees.



I declare that the information I have provided on this form is complete, accurate, and true to the best of my abilities. By signing below, I indicate that the information in this form is bound to me.

Signature:

Date:

Please return this form to the Registrar and CEO of the College by one of the following methods:

Email: info@denturists-cdo.com

Fax: 416-925-6332

Mail:

College of Denturists of Ontario
365 Bloor Street East, Suite 1606
Toronto, ON M4W 3L4

DRAFT



Conflict of Interest Declaration

Annual Questionnaire for Council and Committee Members and Volunteers

Name:

- Public Appointee¹ Public Representative² Elected Member Non-Elected Member

I. Conflict-of-Interest Declaration of Adherence

As a member of Council and/or committee of the College, I acknowledge that:

- I have a duty to carry out my responsibilities in a manner that serves and protects the interest of the public. Therefore, I must not engage in any activities or decision-making about any matters where I have a conflict of interest.
- I have a duty to uphold and further the intent of the [Denturism Act, 1991](#) which is to regulate the practice and profession of denturism in Ontario. I must not represent the views of advocacy or special interest groups.
- I must avoid conflicts between my self-interest and my duty to the College. As part of this Conflict-of-Interest Declaration of Adherence, I have identified below any relationship(s) I currently have or recently have had with any organization that may create a conflict of interest by virtue of having competing fiduciary obligations to the College and the other organization (including, but not limited to, entities of which I am a director or officer).
- I confirm I have read, considered and understand the College's Conflict-of-Interest by-laws section ([section 27](#)), and agree to abide by its provisions.
- I understand that my completed questionnaire will be included in the appendix to each Council and/or committee meeting package and that I must declare any updates to my responses and conflicts of interest specific to the meeting agenda at the start of each meeting.
- I recognize that a conflict of interest could bring discredit to the College, amount to a breach of my fiduciary duty to the College and could create liability for the College and/or myself.
- I understand that any breach of the College's Conflict-of-Interest by-laws section may result in remedial action, censure or removal from office.

¹ A member of the public appointed to the Council by Order-in-Council.

² A member of the public appointed by the Council or Executive Committee to College Committees.



II. Outside Interests

In accordance with [section 27](#) of the by-laws of the College, I hereby disclose that I, or one of my family members (e.g., a parent, spouse³, child or sibling), close friends, business partners, dating partner, or other person with whom I have a close personal or professional relationship, have or recently⁴ have had the following direct or indirect affiliations, personal or financial interests or relationships, and/or have taken part in the relevant transactions.

I am aware that a conflict of interest arises where I have a personal or financial interest which conflicts, might conflict or may be perceived to conflict with the interests of the College. The purpose of this form is to assist me and the College with identifying possible conflicts. A conflict of interest could arise in relation to personal or financial matters including (but not limited to):

- Directorships or other employment;
- Interests in business enterprises or professional practices;
- Share ownership;
- Beneficial interests in trusts;
- Membership in existing professional or personal associations;
- Professional associations or relationships with other organizations; and
- Personal associations with other groups or organizations, or family relationships.

Any obligation, commitment, relationship or interest that could conflict or may be perceived to affect my judgment or the discharge of my duties to the College must be declared.⁵

1. A conflict with my duty to the College may arise because I hold the following offices related to denturism (appointed or elected):

Office/Title	Professional Association/Organization

³ The [Family Law Act](#) definition of “spouse” is applied. A “spouse” includes either of two persons married to each other or who are not married and have cohabitated continuously for a period of at least three years or who are in a relationship of some permanence if they are parents of a child as set out in section 4 of the [Children’s Law Reform Act](#).

⁴ If you are a newly elected Council member, you must not have held a position with any denturism-related Professional Association for at least one year at any time between the election date and the 120th day immediately before that date. If you are a newly elected and previously served as an elected Council member for nine consecutive years, at least three years must have passed by any time between the election date and the 120th day immediately before that date. See [subsections \(ii\)\(f\) and \(iv\) of section 13.01 \(“Eligibility to Run for Election”\) in the College’s by-laws](#).

⁵ A conflict of interest exists where a reasonable person would conclude that a Council or Committee member’s personal or financial interest may affect their judgment or how they discharge their duties to the College. A conflict of interest may be real, perceived, actual, potential, direct, or indirect.



The nature and extent of the conflicting office duty is/could be:

2. A conflict with my duty to the College may arise because I, or any trustee or any person on my behalf, own or possess, directly or indirectly, the following interests related to denturism:

Interest	Professional Association/Organization
<p><u>The nature and extent of the conflicting interest is:</u></p>	

3. A conflict of interest with my duty to the College could arise because I receive financial remuneration (either for services performed by me, as an owner or part owner, trustee, or employee or otherwise) from the following sources related to denturism:

Office/Title	Professional Association/Organization
<p><u>The nature and extent of the conflicting interest is:</u></p>	

4. Other than what is disclosed above, I have considered whether I have any relationships or interests that could compromise, or be perceived to compromise, my ability to exercise judgment or decision-making independently and objectively with a view to the best interests of the College and listed them below:

N/A

Office/Title	Professional Association/Organization



The nature and extent of the conflicting office duty is/could be:

Signature:

Date:

Please return this form to the Registrar and CEO of the College by one of the following methods:

Email: info@denturists-cdo.com

Fax: 416-925-6332

Mail:

College of Denturists of Ontario
365 Bloor Street East, Suite 1606
Toronto, ON M4W 3L4

DRAFT



MEMO

To: **Executive Committee**

From: **Roderick Tom-Ying, Registrar & CEO**

Date: **June 9, 2023**

Subject: **Elections Results – 3, 4, 5 and 7**

Pursuant to Article 18.02 of the College By-laws which states:

18.02 Registrar's Declarations

The Registrar shall make all declarations in respect of an election in writing, keep them in the records of the College and include a copy of each declaration in the next package of materials sent to the Council after making it.

I write to provide Council with the results of the 2023 Council elections of representatives from the profession from Districts 3, 4, 5 and 7.

One (1) nomination of candidacy for election to the College Council was received in District 5. The nomination period closed on April 21, 2023, and the deadline to submit notice of withdrawal of candidacy was May 3, 2023. The online election period for the election of a professional member of Council would have begun on May 8, 2023; however, since the seat was filled by acclamation, no election was required.

I declare and provide you notice that the following professional member was elected to the Council by acclamation:

District 5 Mr. Garnett A.D. Pryce

There were no nominations of candidacy received for District 3, 4 or 7. Pursuant to Article 14.02 of the College By-laws, "where there are no candidates for an electoral district who are eligible for election, the Registrar shall, as soon as possible call a by-election for that electoral district." My intention is to call a by-election as described in the briefing note that follows.

This notice shall constitute the record of the College for this election, and it will be included in the next Council meeting package of materials.



BRIEFING NOTE

To: **Executive Committee**

From: **Roderick Tom-Ying, Registrar & CEO**

Date: **June 9, 2023**

Subject: **By-Elections for Districts 1, 3, 4, 7**

Public Interest Rationale

The public holds an interest in regulatory oversight organizations that have a clear focus on performance accountability and progressive accomplishment of organizational initiatives that align with the organization's mandate. General Elections and By-Elections and its associated processes are codified in the College's By-Laws. Elections are necessary in the routine processes of the CDO to ensure that it has a full complement of Professional Members of Council to govern effectively.

General Elections – Districts 3, 4, 5

As per article 10.04 of the College By-Laws, there shall be regular general elections for electoral districts 3, 4 and 5, in 2011 and every third year after. June 2023 represents the term expiry for Council Members representing districts 3, 4 and 5 necessitating a general election to be called in advance of June 2023.

Upon closing of the nomination deadline on Sunday, April 23, 2023, there were no nominations received for districts 3 and 4, and one nomination received for district 5.

I am pleased to report that Mr. Garnett Pryce, DD, the current incumbent for district 5 has been acclaimed to serve on Council as a Professional Member for another three-year term.

Due to the lack of nominations received for districts 3 and 4 during the regular elections period, the Executive Committee is asked to direct the Registrar to hold a By-Election for districts 3 and 4.

By-Election – Districts 1 & 7

Currently there are vacancies for districts 1 and 7 due to two resignations received from the incumbent Professional Members on Council. As a result of these vacancies, the Executive Committee is asked to direct the Registrar to hold a By-Election for districts 1 and 7 to elect Professional Members to serve the remainder of the respective terms for those districts.

The remaining term for District 1 is for a two-year term ending June 2025.

The remaining term for District 7 is for a one-year term ending June 2024.

By-Election Timelines

Based on the College By-Laws, College Staff have proposed the following timeline to conduct by-elections for districts 1, 3, 4, 7 at the same time:

2023 By-Election Dates – Districts 1, 3, 4, 7

Council Meeting: Friday, September 29, 2023	
Election Date: Thursday, September 21, 2023	
Election Polling Opens: Tuesday, August 22, 2023	= election day – 30 days (16.01)
Last Day to Withdraw: Thursday, August 17, 2023	= election day – 35 days (13.09)
Nomination Deadline: Monday, August 7, 2023	= election day – 45 days (13.04)
Notice of Election: Friday, June 23, 2023	= election day – 90 days (13.03)
✓ Pull Eligibility List: Wednesday, May 24, 2023	= election day – 120 days (12.01 ii)

Options

1. That the Executive Committee direct the Registrar to hold By-Elections for districts 1, 3, 4, 7 in accordance with the CDO By-Laws.
2. Other

Attachments

N/A



MEMO

To: **Executive Committee**

From: **Roderick Tom-Ying, Registrar & CEO**

Date: **June 9, 2023**

Subject: **Committee Appointments for 2023-2024**

Public Interest Rationale

In June of each year, the statutory and non-statutory committees of the College are dissolved and reconstituted on the appointment of new committee members for a one-year term. The review and approval of the College's committee membership by Council serves the public interest by ensuring a full complement of committee members is available to provide effective governance.

Background

The proposed slate for committee memberships for 2023-2024 is attached. Normally this slate is developed by the Nominating Committee; however, the College will be relying on the Executive Committee to fulfil this important role. Consequently, I am presenting the proposed slate for consideration and approval.

Members of Council received priority for their preferences. Diligence was undertaken to ensure that all Council Members received at least one preferred Committee.

Sixteen (16) Registered Denturists volunteered for non-Council positions on various committees, including several educational professors/lecturers from the various educational institutions. Due to potential conflicts of interest, they were placed on the Quality Assurance Committee. College Staff believes that this Committee would best utilize their knowledge and background for developing programs/policies to better serve Registered Denturists.

Care was taken to ensure that every Council Member, and non-Council Registered Denturists who submitted a preference would have an opportunity to serve the College. All non-Council Registered

Denturists who provided a preference were accommodated. This was possible due to vacancies created by outgoing non-Council Registered Denturists who indicated due to personal circumstances they would not be participating this year. In total, three (3) of the sixteen (16) non-Council Registered Denturists are new to College committees from last year.

Options

After consideration and discussion of the attached proposed Slate, the Executive Committee may:

1. Adopt a motion to approve the proposed slate,
2. Request amendments to the proposed slate and adopt a motion to approve the proposed slate as amended, or
3. Other

Attachments

1. Proposed Committee Slate (Draft)

College of Denturists of Ontario

Draft Slate for Statutory and Non-Statutory Committees for 2023-2024

Inquires, Complaints & Reports (ICRC)	Registration	Quality Assurance Committee	Patient Relations	Discipline	Fitness to Practise
AT LEAST: 2 Professional Members 2 Public Members 1 or more NCCM or persons	AT LEAST: 2 Professional Members 1 Public Member 1 or more NCCM or persons	AT LEAST: 2 Professional Members 1 Public Member 2 or more NCCM MAY HAVE: 1 or more persons	AT LEAST: 2 Professional Members 2 Public Members 1 or more NCCM or persons	All Members of Council AT LEAST: 1 or more NCCM	All Members of Council AT LEAST: 1 or more NCCM
Kristine Bailey	Elizabeth Gorham-Mathews	Abdelatif (Latif) Azzouz	Kristine Bailey	Elizabeth Gorham-Mathews	Norbert Gieger
Majid Ahangaran	Kristine Bailey	Cindy Abramovici-Rotman	Cindy Abramovici-Rotman	Majid Ahangaran	Cindy Abramovici-Rotman
Michael Bakshy	Annie Chu	Michael Bakshy	Danielle Arsenault	Abdelatif (Latif) Azzouz	Majid Ahangaran
Annie Chu	Norbert Gieger	Avneet Bhatia	Michael Bakshy	Kristine Bailey	Abdelatif (Latif) Azzouz
Norbert Gieger	Gaganjot Singh	Aisha Hasan	Avneet Bhatia	Michael Bakshy	Kristine Bailey
Jae Won (Eric) Kim	Taifi Umbareen	Deepak Naik	Elizabeth Gorham-Mathews	Avneet Bhatia	Michael Bakshy
Emilio Leuzzi	Carlo Zanon	Vy Nguyen	Deepak Naik	Lileath Claire	Avneet Bhatia
Karla Mendez-Guzman		Garnett Pryce	Vy Nguyen	Eugene Cohen	Lileath Claire
Garnett Pryce		Gaganjot Singh	Garnett Pryce	Norbert Gieger	Eugene Cohen
Gaganjot Singh		Taifi Umbareen	Rachael Smith	Aisha Hasan	Elizabeth Gorham-Mathews
		Majd Zaitouni	Majd Zaitouni	Jae Won (Eric) Kim	Aisha Hasan
				Emilio Leuzzi	Karla Mendez-Guzman
				Karla Mendez-Guzman	Vy Nguyen
				Garnett Pryce	Garnett Pryce
				Bruce Selinger	Gaganjot Singh
				Gaganjot Singh	

NON-STATUTORY COMMITTEES	
Qualifying Examination	Qualifying Exam Appeals
AT LEAST: 1 Professional Member 1 Public Member 1 NCCM	AT LEAST: 1 Professional Member 1 Public Member 1 NCCM
Abdelatif (Latif) Azzouz	Gaganjot Singh
Avneet Bhatia	Danielle Arsenault
Emilio Leuzzi	Norbert Gieger
Karla Mendez-Guzman	Aisha Hasan
Milania Shahata,	Emilio Leuzzi
Carlo Zanon	Karla Mendez-Guzman
	Taifi Umbareen

Statutory Committee Chairs	
ICRC	Kristine Bailey
Registration	Elizabeth Gorham-Mathews
Quality Assurance	Abdelatif (Latif) Azzouz
Patient Relations	Kristine Bailey
Discipline	Elizabeth Gorham-Mathews
Fitness to Practise	Norbert Gieger
Non-Statutory Committee Chairs	
Qualifying Examination	Abdelatif (Latif) Azzouz
Qualifying Exam Appeals	Gaganjot Singh

	Emilio Leuzzi	Karla Mendez-Guzman
	Karla Mendez-Guzman	Vy Nguyen
	Garnett Pryce	Garnett Pryce
	Bruce Selinger	Gaganjot Singh
	Gaganjot Singh	

LEGEND
Professional Member
Public Member
Non-Council Committee Member
Person (Member of the Public)



2023-2025 STRATEGIC PLAN

College of Denturists of Ontario

PROGRESS TO DATE

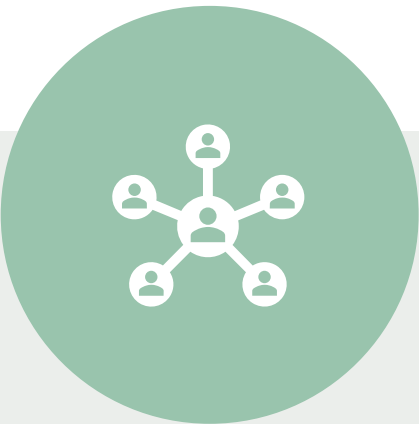
- Council met on April 15, 2023, to facilitate the development of its 2023-2025 Strategic Plan
- Presentation by Mr. Garnett Pryce on Introduction to Denturism
- Survey conducted to garner CDO's top 3 strengths, top 3 internal risks, top 3 external risks
- 2016 and 2023 SWOT (strengths, weaknesses, opportunities, threats) analysis
- Breakout groups to facilitate discussion on top 4 key priorities, challenges and successes in implementing this priority, measures of success etc.



SURVEY FEEDBACK-CDO TOP 3 STRENGTHS



STRONG CAPABLE
LEADERSHIP

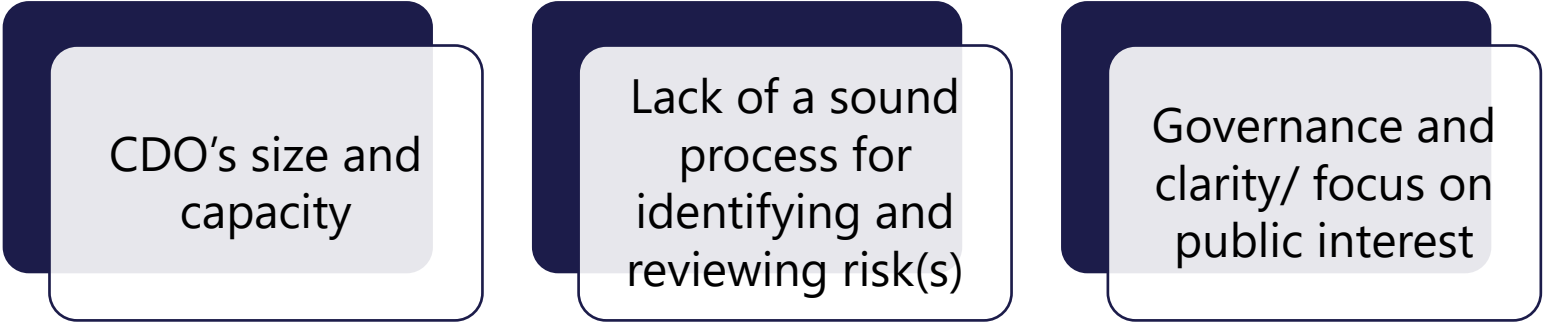


RELATIONSHIPS-INTERNAL
AND EXTERNAL



ADAPTABILITY AND
AGILITY

FEEDBACK-3 LARGEST INTERNAL RISKS



FEEDBACK-3 LARGEST EXTERNAL RISKS



2016 S.W.O.T ANALYSIS

	INTERNAL	EXTERNAL
FAVOURABLE	Strengths:	Opportunities:
	Effective Registrar; motivated staff	Seeking input from stakeholders
	Improved registration examination	MOHLTC's transparency initiative
	Improved continuing education requirements	Updated website – improved communication with public/members
	Balanced budget	Stakeholders viewing changes at College positively
	Strong committee work; improving professionalism of Council	Sexual Abuse Task Force recommendations for legislative and process changes (CDO not having a problem with sexual abuse the way many other regulators do)
	Began to review, clarify, simplify and promote standards of practice	
	Established/clarified policies and guidelines	
UNFAVOURABLE	Weaknesses:	Threats:
	Digital dentistry?	Public opinions of the College based on the past
	Inexperienced staff and risk of staff turnover	Government "meddling"
	Too many time demands on Council members	Using the College to promote professional issues rather than public protection
	Council members not attending meetings regularly and being prepared	General lack of understanding by the public and the profession of the role of the College
	Not enough Council member training	Ongoing friction between professional associations
	Self-interest on the part of Council members	Competing scopes of practice amongst professions
	Some registrants receiving numerous complaints (and disproportionately taking up resources)	Ministry consolidating dental professions under RCDSO
High number of complaints against CDO registrants as compared to other professions		

2023 S.W.O.T ANALYSIS

	INTERNAL	EXTERNAL
FAVOURABLE	Strengths:	Opportunities:
	Strong capable leadership	Amalgamation with oral health Colleges
	Better stakeholder relationships	Enhanced public communication and engagement
	Adaptability and agility	Better use of technology
	Collective desire to lead change	Ability to respond to changing priorities
	Staff keeps abreast of changes	Agreement to join the HUB demonstrates leadership and willingness to change
UNFAVOURABLE	Weaknesses:	Threats:
	Challenge to recruit/retain good staff	Insufficient public engagement
	Unremitting focus on public interest	Friction between two associations
	Difficulty embracing change(s)	Resistance to change
	Need to put Public Interest first not fully embraced	Inability or unwillingness to put Public Interest above all other interests
	Inordinately high number of complaints	Complaints and associated processes

STRIVING FOR CONSENSUS



Agreeing on the top three strategic priorities that should be included in the 2023-25 Strategic Plan



Is there consensus on the three priorities identified?



If others, please identify with your rationale

SEEKING COLLECTIVE AGREEMENT AND UNDERSTANDING

Rank priorities in order of importance or urgency



Set the strategic directions(Council); Develop plan to operationalize these for Council's approval(Registrar)



Approve the final strategic plan, thereby committing the resources needed to give effect to it

SUMMARY



Finalized strategic priorities



Creation of Focus Areas



College Staff to create draft Strategic Plan for Council's review

Mission

To regulate and govern the profession of Denturism in the public interest.

Vision

Leading our registrants to provide exemplary denturism care to Ontarians.

Guiding Principles

Integrity, Honesty, Transparency, Accountability, Fairness, Inclusivity

KEY PRIORITIES



Regulatory Effectiveness



Effective Stakeholder Engagement



Ensuring Sustainability



Embracing DEI

2023-2025

KEY PRIORITIES



Regulatory Effectiveness

CDO continually strengthens and improves its operational and governance framework as an effective and nimble regulator.

Focus Areas:

- Unremitting focus on the Public Interest
- Supporting professional standards and multi-jurisdictional examination processes
- Reviewing and mitigating risks
- Continually meet governmental expectations and standards

Effective Stakeholder Engagement

CDO fosters collaboration and engagement with the public, the profession, and system partners to support Ontarians access to safe, quality, oral health care.

Focus Areas:

- Ensuring necessary relationships are formed, maintained, and appropriate
- Demonstrating to the Public how the CDO and the profession can work together to ensure continued access to quality oral health care

Ensuring Sustainability

CDO positions itself strategically for regulatory success by ensuring it has the appropriate capacity and resources to respond to new and emerging issues.

Focus Areas:

- Staying open to opportunities for collaboration, sharing, or integration
- Maintaining or increasing capacity to stay nimble and effectively respond to change
- Embracing new technologies

Embracing DEI

CDO commits to and embraces the principles of diversity, equity, and inclusion.

Focus Areas:

- Increasing commitment to education and training for Council, Committees, and Denturists in Ontario
- Demonstrating CDO's commitment to embracing DEI

ACTION PLAN

Strategic Priority: **Regulatory Effectiveness**

Focus Area	Action Plan	Expected Outcome
Unremitting focus on Public Interest	<ul style="list-style-type: none">• Find new ways to augment Council Member onboarding training with HPRO governance training opportunities and continue Council Mentor program.• Rebranding CDO communication pieces including newsletters, published materials, website to reflect current terminology and wording that better encapsulates CDO's role in safeguarding the public interest.• Document public interest considerations in Council minutes to reflect how Council's decision/action is made in the Public Interest.	<ul style="list-style-type: none">• Enhanced public confidence and trust in the CDO• Clarity on role of CDO as a public regulator

OVERVIEW AND NEXT STEPS



- Council to review, revise, and approve Strategic Plan including priorities, focus areas, and proposed action plan
- College Staff to develop measures of success and key performance indicators
- College Staff to execute Action Plan and report progress to Council quarterly





2023-2025 Strategic Plan: Action Plan

Strategic Priority	Focus Area	Action Plan	Expected Outcomes
Regulatory Effectiveness	Unremitting focus on Public Interest	<ul style="list-style-type: none"> Find new ways to augment Council Member onboarding training with HPRO governance training opportunities and continue Council Mentor program. Rebranding CDO communication pieces including newsletters, published materials, website to reflect current terminology and wording that better encapsulates CDO's role in safeguarding the public interest. Document public interest considerations in Council minutes to reflect how Council's decision/action is made in the Public Interest. 	<ul style="list-style-type: none"> Enhanced public confidence and trust in the CDO Clarity on role of CDO as a public regulator
	Supporting professional standards and multi-jurisdictional examination processes	<ul style="list-style-type: none"> Continued progress on the accreditation of Denturism programs across Canada. College Staff to lend support to the accreditation process by participating as accreditation surveyors. To provide administrative, strategic, and financial support to maintain national working groups (national examination committee, item writing group, standard setting group) in support of a multi-jurisdictional examination process. To continue the necessary developmental work required to standardize the OSCE portion of the Qualifying Examination on a multi-jurisdictional level. 	<ul style="list-style-type: none"> Increased collaboration and support from CDO with its regulatory partners Increased transparency, consistency, defensibility, and portability of examination processes and results on a multi-jurisdictional level



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		<ul style="list-style-type: none"> Quality Assurance Committee to launch the Self-Assessment Tool for Denturists as part of the Quality Assurance Program. To prepare for the potential implementation of revised Registration Regulation including necessary By-Law updates, enactment of supporting policies, processes, forms, and required database changes. 	<ul style="list-style-type: none"> Competent and knowledgeable health care professionals Increased consistency in quality of care across multi-jurisdictions
	Continually meet governmental expectations and standards	<ul style="list-style-type: none"> Continue to meet and exceed or create a credible plan for achieving deliverables as documented in the CPMF Action Plan. Implement a Council third party assessment process, at a minimum once every three years, to evaluate governance effectiveness. Council commit to the implementation and publishing of its Annual Conflict of Interest and Confidentiality declarations publicly. Council commits to the development and implementation of competency profiles for Council and Committee Members. Collectively commit to following principles of good governance, evaluation, and accountability 	<ul style="list-style-type: none"> Increased clarity on role of Council Robust governance structure Diverse set of decision makers with a wide variety of competencies Targeted competency improvements



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	Reviewing and Mitigating Risks	<ul style="list-style-type: none"> • Explore creation of a risk register (adapted to the CDO) to identify internal and external risks that may impact strategic objectives and regulatory outcomes. • Explore the inclusion of “Risk Considerations” in Council briefing notes and materials for approval. • Document how an approved new standard of practice or policy is considered to address or mitigate identified risks (including risk of harm to patients) 	<ul style="list-style-type: none"> • Informed decision making based on data • Greater focus on internal and external risk considerations when exploring new opportunities for integration, collaboration, amalgamation
Effective Stakeholder Engagement	<p>Ensuring necessary relationships are maintained and appropriate</p> <hr/> <p>Demonstrate to the Public how the CDO and the profession work together to</p>	<ul style="list-style-type: none"> • Gaining and maintaining necessary support from other provincial denturist regulators, educators, professional associations, and government in supporting CDO initiatives through regular update/checkpoint meetings throughout the year. • Working to engage and find ways to collaborate with other stakeholders/regulatory partners not previously identified to the CDO by reaching out to the regulatory network. • Commit to hosting in-person Peer Circles at association conferences and expanding access to Peer Circles. • Commit to continued collaboration with provincial health regulators at HPRO for joint initiatives such as DEI working groups. • Reconfirm importance of attendance at regulatory conferences for outreach, networking, and learning best practices. • Set and communicate high(er) expectations for clearer and more effective communication between denturists and their patients, including ensuring message sent is received and proper record keeping is maintained. 	<ul style="list-style-type: none"> • Improved engagement from all identified stakeholders • Tailored effective communications to registrants • Increased awareness of CDO’s mandate and role • Reduction of complaints associated with communication/expectation issues between Patient and Denturists. • Clear expectations for standards of practice especially communication competencies



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	ensure they receive quality oral health care	<ul style="list-style-type: none"> • Increase commitment to education and professional development for Council, Committees, and Denturists in Ontario. • Review current expectations for communication between Denturists and their patients with a view to improve patient relations and patient care. • Develop and update webinars and educational opportunities for Denturists regarding clear communications and expectations with patients. • Develop joint complaints process guidelines and mandatory reporting guidelines with oral health regulators (RCDSO, CDHO, CDTO) 	<ul style="list-style-type: none"> • Increased number of high-quality educational offerings for Denturists by CDO • Clear concise process guidelines for the four oral health regulators in relation to complaints
Ensuring Sustainability	Staying open to opportunities for greater collaboration, sharing, or integration	<ul style="list-style-type: none"> • Council commits to keeping an open mind to other collaborative opportunities including greater integration and potentially amalgamation with like-minded organizations to ensure greater service delivery to the public. • CDO continues to integrate into HUB 601 including change of office address, alignment of service providers, IT processes, and development of a HUB 601 office manual. • Council commits to acknowledging HUB 601 as only an important first step towards greater collaboration. 	<ul style="list-style-type: none"> • Stronger collaboration between network of health regulators • Streamlined operational processes due to sharing of service providers and IT infrastructure • Significant cost savings in operational overhead • Opportunity for CDO to evolve from “smaller” resource constrained regulator to beyond



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	<p>Maintaining or increasing capacity to stay nimble and effectively respond to change</p>	<ul style="list-style-type: none"> • CDO continues to implement and support staff professional development on CDO's robust Records and Information Management program. • Actively explore and leverage greater sharing opportunities and alignment with other regulators including professional development activities, records and information management knowledge sharing, operational process best practices, and IT systems to find new ways to increase capacity. • Be transparent about reality of high(er) expectations and costs associated with self-regulation in communications with the profession and other stakeholders 	<ul style="list-style-type: none"> • Increased capacity of CDO staff to focus on strategic initiatives and longer-term projects • Greater automation of administrative processes • Cutting edge records and information management program that rivals the banking, finance, and government industry
	<p>Embracing new technologies</p>	<ul style="list-style-type: none"> • CDO continues to develop online applicant portal and modernize member portal to streamline application process and increase registration staff capacity. • Commit to the development of an "at-a-glance" dashboard with annual regulatory requirements and registrant's progress on meeting those requirements. • Develop and implement an organizational wide Data and Technology Plan. 	<ul style="list-style-type: none"> • Adoption of 21st century technology including clear, concise, easy to use member portal • Implementation of new technologies that rival or exceed larger organizations • Document and standardize the data and technology processes of the CDO



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Embracing Diversity, Equity, and Inclusion	Increase commitment to education and training for Council, Committees, and Denturists in Ontario	<ul style="list-style-type: none"> • Seek out cost-sharing opportunities for training opportunities, professional development, on-boarding training with other regulators (oral health, HUB 601 partners, HPRO) • CDO continues to work with HPRO’s DEI working group to explore the creation of a decision-making framework through the lens of DEI principles 	<ul style="list-style-type: none"> • An inclusive and diverse Council informed by many perspectives • Reduce overhead costs for training opportunities through cost-sharing arrangements • Increased number of professional development opportunities
	Demonstrate CDO’s commitment to embracing DEI	<ul style="list-style-type: none"> • Apply principles of DEI in all CDO programs and processes: Quality Assurance, Investigations, Complaints, Discipline, Registration. • Use of appropriate pronouns and language by College Staff when interacting with members of the public, registrants, and stakeholders. • CDO continually learns and finds new ways to do its part in national reconciliation efforts. 	<ul style="list-style-type: none"> • Promotion of the fair treatment and full participation of all peoples including those who have been historically underrepresented or subject to discrimination • Fair, transparent, defensible examination and registration processes free of bias