

BRIEFING NOTE

TO: Council

FROM: Governance Committee

DATE: December 2 and 3, 2019

SUBJECT: 8.5 By-Law Amendments with respect to Governance Reform

☒ For Decision

☐ For Information

☐ Monitoring Report

Purpose:

To determine whether to approve proposed by-law changes for circulation for stakeholder feedback with respect to the following:

1. Changes to the titles for people and groups within the College
2. Introduction of a mandatory 3-year cooling off period for persons holding positions with professional associations

Background:

Council has tasked the Governance Committee with developing a blueprint for governance transformation within the COO. At its meeting on October 7, 2019, Council approved a letter to the Ministry of Health in which the COO expresses support of the College of Nurses of Ontario's proposed governance initiatives that were set out in that college's "Vision 2020" plan. The letter states that the COO is taking active steps to achieve reform within the current legislative framework where such flexibility exists within our by-laws.

In addition, the Governance Committee continues to monitor developments in professional regulation in Ontario and across Canada. The Committee has observed that:

- The government continues to show support for Colleges proactively addressing governance reform before having change imposed on the sector
- OHPR (formally FHRCO) continues to be helping Colleges stay informed and be prepared for changes in the area of College governance by striking a Governance Working Group
- Governance continues to be an area of focus for governments. The Cayton Report, (An Inquiry into the College of Dental Surgeons of British Columbia and the Health Professions Act), supports this assertion
- A new Advisory Group for Regulatory Excellence (AGRE) has been struck to develop options for legislative changes to support the government in modernizing governance that considers provincial, national and international trends and best practices in health regulation

- An additional 15 regulatory colleges outside AGRE have adopted or have begun to approve governance reform principles

For Consideration:

In keeping with the COO's commitment to taking steps to achieve reform within our existing legislative framework, as expressed in the letter to the Ministry of Health, the Committee has identified two initial areas for governance modernization:

1. Changing the titles of people and groups within the COO
2. Introducing a mandatory cooling off period for individuals who held positions within professional associations.

These reforms can be achieved through amendments to the COO's by-laws, and do not require legislative change to be effective.

1. Changing the titles of people and groups within the COO

The first area for governance modernization identified by the Governance Committee is with respect to the titles of the people and groups who register with and govern the College. The Committee is proposing changes to these titles to make their roles and responsibilities clearer to the public and more consistent with the nomenclature of boards. The Committee has proposed the following amendments:

Current Terminology	Proposed Terminology
Council of the College	Board of Directors of the College
Council Member(s)	Director(s)
President of Council	Chair of the Board of Directors
Vice-President of Council	Vice-Chair of the Board of Directors
Members	Registrants

These changes can be achieved by amending Article 1 of the COO's by-laws. Proposed amendments to this article are attached for Council's review. There is no requirement under the Health Professions Procedural Code that these amendments be circulated for stakeholder feedback.

2. Mandatory cooling off period between professional associations and Council/committee

The second area identified by the Governance Committee for governance modernization is with respect to fostering greater separation between the College and professional associations. Specifically, the Governance Committee is proposing that the by-laws be amended to introduce a mandatory 3 year cooling off period between when an individual resigns a position with a professional association and

when they can join the College as a Council or committee member. The purpose of this amendment is to enhance the College's public protection role by reducing the likelihood of an actual or perceived conflict of interest when an individual who has previously held a position with a professional association wishes to sit on the Council or a committee.

The College is mandated to regulate the practice of opticianry in the public interest. By contrast, the role of professional associations are to represent the interests of members of the profession. As a result, there is an arguable conflict of interest between the role of the College and the role of professional associations.

Currently, the by-laws state that a person must resign any position (such as director, owner, board member, officer or employee) with a professional association relating to opticianry before being eligible for election to Council or appointment to a committee. There is no requirement that there be a cooling off period between the time when the resignation occurs and when the individual joins the Council or committee. The introduction of a 3 year cooling off period will better ensure that individuals who sit on Council and committees are doing so with a view to serving the COO's public protection mandate.

Proposed changes to the by-laws respecting eligibility criteria for Elected Council Members (Article 6.3(h)) and Appointed Committee Members (Article 12.2(a)(viii)) are attached for Council's consideration.

There is no requirement under the Health Professions Procedural Code that amendments to these by-laws be circulated for stakeholder feedback.

Recommendations/Action Required:

That the Council approve the proposed amendments to by-law articles 6.3(h) and 12.2(a)(viii) for circulating for stakeholder feedback, as recommended by the Governance Committee. While there is no legislative requirement to circulate these proposed amendments for stakeholder feedback, the Committee is of the opinion that there is a sufficient public interest in the proposed amendments to warrant public circulation.

PROPOSED BY-LAW AMENDMENTS

NOVEMBER/DECEMBER 2019

Current Language	Proposed Language	Explanation/Rationale
ARTICLE 1: INTERPRETATION		
1.1 Definitions		
In these by-laws, “Appointed Committee Member” means a Member of the College who is not a member of the Council of the College and who is appointed to a statutory or non-statutory committee;	In these by-laws, “Appointed Committee Member” means a Member <u>Registrant</u> of the College who is not a member of the Council of the College <u>Director</u> and who is appointed to a statutory or non-statutory committee <u>Committee</u> ;	Amended to reflect updated terminology. The reference to statutory and non-statutory committees has also been simplified so that it is consistent with the other definitions in this section.
	“Board” or “Board of Directors” <u>means the council of the College within the meaning of section 1(1) of the RHPA and section 7 of the Opticianry Act;</u>	Added to reflect the change in terminology from “Council” to “Board” or “Board of Directors”.
	“Chair” <u>means the chair of the Board of Directors of the College;</u>	Added to reflect the change in terminology from “President” to “Chair”.
“Code” means the <i>Health Professions Procedural Code</i> , being Schedule 2 to the <i>Regulated Health Professions Act, 1991, S.O. 1991, c. 18</i>	“Code” means the <i>Health Professions Procedural Code</i> , being Schedule 2 to the <i>Regulated Health Professions Act, 1991, S.O. 1991, c. 18</i> <u><i>RHPA</i></u> ;	Amended for clarity/consistency with the other definitions in this section.
“College” means the College of Opticians of Ontario;	“College” means the College of Opticians of Ontario;	No change.
“Committee” means a committee of the College, including a statutory, standing, or ad hoc committee, and includes a panel of that Committee;	“Committee” means a committee of the College, including a statutory, standing, or ad hoc committee, and includes a panel of that Committee;	No change.

Current Language	Proposed Language	Explanation/Rationale
" Committee Member " means a member of a Committee, including Elected Council Members, Appointed Committee Members, and Public Council Members;	" Committee Member " means a member of a Committee, including Elected- Council Members <u>Directors</u> , Appointed Committee Members, and Public Council Members <u>Directors</u> ;	Amended to reflect updated terminology.
" Council " means the Council of the College;	"Council" means the Council of the College;	See definition of "Board" or "Board of Directors".
" Council Member " means an Elected Council Member or a Public Council Member;	"Council Member" means an Elected Council Member or a Public Council Member;	See definition of "Director".
" Deputy Registrar " means the Deputy Registrar of the College;	" Deputy Registrar " means the Deputy Registrar of the College;	No change.
	<u>"Director" means a member of the Board of Directors of the College;</u>	Added to reflect terminology change from "Council Member" to "Director".
" Discipline Committee " means the Discipline Committee of the College;	" Discipline Committee " means the Discipline Committee of the College;	No change.
" Elected Council Member " means a Member elected to Council in accordance with the by-laws and includes a Member elected in a by-election or appointed to fill a vacancy created by an Elected Council Member ceasing to be a member of Council prior to the completion of his or her term;	" Elected Council MemberDirector " means a Member-Registrant elected to Council-the Board in accordance with the by-laws and includes a Member-Registrant elected in a by-election or appointed to fill a vacancy created by an Elected Council Member <u>Director</u> ceasing to be a member of Council-the Board of Directors prior to the completion of his or her <u>their</u> term;	Amended to reflect updated terminology. Pronouns amended for gender neutrality.
" Executive Committee " means the Executive Committee of the College;	" Executive Committee " means the Executive Committee of the College;	No change.
" ex-officio " means "by virtue of the office" and, for greater	" ex-officio " means "by virtue of the office" and, for greater	No change.

Current Language	Proposed Language	Explanation/Rationale
certainly, unless otherwise specifically provided for, all <i>ex-officio</i> members of a committee have all of the rights, responsibilities and powers of any other members of the committee, including the right to vote;	certainly, unless otherwise specifically provided for, all <i>ex-officio</i> members of a committee have all of the rights, responsibilities and powers of any other members of the committee, including the right to vote;	
“First Annual Meeting” means the first meeting of Council in each calendar year;	“First Annual Meeting” means the first meeting of Council <u>the Board</u> in each calendar year;	Amended to reflect updated terminology.
“Fitness to Practise Committee” means the Fitness to Practise Committee of the College;	“Fitness to Practise Committee” means the Fitness to Practise Committee of the College;	No change.
“Governance Committee” means the Governance Committee of the College;	“Governance Committee” means the Governance Committee of the College;	No change.
“Inquires, Complaints and Reports Committee” means the Inquiries, Complaints and Reports Committee of the College;	“Inquires, Complaints and Reports Committee” means the Inquiries, Complaints and Reports Committee of the College;	No change.
“Last Annual Meeting” means the last Council meeting that takes place in each calendar year;	“Last Annual Meeting” means the last Council <u>Board</u> meeting that takes place in each calendar year;	Amended to reflect updated terminology.
“Life Member” has the meaning ascribed thereto in Article 3.1;	“Life Member” has the meaning ascribed thereto in Article 3.1;	No change.
“Member” means a Member, of any class of registration, of the College. Where the situation requires, Member also includes a person whose certificate of registration with the College is under suspension;	“Member” means a Member, of any class of registration, of the College. Where the situation requires, Member also includes a person whose certificate of registration with the College is under suspension;	See definition of “Registrant”.

Current Language	Proposed Language	Explanation/Rationale
“Opticianry Act” means the <i>Opticianry Act, 1991</i> , S.O. 1991, c. 34, and any Act that may be substituted therefore, as from time to time amended;	“Opticianry Act” means the <i>Opticianry Act, 1991</i> , S.O. 1991, c. 34, and any Act that may be substituted therefore, as from time to time amended;	No change.
“Patient Relations Committee” means the Patient Relations Committee of the College;	“Patient Relations Committee” means the Patient Relations Committee of the College;	No change.
“President” means the President of the College;	“President” means the President of the College;	See definition of “Chair”.
“Professional association” means an organized group that promotes the interests of the profession but does not include a school whose sole purpose is to educate;	“Professional association” means an organized group that promotes the interests of the profession but does not include a school whose sole purpose is to educate;	No change.
“Public Council Member” means a member of Council appointed by the Lieutenant Governor in Council;	“Public Council Member” Director” means a member of Council <u>the Board of Directors</u> appointed by the Lieutenant Governor in Council;	Amended to reflect updated terminology.
“Quality Assurance Committee” means the Quality Assurance Committee of the College;	“Quality Assurance Committee” means the Quality Assurance Committee of the College;	No change.
	<u>“Registrant” means a member of the College within the meaning of section 1(1) of the RHPA and is a person who holds a certificate of registration with the College in any class of registration. Where the situation requires, Registrant also includes a person whose certificate of registration with the College is under suspension;</u>	Added to reflect terminology change from “Member” to “Registrant”.
“Registrar” means the Registrar of the College;	“Registrar” means the Registrar of the College;	No change.

Current Language	Proposed Language	Explanation/Rationale
"RHPA" means the <i>Regulated Health Professions Act, 1991</i> , S.O. 1991, c. 18, and any Act that may be substituted therefore, as from time to time amended and includes the regulations made under it;	"RHPA" means the <i>Regulated Health Professions Act, 1991</i> , S.O. 1991, c. 18, and any Act that may be substituted therefore, as from time to time amended and includes the regulations made under it;	No change.
"Registration Committee" means the Registration Committee of the College;	"Registration Committee" means the Registration Committee of the College;	No change.
"Regulations" means the Regulations promulgated pursuant to the <i>Opticianry Act</i> or RHPA;	"Regulations" means the Regulations promulgated pursuant to the <i>Opticianry Act</i> or RHPA;	No change.
"Signing Officers" means the President, the Vice-President, the Registrar and the Deputy Registrar;	"Signing Officers" means the <u>PresidentChair</u> , the Vice- <u>PresidentChair</u> , the Registrar and the Deputy Registrar;	Amended to reflect updated terminology.
"Standing committee" means a committee of the College which is not a statutory committee but which is specifically established by the by-laws;	"Standing committee" means a committee of the College which is not a statutory committee but which is specifically established by the by-laws;	No change.
"Statutory committee" means a committee of the College established by the Code; and	"Statutory committee" means a committee of the College established by the Code; and	No change.
	<u>"Super Majority Vote" means a vote by the Board which requires 75% or more of Directors present and voting to vote in the affirmative in order for the motion to be carried;</u>	This addition is to give effect to the new proposed Schedule E to the by-laws.
"Vice-President" means the Vice-President of the College;	"Vice-PresidentChair" means the Vice- <u>PresidentChair</u> of the <u>Board of Directors of the College</u> ;	Amended to reflect terminology change from "Vice-President" to "Vice-Chair".

Current Language	Proposed Language	Explanation/Rationale
ARTICLE 6: ELECTED COUNCIL MEMBERS¹		
6.3 Eligibility for Election		
<p>A Member is eligible for election to Council in an electoral district if, on the deadline for the receipt of nominations and up to and including the date of the election:</p> <p>(h) the Member has resigned, before being nominated for election, any position such as director, owner, board member, officer or employee that the Member holds with a professional association relating to opticianry;</p>	<p>A Member-Registrant is eligible for election to Council-the Board in an electoral district if, on the deadline for the receipt of nominations and up to and including the date of the election:</p> <p>(h) the Member-Registrant has resigned, <u>at least three years prior to before</u> being nominated for election, any position such as director, owner, board member, officer or employee that the Member Registrant holds with a professional association relating to opticianry;</p>	<p>Amended to reflect updated terminology.</p> <p>Amended to introduce a three-year cooling off period for any person who has held a position at the Ontario Opticians Association or any other professional association for opticians before becoming an elected director or committee member at the College.</p>
ARTICLE 12: COMMITTEE APPOINTMENTS AND PROCEDURES		
12.2 Eligibility for Appointed Committee Members		
<p>(a) A Member of the College is eligible for appointment as an Appointed Committee Member if, on the date of the appointment:</p> <p>(viii) the Member has resigned, before being appointed, any position such as director, owner, board member, officer or employee that the member holds with a professional association relating to opticianry;</p>	<p>(a) A Member-Registrant of the College is eligible for appointment as an Appointed Committee Member if, on the date of the appointment:</p> <p>(viii) the Member-Registrant has resigned, <u>before at least three years prior to</u> being appointed, any position such as director, owner, board member, officer or employee that the member holds with a professional association relating to opticianry;</p>	<p>Amended to reflect updated terminology.</p> <p>Amended to introduce a three-year cooling off period for any person who has held a position at the Ontario Opticians Association or any other professional association for opticians before becoming an Appointed Committee Member.</p>

¹ In the event that the amendments to Article 1: Interpretations are approved, the title of this article will be amended to reflect the change in terminology from “Elected Council Members” to “Elected Directors”.