



March 4, 2022

Sean Court
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College of Chiropractors of Ontario (CCO) Comments re: Governance Reform Referenced in your Correspondence dated January 26, 2022

Dear Sean Court:

I Introduction

CCO appreciates the opportunity to respond to your letter of January 26, 2022. In that letter you circulated a twelve-page document outlining some governance reform and regulatory modernization proposals. Given the short timeline, these comments reflect a high-level review, consistent with previous comments made by CCO as well as the Health Profession Regulators of Ontario (HPRO). Not having discussed some of these issues in detail before, CCO is not able to give as comprehensive a response as is warranted. We trust however that our comments will be helpful to the Ministry's considerations.

As you know, CCO regulates the chiropractic profession in the public interest. CCO has previously made submissions supporting governance reform and identified implementation issues for such changes (see correspondence to you dated June 21, 2021 attached). CCO continues to support the governance proposals in principle, especially those related to a smaller Council and competency-based selection of Council and committee members. This topic has been highlighted in the College Performance Measurement Framework (CPMF) developed by the Ministry. CCO has done extensive work in developing and publishing the competencies for Council and committee members and has been taking steps to apply those competencies for committee appointments and to guide the Council election process (<https://cco.on.ca/wp-content/uploads/2022/01/CompetenciesforCouncilMembersNov252021.pdf>).

Unlike the governance proposals, which have been under discussion for some time, including through the CPMF process, many of the other proposals are new, vague, and potentially wide ranging. CCO suggests that there be further consultation on them so that their implications and relationship with enhanced public accountability can be fully understood.

II Governance Proposals



The governance proposals involve significant changes. It is important to implement them carefully so that there are no issues through the transition. For example, changes in the selection process for professional and public members of the Council and committees will require changes to legislation, by-laws, and processes that need to be coordinated. In addition, new infrastructure for developing an open, objective, independent, credible, competency-based process needs to be developed. The selection of professional and public members of the Council and committees needs to be coordinated as well if the goals of the proposals are to be achieved. It is critical that the new process does not result in the Council or a committee being improperly constituted.

Smaller Councils

The Ministry is proposing smaller Councils of between 10 and 12 members. The result will be that Councils will focus more on higher level policies and internal oversight.

Two of the considerations are as follows:

- It would be useful to have at least some carryover from the previous Council in order for there to be some collective memory, especially over significant pending issues that are time sensitive.
- The current composition of statutory committees requires at least some Council members of various categories. Thus, the transition for Council and committee member composition must be coordinated.

CCO recommends the following:

- The transition should occur on a specific date. The date could be specified in advance, or it could be set by proclamation.
- The transition for Council and committee composition should occur on the same date.
- There should be clear transition provisions in the *Health Professions Procedural Code* ("Code") enabling the selection of Council and committee members, including the removal of existing ones as of the transition date, in advance of the transition date.
- There should be an explicit provision specifying which committee panels already dealing with a matter can continue to operate despite no longer being properly constituted or losing quorum under the new rules (analogous to the existing provisions relating to discipline panels).
- CCO (and others) should be given sufficient warning (at least a few months) so that it can amend its by-laws in advance of the transition date. Only Council has the authority to amend by-laws, and Council meets four or five times annually.



As you know, there is currently an extensive overlap in composition between the Council and committees. If this is to be ended, the simplest option might be for Council members who are departing from the Council on the transition date to be eligible to serve on a committee so long as they are selected through an open, objective, independent, credible, competency-based process.

Many Colleges, including this one, have experienced significant issues with their Council not being properly constituted. Because the *Chiropractic Act* specifies a fixed number of professional members, CCO has also had some challenges addressing unexpected vacancies in the elected positions. Those issues are likely to be compounded during the transition. It is essential that the amending legislation provide for Councils to remain properly constituted despite vacancies. The quorum should be sufficiently low (perhaps even less than 50%) and flexible (without too many restrictions in terms of categories of members of the Council) to ensure the continued operation of CCO. It should be noted that the existing safeguard, of having the Executive Committee operate on behalf of the Council while it is not properly constituted, will no longer be available if the Ministry proposal about that Committee is implemented.

Separating Council and Committees

The Ministry is proposing to separate the composition of a Council from the composition of committees so that there is no longer overlapping members. As a preliminary point, it is important to ensure that this separation occur only for statutory committees. CCO by-laws allow for nonstatutory committees to be composed as needed to support Council's work and it is appropriate that CCO is permitted to have Council members serving on those committees.

As noted above, the transition should occur at the same time as the Council composition changes, to avoid confusion as to the status of former Council members on statutory committees. We appreciate the Ministry's recognition of the importance of a careful transition and its commitment to assuring continuity across all areas related to operations and governance as reflected in the consultations between the Ministry and colleges.

The issue of the selection of public members for committees is not specifically addressed. In general, public members should be required to meet the competencies expected of professional members and should also reflect a commitment to the principles of diversity, equity and inclusion. One matter that is critically important, is for French speaking public members to be appointed to Council to ensure CCO can conduct discipline hearings in French as part of the protection of members' language rights. Discipline hearings require at least two public members, and at this time do not have individuals who could conduct a hearing without simultaneous translation which the courts have recently indicated may not be sufficient.

A related issue is whether the public members should continue to be funded by the government or by the Colleges. This has been a significant source of discontent over the years and is not a matter which CCO has had sufficient time to consider. It is important that a competitive per diem for public members be offered, preferably at the same level as professional members.

Equal Public and Professional Representation



The Ministry proposes that there be an equal number of professional and public members on the Council.

A possible transitional issue is that the new composition (smaller Council with equal representation) may make it a challenge to ensure that sufficient previous Council members remain available to facilitate continuity and collective memory. However, since the Council of the CCO consists of at least 15 members, this risk should be minimal.

Selection of Professional Members

The Ministry proposes that the professional members for both Council and committees be selected (or, at least have the selection overseen) by a Nomination and Selection Committee based on the relevant competencies for the Council or the particular committee. The criteria might include diversity, technical, regional and behavioural requirements.

The Ministry asks whether all these criteria can be achieved in a Council of five or six professional members. Of course, it will be challenging to achieve all these criteria with so few people. Three implications flow from this circumstance. First, there may need to be prioritizing of the criteria. For example, it may be that regional professional representation will not be achievable in every iteration of the Council. Second, Colleges can use advisory groups to fill any gaps. Third, it would be much easier to achieve these requirements if the selection of the public members of the Council were done at the same time and by the same process.

A gap in the Ministry's proposals is the selection of public members of the Council and committees. It does not appear that the process and criteria for public appointments are as rigorous, or even as coordinated, as will now be expected for professional members of CCO. We note that similar reforms for the Ontario College of Teachers permits the College to make recommendations for the public members of the Council and that the College selects the public members of the committees. CCO is committed to demonstrating accountability for its performance in all regulatory activities. We would welcome the opportunity to recruit and select professional members of Council based on approved criteria and competencies, and as always, we are prepared to demonstrate accountability for the processes followed. We would hope that it would also be expected that the ministry and Public Appointments Secretariat would be held to the same accountability for ensuring its processes for selection and appointment of public members follow the same vigor.

The Ministry asks whether the competencies should be applied retroactively or only to the new professional members of the Council (and committees). Our experience is that new Council members usually require some orientation and observation time before they can fully participate in Council business. It would be challenging for a Council to have all new members. Serious consideration should be given to retaining some of the existing Council members, including professional ones, for a year or two after the new regime commences. Even if the Nomination and Selection Committee chooses or recommends the most suitable candidates, the legislation could reserve some spots on Council for them (perhaps with an exception where no existing or former Council members apply).



The Ministry asks whether the Nomination and Selection Committee should be a statutory committee? The Committee will perform a very important role. Our understanding is that in the United Kingdom an independent body, the Professional Standards Authority, reviews and certifies to the government that the selection process is open, objective, independent, credible, and competency-based. There is much to be said for specifying the composition requirements for the Nomination and Selection Committee (e.g., few or no existing Council members, some public members, perhaps a staff person from another health regulator) in the legislation. Similarly, the process requirements (e.g., published criteria, open applicant process, use of or certification of the result by a human resource professional) for the Nomination and Selection Committee could be specified in the legislation.

As noted above, it is essential that this work can be done in advance of the transition date so that the new people can commence work immediately and so that there are no delays. It would also be very important to have a transition provision that any matter pending before a panel under the previous version of the legislation can continue to complete those matters. That transition provision should also specify that the panel can complete its work even if it is no longer properly constituted, if it contains a Council member, or if it loses quorum under the new rules.

Term Limits

The Ministry implies that it will impose shorter term limits, from the current nine consecutive years. Even if term limits are reduced, there is also much to be said for having some experienced Council and committee members after turnover occurs. Setting term limits of less than six years would deprive CCO of experienced and knowledgeable talent.

The Ministry asks about whether those term limits can or should be imposed retroactively. The amendments should address the issue including to what degree the previous years of service will be counted. For example, if someone has served for seven years, and the new term limit is six years, do they automatically go off Council on the transition date? Or, if someone has served for five years, and the new term limit is six years, do they automatically go off Council one year after the transition date? Whatever policy choice is made, clarity of the rules is essential.

Elimination of the Executive Committee

The Ministry is proposing to eliminate the Executive Committee given that Council will be smaller in size and given that technology facilitates meetings on short notice. This proposal is consistent with current governance thinking generally.

The main consideration for CCO is that the Executive Committee was relied on to keep Colleges functioning when the Council was not properly constituted. It is critical that CCO does not face periods of time under the new provisions when the Council or its committees are not properly constituted. At a minimum there needs to be an explicit provision enabling the Council to continue to operate despite vacancies.



Another consideration is that a nimble Executive Committee was available to deal with urgent issues on short notice. It is not clear that a Council of 10 or 12 people can be as nimble as a committee of five or seven people.

It should also be noted that under s. 74 of the *Code* the Executive Committee has the power to reinstate a certificate of registration without a hearing. That authority will have to be removed. Given that the Council will be focusing on policy making and oversight activities, its authority under this provision could likely also be removed.

III Modernization Considerations – Additional Oversight Bodies

CCO notes that it has been operating at full capacity protecting the public given the disruption and other priorities created by the pandemic. Many adjustments have had to be made on very short notice to provide regulatory activities remotely, including to its registration examination process. Like all organizations, the College has had to deal with staff and committee illnesses, isolation requirements for individuals, school disruptions and other pandemic-related challenges.

The new oversight vehicle of the CPMF, introduced during the pandemic, has resulted not only in extensive new reporting requirements, but also in significant policy debates and process and by-law changes. Last year the Office of the Fairness Commissioner (OFC) introduced its Risk-informed Compliance Framework and Policy. Earlier this month the OFC introduced its Legal Obligations and Best Practices for non-health professions regulators, and we anticipate that there may be a similar document in preparation for the health professions regulators.

So as a general question the College asks why three new oversight mechanisms are being proposed at this time? Should not the existing oversight mechanisms, such as the Minister, the CPMF, the OFC, the Health Professions Appeal and Review Board, and the courts (along with the new governance measures) be given an opportunity to be fully implemented and assessed before new oversight mechanisms are introduced? Has the government conducted an analysis of these new measures to ensure that they would generate sufficient additional public protection return to justify the disruption and expenditure of resources? Will CCO and other regulators be expending so many of its resources on responding to different oversight requests for information and directed changes that there will be no resources left to actually regulate the profession?

The modernization proposals would create three additional oversight bodies for the Colleges. Each of these proposals, individually, will involve the expenditure of significant resources by the Colleges. The sheer volume of these changes occurring together would be extremely burdensome. The new oversight agencies have the potential to direct the regulatory priorities of the Colleges to areas of focus that might not be otherwise chosen by the Councils of the various Colleges. For example, the CPMF requires Colleges to report on how they use “right-touch regulation” principles in their regulatory activities. To our knowledge, the three additional proposed oversight bodies do not use right-touch regulation principles.



In addition to the risk of disparate priorities of the various external oversight bodies, there is a risk of duplicative, or even inconsistent, oversight. For example, a party to the complaints process could, in addition to appealing to the Health Professions Appeal and Review Board, raise concerns about French language issues with the French language oversight bodies, request the involvement of the Patient Ombudsman, and call for the intervention of the Auditor General.

Inclusion under the French Language Services Act

Colleges already have extensive obligations to provide services in French. CCO has provided services in French and is working towards enhancing that ability, including translating more of its public documents into French.

One of the barriers to meeting this obligation is that there are an insufficient number of French speaking committee members, including public members. This circumstance supports the submission that the College should be able to select its public members, especially for committees. The government is not currently making sufficient appointments of bilingual public members.¹ This institutional inability on the part of government to make sufficient and prompt appointments will cause even more strain as significantly more appointments will be required if Council and committee composition is separated. Delays in forming panels for committees is already causing challenges to routine regulatory actions on the grounds of delay. This concern is likely to be severely aggravated if the Supreme Court of Canada decision in the *Abrametz* case² imposes an enhanced duty of prompt proceedings.

CCO welcomes the assistance of government as suggested in the proposals. However, if CCO accepts funding from the government to support enhanced French services, will the Colleges then become subject to additional unexpected obligations? For example, would some provisions of the *Broader Public Sector Accountability Act* apply to the College?

Auditor General Audits

The Ministry is proposing that the Auditor General be authorized to conduct audits of the Colleges and publicly report on them. The Ministry suggests that these would be financial audits only. This limitation on audits should be clarified as the Auditor General seems to use the “value for money” concept to conduct reviews as to the regulatory activities, processes, outcomes, and priorities of regulators. Is that the intent?

¹ In *Bélanger v. College of Physicians and Surgeons of Ontario*, 2021 ONCS 5132 (CanLII), <https://canlii.ca/t/jh6mf> the Divisional Court suggested that the College ask government to appoint bilingual public members to enable a bilingual Discipline Committee panel to be appointed.

² *Law Society of Saskatchewan v. Peter V. Abrametz*, 2021 CanLII 13273 (SCC), <https://canlii.ca/t/jddw3>.



CCO is funded entirely by member dues. The College has met its budget every year, has not raised dues in approximately 12 years, has had “clean” audits annually, and is not a government agency. The regulatory functions of CCO are actioned by a staff of 12. Since CCO is not the “government” or a “government organization” it does not use accounting standards that apply to public sector entities. CCO uses Canadian accounting standards for Not-For Profit Organizations consistent with the advice of our auditor.

Under the *Auditor General Act* the Auditor General has significant powers, including broad access to information, the right to examine College representatives under oath, and the authority to place a representative of the Auditor General in the College offices to observe College operations. The Auditor General also has the right to make recommendations to the Colleges.

This added layer of accountability for the Colleges will be challenging. The cost of such an audit, even if it only involves the provision of information and answering questions, will be significant. The Auditor General would use criteria not previously provided to the College for the basis of evaluating the performance of the College for the audit. The audit may involve access to sensitive regulatory information, including information about patients and complainants. Those resources might take away from core regulatory activities of the College in order to document and measure all its processes to a high degree.

Patient Ombudsman Review of the Complaints and Discipline Processes

The Ministry is proposing that the office of the Patient Ombudsman be given the additional mandate to oversee and review the complaints and discipline processes of the Colleges. The proposal suggests that the Patient Ombudsman’s role would be analogous to that of the Fairness Commissioner of Ontario.

Currently the Patient Ombudsman investigates complaints and concerns about health care institutions and providers other than practitioners regulated under the *RHPA*. The Patient Ombudsman’s function is quite different from that of an *RHPA* College. The process is more limited than the process before ICRCs, especially in terms of remedies, which for the Patient Ombudsman, primarily consist of recommendations. However, the scope of those investigations is not restricted to professional misconduct or incapacity. The Patient Ombudsman can also initiate inquiries, including of the general policies and procedures of health care institutions like hospitals.

It is not clear that the Patient Ombudsman’s office has expertise in dealing with the kind of complaints or reports investigated by the Colleges. The Patient Ombudsman’s mandate is more focused on resolving concerns than protecting the public from harm. Also, given their simplified process, the Patient Ombudsman is not familiar with the detailed legal requirements and expectations imposed on the Inquiry, Complaints and Reports Committee or the Discipline Committee. It also seems odd to propose that the Patient Ombudsman might be able to order changes for the Colleges when it cannot do so currently for the principal providers it oversees, health care institutions.



The CPMF should be permitted to have more opportunity to enhance regulatory performance in a sector-knowledgeable manner before these new oversight mechanisms are imposed. CCO does not support the proposal for imposing three new/additional oversight mechanisms in the absence of more information and clarity as to the rationale and public protection benefits.

IV Housekeeping Proposals

The Ministry proposes to remove references to practice titles and terminology. In principle CCO is open to such changes but would like to see the specific proposals to ensure that there are no unanticipated consequences.

V Reducing Registration Barriers

The Ministry proposes a number of provisions to reduce barriers to registration.

Removal of Canadian Experience Requirements

CCO does not have any Canadian-experience requirements. Given the period for response, the College is not able to address the other specific questions posed by the Ministry. CCO provides most of the information requested in annual reports to the OFC.

Time Limits for Registration Decisions

It is unclear from the Ministry document whether the proposal relates primarily to Canada mobility applicants or to all applicants. While the second question posed appears to suggest there could be time limits for all registration applications, the remainder of the questions contemplate primarily mobility applicants.

As a practical matter, any time limit should not begin until after the applicant has provided all required information and completed all the requirements (e.g., any assessment, test or examination). The length of time to complete those steps are beyond the control of the CCO. Even then, CCO may need to obtain confirmatory information (e.g., to verify the authenticity of a document or the achieving of a requirement). There may also be circumstances where inquiries must be made about any good character/suitability concerns. Those inquiries can be time consuming. Also, where discussions about terms, conditions and limitations take place with an applicant, additional time unrelated to the College's internal processes is expended. The consequence of not achieving a prescribed time limit is unclear. It cannot be the case that there is an obligation to register the applicant regardless of their competencies and past conduct. It also seems inappropriate, given their role and comparative expertise, to give the Health Professions Appeal and Review Board the authority to take over the registration decision. Likely the only consequence will be a public record of the non-compliance. That outcome can already be achieved through the CPMF process.

As a practical matter, CCO has not had an issue with excessive timelines for Registration decisions. The Registration Committee meets monthly (virtually) to address any registration applications referred to it.

Standardized Language Proficiency Requirements



The Ministry is proposing that there be standardized language proficiency requirements for all Colleges. Please clarify whether the proposal relates to language test fluency scores or whether the Ministry is concerned about consistency in alternatives to test scores. In CCO's case, fluency is established by successful completion of a jurisprudence test, which is an accessible and quick approach to the issue. For CCO, requiring successful completion of a standardized language proficiency test would create a barrier to registration that does not currently exist. The national clinical competency examinations through the Canadian Chiropractic Examining Board are offered in English and French.

Emergency Registration

Ensuring that Colleges can register applicants during an emergency even though they have not fully demonstrated all the requirements, especially non-exemptible ones, is attractive. Likely the best way to achieve this is to create an emergency category of registration for applicants in the registration regulation for each College.

However, the difficulty is determining the best method of protecting the public on an ongoing basis while being fair to those registered during the emergency. For example, is there an ability to terminate the registration without having to go through the discipline process if practice concerns for an emergency class registrant arises? Should public protection only be reactive, requiring concerns to be reported, before further assurances of competency are achieved? Even if registration through the emergency class is permanent, patients and employers may be reluctant to hire practitioners in that class once the emergency resolves.

Given the variety of registration processes to assess competence by the Colleges (e.g., assessment of education, examination, prior learning assessment, supervised work experience), consideration might be given to not taking a universal approach. Each College should be able to choose the options most appropriate to their profession and existing processes. CCO dealt with the challenges associated with the cancellation of the national clinical competency examinations by developing a policy on provisional certificates of registration i.e. individuals are registered, practice with an experienced member, and move into the general class when they successfully complete the in person clinical competency examinations.

Integrating the New Regulatory Regime

The *Health and Supportive Care Providers Oversight Authority Act, 2021*³ creates a new regulatory regime for personal support workers and, potentially, other professions. The Ministry is seeking to consult on how *RHPA* Colleges and the new Authority can and should work together. The questions relate to sharing of information between *RHPA* Colleges and the Authority, involving the Authority in networking opportunities with health regulatory organizations, inquiring as to whether *RHPA* Colleges will share expertise and resources with the Authority, and assessing a possible expanded role for the Authority. CCO is open to working with and sharing resources with the new Authority.

³ See: <https://www.ontario.ca/laws/statute/21h27>.

VI Conclusion



The Ministry proposals have significant implications for *RHPA* Colleges. CCO is open to implementing the governance proposals in a planned and coordinated manner, open to the housekeeping proposals and open to working with the new Health and Supportive Care Providers Oversight Authority. CCO is not in a position to make substantive submissions on the proposal to create three new oversight agencies. CCO would appreciate an opportunity for further discussions about each of those proposals, but certainly needs significant additional information from the Ministry on how those oversight agencies are expected to enhance the protection of the public over the existing, and recently expanding, oversight mechanisms without reducing the effectiveness of the College's existing regulatory activities. Thank you for the opportunity to make preliminary comments, and we look forward to a more fulsome discussion as the Ministry implements its policy direction relating to regulation of health professionals in Ontario.

Yours Truly,

A handwritten signature in black ink, which appears to read "Jo Ann Willson". The signature is written in a cursive, flowing style.

Jo-Ann Willson
Registrar and General Counsel

c. Allison Henry, Director

June 21, 2021



Via Email (Sean.Court@ontario.ca)

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College of Chiropractors of Ontario (CCO) Preliminary Comments re: Governance Reform

Dear Mr. Court:

This submission is in response to your letter of June 8, 2021, on the issue of governance reform.

CCO continues to support the request by the College of Nurses of Ontario (CNO) to reform its governance structure. The CNO proposals would seem to advance the public interest through modernizing its governance. The *Regulated Health Professions Act (RHPA)* should have the flexibility to enable different governance structures for different Colleges.

CCO Council has discussed governance reform but has not yet formulated a detailed plan. However, we can share the following points.

CCO has experienced issues maintaining a properly constituted Council. Usually, our Council's lack of legal structure has occurred because it often does not have the minimum number of public appointees from the government. Lack of proper constitution has also occurred because our Council must have precisely nine elected members; even one resignation by an elected member renders our Council improperly constituted. The College cannot properly perform its important regulatory functions without a legally constituted Council. We urge the government to amend the legislation so that College Councils remain properly constituted even if there are vacancies. I would like to emphasize that we respect the hard work being done by many of CCO's public members, and that some vacancies cannot be predicted. We recently had a situation where a valuable public member, Mr. John Papadakis, died unexpectedly. CCO did find a "work around" by having the Executive Committee perform all leadership functions, but as you know, only Council has the authority to approve or amend by-laws or regulations, and having the Executive take on all the functions of Council is somewhat cumbersome and inconsistent with the full participation of all Council members.

Correspondence dated June 21, 2021 to Mr. Court from Ms Willson



We note that the College Performance Measurement Framework (CPMF) expects that Council and committee members be selected on the basis of competence and suitability, which is also consistent with the governance reform suggested by CNO and others. However, our legislation requires that professional members of Council be elected by a free vote of the membership. Despite our best efforts to reconcile these expectations, the reality is that they are not consistent. In any governance reform, the Ministry needs to rationalize the selection process so that the criteria and process for selection is clear and consistent. This applies to the selection of both professional and public members of Council. We trust that the Ministry will examine the selection process used for the health professions in the United Kingdom.

CCO looks forward to consulting with the Ministry on this initiative. Governance can have a significant impact on effective regulation of the profession in the public interest and we are encouraged by the Ministry's efforts to move forward with governance reform during what has been a time of significant challenge. Thank you for the opportunity to comment.

Yours Truly,

Ms Jo-Ann Willson
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Registrar and General Counsel