

Situational Analysis on the State of Governance

Prepared for the College of Registered
Psychotherapists of Ontario

June 2019

SML

Steinecke Maciura LeBlanc
Barristers & Solicitors

401 Bay Street, Suite 2308

Toronto, Ontario M5H 2Y4

T | 416.599.2200

F | 416.593.7867

E | info@sml-law.com

Executive Summary

The Council of the College of Registered Psychotherapists of Ontario (“CRPO”, or the “College”) mandated this analysis to ensure its by-laws, procedures and policies, as they relate to governance, are in keeping with modern practices. This report sets out my analysis, the facts on which it is based and my observations on why a number of practices are in need of reconsideration.

Generally the College’s governance and in particular the work of Council and its committees is consistent with similar bodies. However, the College’s work could benefit significantly if several deficits in current practices and approaches are improved. These include: insufficient focus on ‘the public interest’ in formulating issues for Council; Council’s agendas do not sufficiently focus on its policy-making role; reports to Council do not consistently identify the policy issue and why Council must address a matter; the College has no succession planning so future leadership is not identified and properly prepared to progress through positions of increased responsibility; and the College has not identified the skills, competencies and attributes required for leadership from the profession and therefore, there is no intentional recruitment of either Council or committee members.

The absence of a set of strategic and operational priorities is a significant deficit, though it should be addressed in the coming months as the College undertakes strategic planning.

While no individual weakness undermines effective governance, collectively they result in an organization focused too much on the ordinary day to day business, rather than the larger issues facing the profession and the College as its regulator. Ideally improved governance will significantly enhance the College’s decision making and the operations that follow. It will enable better management of issues the College will face as it matures. Most importantly it will allow for a focus on strategy, in a rapidly changing world of health care delivery, to effectively regulate registered psychotherapists in the public interest. Though the details of its strategic priorities have yet to be articulated, the College’s discussions about ‘right touch regulation’ suggest it will center on the management of risk, being proactive in its approach and articulating the outcomes the public and the profession can expect from regulation.

Introduction

The Psychotherapy Act, 2007¹ established the College of Registered Psychotherapists of Ontario. Its governance model aligns with the Health Professions Procedural Code (Code),

¹ S.O 2007, c.10, Sched. R, <https://www.ontario.ca/laws/statute/07p10>

Schedule 2 of the Regulated Health Professions Act (RHPA)². In tandem with regulations, the College's by-laws govern specific operations prescribed only in general terms by the Code³.

After the Act was introduced in 2007, it took several years to hire qualified staff, develop its by-laws, procedures and policies, and to bring thousands of psychotherapists, representing a number of differing approaches to psychotherapy, into membership. The College became fully operational in April 2015.

This report outlines my analysis of the current approach to governance at the College. This approach has been effectively used by the College in its transitional phase and since becoming fully operational. Based on my observations the style to governance that has served the College is no longer appropriate. Many improvements in process, policy and practice are required to better support the College's delivery of high quality professional and public interest focused regulation. Enhance governance will provide the foundation to develop long term goals and priorities.

The word 'governance' derives from the Greek verb *kubernan* meaning to steer —as in steering a ship. As applied to organizations, a very simple definition might be "the art of steering organizations."⁴

Today the word 'steering' has a greater significance than it held for the early Greeks. For us, a notion of stewardship is implicit in setting a course. Steering, as its embodied in 'governance', requires establishing a vision or mission, staying clear of shoals, guiding progress toward goals, and assuming overall responsibility for the organization.

In reflecting on how good governance is achieved, Tim Plumptre founder of the Institute On Governance⁵ suggests:

I find it useful to view governance as a set of ideas about how direction is provided to human activity — to any form of collective action. What distinguishes governance from management is that it is concerned with how the big (or strategic) decisions are

² S.O 1991, c. 18, <https://www.ontario.ca/laws/statute/91r18>

³ A memo to Council recommending this governance review noted as follows: The planned governance review will build on this solid foundation to ensure that the College is in the best-possible position to respond to expected changes. While there have been periodic revisions to the RHPA since its proclamation, there has never been any major overhaul to the legislation. Changes to the province's health care system as well as the public's expectations around transparency and accountability of the regulatory colleges has led many stakeholders to question whether the RHPA is still an appropriate framework. Increasingly, the consideration of emerging best-practices in other Canadian jurisdictions as well as in other countries suggests that there are, in fact, more effective ways to regulate professionals across and within many disciplines (e.g. healthcare, law, etc.).

⁴ Adapted from 'Governance Works' by Barbara Laskin, https://www.saskculture.ca/content/grant_pdf_files/Governance_Works_Eng.pdf

⁵ A brief biography is found at - <https://www.theaccountabilitygroup.com/index.cfm?id=79182>

taken — decisions related to achieving important goals, maintaining key relationships, and providing feedback - and who takes those decisions. Governance is the process whereby strategic goals are set, key relationships are maintained, the health of the organization is safeguarded, and account is rendered for performance.

Effective governance involves a set of connected relationships and practices. It requires:

- A clear organizational purpose with an articulated strategy to advance that purpose and the expected outcomes to be achieved⁶;
- Policies that articulate the principles, roles, rules and expectations for those involved in the organization;
- An organization-wide understanding of the differences between Board and management responsibilities and the concepts embodied in the saying “Eyes open, noses in, fingers out”⁷;
- An understanding by all members of the Board of the policies and their individual and collective responsibilities as a steward and decision-maker;
- A Chief Executive Officer mandated to support the Board to fulfill its proper role and provide information, advice and guidance it requires to make effective decisions;
- Staff of the organization who understand their roles in supporting the CEO and committees by assembling and preparing materials to enable committee and Board work that advances assigned roles, effective policy and rule development and subsequent decision-making.
- A culture in the organization that recognises the importance of effective governance by supporting the respective roles and responsibilities held and shared by those involved in deciding and achieving the organizations purposes.

In a recent presentation⁸, Sir Harry Cayton of the Professional Standards Authority (‘PSA’) summarized his views on governance:

Simply my observation is that the correlation between good performance and good governance is not direct. ... much of what is said about good governance misses the point by concentrating on board and committee procedures rather than on the personal qualities, skills and behaviours of board members. Good governance should be a means to achieve organisational ends. It’s an input not an outcome. Good governance can only be assessed by measuring good outcomes. Outcomes are

⁶ For a professional health regulator this should entail articulation of regulatory objectives to complement the provisions of 3(1) of the Health Professions Procedural Code

⁷ See <https://www.lexology.com/library/detail.aspx?g=f670c6ea-23cf-4c96-bd5b-e6d1b75bfde9>

⁸ - https://www.professionalstandards.org.uk/docs/default-source/conferences/presentation/2019-conference/cayton.pdf?sfvrsn=1f9a7420_2

delivered by staff not board members but the quality of decisions by boards affects those outcomes.

Because the College has benefited from the work of Harry Cayton and the PSA, I use an approach they have developed to create a structure for this Report. Because among health profession regulators there is considerable sharing of information and ideas, I have chosen to structure my review around the governance principles used by Sir Harry in his recent review of the Performance of the College of Dental Surgeons of British Columbia⁹. Using a framework developed for another professional regulator provides for comparisons and points of reference which should be helpful. The PSA principles are listed in Appendix A.

Based on the PSA's Governance Principles, I make statements regarding the current governance of the College. Each statement is followed by my observations and comments that suggest where practices are wanting and how they might be improved.

Discussion based on PSA Governance Principles

1.0 The regulator has an effective process for identifying, assessing, escalating and managing organisational risks, and this is communicated and reviewed on a regular basis by the senior staff and the Board.

1.1 The College has not adopted a comprehensive risk framework for its work.

Observation

CRPO's priorities have been building core competencies, procedures and policies for regulation. In a short time it has licensed more than 7300 Registered Psychotherapists (RPs), through complex processes to deal with a grand parenting regime for practitioners, with diverse modalities of practice, credentialing of new practitioners, a process for accrediting educational institutions and renewal processes. Simultaneously it has built systems to deal with complaints, quality assurance and client relations. Staff, including a new Registrar, have been recruited and trained. Communication systems with a new regulated profession have been developed. These and a myriad of other tasks, essential to the day to day operation of a professional regulator, have consumed the College's resources.

The CRPO has developed numerous systems. Its regulatory practices reflect learnings from other health profession regulators. For example, it has some triage approaches in complaints

⁹ <https://www2.gov.bc.ca/assets/gov/health/practitioner-pro/professional-regulation/cayton-report-college-of-dental-surgeons-2018.pdf>

work so resolution efforts are made early. Its registration practices have been streamlined and appear to be efficient. It has adopted technology to assist in enhancing its efficiency.

Though some risk based thinking has been used in credentialing and complaints, the College has yet to establish a comprehensive framework to use risk as a dynamic in its regulation.

Comment

A professional regulator should use tools to identify where resources can most effectively be used. A regulator that fails to think about the systems which affect its practitioners, applies the same practices and approaches in the face of increasing volumes, and treats all matters before it with the same priority is unlikely to enhance its effectiveness. Results will not improve. Though there will be plenty of work, a regulator without a framework to guide its priority setting, will not know if its efforts make any difference to the profession it oversees or the public it protects.

The PSA has identified ‘the role and value of regulation in controlling the risk of harm to the public’ as a touchstone for its work on Right-touch Regulation¹⁰. Several Ontario health regulators, including the College of Nurses of Ontario and the College of Physicians and Surgeons of Ontario, are also adopting approaches that allow them to use ‘risk’ as a key factor in all aspects of their regulatory work.

The CRPO will also want to look at how it incorporates risk based thinking in both its regulation and operations (Enterprise Risk Management¹¹) to build on its early successes and refine its processes. The goal is maximum benefit for the public. This will entail new roles for both staff and Council members as they together learn how to build risk matrices and policies to identify, quantify and manage risks across the organization.

¹⁰ Right-touch Regulation Revised, October 2015, <https://www.professionalstandards.org.uk/publications/detail/right-touch-regulation-2015>

¹¹ There are excellent resources available from EY at this site - https://www.ey.com/en_us/board-matters

2.0 The regulator has clear governance policies that provide a framework within which decisions can be made transparently and in the interests of patients and the public. It has clear terms of reference for committees and working groups and effective reporting mechanisms.

2.1 Governance Policies are embryonic

Observation

The College has a set of draft Governance Policies dated 2018. Though they are excellent, they have not yet been adopted by Council. They contain the beginning of an essential governance framework but are incomplete and require significant additional work.

Comment

Properly constructed governance policies outline an organization’s governance rulebook.

- They contain the values that dictate how it operates, e.g. openness, transparency, integrity, diversity and non-discrimination;
- They outline the responsibilities of each constituent part of the organization, e.g. committee roles, Board authority;
- They provide a roadmap on how contentious issues will be addressed, e.g. conflicts of interest;
- They outline how a Board will work together, e.g. consensus decision making, no public dissent after a decision is made;
- They describe the basic governance principles and philosophy of the organization;
- They contain key position descriptions, e.g. the President and Vice – President, other officers, committee chairs;
- They outline the relationship with the CEO and who is responsible for it, the organization’s expectations of the CEO, as well the clear separation of responsibilities relating to operations/management and Board policy work (“Eyes open, noses in, fingers out”);
- They may contain committee terms of reference and the processes for reviewing them.

There is no standard or prescribed set of governance policies. To be most effective their development and adoption should be organic within an organization. Those responsible for them, the Board and committees, should develop them supported by the CEO and staff. Because they reflect and embody culture, it is imperative they be developed with history, current realities and future aspirations in mind. These factors should be top of mind as they are established.

For a regulatory body, governance policies should describe how regulatory and policy matters are addressed by the Board. Where does decision making rest? How is the Board responsible for the quality of the regulatory work? These policies should also address how the organization manages risks, both regulatory and operational, the responsibilities for strategic and operational planning and how the regulator reports on its effectiveness. In England, the PSA has urged regulators to commit to risk management and outcomes measurement and in their work in several places in Canada this approach has been a regular part of their advice. As the CRPO continues to evolve and documents its governance philosophy, it will likely want to address how risk and measurement are embodied in its governance policies.

I am attaching as Appendix B a copy of the table of contents of another regulator's governance policies¹², not because they are perfect but to illustrate the range of issues they address.

2.2 The current work of Council reflects approaches that have been in place for many years. Council meeting agendas follow a standard structure, developed with the Transitional Council, have remained largely unchanged.

- There are written committee reports with an opportunity for questions.
- A 'Question Period' to allow members of Council to ask questions is a standard part of the agenda.
- There has been a significant improvements in Council briefing materials, but there is no standard format for presenting reports from committees or staff to Council and no practice of highlighting public interest or public protection or consistently connecting issues before Council to CRPO's mandate.
- By-law 17.01 imposes a duty of confidentiality on Council members.
- Opportunities for education are a regular part of the Council agenda.
- The Registrar's reports to Council contains a mix of operational, regulatory, political and other information and are written in an informal manner.

Observation

I interviewed members of Council to better understand their perspectives on the College, Council and committees. The College has benefited from significant and long term commitments from several Council members whose terms are ending. Some were involved with the Transitional Council and helped construct most of the structures in place. They have done an impressive job in leading the organization from its earliest inception through

¹² https://nsbs.org/sites/default/files/cms/menu-pdf/council_policies_0.pdf

transition to incorporation and now dealing with ongoing regulatory issues. Many practices I suggest need to be considered for change were created in a different time when the College was at a different place in its evolution.

Council meetings usually begin with reporting items by the President, the Registrar and Committees. There is time allotted for questions and some discussion. As the College was developing there was merit in sharing information in this way and ensuring a common level of knowledge across Council. That development stage is now complete.

Next substantive agenda items are addressed. In some meetings there is an opportunity for professional development. Before the end of the meeting there is a question period when members of the profession may raise issues.

Council agendas are in line with what one would expect of an association. They mix routine reporting with decision-making. They allow members of the profession (or any member of the public) to propose questions to Council prior to the meeting in accordance with a policy.¹³ This practice allows someone other than Council and the College's leadership to affect Council's agenda.¹⁴ However, when looked at over many meetings, the Council agenda do not sufficiently focus on public interest as is mandated by the RHPA.

Council's work does not obviously stray into operational issues¹⁵. There are no robust minutes of budget deliberations, an area where this is most likely to occur, but my discussions with Council members showed a nuanced understanding to the respective roles of Council and the Registrar and a clear appreciation of the line that ought not to be crossed. They appeared to pay heed to the concepts embodied in the dictate 'Eyes open, noses in and fingers out'.

The time commitments by Council members have been extraordinary. Some committee work, especially the ICRC, demands an inordinate amount of time. Committee packages have exceeded a thousand pages and if committee members must spend many hours in preparation in addition to their Council obligations. There is no consistent reporting by Council members of the number of hours they spend on College time. It is to be expected those in leadership spend more. The College publishes an estimate of the expected time of those running for office. The estimates appear to be in line with what regular members of Council commit.

¹³ <https://www.crpo.ca/wp-content/uploads/2018/01/Question-Period-Policy.pdf>

¹⁴ In a recent meeting a member of the profession asked about costs associated with incorporation, a matter which is clearly operational and if a rationale for a change was requested the Registrar was best placed to provide the information.

¹⁵ The recent Council Evaluation casts some doubt on this and whether there is as clear an understanding for the separate roles as appeared from my review of materials.

Comment

Council Agendas - One Council member reflecting on the Council experience opined that Council meetings do not encourage or promote sufficient or informed debate. ‘Council is not working properly’ was the view expressed.

The Council agenda structure and format, while common among many organizations, do not reflect modern governance approaches. The agenda is not structured to advance the College’s priorities. Even before the CPRO develops its strategic plan, Council should reflect on how its work gets addressed so it makes the most effective decisions that reflect its role as a public interest regulator. That requires consideration of the order of work, the content of the agenda, the nature of materials and a clear understanding of the expectations for Council members and staff in supporting them.

It is generally recognized that in a meeting the most important items should be addressed early, while members are fresh. There should be sufficient time allocated to allow for a discussion commensurate with the importance of the item to the College’s mandate. There should be a variety of means used to facilitate discussions, besides parliamentary style debates following presentations and motions. It is helpful if the agenda itself clarifies, not just by ‘discussion’ or ‘decision’ labels, what Council is being asked to do. My experience supports the use of a brief narrative to describe what is expected of Council is helpful.¹⁶

Ongoing education about matters relevant to the College and Council, as well as about governance, are important parts of a board’s work. Education should be purposive and connect to current or expected business of the College. Industry and health profession information, contextualized to the College, should always be helpful. Members of Council should be able to identify what topics will enhance their contributions to decision making and what they need to do their job better. Educate Council in a variety of ways. Adults learn differently and need multiple approaches to maximize their learning experiences. Not all professional development for Council needs to occur at meetings. Materials such as articles,

¹⁶ To illustrate this I have excerpted from a recent Council meeting agenda of a regulator in Nova Scotia.

‘Client ID Rules - Council will review the memo prepared by Elaine Cumming in this matter and consider approval to distribute this information to the membership. Regulatory amendment required – Regulation 2.9.1.

Committee Changeover - Council will discuss how new Council members will be appointed to committees and how best to determine whether non-returning Council members wish to stay on their current committees.’

podcasts or videos could be assembled for Council so they can access them at times most convenient to them.

Future policy work of Council should be identifiable several months in advance. It is known when committees will bring matters forward and Council should plan accordingly. If matters will be introduced at one meeting and then voted on subsequently, the nature of the discussion, the request for further work and the reasons for returning a matter to the agenda must be articulated. So a pending major policy matter might be preceded by an educational session to set the context for that matter; there might be materials provided to members even before the Council materials are available; the memo from the committee should identify what the committee has done and when it outlines either the options or recommendations. They should be cloaked in the public interest considerations.

The Code requires proposed by-laws be ‘circulated’ to the profession before amendments are made¹⁷. It is not clear whether there are or should be exceptions though I am informed this requirement has not always been strictly met. The recent experience of circulation inviting consultation before the fees were adjusted, though required by the Code, should be a cautionary tale about the value of this approach. Consultation about matters that directly affect practice may be required, but engagement with the profession should not be allowed to supplant Council’s responsibility to be the governing body and the final decision maker for the College. The Code provisions may be an impediment to good governance but governance policies may be able to ameliorate these strict requirements by outlining the reasons for circulation and when circulation is accompanied by consultation or is merely providing information to the profession.

Routine matters, such as minute approvals, committee reports or some appointments, should be addressed in a ‘consent agenda’ that is designed for no discussion, unless a specific request is made. To be clear, the Council members are still required to review the information. However, it is understood that unless a specific request is made to have the report discussed, it will be approved without debate.

Once Council adopts a strategic framework for the College, it will then be much easier to build all Council agendas around that plan. The starting point for agenda develop is if an agenda item is not designed to advance the College’s strategy it should not be on Council’s agenda, unless the Act or Regulations require it.

Routine Committee Reports to Council - Though there is a place for reporting from Committees to Council, the nature of reports on regular work needs to be carefully

¹⁷ Code s. 94(2)

considered. Inviting Council to consider committees' routine work blurs the different roles each has. Such reports can act as an invitation for Council to revisit the work of the committee.

If Council needs to know what a committee is doing, the reports should only be in writing. They should follow a prescribed format designed to inform Council and advance its work but not allow Council members to second guess, offer opinions on or otherwise influence the committee's work.

That is not to suggest Council should know nothing about what committees do. The opposite is true. By setting terms of reference, Council prescribes a committee's mandate and in a review of Terms of Reference (ToR) it should engage with the committee about its work. Committees should have Council approved work plans to support the overall planning of Council. There should be annual reports on committee work as part of Council's role that ensures assigned work is being done¹⁸. This annual review of committee work should be a major responsibility of Council.

Committee Reports to Council for Action – There has been a significant improvement over the last year in the content and structure of materials presented to Council. It is clear this has been purposive. Generally reports to Council are more logically organized and state the matters Council needs to consider by way of recommendations or options. However, reports to Council are not specifically rooted in an advancement or protection of the public interest. They should be. All committee work that makes its way to Council should be framed to identify the public interest issues and why Council must address and decide a policy issue.

A public interest regulator should not leave to assumption that the public interest is embedded in its work. The means by which a committee's recommendations or options will advance the public interest should be stated. This requires a committee itself to address the public interest as part of its deliberations. By setting this out explicitly in reports and the memoranda reflecting their work, committees and staff assist Council to stay focused on its core purpose. Though every decision of Council may not need to expressly advance the public interest, every policy decision should be considered in that light and Council's discussions should contemplate the public interest and determine if and how their decision will consider it.

¹⁸ See s. 11(1) of the Code

Confidentiality – Council has an important public function. It carries out its business in public. Its materials and minutes are available in the public domain. By-law 17.01¹⁹ must be read in that light. Though s.36(1) of the RHPA is entitled ‘confidentiality’, a clear reading of it would require little done by Council members at the Council table to be kept confidential. Its focus is on confidentiality associated with patient records. Either through governance policies or amending the by-law this matter should be clarified.

2.3 Committee Terms of Reference were developed by the transitional Council and reflect the requirements of By-laws 12.03 and 12.04 regarding composition and ratios.

Observation

Committee Terms of Reference (ToR) follow a consistent format. They describe authority, mandate, composition, term, frequency and location of meetings, quorum and other headings. Most were developed in 2014 and include provisions covering the transitional period and changes which will take effect once the College is fully established. Not all ToRs have been amended or updated.

Descriptions for committees have been developed for Council’s orientation materials. In describing the committees’ work they do not quote verbatim from the ToR but describe the committees’ work, what is expected and how they operate. In doing so they present a more accurate description of current expectations than the ToR themselves. For example the orientation materials include a description for the Executive Committee that refers to governance excellence, strategic planning and policy development which do not appear in its approved ToR. In amending ToRs, the orientation materials will be a valuable resource and template.

ToRs follow the Code, where it specifies composition. The College has not expanded committee membership beyond the required composition and thus have taken no systemic steps to broaden involvement of RPs (or even members of the public) in the College’s work. The College of Denturists and the College of Physicians and Surgeons are two regulators who have successfully incorporated members of the public and the profession in their committee appointments.

The College has also created and developed ToR for time or subject specific task groups. Their mandates are narrow and generally address a single issue for advice to Council.

19

17.01 – Duty of Confidentiality

Members of the Council and Committees, staff and persons retained or appointed by the College are required to maintain confidentiality of information that comes before them in the course of discharging their duties unless disclosure is authorized by the Council or is otherwise permitted under section 36(1) of the RHPA

Comment

A committee's ToR is a vital governance document. It should outline what a committee is to do, its relationship with Council and how it is to advance the College's mandate and strategic priorities. It should be a living document, with a regular review by the committee itself and a committee responsible for governance. This should entail the addition or removal of responsibilities, any necessary clarification on how the committee does its work and a fine tuning of other provisions, based on an overall review of ToR.

A ToR should be very clear about what the nature of the relationship is with Council. For regulatory committees (ICRC, Registration and Discipline) it is vital that a clear separation of responsibilities be present. Statutory committees, including those with regulatory responsibilities, have a policy advice role; it must be clear on whose initiative they advise Council on policy matters which might require amendments to or the creation of regulatory instruments²⁰.

For non-statutory committees clarity of both purpose and function are required. Who initiates committee work – the committee itself or Council? What is the work product required – recommendations or options? What process of engagement with the profession is necessary for the committee's work? These are some items a ToR should contain.

ToR should outline the skills and competencies the committee requires from its members in order to undertake its mandate. By articulating these core competencies, Council can better populate the committee and recruit participation from those on Council (both professional and public members) and from the profession.

Committee planning and reporting on an annual or regular cycle should be a requirement.

2.4 The College's governance effectiveness is affected by the election and appointment processes that bring individuals onto Council and committees.

Issues include:

- the appointment process of public Members,
- the timing of elections and committee appointments,
- the absence of succession planning done by or approved by Council,

²⁰ Regulatory instruments include regulations, by-laws, a code of conduct and professional practice standards.

- the absence of a clear description of skills, competencies and attributes for Council and committees,
- a lack of racial, ethnic, and cultural diversity as well as RPs from various practice structures²¹ in the leadership of the College and the Council,
- participation in elections is low - <14% in 2018,
- the practice of the President chairing committees,
- by-law 12.04 requires most committee members to be RPs,
- the absence of an annual planning cycle,
- the stopping of much work over the summer.

Observation

Most health regulators in Ontario have faced the prospect of not being properly constituted because the government has not kept pace with the expiry of public members' terms. This prospect has caused the College to develop a work around that involves holding open Executive Committee meetings and having Council ratify decisions subsequently. Though this issue is not of the College's making, it demonstrates a significant vulnerability that should be addressed by the health profession regulators acting collectively.

Council members are elected by RPs who practise across Ontario. For those coming from the northern district and most westerly parts of the Province, the travel obligations add an additional burden to being involved in professional regulation. There have not always been RPs willing to make the time and energy commitment. It has been rare for many RPs in one district to seek election.

The profession has not participated in elections. Fewer than 14% of the profession voted in the last election.

This is a cause for concern.

For those seeking to participate in the College's activities, there are no clear descriptions of the basis upon which selections to committees are made. While most committee positions are filled by members of Council, even for them it is not clear what skills, competencies or attributes are required. Discussions with Council members about this did not reveal it to be a concern. They spend the time, believe they do good work and generally have not reflected on what skills they require to make regulatory decisions.

²¹ Private practice has been the dominant career for Council members. There are RPs in public institutions, private practice, not for profit associations and service providers. They deal with paying clients or those who are publicly funded. They practice using a number of modalities. The profession is not homogenous.

There is no long term succession plan for the CRPO's leadership. Though there is a vice-president position, assumption of the presidency is not automatic. The Council can elect anyone to the highest office. Thus the current position description for the vice does not mandate the assumption of progressively more responsibility. There is also no planning done for members of Council that will expose them to various areas and prepare them to assume an Executive position.

There are no identified skills, knowledge and attributes identified for CPRO committees. Committee appointments are made by Council but the proposal for committee constitution is recommended by the Executive. Decisions are based on familiarity with the work and the Council members. It is impossible to evaluate what quality has resulted from this.

The President, unusually sits as Chair of at least one committee and in the past presidents have chaired more than one. This was likely a result of the thin layer of skills and knowledge around the Council table.

Since its inception the College's Council and committee members has not reflected the diverse population of Ontario. There have been no overt efforts to address that situation.

The timing of elections, various appointments and the assumption of committee responsibilities is not logical and results in gaps and substantial time when committees do not operate. Elections are not held on a fixed date. They can occur in May or June, which means the first meeting of a new member may be in June, if the election occurs before the meeting, or in September. The President assumes office in June, but the Executive does not take office until September so the former committee remains. Council members start their committee work in September.

The result is a three month hiatus in most committee work over the summer.

Comment

Public Members – They are full members of Council and share equally in the regulatory and governance work. Because the College does not have responsibility for their appointment and must take those appointed by government, this creates a very unsatisfactory situation. Though the public members have performed well and like their RP counterparts have made significant contributions, the College is vulnerable to the possibility that weak or ineffective or disinterested persons might be appointed.

Because this is an issue across the regulated health professions, the College likely cannot make any change on its own. Nor can it be a major priority, given the other governance issues it must address. However, this might be an issue which could be addressed by the Federation of Health Regulatory Colleges of Ontario. There are other models which regulators have

successfully negotiated with governments to allow the government to make appointments of well qualified people recruited by the regulators. Details of an approach would need to be developed if FHRCO is to take up this issue.

Meanwhile the College has good advice on how it can continue to work if it is not properly constituted.

Elections – There is no evidence that elections produce the best people to lead regulatory agencies. Many anecdotal reports suggest the opposite – people run for election to promote a personal interest or to add to their own resume. They may not understand the nature of the work, despite a robust orientation process before elections, and often do not like it. They may not possess the aptitudes or skills required. They cannot devote the time required to prepare, travel and attend committee and Board meetings.

Elections raise two issues – not enough people offer as candidates and not enough people vote. Both issues need to be addressed.

Though many excellent leaders have come via election processes, and that is very true for CRPO, elections are a very blunt instrument to produce a highly skilled, capable and committed regulator. Because of that several regulators have looked at alternative models to identify, recruit and appoint Board members. The Law Society of Manitoba changed its rules to allow 25% of its Board members to be appointed from the profession to complement the 20% of appointed public representatives. The College of Nurses of Ontario²² and the Ontario College of Teachers²³ have adopted reports that will modernize governance, reduce the size of their Boards and allow for appointments of some members. Key to both approaches is the Board members will be appointed based on specific attributes and competencies — their experience, knowledge, and skill.

CRPO should consider how its Council members assume office because of the pitifully low participation by the profession in elections and the few candidates who offer. There are likely complex reasons for the apparent lack of interest in the College's election process. Regardless of what they are, consideration of a different approach is warranted. When the Law Society of Manitoba changed from elections to appointments for the 25% of its Board, the first thing it did was identify the skills, attributes and knowledge required. When it made a public call, it had about ten expressions of interest/applications for each position. That was proof that qualified people were prepared to serve. They simply were not prepared to participate in an electoral process.

²² <http://www.cno.org/en/what-is-cno/councils-and-committees/council/governance-vision-2020/>

²³ <https://www.oct.ca/-/media/PDF/Governance%20Review%20Report/Governance%20Review%20Report.pdf>

Committee Appointments: Skills, succession and timing - It is now common for organizations to undertake appointments based on applying a skills, knowledge and attributes matrix. The body identifies what it requires for a committee to operate effectively, identifies the skills, knowledge and attributes of the pool of potential appointees and then attempts to match needs with available human resources. If the pool does not have enough people with the required aptitude for appointment, then a process to recruit others is undertaken.

For CPRO the absence of a skills matrix and any succession planning likely means the success of committees is more the result of good luck than good planning. Because worthy, committed and capable people have served on Council, there has been good work done by committees. But the absence of a matrix to guide committee selection has meant an absence of diversity as a criteria and the resulting failure of the College's committees to reflect the population of Ontario they should serve or the profession itself²⁴. It also has resulted in a limited pool of experienced people available to fill committee positions.

A commitment to future leadership and the training and preparation of people to assume progressively more responsibilities is a fundamental aspect of effective governance. That applies to both Council and committees. Leaders are groomed; they are prepared to assume that role because they have been prepared by exposure to the issues and participating in various types of decision-making. The College has had no plan for succession and with the imminent departure of its longest serving Council members, there is a risk of a shortage of people ready and able to assume leading roles in committees and on Council.

It is usually the role of a Governance Committee to sheppard the development of succession plans and to oversee their implementation either by acting as a nominating committee or by ensuring that the Nominating Committee does this. The College's Executive Committee has had to play the role of a governance committee, along with too many other responsibilities. Nominating and succession have been effectively addressed. They should be given priority. It may be time to create a separate committee with responsibility to address the interconnected issues of governance, nominations and elections.

Succession planning should be a part of the strategy that creates the College's senior leadership. Officers should progress up a ladder. If it is a two step ladder then the Vice-President, at least in the President's final year in office, should be presumed to become the President. There needs to be clarity about the role of Past President, especially in a regime where the President serves for several years. The position description for all offices needs to

²⁴ The CPRO website provides some interesting information about the demographics of the profession which illustrate this point.

be reworked to clarify that intent. Absent an approach like this, the College could end up with a President with minimal experience in the College's work.

Creating a succession plan does not impact how leadership is selected. If Council 'elects' the officers, with a ladder in place, the effect is that they bear responsibility for electing someone who will hold office for several years, generally a good result in regulatory bodies.

The other significant issue around committees relates to the time gap from election until committees start to work. It is not uncommon for organizations to slow down in the summer. 'Summer is so short in Canada' is a common refrain. The impact of allowing committees to take the summer off is to dramatically reduce the time they have to do their work and to prolong the time to do things.

At a minimum the College should fix an election date so Council members can take office in June, complete an orientation and commence their committee work immediately. The same is true for the Executive Committee. It should take office when the President does.

Organizational Continuity vs. the Summer Break– It is very common in bodies like CPRO to operate as if each Council is a distinct dynasty. It has a term of office. It does its work. Its time comes to an end. A new Council starts and the process repeats itself. This thinking reflects an approach that is not consistent with the work of regulatory bodies. Neither their regulatory nor their policy work should be dependent upon who holds what office or who sits on Council. A regulator's structures should be set up so work continues and is uninterrupted by a change in personnel. Stopping and starting, the norm for the College, is inefficient and undermines progress on major issues. When a newly appointed committee (even with some continuing members) has taken several months away from its work, momentum is lost. College structures and processes should support an approach that policy work continues for twelve months a year.

Activity Planning - The final comment around these timing issues relates to the planning process referred to below in the discussion on 7.0-9.0. Once the CRPO develops a strategic plan, it should build a requirement for annual planning. An annual plan differs from an operational plan, which is the Registrar's outline of intended activities to support Council and the College in achieving defined goals. An 'Annual Plan' is the Council's schedule for various things to happen so the strategy is advanced. Properly constructed the Annual Plan will assign work to committees throughout the year so their work never stops. To support this committees should also engage in their own planning, which supports Council's Annual Plan.

To develop an activity plan requires Council to appreciate the issues, their priority, the capacity of committees and staff to manage multiple obligations (such as regular regulatory work) and the effect any outside bodies, such as government, may have on timing

An annual activity plan will also militate against the summer break as work should have to carry on over the summer to meet assigned deadlines.

President as a Committee Chair – Normal governance practices appoint the President as a non-voting member of all committees by virtue of office (*ex officio*). In that way the senior leader maintains a connection to all committee work that will make its way to Council. The nature and quality of committee work can be evaluated as generally it is the President who is responsible to ensuring both committees and individual members are fulfilling their responsibilities. It is unusual for a President to Chair a committee. With a President as chair, some may think that committee has an enhanced role. It may be seem as more important than others. That can have an unintended consequence. It should be avoided.

The exception is when Council has determined a matter is of such significance that it requires the President's leadership. By filling that role the importance of the issue to the rganization is clearly communicated. This should be reserved for the exceptional.

3.0 *The regulator has effective controls relating to its financial performance, so that it can assure itself that it has the resources it needs to perform its statutory functions effectively, as well as a financial plan that takes into account future risks and developments.*

3.1 The College has assigned responsibility for financial oversight to the Executive Committee.

Observation

In the early days of the College, especially through the transition period there were too many tasks for the limited human resources available. It made sense to assign oversight of finances to the Executive Committee which was leading all aspects of the College's development. The Executive Committee was familiar with the arrangements with government that financially supported the transition.

Comment

A Finance Committee - With the CRPO being fully functioning it may be time to consider creating a separate committee with first level oversight of the College's finances. Though Council is ultimately accountable, most organizations have a committee with the obligation to ensure proper systems are in place to manage the College's assets and reserves, for budgeting, segregation of responsibilities and technology and to ensure the College is audited and identified issues are addressed. A Finance or a Finance & Audit Committee requires very specific skills that likely are not held by the present Executive.

Risk Management Oversight - If management of enterprise risk is adopted as a policy, the College should have a committee that receives and reviews reports from the Registrar on risk, how it is being managed and what needs to be reported to Council. For regulatory risk it will be necessary to build a framework for identifying risks, managing them and reporting to Council. This might fall to the Finance Committee, but it will be essential that a uniform approach to risk is developed so the focus is on 'organizational risk' and a single vocabulary is developed for it.

A Finance Committee can also serve as the body that ensures appropriate human resource policies are in place. Because HR issues impact organization or enterprise risk, this may be the committee best placed to deal with the risks and obligations the law imposes on all employers.

It is imperative the College create effective Council oversight for its finances. That oversight is not to interfere with the Registrar's responsibility to manage the accounting and finances but is to ensure Council fulfills its fiduciary and stewardship responsibilities, some of which are statutory, e.g. withholding and remitting employee income taxes, CPP and EI.

4.0 The regulator engages effectively with patients and the public.

Observation

The College has a Client Relations Committee which fulfills the role assigned to the Patient Relations Committee by the Code. Nothing in my review of materials and discussions with Council members identified any governance issues to be raised in this analysis.

Comment

I do not recall if the CRPO a member of the Citizens Advisory Group, established by the College of Physiotherapists. Various regulators hold sessions with average citizens to probe issues or ideas. If they are not a member they may wish to consider joining.

5.0 The regulator is transparent in the way it conducts and reports on its business.

5.1 RHPA s 33(1) – Confidentiality

5.2 Relying on s. 7(2)(b) of the Code, Finance matters have generally been dealt with 'in camera'.

Observation

The issues of confidentiality for Council are discussed above in 2.2.

Reading Executive and Council materials discloses little about the College's financial situation. There has been a long-standing practice of moving discussions of finances *in camera* and doing so based on s.7(2)(b) of the Code. The origin of this practice is not clear, but it would appear to be based on a misinterpretation of the Code provision which permits financial matters to be discussed in camera but does not make it mandatory.

Comment

Transparency in all of a regulator's activities is vital to earn and maintain the trust and respect of the public and practitioners. Because the profession bears the financial costs of regulation, it is incumbent on a regulator to be clear and open about its financial choices. Though there is no direct accountability to RPs for financial matters, through its Annual Reports, and engagement with the Ministry²⁵ and the profession, on matters such as by-law amendments to increase fees, it is incumbent that all aspects of the College's finances stand up to scrutiny.

In Harry Cayton's recent report on the Dental College in British Columbia, some of his most penetrating criticisms were levelled at that College's opaque approaches to reporting on and being accountable for finances²⁶.

Though all Colleges must produce an annual report, the RHPA and the Code are not very specific on what is required in terms of financial reporting. The College can create standards for financial accountability that send clear messages about the quality and integrity of its financial oversight. When this is combined with clear articulation of the financial risks being managed and communicated through multiple channels, it will contribute significantly to public trust and respect.

6.0 The Board has effective oversight of the work of the senior staff and effective reporting to measure performance.

6.1 Council has not directed there should be a comprehensive set of workplace and human resource policies – matters for which they might be personally liable.

6.2 Nature of professional support for committees has evolved with staff assuming responsibility for committee packages after agenda has been approved by the Chair

6.3 Sometimes staff have evolved to take on some regulatory roles – but only beginning (and Act does not give a lot of leeway)

²⁵ The authority of the Minister under s. 5 of the RHPA to appoint a supervisor for a College, especially in the event of concerns over financial accountability, should be noted.

²⁶ See fn. 5 above

Observation

As the College progressed through transition to be fully operational the respective roles of Council members and staff also changed. Early on the volunteer Council and committee members did much of the writing, drafting and report preparation to allow Council to make decisions. They made all the regulatory decisions as thousands of psychotherapists registered. They examined the various modalities of practice; they identified the commonalities for registration and they created the precedents to guide future work. With experience decisions became routine; more work moved to staff, so Council and committee members were primarily involved in the exceptional or difficult matters. Policies and procedures are now in place so the bulk of routine regulatory work is being done in the right place.

Volunteers also organized committee materials and agendas. This work too moved to College staff. With experience and professional development a balance was struck between what work was properly for Council and committee members and what was for staff. Now College staff are properly assuming most of the roles associated with the administration of professional regulation. They provide the committees with the material to address the matters before them. They prepare agendas, committee packages and reports to Council for the Chair's approval.

While this evolution there is a balance between the roles of the two constituents in regulation – staff as administrators and advisors and committee members as decision makers.

Council has not yet mandated a clear articulation of the human resource management infrastructure required for the College which will both enable the Registrar to provide long term, high quality and professional support for Council and the College's regulatory work.

Comment

A board of directors must hire and oversee the work of a qualified chief executive. CPRO's Council must fulfill that obligation by hiring and overseeing the work of the Registrar. The oversight is not to meddle in operations ('fingers out' was referred to earlier) but to establish the policy framework to hold the Registrar accountable. It is for Council to set the expectations for the Registrar. Some regulators in Ontario use a 'Carver Model' of governance²⁷ which relies on executive limitations for a CEO. Other organizations use a model where they outline the expectations of the chief staff officer. Regardless of the model, Council should be framing a set of requirements for the Registrar that address Council's fiduciary obligations.

Council should require a comprehensive set of workplace human resource policies and create a means to monitor them. Because Council members may be personally liable for

²⁷ <https://www.carvergovernance.com/model.htm>

breach of certain statutory obligations, their stewardship requires they ensure that proper procedures are established for statutory deductions and other employment standards, such as a discrimination free workplace.

Effective human resource policies will also address staff development. With new policies or approaches to regulation, College employees must be able and empowered to assume the necessary responsibilities to meet Council's expectations. If the College develops a based approach to regulation and I discuss earlier, that will require a more sophisticated role for the College's staff team. HR policies will ensure professional development through proper training, supervision and appropriate use of outside expertise.

In regulatory work case law now indicates that certain regulatory acts may be delegated to staff. With a properly articulated policy framework for this, committees will be relieved from dealing with routine matters; they will delegate work to staff and receive reports on their and they will then be able to advance the regulatory policy framework adopted and developed by the College.

7.0 The Board sets strategic objectives for the organisation.

8.0 A primary responsibility of a Board of Directors is to approve and monitor the strategic framework for an organization.

9.0 The regulator's performance and outcomes for patients and the public are used by the Board when reviewing the strategic objectives of the organisation.

The College does not have a strategic plan.

Observation

The discussion of these three governance standards are addressed together because the College has not yet undertaken a comprehensive strategic planning process. It is planned and will start in June 2019. As part of this process Council will determine where its obligations lie and what responsibilities are born by the Registrar.

Discussions with Council members indicated Council needs a set of priorities and a readiness to embark upon that process.

Comment

In the corporate world, it is common that responsibility for strategic planning is vested in the CEO and senior management, with the Board playing an oversight role to over implementation. That model has rarely been adopted in the not for profit world, where strategic planning is a shared responsibility between the Board and the CEO, with the obligation being vested in the CEO to make sure that planning occurs.

However oversight, monitoring and public accountability will be Council’s responsibility. The means by which Council will fulfill these obligations will need to be specified in the strategic plan itself, or preferably in the governance policies developed.

The College as part of the pending planning process and developing governance policies should also identify the specific obligations on the Registrar vis-à-vis planning.

As noted in the discussion under 2.4 above, strategic planning only works if its implementation comes with annual activity and operation planning by Council and the Registrar. Council’s control of its own calendar is a way for it to exercise leadership as it sets its own agenda and clarifies what accomplishments and outcomes it intends to achieve²⁸.

10.0 *The Board works cooperatively, with an appropriate understanding of its role as a governing body and members’ individual responsibilities.*

Observation

I have not observed Council’s in person work. As I was completing the writing of this analysis, I received the results of the Council Evaluation. There are many issues identified that Council will want to explore in terms of how it does its work. In a Council the size of the CRPO if even one person is negative or does not know or appreciate details of the work of Council, that can have a real impact on Council’s work.

Comment

I did hear from some Council members they see no appreciation from some of their colleagues for the ‘big picture’ of what is involved in regulation of the RP profession. Some also felt Council members do not have sufficient time for critical thinking/engagement about the policy work of Council/the College. Both of these sentiments are borne out by some results in the

²⁸ My former organization had this policy requiring Council to adopt a 12-month calendar - The Executive Director must prepare for Council approval, a 12-month planning calendar that includes but is not limited to scheduled times for orientation for new Council members; development of an annual activity plan and a budget to support the approved activity plan and the Society’s Regulatory Objectives; education related to the Society’s purpose and Regulatory Objectives; review of and reporting on Council’s Governance policies by the Governance and Nominating Committee; monitoring of Council Policy 18 (Expectations of Executive Director) and compliance by the Executive Director; receipt of operational monitoring reports; receipt of work plans and reports from committees that accord with their terms of reference and the approved strategic priorities, as appropriate; Council evaluation; and in years during which there will be an election, a schedule for the election process that will include dates for notifying members of the election, dates for posting of information that persons considering running for Council should have, and the posting of election dates.

Council Evaluation. It is impossible, without interviewing every Council member, to determine specific causes for concern, but my analysis shows several areas for improvement which will enhance the quality of Council member participation. Increased individual Council member satisfaction will benefit the College in ways that will become obvious.

Conclusion

Governance of the CRPO needs attention to enhance what I call ‘governance hygiene’. Hygiene requires attention to many small things. Primarily its about a culture of cleanliness but it also involves what we touch, how we clean, how we deliver the hygiene message, and how we enforce the rulebook. Good modern governance requires these things as well. Collectively the impact of many small improvements will surpasses the sum of the parts.

Many things need attention. Building a model that is built on an emerging culture of governance excellence will start with a complete and thorough set of governance policies. I have referred to this more than anything else. By creating its own set of governance provisions, tailored to the circumstances of CPRO, Council will commit to addressing a myriad of small things. It will learn from the experiences of others. It should borrow what it believes works best.

Embodying modern governance practices, with clearly understood rationales and expected outcomes, the College will create an infrastructure to enhance its decision-making at all levels. With a robust policy capacity, because its governance hygiene is unsurpassed, the College will improve its regulatory processes. It will make better regulatory decisions and better align itself with its primary obligation - regulating the profession of registered psychotherapists in the public interest.

Respectfully submitted



June 10, 2019

Appendix A

1. The regulator has an effective process for identifying, assessing, escalating and managing organisational risks, and this is communicated and reviewed on a regular basis by the senior staff and the Board.
2. The regulator has clear governance policies that provide a framework within which decisions can be made transparently and in the interests of patients and the public. It has clear terms of reference for committees and working groups and effective reporting mechanisms.
3. The regulator has effective controls relating to its financial performance, so that it can assure itself that it has the resources it needs to perform its statutory functions effectively, as well as a financial plan that takes into account future risks and developments.
4. The regulator engages effectively with patients and the public.
5. The regulator is transparent in the way it conducts and reports on its business.
6. The Board has effective oversight of the work of the senior staff and effective reporting to measure performance.
7. The Board sets strategic objectives for the organisation.
8. A primary responsibility of a Board of Directors is to approve and monitor the strategic framework for an organization.
9. The regulator's performance and outcomes for patients and the public are used by the Board when reviewing the strategic objectives of the organisation.
10. The Board works cooperatively, with an appropriate understanding of its role as a governing body and members' individual responsibilities.

Appendix B

NOVA SCOTIA BASSISTERS' SOCIETY - GOVERNANCE POLICIES - TABLE OF CONTENTS

PART 1	Council Policy 12 – The President
Council Policy 1 – Council’s Governance Responsibilities	Council Policy 13 – The Vice-Presidents
Council Policy 2 – Council’s Roles	Council Policy 14 – The Executive Committee
Council Policy 3 – Council’s Values	Council Policy 15 – Honorariums for Society Officers and Public Representatives
Council Policy 4 – Council’s Manner of Governance	Council Policy 16 – Role and Expectations for Committees and Chairs
Council Policy 5 – Code of Conduct	Council Policy 17 – Executive Director
Council Policy 6 – Openness, Transparency and Confidentiality	Council Policy 18 – Executive Expectations of the Executive Director
Council Policy 7 – Council Evaluation and Performance	Council Policy 19 – Executive Director Performance Evaluation
Council Policy 8 – Council Agenda and Planning Calendar	Council Policy 19 – Appendix 1
Council Policy 9 – Conflict of Interest	Executive Director Performance Goals
Council Policy 10 – This page is blank	Council Policy 19 - Appendix 2
Council Policy 11 – Elected Council Member Vacancies	
PART II	

Executive Director Performance
Review

Part A: Organizational
Responsibilities

Council Policy 20 – Public
Representatives on Council

Council Policy 21 – Member of the
Council of the Federation of Law
Societies of Canada