

June 14, 2019

The Hon. Adrian Dix, Minister of Health  
Mr. Norm Letnick, MLA  
Ms. Sonia Furstenuau, MLA

VIA email: PROREGADMIN@gov.bc.ca

RE: Submission in response to Cayton Report

The College of Chiropractors of British Columbia (CCBC) gratefully accepts the opportunity to comment on part two of the report titled *An Inquiry into the Performance of the College of Dental Surgeons of British Columbia and the Health Professions Act*. We respectfully submit the following perspective to the Steering Committee as they deliberate on their task of creating a proposal to modernize the regulatory framework for health professions in BC.

The CCBC is in agreement with a majority of the recommendations outlined in part two of the report and are optimistic that these changes will have a positive impact on the health and safety of British Columbians.

## A New Mandate

There is agreement on what public protection is amongst regulators, boards and professionals at a high level; however, when it comes to furthering this mandate, there is significant diversity between these groups. Interpretations of public protection and the *Health Professions Act (the 'Act')* also vary from one regulator to another. The origins of self-regulation generally stem from the work of professional associations which further complicates the regulator's view and may impact the culture of the regulator as one that represents the interests of the profession.

As Mr. Cayton points out, "*Colleges need a clear mandate prioritizing patient safety and the clinical competence and ethical conduct of registrants.*" Not only does this provide Colleges with a specific definition to engage in their work, it also meets the public's expectation of the purpose of Colleges and clarifies with professional registrants that this mandate does not reflect their own interests.

Mr. Cayton also rightly identifies that the term "member" is used interchangeably with "registrant" in *the Act*. This sends an inconsistent message, especially to registrants. Another term which causes significant confusion to both registrants and the public is "College." The word "regulator," in our opinion, does a better job of communicating the role that we serve. The CCBC encourages the Steering Committee to consider these terms in context with proposed legislation.

## Governance

We have seen many examples of failed governance with self-regulating professions, including the most recent experience at the College of Dental Surgeons of British Columbia. Our College, too, suffered from governance issues which is also evidenced in part two of the report. The CCBC completed a governance review earlier this year to address these concerns and is actively working to implement a plan to address these issues, some of which were identified in Mr. Cayton's report. The CCBC is also working to measure our effectiveness as a regulator using the UK Professional Standards Authority's Standards for Good Governance which Mr. Cayton employed in the assessment of the College of Dental Surgeons of BC. Furthermore, our most recent strategic plan takes Mr. Cayton's recommendations in his report into account.

The CCBC feels that many of the governance changes proposed will have a positive impact on the regulation of professions, including but not limited to:

- Fully appointed Boards composed of health professionals and public members in equal parts;
- An improved appointment process that is more transparent and allows regulators to request individuals with certain skills and competencies;
- Elimination of nomination and election processes; and,
- Elimination of the requirement for Annual General Meetings.

We are also encouraged by the recommendation for regulators to *"be given greater freedom to change their own rules and bylaws."* The CCBC would like to note that Ministry of Health staff continue to be very helpful and supportive during the bylaw amendment process. The limitations exist in the process itself, especially around the timelines required to make bylaw changes, which can be lengthy. While some bylaws are administrative in nature, others are in the interests of public safety and can impact the regulator's ability to be proactive.

## Improved Transparency

The CCBC agrees that transparency to the public is important for maintaining trust. When considering new legislation, we recommend the development of additional tools to allow regulators to be more transparent.

The CCBC is preparing the 2019 Annual Report and will consider ways to incorporate the recommended dataset listed in section 9.64 of the Cayton Report.

The CCBC fully supports the creation of legislation that not only makes it more clear what Inquiry and Discipline matters are published, but also allows for all or most resolutions to be made available to the public. The CCBC Inquiry Committee is highly effective at settling cases through consent resolution; however, when the matter is not deemed serious, it does not become public. This creates an illusion that the College is being secretive and protecting professionals. In reality, we must weigh costs, fairness and stress on complainants (in the case of a hearing). In some cases, a registrant may consent to publication, but this is rare due to the increasing trend for registrants to retain legal representation.

## Relationships with Associations

The CCBC undertook a complete physical and financial separation from our professional association, the BC Chiropractic Association (BCCA) in 2017. The CCBC relocated from shared office space with the BCCA and ceased collecting association fees. This separation came with some unintended consequences and temporarily strained our relationship with the BCCA. Registrants viewed the separation as an attempt by the CCBC to undermine the BCCA and cause them financial harm. Our two entities were intertwined for so long that it was difficult for the BCCA and registrants to understand that the CCBC was unable to fulfill its mandate through this arrangement. We are certain that other regulators who must separate facets of their business will receive push back from their associations; however, we fully endorse the need for regulators to break from professional interests.

We are pleased to report that the CCBC and BCCA are working hard to collaborate in areas that are appropriate and do not compromise the CCBC's requirements under *the Act*.

## One Health Regulator

At our June 12, 2019 meeting, the CCBC Board agreed to the following statement:

*The Board supports the amalgamation of Colleges as a positive step towards reform of the professional regulator framework.*

The CCBC is aware that the existence of a stand-alone body to regulate the chiropractic profession in the next 5-10 years is unlikely. Although the CCBC is a well-resourced college, we are particularly interested in the alignment of best practices, policies and procedures that amalgamation may bring. Further, the ease of use for the public in accessing services through fewer entities is clearly in line with our mandate to protect the public.

We wish to acknowledge the successful amalgamation of the three nursing colleges in September 2018. Our understanding is that this took a significant amount of time and resources to thoughtfully address this unique challenge. We strongly feel that the creation of the BC College of Nursing Professionals was the first step towards greater reform of the health regulatory framework.

To continue with this momentum, our recommendation is to form one health regulator of all professions. Harmonization of processes, policies and decision-making would be achieved across all professions, granting no profession greater or less importance over another, which would truly allow the public interest to be first and foremost. Profession-specific expertise would be maintained through professional staff and committees. The Australian Health Practitioner Regulation Agency could be used as an example.

The one regulator model lends itself well to many of the suggestions that Mr. Cayton has outlined his report including:

- A single register of registrants from all health professions;
- A shared code of ethics and conduct for all professions; and,
- Standard processes for the investigation of all health professions' complaints.

The experience to the public would be consistent. The regulator would have greater ability to address evolutions in health care, including those involving team-based care. We feel the one regulator model has the potential to make the most positive impact on health care regulation.

## Other Options for Amalgamation

If one large regulator is not a viable proposition, the CCBC supports the creation of two or three large regulators in total. These regulators could be arranged based on level of education and risk to the public. We feel this model provides a more logical approach to the regulation of professions as opposed to arbitrarily assigning professions to one group of Colleges or another. Attention is required to ensure that the risk assessment of professions does not enforce power dynamics between professions or gender gaps.

Another suggestion for amalgamation includes grouping regulators by modality and scope of practice. The CCBC cautions amalgamation of regulators based on outpatient/inpatient professions and unionized/non-unionized professions as this is not always consistent and does not acknowledge how health care will evolve. We also do not support an amalgamation of regulators based on what is considered allied health vs. “complimentary and alternative medicine (CAM).”

The CCBC supports the need for additional regulatory tools that would permit, for example, the acquisition and merging of regulators. We are very willing to pursue amalgamation opportunities, especially with the Minister’s guidance on how he wishes this to be achieved.

The process of amalgamation must be thoughtfully considered so as not to negatively impact regulators’ ability to fulfill their mandate of protecting the public. Unintended consequences must be carefully managed. Amalgamation is a costly and worthwhile endeavor, but financial and human resourcing must also be considered.

## Shared Services

One of the first steps towards amalgamation is the sharing of services. As we move toward a more unified presence amongst regulators, the CCBC will strive to achieve further consistency through collaboration and shared services. We are proud to share the Health Regulatory Hub at 200 Granville with ten other BC health regulators. Our database and IT services are also shared with regulators in BC and Ontario through the Consortium Shared System which should be considered the gold standard for regulatory IT systems. Expert staff are shared between regulators. Policies, procedures and guidelines are discussed in an effort to improve regulation for all professions. Shared services allow smaller regulators, such as ourselves, to maximize on economies of scale, which is a concept that Mr. Cayton highlighted numerous times in his report.

## Complaints and Discipline

The processing and handling of complaints is a core regulatory function and plays a key role in public protection. We support many of the recommendations outlined in the report including:

- The ambiguity around the Registrar's ability to dispose of complaints. The CCBC commissioned an independent review of our own complaints process in 2018 and identified this as an area of concern. As a result, we implemented a protocol in early 2019 to better define this process;
- The difficulty created by the term 'serious matter';
- Consideration of a registrants past action/history;
- Ability for the Registrar to take extraordinary action before and separate from consideration by the Inquiry Committee;
- Defined and consistently applied thresholds at each stage of the complaints process;
- Mandatory remedial education or training upon conclusion of investigations when appropriate. This would require defining "when appropriate" in legislation;
- Clarification around publication once a citation has been issued;
- Separation between the work of the Inquiry and Discipline committees and the Board. At present, the CCBC is diligent in enforcing the Inquiry and Discipline committees' authority under *the Act* and maintaining a distance from the Board;
- Authorizing the Registrar to disclose information in the public interest; and,
- Statutory time limit for complaints should be removed.

We do not necessarily agree with the recommendation to remove the option for registrants to make a proposal to the Inquiry Committee after the Discipline Committee has assumed jurisdiction. Hearings can be costly and force complainants to testify who may be reluctant or unwilling. If an appropriate solution can be reached once a citation has been issued, it should be considered.

## The Role of the Health Professions Review Board

The Health Professions Review Board (HPRB) exists for a very specific purpose. The report suggests that this role could be expanded. The CCBC is cautiously optimistic about how this could be achieved and would like to highlight our concerns. We note there are no less than 18 civil actions with the HPRB brought on by various regulators and individuals due to some questionable decisions. Not only is this a costly process for all parties, it further deteriorates the public's trust in our system. The public wants a fair, reasonable and transparent way to be heard. The HPRB, on occasion, makes this slow and difficult. Mr. Cayton proposes a brand new oversight body that would assume the functions of the HPRB. We do not recommend that the HPRB assume new functions; rather, the HPRB should cease to exist and a new entity should take over the broadened role.

## Our Mutual Responsibility to Indigenous Health

The report suggests that regulators have an obligation to report on their commitment to Indigenous health care in annual reports, but was sparse in the area of engaging Indigenous perspectives to create legislation to support First Nations, Metis and Inuit health. For example, the complaints process under

*the Act* was identified as a potential barrier for Indigenous peoples to raise concerns. Indigenous health is a shared responsibility between the Ministry of Health, the regulators and the First Nations Health Authority, which was acknowledged with the signing of the Declaration of Commitment in 2017. The Truth and Reconciliation Commission Calls to Action also identifies the responsibility of provincial governments to consider policies and how they contribute to Indigenous health.<sup>1</sup>

We appreciate the opportunity to make this submission in an effort to support the Steering Committee in their work. The CCBC looks forward to working with the Committee, the Ministry of Health and our fellow regulators to modernize the health regulatory landscape for future generations of British Columbians.



Dr. Johnny Suchdev  
Board Chair



Michelle Da Roza  
Registrar

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<sup>1</sup> Truth and Reconciliation Commission Calls to Action #18: We call upon the federal, provincial, territorial, and Aboriginal governments to acknowledge that the current state of Aboriginal health in Canada is a direct result of previous Canadian government policies, including residential schools, and to recognize and implement the health-care rights of Aboriginal people as identified in international law, constitutional law, and under the Treaties.