



## Provincial Dental Board of Nova Scotia

### Modernizing the Nova Scotia *Dental Act*: A Discussion Paper

#### Purpose

The purpose of this discussion paper is to seek feedback from Nova Scotians on possible changes to the regulatory framework for those health professionals operating under the Nova Scotia *Dental Act*.

The current *Dental Act* was proclaimed in 1992 – nearly 30 years ago, demonstrating the need for a significant refresh. Since that time many professions in Nova Scotia and across Canada have had their frameworks for regulation re-examined, but particularly health professions.

#### Context

Professional regulatory bodies, including dental regulators should have two overriding purposes:

- First and foremost, to promote the health and safety of the patient.
- Second, to promote transparency and accountability to the public.

The Regulation of Health Professionals in Canada has undergone significant changes in the past few years, most notably in British Columbia and Alberta

In April 2019, British Columbia's Minister of Health released [\*An Inquiry into the performance of the College of Dental Surgeons of British Columbia and the Health Professions Act\*](#). The report was the result of an inquiry performed by Harry Cayton, a leading expert in the field of professional regulation, who was asked by the British Columbia Government to examine the governance and operations of the College of Dental Surgeons of British Columbia, and review the model for health profession regulation in British Columbia.

The report laid out a clear framework and principles for modern health professional regulation, which will be referenced throughout the following discussion paper.

In response to the Cayton Report, the Province of British Columbia established a Steering Committee on the Modernization of Health Professions Regulation. In November 2019 the Steering Committee issued a consultation paper [\*Modernizing The Provincial Health\*](#)

[Profession Regulatory Framework](#). This consultation will be guided by the same three objectives that guided the British Columbia modernization initiative, namely:

1. Improve patient safety and public protection.
2. Improve efficiency and effectiveness of the regulatory framework.
3. Increase public confidence through transparency and accountability.

In August 2020, the Steering Committee [issued its recommendations](#) to modernize the provincial health profession regulatory framework.

Also in August 2020, the Province of Alberta released a discussion paper, [Proposals to Amend the Health Professions Act to Improve Regulatory Effectiveness and Efficiency: Discussion Paper](#).

### **Provincial Dental Board of Nova Scotia: Discussion Paper**

This discussion paper will outline the proposed themes and associated changes that are being considered in order to modernize *The Dental Act*, and the rationale for each. It is our intention that this discussion paper will serve to:

- Encourage discussion on areas covered in this paper, and spark discussion on other areas.
- Inform the affected stakeholders and the public of the concepts being considered for a New Act.

### **The Proposed Concepts for the New Act:**

The proposed concepts for the New Act can be categorized into five broad areas:

- A. Mandate and Accountability
- B. Governance
- C. Scope of Practice
- D. Registration and Licensure
- E. Professional Conduct

Each of the proposed new concepts is presented below.

#### ***A. Mandate and Accountability***

All of the mandate concepts being proposed for the New Act will help the regulator to strengthen its commitment to regulating in the public interest.

#### *Proposed New Concept for Discussion*

It is proposed to replace the terms “Provincial Dental Board of Nova Scotia” and “Board” with the terms “Dental College of Nova Scotia” and “College” respectively.

**Rationale:** *This change will seek to allow for the uniformity of language with other health professions in Nova Scotia and a number of other provincial dental regulators in Canada.*

*For example, in Nova Scotia the regulatory body for physicians is the College of Physicians and Surgeons of Nova Scotia.*

*Increasingly, dental regulators are modernizing their structure to become colleges, for example the College of Dental Surgeons of Saskatchewan, the Royal College of Dental Surgeons of Ontario and the College of Dental Surgeons of British Columbia.*

### Questions

- Do you agree with the recommendation to change the name of the Provincial Regulator from the Provincial Dental Board of Nova Scotia to the Dental College of Nova Scotia?
- If your answer is no, please explain.

### *Proposed New Concept for Discussion*

The New Act will re-phrase the College's mandate in clearer terms, and embed it directly in legislation.

*The Regulated Health Professionals Act* charges the colleges established under it with the duty to 'serve and protect the public'. 'Serving and protecting' the public can be widely interpreted in ways that meet the interests of a profession.

As indicated in the Cayton Report, "Colleges should separate themselves entirely from professional associations. They should not collect fees for professional associations or give them grants. Of course, such associations or unions have a role to play and are often key stakeholders for colleges, but they should not be accorded special privileges or special influence on college decision-making."

**Rationale:** *Currently, while the College's mandate is implicit, there is no legislative mandate spelled out. This change would make clear to the public what the role of the College is.*

*This change will also seek to clearly demonstrate that the College's mandate is the protection of the public interest in the practice of dentistry. In other words, it will seek to clarify that the regulatory college is putting the public interest and patient safety ahead of the professional or private interests of dentists.*

### Questions

- Do you agree that the College should have a mandate defined in legislation that focuses on the protection of the public interest?
- If your answer is no, please explain.
- How would you define the term "public interest"?

*Proposed New Concept for Discussion*

The New Act will identify the governing body as “Council”.

The current *Dental Act* refers to the Governing Council of the Board as Board Members, and this can create confusion between the body corporate (the Provincial Dental Board) and Board members. Further, the term “Board Member” may imply the duties and roles are similar to those of a Board of Directors of a Corporation.

It is proposed to designate the Governing Body as the Council as opposed to the Board.

**Rationale:** *This change is necessary to establish a Council as a governing body of the College. This will allow for a clearer understanding of the different roles of the Registrar and the Governing Council as well as allow for a clearer expression of the role of the Governing Council.*

**Questions**

- Do you agree the term “Council” is the appropriate term for the Governing Body?
- If your answer is no, is there another term you would deem more appropriate?

*Proposed New Concept for Discussion*

Introduce enabling language to permit Council to make and pass various by-laws.

Examples of by-law making powers would include:

- Registration and licensing requirements
- Prescribing a register with categories of licensing
- Creating a Public Relations Committee

Under the current *Dental Act*, any changes to the structure of the Board requires the Government to pass a regulation or new legislation. This can be cumbersome and cause unnecessary delays. For example, in order to create a new Committee of the Board, it requires a Provincial Regulation.

**Rationale:** *In recognition of the need for regulatory bodies to be responsive to changing public demands, the Cayton Report recommends Colleges should be given greater freedom to change their own rules and by-laws.*

*Some examples of the types of by-law making powers that could be delegated to the Council include:*

- *Registration and licensing requirements*

- *Prescribing new categories of licensing*
- *Matters relating to complaints and discipline*

### **Questions**

- Do you agree that giving Council the ability to make by-laws is the most appropriate way to make sure the College can quickly adjust to changing circumstances?
- If no, would there be a more appropriate way?
- Are there specific areas where the Council requires by-law making authority?
- Are there areas that are not appropriate for by-law making powers?

### **B. Governance**

All of the governance concepts being proposed for the New Act are aimed at maintaining the public interest focus of the governing body, ensuring a fair process of appointment to Council, and incorporating best practices with respect to Council governance.

#### *Proposed New Concept for Discussion*

Public representation on the Council should increase.

The Act should require that public representation should be at least 33% and not more than 50%.

**Rationale:** *The Cayton Report recommends that councils of health professional organizations should be composed of health professionals and members of the public in equal parts.*

*As highlighted in British Columbia's Steering Committee on Modernization of Health Professional Regulation 2019 Report,*

*"Unlimited self regulation has in general proved itself unable to keep patients safe or to adapt to changing healthcare provision and changing public expectations. Professional regulation needs to be shared between the profession and the public in the interests of society as a whole.*

*Striving for balanced numbers of public and registrant board members will ensure that the perspective of the public is well represented. Ideally, a balanced board will include about half public and half registrant board members. Increased public representation will also ensure that boards are more diverse and reflective of the public they serve. Using a competency-based process to appoint board members ensures boards have the right mix of skills and experience to govern effectively."*

*Recent changes to the regulation of registered nurses in Nova Scotia led to the creation of the Nova Scotia College of Nursing. That legislation requires that the number of public representatives on the Board must not be less than 33% and not more than 50%.*

*This proportion of public representatives for the Nova Scotia College of Nursing is consistent with a number of other regulated health professions both in Nova Scotia and in other Canadian jurisdictions.*

*We recommend that the legislation require a minimum of 33% public members and a maximum of 50% public members. 33% is compliant with the Government of Nova Scotia's Self-Regulated Professions Policy and this is consistent with the approach taken by the Province in recent changes to the regulation of registered nurses.*

*The inclusion of a Council with at least 33% public representation would ensure that the public's perspective is considered in strategic leadership and decision making, and that the Council would include members that are directly accountable to the public, rather than professional colleagues.*

## **Questions**

- Is a minimum of 33% and a maximum of 50% public representation on Council the right amount?
- If no, what is the right percentage in your view, and why?
- With the increased number of public members, should the College have a role in soliciting public interest to serve on Council?

## *Proposed New Concept for Discussion*

The appointment of Council, including the considerations for how Council is appointed, will be determined by the Council's by-laws.

**Rationale:** *The Cayton Report emphasizes Council should be appointed based on merit, competencies and experience:*

*"The Government should consider the process for the appointment of public members so that it is more transparent, with public criteria and competencies for appointment and attention paid to the skill mix on individual boards."*

*As also highlighted in British Columbia's Health Steering Committee on Modernization of Health Professional Regulation's Modernizing the Health Professions Regulatory Framework 2019 Consultation Paper:*

*"Regulatory college boards must provide effective leadership to ensure regulatory colleges fulfill their legally defined mandate. To achieve this,*

*boards need to be composed of individuals with the right balance of skills and experience, who are focused on public safety”.*

*Having the by-laws specify how Council is appointed will create more public transparency to the governance process and to the Council itself. This allows for more flexibility and input from Registrants, in addition to improving effectiveness of regulatory college boards.*

## Questions

- What qualifications are important considerations for public members?
- What qualifications are important considerations for non-public members?

### *Proposed New Concept for Discussion*

The New Act will remove references to the Nova Scotia Dental Association (NSDA) and the Nova Scotia Dental Assistants' Association (NSDAA).

**Rationale:** *Currently, the Nova Scotia Dental Act provides for the statutory basis for the Nova Scotia Dental Association, including its membership rules, objectives and powers. The NSDA and NSDAA are member services organizations.*

*The Cayton report recommended that professional associations and their governance be separated from the Act which outlines the regulation of the professions.*

*This approach is consistent with the approach taken in some other jurisdictions as well as other health professions in Nova Scotia.*

*For example, the Acts regulating dentists in Ontario, British Columbia and Quebec do not make reference to the member services organizations in the Province.*

*Similarly, a number of health profession regulatory Acts in Nova Scotia separate the governance of the profession from the rules, objectives and powers of the member service organization. Specifically, the Acts regulating nurses, physicians, physiotherapists, pharmacists and psychologists do not reference the member services organizations for their respective professions.*

*Of note there is a separate Act that governs the membership, powers and objectives of Doctors Nova Scotia, the member services organization for physicians.*

*Regulatory Colleges and Member Associations have different and potentially competing interests, so it is essential the public understands that the College is separate from the professional associations.*

*As referenced in the report, although such associations have a role to play and are often key stakeholders for colleges, they should not be accorded, or seen to be accorded, with special privileges or special influence on college decision-making.*

## Questions

- Do you agree that the removal of the NSDA and the NSDAA from the New Act is appropriate?
- If no, please explain why the authorization and oversight of the NSDA and the NSDAA should be included in the legislation.

### **C. Scope of Practice**

The scope of practice concepts being proposed for the New Act are aimed at providing the new regulator with the flexibility to adapt to a changing health care environment, and allow effective practice.

#### *Proposed New Concept for Discussion*

The scope of practice of dentistry provisions will be expanded slightly to include an anticipatory provision (“such as other practices that may appear as determined by the by-laws”).

#### **Current definition of scope:**

“dentistry” means the services usually performed by or under the supervision of a dentist and includes:

- I. **The diagnosis and treatment** of any injury, disease, pain, deformity, defect, lesion, disorder or physical condition of, to, in or from a human mouth, mandible or maxilla or associated structures or tissues, including the prescribing and administering of radiographs, anaesthetics, drugs and medicines in connection therewith;
- II. **Prescribing or advising** the use of, or constructing, fitting or repairing any dental prosthesis, fixed or removable, denture, bridge, or appliance for any of the purposes indicated in subclause (i) or to reduce, improve or supplement a human tooth, or to prevent, alleviate, correct or improve any condition in the human oral cavity, or to be used in, upon or in connection with a human tooth, jaw or associated structure or tissues, or in the treatment of any condition thereof; and
- III. **Taking or making, or the giving of advice or assistance**, or the providing of facilities for the taking or making of any impression, bite or cast, and design preparatory to constructing, fitting or repairing a dental, prosthesis, fixed or removable, denture, bridge, appliance or thing.



It is being proposed that the New Act would add the following to the existing definition of scope:

- IV. **Such other practices** that may appear and are described by Council in by-laws.

**Rationale:** *This will provide the College with the flexibility to quickly evolve with and respond to changes in the delivery of dental services. Additionally, this will ensure that the College is able to keep up with future health innovations and technologies for the practice of dentistry.*

### Questions

- Is this an appropriate addition?
- Would you like to see any other changes to the definition?

### *Proposed New Concept for Discussion*

The New Act will specifically prohibit unlicensed practice. Further, the New Act will prohibit people from using the title “dentist” or “dental assistant” unless that person is registered under the Act.

### **Additional proposed wording on prohibiting a person from holding themselves out as a registrant:**

Except as provided in this Act and the regulations, no person, other than a licensed dentist shall:

- a) publicly or privately, for hire, gain or hope of reward, practice or offer to practice dentistry;
- b) hold themselves out in any way to be entitled to practice dentistry; or
- c) assume any title or description implying or designed to lead the public to believe that person is entitled to practice dentistry.

**Rationale:** *This proposed change would seek to protect both the integrity of the College and the profession itself, as well as the public interest, by ensuring that only qualified and registered individuals hold themselves as “dentists”. Additionally, it is proposed that only qualified and registered individuals hold themselves as “dental assistants”. This protection of title would help the public to easily identify qualified professionals who have demonstrated the requirements to practice safely.*

### Questions

- Do you agree it is appropriate to specifically prohibit unlicensed practice?
- If not, please explain.

- Do you agree it is appropriate to prohibit people (other than those licensed to do so) from using the title “dentist”?
- If not, please explain?
- Do you agree it is appropriate to prohibit people (other than those licensed to do so) from using the title “dental assistant”?
- If not, please explain.

*Proposed New Concept for Discussion*

The New Act will allow the College to seek injunctive relief. The new Act will also create additional offences under the Act. For example: It is an offence to contravene the Act.

The offences created by the New Act are largely consistent with the Current Act. However, the College will be granted the power to seek injunctive relief.

**Rationale:** *The purpose of this recommended change would be to ensure that there is a remedy available to the College when there is no other remedy at law and irreparable harm will result if the relief is not granted. This will ensure the protection of the integrity and authority of the College.*

*Additionally, this would ensure that the College has the tools needed to carry out its mandate to protect the public from harm, by enshrining in legislation the various potential offences that could undermine the safe practice of dentistry in the province.*

*For example, on the matter of unauthorized practice – if the College believed someone was performing dentistry in their home without accreditation, an injunctive relief provision would allow the College to apply to the Court for an Order ordering the person to cease performing dentistry immediately pending the outcome of a College investigation. Without injunctive relief, the College would have to go through a lengthier process prior to taking any action. Unauthorized practice serves as a high risk to the public, and allowing the College the power to seek injunctive relief would ensure urgent matters can be dealt with in a timely manner.*

**Questions**

- Is it appropriate to give the College the power to seek injunctive relief?
- What should be the criteria for when the College may seek injunctive relief?
- Are there any offences listed under the Act that should be removed?
- Are there any new offences that should be added?

#### **D. Registration and Licensure**

All of the registration and licensure concepts being proposed for the New Act will seek to clarify language and to allow for greater flexibility, while maintaining public safety.

##### *Proposed New Concept for Discussion*

While rules around licensure remain largely unchanged, the New Act will move rules regarding licensing and registration to the by-laws.

For example:

- Requirements for registration, and the procedure for imposing conditions on licenses will be moved to the by-laws.

**Rationale:** *The Cayton Report recommends this as a way to enable the Council to more easily make changes to these rules where necessary, without going through the legislature. This would ensure that important changes could be made in a timely manner, regardless of whether or not the legislature is in session.*

#### **Questions**

- Do you support giving Council the power to make licensing and registration rules within the by-laws of the College?
- If not, please explain.

##### *Proposed New Concept for Discussion*

The New Act will define one register with specified categories rather than defining separate registers for dentists and for licensed registered dental assistants. It is being proposed that the categories be:

- Full License
- Graduate/Postgraduate Student Practitioners
- Conditional
- Restricted

**Rationale:** *One register will make it easier for members of the public to identify the health professionals regulated under the Dental Act. This is consistent with the recommendations of the Cayton Report. Currently, each of these is separate, and this will allow for streamlining of the process.*

## Questions

- Do you agree that the proposal to make one registry, as opposed to separate registries, will improve public transparency?
- Do you agree with the proposed categories?
- If not, please explain.
- Should there be additional categories?

### *Proposed New Concept for Discussion:*

In addition to separate categories the following sub-categories of licenses are proposed:

1. Full License
  - a. *Licensed Registered Dental Assistant*
  - b. *Dentist*
  - c. *Specialist*
2. Graduate/Post-Graduate Student
3. Conditional
  - a. *Defined (for example, a dentist who applies seeking a licence for less than full-scope of practice)*
  - b. *Temporary (for example, an individual coming to Nova Scotia for a set period of time to deliver or participate in a hands-on Continuing Dental Education course involving patients)*
  - c. *Academic (for example, when an individual is licensed to practice exclusively at an accredited Faculty of Dentistry)*
4. *Restricted (for example, a dentist whose scope of practice has been limited as a result of a disciplinary proceeding or settlement agreement)*

The New Act will change terminology to reflect the new register.

Examples:

- Instead of Assistants' Register and Dentists' Register, simply one "Register"
- Add the definition of Registrant to mean anyone registered under the New Act
- Instead of Licensed Dental Assistant, a change to "Licensed Registered Dental Assistant"

**Rationale:** *This change would enable greater clarity to the public when it comes to those that are registered. Although "Full License" and "Graduate-Post-Graduate Student" categories have been defined, this will create a new category of "Conditional" to allow for, and clearly differentiate between, the different types of Conditional licenses.*

## Questions

- Are you in agreement with the creation of a new categories, under “Conditional” licenses?
- If your answer is no, please explain.
- Are there any other categories that you believe should be considered?

### *Proposed Concept for Discussion*

The New Act will create a Registration Committee, define its membership and confirm the existence of the Appeals Committee.

The Council will appoint a Registration Committee and a Registration Appeal Committee, including Chairs. The membership of which would be set out in the by-laws.

The Registrar, Registration Committee, and Registration Appeal Committee shall perform such registration and licensing functions as are set out in the *Dental Act*, the regulations, and the by-laws.

Subject to certain exceptions the Registrar, Registration Committee, and Registration Appeal Committee have all the rights, powers, and privileges of a Commissioner appointed pursuant to the Public Inquiries Act.

**Rationale:** *A Registration Committee is absent from the current Dental Act. Currently the Registrar is responsible for all registration and licensing decisions under the Act. The creation of a Committee provides the public, registrants, and prospective registrants with transparent information regarding the make-up, powers, and process of the Registration Committee and the Registration Appeals Committee.*

## Questions

- Do you agree that registration decisions should be the responsibility of a Committee, as opposed to the Registrar?
- If your answer is no, please explain.

### *Proposed Concept for Discussion*

The New Act will create a Reinstatement Committee and set out the key operational terms of that Committee.

**Rationale:** *A Reinstatement Committee is expected to provide an additional layer of protection to the public, as well as procedural fairness to Registrants applying for reinstatement after revocation.*

## Questions

- Do you agree that reinstatement decisions should be the responsibility of a Committee, as opposed to the Registrar?
- If your answer is no, please explain.

### *Proposed Concept for Discussion*

The New Act creates disclosure obligations for Registrants. Examples of disclosure obligations include:

- Where a person has been charged or found guilty of a criminal act
- Where a person has been found guilty of a disciplinary matter or is subject to a disciplinary process or investigation in another jurisdiction
- Where a person has a licensing sanction in another jurisdiction
- Where a person has a medical condition that will impact their capacity to practice

**Rationale:** *A Registrant does not have enumerated disclosure obligations under the Current Act and the Board does not have the authority to take any action if there is a lack of disclosure. This will enable the College to be more aware of any offences or activities inconsistent with proper professional behavior or of issues that may affect the competency of Registrants. It will also give the College some authority to act if a Registrant chooses not to disclose.*

*Additionally, this will serve the public interest, as it will protect the public from being served by Registrants that should, for any of the above reasons, not be practicing in a full capacity. As such, this protects the legitimacy and integrity of the profession in the province.*

## Questions

- Do you agree that Registrants should have proactive disclosure obligations?
- Are the obligations listed the right obligations? If not, please explain.
- Should there be any additional obligations?

### ***E. Professional Conduct***

All of the professional conduct concepts being proposed for the New Act will enhance the regulator's ability to regulate in the public interest, while introducing changes to engage in more efficient and effective regulation of dental care in Nova Scotia.

### *Proposed Concept for Discussion*

The New Act will add definitions of a number of terms not defined in the Current Act, including:

- Capacity
- Competence
- Conduct unbecoming
- Incapacity
- Incompetence
- Professional misconduct
- Licensing sanction

**Proposed Language**

*Capacity:* the medical, physical, mental or emotional status of an applicant or Registrant that impacts that person’s ability to practice in a competent manner.

*Competence:* the ability to integrate, apply and adequately communicate the knowledge, skills, aptitude and judgement required to practice safely, ethically, and professionally in a designed role and practice setting.

*Conduct unbecoming:* conduct by a Registrant or former Registrant outside the practice of dentistry or dental assisting that tends to bring discredit upon the dental profession or the registered dental assisting profession, as the case may be.

*Incapacity:* the status whereby a Registrant or former Registrant suffers or suffered from a medical, physical, mental or emotional condition, disorder or addiction that renders or rendered the Registrant or former Registrant unable to practice with competence or that may endanger or has endangered the health or safety of individuals.

*Incompetence:* the lack of competence in the Registrant or former Registrant’s care of an individual or delivery of dental services that, having regard to all the circumstances, rendered the Registrant or former Registrant unsafe to practice at the time of such care of the individual or delivery of dental services or that renders the Registrant or former Registrant unsafe to continue in practice without remedial assistance.

*Professional misconduct:* includes such conduct or acts in the practice of dentistry or registered dental assisting, as the context requires, that, having regard to all the circumstances, would reasonably be regarded as disgraceful, dishonourable or unprofessional and that, without limiting the generality of the foregoing, may include breaches of:

- The Code of Ethics for Dentists or Licensed Registered Dental Assistants, approved by the Council;
- The accepted standards of the practice of dentistry or registered dental assisting;
- The Act, the regulations and policies approved by the council.

*Licensing sanction:*

- the imposition of conditions or restrictions on a licence by an investigation committee or a hearing committee, or their equivalents from another jurisdiction

- a consensual reprimand ordered by an investigation committee or its equivalent from another jurisdiction
- a reprimand issued by a hearing committee or its equivalent from another jurisdiction
- a suspension of a licence by an investigation committee or a hearing committee or their equivalent from another jurisdiction
- a revocation of registration or licence by a hearing committee or its equivalent from another jurisdiction.

**Rationale:** *Including each of the above concepts would ensure clarity around issues related to capacity and incapacity, and anything else that might make a Registrant unfit to practice. Providing clear definitions of these concepts is in keeping with the principle of transparency to both the public and Registrants.*

### Questions

- Do you agree with including the above definitions in the Act? If not, please explain.
- Do you agree with the proposed definitions? Are there any suggested changes to the definitions?
- Would you like to see any additional terms defined in the Act?

### *Proposed Concept for Discussion*

The New Act will add language to expand upon the role of the Registrar including to initiate complaints, dismiss complaints, and to refer incapacity matters to remediation where Registrant agrees.

**Rationale:** *This change would seek to enshrine within the Dental Act additional language to allow for the dealing with complaints.*

### Question

- Do you agree to expand upon the role of the Registrar?

### *Proposed Concept for Discussion*

The New Act will also provide the College with increased jurisdiction to handle complaints.

#### Example:

- The Registrar or the Investigation Committee will be able to appoint Investigators with specific powers to enter and search premises and examine anything that may be relevant to an investigation.



**Rationale:** *This change would allow for a better ability to properly investigate complaints, which works to uphold both the public interest and the integrity of the profession in the province.*

### Questions

- Do you agree the College requires additional powers to properly dispose of complaints?
- Are there other additional powers the College should have?

### *Proposed Concept for Discussion*

In the New Act, the Complaints Committee becomes the Investigation Pool.

- The Investigation Pool will comprise of members who can be called upon to form a Committee to hear complaints as they arise.

**Rationale:** *Currently under the Dental Act, the Complaints Committee is comprised of 10 permanent members: 4 dentists, 2 dental hygienists, 2 registered dental assistants and 2 members of the public. The Chair of the Complaints Committee then strikes a panel to hear a specific complaint which is comprised of 3 members.*

*Transitioning to an Investigation Pool, which can have more than 10 members, is required given the increased complexity of complaints. Transitioning from a 10-member permanent Committee to an Investigation Pool will better allow complaints to be heard in a timely manner, at the benefit of both the Registrant for which the complaint is against, as well as the public interest. Under the new proposal Committees would be struck to address specific complaints (as opposed to panels) by the Investigation Pool Chair and would be comprised of three to five members.*

### Questions

- Do you agree with the proposal to move from a permanent Complaints Committee of 10 members to an Investigation Pool approach?
- If not, please explain.
- Should the Investigation Pool be required to have a certain number of dentists, registered dental assistants, and members of the public as members?
- Should additional specialties also be required as part of the Investigations Pool?

### *Proposed Concept for Discussion*

In the new Act, the Discipline Committee becomes the Hearing Pool.

- The Hearing Pool will comprise of members who can be called upon to form a Committee to hear complaints as they arise.

**Rationale:** *Currently the Discipline Committee is a permanent Committee comprised of 16 members. When a disciplinary hearing is required the Chair of the Committee appoints a 5-person panel, comprised of members of the Discipline Committee. Similar to the reasoning for moving to an Investigation Pool, transitioning to a Hearing Pool is necessary given the increasing complexity of complaints. Moving to a Hearing Pool will better allow complaints to be heard in a timely manner, at the benefit of both the Registrant for which the complaint is against, as well as the public interest. Similarly, when a disciplinary hearing is required the Chair of the Hearing Pool will appoint a Hearing Committee (as opposed to a Disciplinary Panel), comprised of members from the Hearing Pool.*

### Questions

- Do you agree with the proposal to move from a permanent Discipline Committee of 10 members to a Hearing Pool approach? If not, please explain.
- Should the Hearing Pool be required to have a certain number of dentists, registered dental assistants, and members of the public as members?
- Should additional specialties also be required as part of the Hearing Pool?

### *Proposed Concept for Discussion*

The New Act will add language to permit the Registrar to dispose of certain routine matters in manners outlined by the by-laws.

**Rationale:** *Currently, the Registrar must entertain all complaints. Changes will permit the Registrar to dismiss frivolous complaints instead of having them automatically forwarded to Investigations. This will serve to protect the interests of Registrants when complaints are levelled against them without merit.*

### Questions

- Do you agree the Registrar should have the ability to dismiss frivolous complaints?
- If not, please explain?

### *Proposed Concept for Discussion*

The New Act will have additional language for more flexible remedies.

Examples:

- Addition of language that will permit Hearing Committee to impose fines
- Addition of language that will permit the Regulator to enforce statutory Committee costs orders through court proceedings
- Addition of language to impose injunctive relief

**Rationale:** *Currently, the Discipline Committee is not permitted to take these actions, as stated under the Current Act. This will allow for greater discretion when imposing remedies.*

### Questions

- Do you agree that the New Act should have additional language for more flexible remedies?
- If your answer is no, please explain.
- Should any other remedies be made available?

### Seeking Your Views

Moving forward, we will continue to work closely with interested stakeholders to ensure that a modernized *Dental Act* incorporates best practices and policies in health professional regulation. We are interested in your views on the suggested modernization of the Nova Scotia *Dental Act* that are being considered. Please provide your comments on or before Friday, December 18, 2020.

We would appreciate your thoughts and concerns both on proposed concepts for discussion that you do not agree with, as well as those that you do. Please only answer the questions that you feel able to comment on.

Comments and questions can be submitted to the attention of the Registrar, Dr. Martin Gillis at [feedback.pdbns@eastlink.ca](mailto:feedback.pdbns@eastlink.ca)

## APPENDIX A: QUESTIONS

### A. Mandate and Accountability

**Proposed New Concept:** It is proposed to replace the terms “Provincial Dental Board of Nova Scotia” and “Board” with the terms “Dental College of Nova Scotia” and “College” respectively.

#### Questions

- Do you agree with the recommendation to change the name of the Provincial Regulator from the Provincial Dental Board of Nova Scotia to the Dental College of Nova Scotia?
- If your answer is no, please explain.

**Proposed New Concept:** The New Act will re-phrase the College’s mandate in clearer terms, and embed it directly in legislation.

#### Questions

- Do you agree that the College should have a mandate defined in legislation that focuses on the protection of the public interest?
- If your answer is no, please explain.
- How would you define the term “the public interest”?

**Proposed New Concept:** The New Act will identify the governing body as “Council”. The current *Dental Act* refers to the Governing Council of the Board as Board Members, and this can create confusion between the body corporate (the Provincial Dental Board) and Board members. Further, the term “Board Member” may imply the duties and roles are similar to those of a Board of Directors of a Corporation.

#### Questions

- Do you agree the term “Council” is the appropriate term for the Governing Body?
- If your answer is no, is there another term you would deem more appropriate?

**Proposed New Concept:** Introduce enabling language to permit council to make and pass various by-laws. Examples of by-law making powers would include:

- Registration and licensing requirements
- Prescribing a register with categories of licensing
- Creating a Public Relations Committee

#### Questions

- Do you agree that giving Council the ability to make by-laws is the most appropriate way to make sure the College can quickly adjust to changing circumstances?
- If no, would there be a more appropriate way?
- Are the specific areas where the Council requires by-law making authority?
- Are the areas that are not appropriate for by-law making powers?

## ***B. Governance***

**Proposed New Concept:** Public representation on the Council should increase. The Act should require that public representation should be at least 33% and not more than 50%.

### **Questions**

- Is a minimum of 33% and a maximum of 50% public representation on Council the right amount?
- If no, what is the right percentage in your view, and why?
- With the increased number of public members, should the College have a role in soliciting public interest to serve on Council?

**Proposed New Concept:** The appointment of Council, including the considerations for how Council is appointed, will be determined by the Council's by-laws.

### **Questions**

- What qualifications are important considerations for public members?
- What qualifications are important considerations for non-public members?

**Proposed New Concept:** The New Act will remove references to the Nova Scotia Dental Association and the Nova Scotia Dental Assistants' Association.

### **Questions**

- Do you agree that the removal of the NSDA and the NSDAA from the New Act is appropriate?
- If no, please explain why the authorization and oversight of the NSDA and the NSDAA should be included in the legislation.

## ***C. Scope of Practice***

**Proposed New Concept:** The scope of practice of dentistry provisions will be expanded slightly to include an anticipatory provision ("such as other practices that may appear as determined by the by-laws").

### **Questions**

- Is this an appropriate addition?
- Would you like to see any other changes to the definition?

**Proposed New Concept:** The New Act will specifically prohibit unlicensed practice. Further, the New Act will prohibit people from using the title “dentist” or “dental assistant” unless that person is registered under the Act.

#### **Questions**

- Do you agree it is appropriate to specifically prohibit unlicensed practice?
- If not, please explain.
- Do you agree it is appropriate to prohibit people (other than those licensed to do so) from using the title “dentist”?
- If not, why not?
- Do you agree it is appropriate to prohibit people (other than those licensed to do so) from using the title “dental assistant”?
- If not, not?

**Proposed New Concept:** The New Act will allow the College to seek injunctive relief. The New Act will also create additional offences under the Act.

#### **Questions**

- Is it appropriate to give the College the power to seek injunctive relief?
- What should be the criteria for when the College should seek injunctive relief?
- Are there any offences listed under the Act that should be removed?
- Are the any new offences that should be added?

### ***D. Registration and Licensure***

**Proposed New Concept:** While rules around licensure remain largely unchanged, the New Act will move rules regarding licensing and registration to the by-laws.

#### **Questions**

- Do you support giving Council the power to make licensing and registration rules within the by-laws of the College?
- If not, please explain.

**Proposed New Concept:** The New Act will define one register with specified categories rather than defining separate registers for dentists and for licensed registered dental assistants. It is being proposed that the categories be:

- Full License
- Graduate/Postgraduate Student Practitioners
- Conditional
- Restricted

## Questions

- Do you agree that the proposal to make one registry, as opposed to separate registries, will improve public transparency?
- Do you agree with the proposed categories?
- If not, please explain.
- Should there be additional categories?

**Proposed New Concept:** In addition to separate categories the following sub-categories of licenses are proposed:

### Full License

- a. Licensed Registered Dental Assistant
- b. Dentist
- c. Specialist
1. Graduate/Post-Graduate Student
2. Conditional
  - a. Defined
  - b. Temporary
  - c. Academic
  - d. Restricted

The New Act will change terminology to reflect the new register.

## Questions

- Are you in agreement with the creation of a new category, under “Conditional” licenses?
- If your answer is no, please explain.
- Are there any other categories that you believe should be considered?

**Proposed New Concept:** The New Act will create a Registration Committee, define its membership and confirm the existence of the Appeals Committee.

## Questions

- Do you agree that registration decisions should be the responsibility of a Committee, as opposed to the Registrar?
- If your answer is no, please explain.

**Proposed New Concept:** The New Act will create a Reinstatement Committee and set out the key operational terms of that Committee.

## Questions

- Do you agree that reinstatement decisions should be the responsibility of a Committee, as opposed to the Registrar?
- If your answer is no, please explain.

**Proposed New Concept:** The New Act creates disclosure obligations for Registrants.

Examples of disclosure obligations include:

- Where a person has been charged or found guilty of a criminal act
- Where a person has been found guilty of a disciplinary matter or is subject to a disciplinary process or investigation in another jurisdiction
- Where a person has a licensing sanction in another jurisdiction
- Where a person has a medical condition that will impact their capacity to practice.

### **Questions**

- Do you agree that Registrants should have proactive disclosure obligations?
- Are the obligations listed the right obligations? If not, please explain.
- Should there be any additional obligations?

### ***E. Professional Conduct***

**Proposed New Concept:** The New Act will add definitions of a number of terms not defined in the Current Act, including:

- Capacity
- Competence
- Conduct unbecoming
- Incapacity
- Incompetence
- Professional misconduct
- Licensing sanction

### **Questions**

- Do you agree with including the above definitions in the Act? If not, please explain?
- Do you agree with the proposed definitions? Are there any suggested changes to the definitions?
- Would you like to see any additional terms defined in the Act?

**Proposed New Concept:** The New Act will add language to expand upon the role of the Registrar including to initiate complaints, dismiss complaints, and to refer incapacity matters to remediation where Registrant agrees.

### **Question**

- Do you agree to expand upon the role of the Registrar?

**Proposed New Concept:** The New Act will also provide the College with increased jurisdiction to handle complaints.



## Questions

- Do you agree the College requires additional powers to properly dispose of complaints?
- Are there any other additional powers the College should have?

**Proposed New Concept:** In the New Act, the Complaints Committee becomes the Investigation Pool.

- The Investigation Pool will comprise of members who can be called upon to form a Committee to hear complaints as they arise.

## Questions

- Do you agree with the proposal to move from a permanent Complaints Committee of 10 members, to an Investigation Pool approach?
- If not, please explain.
- Should the Investigation Pool be required to have a certain number of dentists, registered dental assistants and members of the public as members?
- Should additional specialties also be required as part of the Investigations Pool?

**Proposed New Concept:** In the new Act, the Discipline Committee becomes the Hearing Pool.

- The Hearing Pool will comprise of members who can be called upon to form a Committee to hear complaints as they arise.

## Questions

- Do you agree with the proposal to move from a permanent Discipline Committee of 10 members to a Hearing Pool approach? If not, please explain.
- Should the Hearing Pool be required to have a certain number of dentists, registered dental assistants and members of the public as members?
- Should additional specialities also be required as part of the Hearing Pool?

**Proposed New Concept:** The New Act will add language to permit the Registrar to dispose of matters in manners outlined by the by-laws.

## Questions

- Do you agree the Registrar should have the ability to dismiss frivolous complaints?
- If not, please explain.

**Proposed New Concept:** The New Act will have additional language for more flexible remedies.

Examples:

- Addition of language that will permit Hearing Committee to impose fines
- Addition of language that will permit the regulator to enforce statutory committee costs orders through court proceedings
- Addition of language to impose injunctive relief

## Questions

- Do you agree that the New Act should have additional language for more flexible remedies?
- If your answer is no, please explain.
- Should any other remedies be made available?

*Adopted by the Board: October 8, 2020*