

A report and recommendations on improving governance

prepared for the

Ontario College of Social Workers and Social Service Workers

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Professional Regulation and Governance

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May 3, 2022

Dear Mukesh,

We are pleased to submit our review and recommendations for the governance of the College.

It has been a pleasure working with the Governance Committee and Governance Working Group and with Council members; we are grateful for everyone's cooperation, patience with our endless questions and for the experiences and knowledge people have shared. Despite the valuable information and insights we have gained from many people the conclusions in this report are ours and ours alone.

We would like in particular to thank Amy Vranichidis, Senior Executive Assistant and Council and Committee Liaison, who has been unfailingly helpful, well organised and prompt in her support for our work.

As you are aware the short timeframe in which this review was required to be carried out has been challenging. If we had had longer we may have been able to explore some issues in greater depth and detail. Nevertheless, we believe that we have met the requirements of our contract and that the judgements we have made and the recommendations we offer are well founded.

As we say in our Conclusions there is much to respect in the commitment, intelligence and hard work of both Council members and staff but the College is hampered by an over reliance on rules, procedures and policies which result in a bureaucratic and cautious style of governance. We urge you to be more confident in making decisions based on common sense and respect for others.

We hope that the Council as a whole will discuss and agree on the actions to be taken in response to this report.



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1 Executive Summary

- 1.1 The Ontario College of Social Workers and Social Service Workers commissioned a review of its governance structure and practices, to be conducted between February and May 2022.
- 1.2 The review was to be in two distinct phases; the first phase of the review included an initial assessment of governance training needs based on feedback from Council and the Governance Working Group and the planning and delivery of two carefully tailored training sessions for the College's Council and senior staff, which were held on March 22 and 25 respectively.
- 1.3 Phase 2 of the review was informed by the initial findings from the first phase and a comprehensive review of the effectiveness of the College's overall governance policies and practices, identifying opportunities for improvement and recommendations for change.
- 1.4 The review finds that the College follows a number of identified good practices, as demonstrated in its: commitment to providing ongoing education and training opportunities for its Council and committee members; its Strategic Plan, its commitment to diversity, equity and inclusion and Truth and Reconciliation; its commitment to facilitate the induction of new Council members through a mentoring program; its development and maintenance of the corporate risk register; and its commitment to a Council evaluation process, with annual results provided to Council for discussion and learning.
- 1.5 The review finds weaknesses in: the lack of dialogue and engagement with the users of social service and social work services; in a failure to include on the risk register identified risks of harm to clients from poor professional practice; in observed challenging behaviours by Council members that focus attention and resources away from the College's mandate of professional regulation in the public interest; in an observed lack of understanding and respect for the respective roles, responsibilities and authorities of the Council, the Committees, the President/Chair and the Registrar/CEO; and in a lack of evidence that Council considers the anticipated regulatory impact or public interest rationale when making decisions or taking actions.
- 1.6 While this is not a legislative review, the review finds that a number of the existing legislative requirements, particularly those mandating the current size and composition of Council; its electoral system, the functions assigned to the Executive Committee; and the requirement that College must hold an Annual Meeting of Members, do not align with contemporary good regulatory governance practices and accordingly challenge effective governance.

- 1.7 The review finds that, with respect to effective governance, the College is hampered by an over reliance on rules, procedures and policies which result in a bureaucratic and cautious style of governance.
- 1.8 The review assessed the College's governance against the Standards of Good Governance, and finds that the College meets three of the nine standards, partially meets three and does not meet three.
- 1.9 A total 21 recommendations are made in this report and are set out in Section 6.

2 How we prepared this report

- 2.1 In February 2022, after an open procurement process, the Ontario College of Social Workers and Social Service Workers¹ commissioned Harry Cayton and Deanna Williams to provide governance training for the College council and to present a report on governance with recommendations for improvements as necessary.
- 2.2 The Statement of Work required the consultants to carry out an initial assessment of the governance training needs based on feedback from Council members, senior staff and the Governance Working Group. The first phase informed the planning and delivery of carefully tailored governance training modules, designed to address both the needs identified by the Governance Working Group, as well as general principles of good governance. The second phase of the review would build on findings that informed the initial governance training sessions/modules by conducting a more in-depth and comprehensive review of the effectiveness of the College's overall governance policies and practices, identifying opportunities for improvement and recommendations with respect to change.
- 2.3 The agreed Statement of Work, further specified that the report should include:
- The findings from the interviews conducted with members of Council and senior management staff, and observations of Council, the Executive Committee and other governance related committees (Governance, Elections, Finance and Nominating Committees);
 - Consideration of similar reviews undertaken by other regulatory bodies in Ontario, across Canada and internationally;
 - A summary of current good practice in regulatory governance;
 - An assessment of the College's governance against the Standards of Good Governance;² and
 - Recommendations for improvements in the governance structures and processes of the College, taking account of the College's legislation and rules, and those changes which are within the College's power to make and those which require government support.
- 2.4 A total of 22 personal interviews were conducted between February 10 and 25 with members of the College Council, as well as senior staff. All of the interviews, which were conducted virtually, followed a predetermined line of questioning but informants were free in addition to say what ever they wished. We also spoke with representatives of the Office of the Fairness Commissioner for Ontario and the Ontario Ministry of Children, Community & Social Services.

¹ For the purpose of this report, the Ontario College of Social Workers and Social Service Workers (OCSWSSW) is referred to as "the College."

² The Standards of Good Governance, as agreed to for this review, were developed by the Professional Standards Authority (UK) and have been adapted for this review.

- 2.5 Meetings of both Council and committees relevant to governance were observed ; these included the Council; the Governance Committee; the Diversity, Equity and Inclusion Task Group; the Election Committee; the Governance Working Group; the Finance Committee; and the Executive Committee
- 2.6 The reviewers met with the Council President; the Registrar/CEO; the Chair of the Governance Committee and the Chair of the Governance Working Group to keep the College up to date with progress throughout the review period.
- 2.7 Through the College's BoardEffect portal, which is used to store and share papers internally, we had confidential access to all relevant policy papers, meeting agendas, meeting papers and minutes. We also reviewed the College's founding legislation³, current regulations, its bylaws and its public facing website.
- 2.8 Although we had limited time, a little over two months, in which to carry out this work we believe that the assessments that we make of the College's governance and the recommendations we offer are sound. We are grateful to all those who spoke freely and frankly to us, in particular the members of Council. We have of course benefitted from their observations and insights but the findings in this review are ours and ours alone.⁴
- 2.9 In reporting as fairly as we can what individuals told us in the interviews without identifying anyone, and in our observations as non-participants in seven meetings, there are obviously things said and observed which are contradictory; we found individuals to have different perspectives on the same issue, different levels of knowledge and different relationships within the College. We have tried to report what we heard and saw objectively but do of course make judgements of our own when assessing the College against the Standards of Good Governance and in making recommendations.

³ *Social Work and Social Service Work Act, 1998*, <https://www.ontario.ca/laws/statute/98s31>.

⁴ One member of Council was unavailable to speak to us throughout the period and they were also unable to attend the governance workshops.

3 What we found

Legislation

- 3.1 The Ontario College of Social Workers and Social Service Workers regulates two professions- both of which provide, plan or administer a variety of services to a range of vulnerable people in the community. There are around 26,500 people on the register, of whom 22,500 are Social Workers and 3,600 are Social Service Workers. There is a small number of members (also referred to as ‘registrants’ in this report) who hold dual registration.
- 3.2 These registrants work in a wide number of roles and provide care and services in a broad range of health and social service settings, ranging from counselling, psychotherapy and advocacy, to education, community development and administration.
- 3.3 The College operates under the Social Work and Social Service Work Act, 1998. The “Duty and Objects” of the Council are set out in s.3 of the Act and composition of the Council in s.4. The Act provides for the College to make regulations (s. 36 (1)), although these are subject to the approval of the Minister and the Lieutenant Governor in Council. The College may make its own bylaws “relating to the administrative and domestic affairs of the College.” Section 37(1) of the Act lists 35 categories of bylaws that may be made. The College currently has, it seems, 332 separate bylaws grouped into seven consolidated bylaw documents.⁵
- 3.4 The Act specifies (s.14) five statutory committees as well as the composition of those committees. Contrary to the contemporary best regulatory practice of ensuring independence of the disciplinary committee to eliminate potential conflicts of interest, members of the College Council must serve on the Discipline Committee.⁶ The Act allows the College to establish other committees and it currently has seven non-statutory committees and one task group in addition to the five statutory committees (see para. 3.29 below).
- 3.5 The College is subject to extensive powers of oversight by the Minister. It must report annually to them and otherwise if requested. The Minister may require the College to do anything that the Minister “believes is necessary or advisable” and may require the College to make, amend or revoke regulations and the College must comply.⁷

The Council

- 3.6 The College Council generally meets four times a year, usually for a day and sometimes for two days. We observed two Council meetings, a special meeting

⁵ By our count, there are 7 By-laws, Numbers 1, 21, 36, 44, 46, 66 and 103, that include 155, 52, 46, 3, 36, 6 and 34 by-laws respectively.

⁶ The Statutory Committees are; the Executive Committee, Complaints Committee, Registration Appeals Committee, Discipline Committee, Fitness to Practise Committee.

⁷ *Social Work and Social Service Work Act, 1998*, S 11(1)-(3).

of Council in February and the scheduled Council meeting in March. We found the agendas and accompanying papers to be well prepared and circulated an appropriate time in advance. Attendance at Council meetings was generally good although not all members attended for the full meeting. The primary governance concern which we drew from our observation of Council and from our engagement with Council members was a lack of trust and consequent tension between members and between members and senior staff. We address this under Standard 9 (para. 5.10 below).

- 3.7 As set out under the Act, the College Council must be composed of 21 members, including 14 professional members (seven social workers and seven social service workers) elected by the professions and seven public members, appointed by the Ontario government. Currently, after two recent resignations, there are five public members appointed to the Council.⁸
- 3.8 All five of the current public members appointed to the Council describe themselves as coming from fields related to social work or social service work; one originally graduated from a social work program but is not currently registered with the College, and the other four individuals told us they currently work or have recently worked in fields related to community and social services.
- 3.9 A majority of informants said they believe the current Council size of 21 members is too large and should be reduced to eight to ten members. It was also suggested that a smaller Council would only work if the need for Council members to serve on the committees is reduced or eliminated.
- 3.10 There was no consensus amongst informants as to whether the current two-thirds professional majority on Council should change or how. Some informants believed that at least half of Council should be public appointees and one said a public majority would be appropriate in alignment with the College's mandate to put the public's interests above all others.
- 3.11 It is apparent that there is tension between the two professions regulated by the College. There are 26,500 registrants of which nearly 22,500 are Social Workers and 3,600 are Social Service Workers. A few Council members questioned the equal representation of the two professions on Council given the smaller numbers of social service workers on the register. This suggests that they believe that the Council should be representative of the professions rather than united in the public interest.

Elections of Professional Members onto Council

- 3.12 Elections of professional members are held annually on a rotating basis based on five geographical districts. Professional members of Council are elected for three-year terms and may serve a maximum of ten consecutive years on Council. Although the Act says that no member may serve more

⁸ At the time of writing, two public member positions are unfilled by the Ministry of Community, Children and Social Services.

than “ten consecutive years,” the inclusion of the word “consecutive” means there is nothing that prohibits a professional member from seeking re-election to the Council after they have sat out one electoral cycle. This seems to be contrary to the spirit of the legislation. Indeed, four current members of Council have previously each served ten-year terms and sitting or long-standing members of Council are regularly unopposed when seeking re-election.

- 3.13 In practice, this electoral process limits the turnover of elected Council members. Since 2018, only one of the current professional members was elected for the first time (in 2020) and two more were declared “elected” in 2021 in accordance with the Election by-law, replacing others who had resigned. The remaining 11, including the four Council members who each served ten years before being re-elected at later dates, have served 101 years between them.
- 3.14 There are currently a number of individuals who are “dual registered” with the College as both social workers and social service workers. Dual registrants may seek election to Council as either a social worker or as a social service worker and must advise the Registrar in advance of an election of the category in which they intend to vote. Except for those who hold dual registration in both professions, registrants may only vote for those who are in the same profession in which they are registered. It seems that those with dual registration have some advantage in both deciding in which category they will vote, and in choosing the category in which they will stand for election should they wish to do so.
- 3.15 In the event of a vacancy in an elected position, the College’s by-law stipulates that the Elections Committee shall declare the person with the most votes of all unsuccessful candidates in the last election in that district to be elected.
- 3.16 Members of the professions who seek election onto Council must complete and submit forms included within the College’s nomination package and satisfy the Registrar that they meet approved “eligibility for election” criteria. Professional members seeking election to Council are also required to view the ‘3 Rs- Roles, Responsibilities and Requirements’ video series developed by the College, subsequently to take a quiz and to submit their certificate of successful completion with their submission.
- 3.17 We welcome that the College, by introducing eligibility requirements, is attempting to have some control over the competence and knowledge of prospective candidates for election. However, contemporary best governance practice for regulators internationally is that all Council members are selected through open competition; appointed based on demonstrated competence and skill, and that geographical or demographical representation are not necessary for effective regulatory governance.⁹ The

⁹ See for example, *Fit and Proper? Governance in the Public Interest*, Professional Standards Authority, 2013.

Act currently prevents the College from selecting council members based purely on merit.

- 3.18 The College is not involved in the appointment of its public members by the Ontario government acting through the Lieutenant Governor. While prospective public appointees are not required to view the College's video, all newly appointed public members are expected to participate in the College's orientation and induction training along with any newly elected members. The background of "public" members also lacks diversity; as previously noted, (see para. 3.8 above) all the current members appointed by the Ontario Government have professional backgrounds in community or social services and one is a former social worker. While not in any way a reflection of their competence or suitability to serve, we do find it interesting that not one of the current public appointees identified themselves as service users.

Members and Representation

- 3.19 Social workers and social service workers who are registered with the College are referred to as 'members' rather than 'registrants', which is common in Canada, where many professional regulatory Colleges have developed out of professional associations. Although unusual amongst other professional regulators, we note that registration with this College is optional for some with social work qualifications, for instance those working in academia. The members' power to elect council members to the Council is widely seen by council members to contribute to a representative mindset resulting in some Council members feeling beholden to those who elected them onto the Council. This model, despite claims to the contrary, does not naturally result in diversity and as observed in Para 3.13 (above) turnover amongst Council members is low reducing the opportunity for younger registrants to join the Council.
- 3.20 There remains a strong belief amongst professional members of Council that geographical representation from across the province is critical; most support for this position related to an alleged need for ensuring inclusion of professionals from Indigenous, racialized, remote or otherwise under-served areas of Ontario. Most informants could not see how the College would understand or respond to unique needs or perspectives in the absence of such representation. We consider the validity of this belief in para. 5.8.4 below.

Meeting of Members

- 3.21 The Act (s.12) requires that the College hold an Annual Meeting of Members, and in our view, this enforces the idea that the College is an association not a regulator. The College currently fulfils this requirement to inform members of the College of activities of the Council and the College through its 'annual meeting and education day', which also includes a selection of educational sessions on a number of topics. The educational sessions are intended as an incentive for registrants to attend the Annual Meeting, since they can be attributed towards members' continuing competence requirements.

Functioning of Council

- 3.22 The Council meets four times a year, on occasion for two days. Agendas are clear and papers available appropriately in advance. Attendance is generally good, although sometimes members are present for only part of a meeting, arriving late or leaving early. Council members told us that during the period of Covid restrictions, both Council and the committees adapted well to virtual meetings and that their work has not been compromised.
- 3.23 The Council meetings that we observed were well-attended. A small number of members appeared content to be present but not to participate, a few were outspoken and dominated discussions and a few strayed from the agenda raising whatever happened to be on their mind. Many members of Council believe that the processes and reporting mechanisms that assure accountability between staff and Council, or Council and committees are good. Others feel that the practice of reading out written reports is repetitive, time consuming and unnecessary and that Council members should be expected to read papers in advance. This is indeed an expectation set out in the College's Code of Conduct.¹⁰
- 3.24 A common belief amongst Council members that relations amongst Council and staff had generally been working well was shaken in 2021 in response to an internal disagreement. Many informants believed this disagreement and its consequences were handled poorly. A lack of openness and transparency but more importantly a lack of clarity as to why information was not or could not be shared led to mistrust and a sense that Council's foundational relationships were not as strong or functional as many had previously believed.¹¹
- 3.25 The way the matter was handled is widely considered to have given rise to ongoing lack of trust and discontent, particularly amongst a few members of Council who had taken sides in the disagreement based on partial information and were initially unwilling to change their view even when presented with evidence that their positions were unfounded.
- 3.26 Many informants said there was a different feel at Council following the disagreement and subsequent independent inquiry in 2021 which was affecting Council's ability to function collectively. Specific comments related to the sense that emotions were getting in the way of good governance; and that an apparent desire from a few members to revisit negative events from the past had weakened Council's ability to be collectively effective and forward looking.
- 3.27 A majority of informants told us that there needed to be greater clarity about roles, responsibilities and the respective authorities of: the Registrar/CEO and the Council Chair; the Council and staff; the Council and the Executive

¹⁰ Code of Conduct, By-law No. 1 (General), Schedule 1,

¹¹ There have also been three resignations due to internal disagreements in the last two years.

Committee; and the Council and the other committees. These roles and responsibilities are in fact set out in the Governance Framework and policies.

- 3.28 A number of individuals said that tensions between the Council President and the CEO are palpable. Notwithstanding the clarity provided in the bylaws about the duties of the Registrar and the President and their respective authority, these informants said they believed the root causes for the disagreement in 2021 were directly related to a lack of clarity and importantly, a failure to understand and respect the responsibilities and assigned authority for each role. Six individuals said they believed a lack of clarity about the President's role and authority and a lack of understanding and respect for the Registrar/CEO's role and responsibilities remain issues of concern.
- 3.29 Some Council members said they feel less trustful of staff and of the President, when they are told that information they ask for 'cannot be shared'. They said when they are told 'it's operational' or 'we can't share that because of confidentiality', they feel that they are being intentionally shut out. However, many other Council members said that when the Registrar/CEO, or the President says that 'we are not able to provide details, and this is why....' Council, individually and collectively, needs to trust that this is the case and accept it.
- 3.30 While all those we interviewed said they understand the College exists to protect the public interest, many Council members confirmed that the question, 'How is this issue (before Council, or a committee) aligned with our mandate to serve the public interest?' is rarely asked or discussed.

The Executive Committee

- 3.31 The College has a statutory Executive Committee that, according to the bylaw, is composed of six members of Council: two social workers, two social service workers, and two public members. Of the six members on Executive Committee, three of the members must be the President and the two Vice-Presidents. Many of the Council members questioned the need for the two Vice-President positions and also said these requirements limit the range of Council members who can serve on the Committee. The Executive Committee usually meets five to six times a year, once for two days.
- 3.32 In accordance with the bylaws, the purpose of the Executive Committee is to act on Council's behalf between Council meetings.¹² The Executive Committee may exercise all the powers of Council, with the exceptions that it cannot make, amend or revoke regulations or bylaws. There is clearly some tension between the duplicative powers of the Executive Committee and of the Council.
- 3.33 Some Council members believe there is a need for greater clarity about why there is an Executive Committee and what it does. These individuals said that they believe the Executive Committee's reach goes far beyond acting on

¹² Executive Committee, Bylaw No. 21 (Statutory Committees),

behalf of Council between Council meetings, as evidenced in the past year when during the internal disagreement the Executive Committee made decisions that were not shared with Council even though the overall impact of the decisions on Council was significant. This is seen to have given rise to concerns about two-tiered governance and the sense that the Executive Committee has too much power. An executive committee is a requirement of the Act; its powers, however, are set out in the bylaws and therefore able to be changed. We make recommendations about the College Committees in Section 6 below.

- 3.34 Our observation of the Executive Committee suggests that it has a duplicative function discussing matters which have already been discussed by other committees or discussing matters which would be referred on to the Council. It was not obvious as to how or why particular items were on the Executive Committee's agenda or why they had to be dealt with between Council meetings. It is unfortunate that the College's legislation requires the Executive Committee to decide on matters that should move forward to investigation. In effect it is acting as an Investigation Committee which is inappropriate for an Executive Committee. The Ontario *Regulated Health Professions Act* removed this arrangement for the health professions in 2009.¹³ Retaining this would, in our view, not be considered contemporary good practice.

Other Committees

- 3.35 Under the Act the College is required to have five statutory committees: the Executive Committee; the Registration Appeals Committee; the Complaints Committee, the Discipline Committee; and the Fitness to Practise Committee.
- 3.36 In addition to the required statutory committees, the College Council has established non-statutory committees, working groups and task groups. These are the Finance Committee, the Nominating Committee, Election Committee, the Governance Committee, the Standards of Practice Committee, the Corporations Committee, the Titles and Designations Committee, the Governance Working Group and the Diversity, Equity and Inclusion (DEI) Task Group.
- 3.37 The reporting relationships between committees and Council, and vice versa, are not clear to some Council members who said that policies are commonly referred back and forth between committees, the Executive Committee and Council, rather than having Council deal with them directly. Currently members of Council chair, or at minimum, sit on the committees, and Council members see this to be of value, as they say it helps to ensure two-way communication and reporting.

¹³ *Regulated Health Professions Act, 1991*, <https://www.ontario.ca/laws/statute/91r18>

Policies, Procedures and Rules

- 3.38 When asked about their understanding of policies, procedures and rules, a majority of Council members said that there is too heavy a reliance on policies and procedures, and that there are far too many. Some individuals said there is a tendency to create a new policy or procedure every time some new problem arises; there is some uncertainty as to whether this practice is meant to ensure issues are covered in the event of a recurrence or to delay the need to address the matter at the time.
- 3.39 Not one Council member could say how many policies there are or that they were familiar with the respective contents of each.¹⁴ A number said that many policies seem to only be referred to if something happens and/or if the Registrar/CEO brings them to Council's attention.
- 3.40 With the exception of staff and two long standing members of Council, no one could confirm that the Council actually follows *Wainberg's Society Meetings Rules of Order* what these entail or why it has chosen them.¹⁵ Some suggested that all of Council would benefit on some education on rules; specifically, what the purpose of a rule is and what happens if a rule is not followed. Wainberg's Rules are a rarely used Canadian set of parliamentary meeting rules. We find their use curious, since a regulatory board or Council is most definitely not a parliament. Again, this suggests that the College's governance is closer to that of an association than a professional regulator.
- 3.41 Most individuals admitted that they do not regularly look at the governance policies, but learn as they go and rely mostly on staff and legal counsel to guide them in the right directions as required or requested and to help ensure that Council individually and collectively follow the rules. We were told that in fact legal counsel do not generally attend meetings (although they may have done in the early days of the College and only do so now when a particular topic requires it). It would indeed be unusual to have legal counsel in attendance at every meeting.

Risk management

- 3.42 Not all Council members were aware that the College has a corporate risk register, but a majority said that they believe risk is on the agenda of Council and every committee meeting. However, our review of minutes of past meetings on BoardEffect revealed that Risk Management was found on the agendas of some meetings of the Finance, Elections and Governance Committees but not every meeting.¹⁶ In fact, the College's Risk Management Framework and Protocol, requires the Risk Register to updated by the

¹⁴ On our count there are 31 separate policies relating to governance, including a policy for writing governance policies. They add up to over 250 pages.

¹⁵ *Wainberg's Society Meetings Including Rules of Order, Second Edition, 2001*

¹⁶ As example, risk management was included as an agenda item for the Finance Committee meeting in April 2022 (but not in November 2021); for the Election Committee meeting in March 2022 (but not in December 2021) and for the Governance Committee meeting in March and June 2021 (but not in September or October 2021 or February 2022)

Management Team each August for the September Council meeting. It is then revised prior to and reviewed at each Executive and Council meeting. Risk management is intended to be a standing agenda item on committee meeting agendas.

- 3.43 Most individuals said they believe risk management is important, but some members who said they are relatively new to Council admitted that they don't really know what they are supposed to do when risk comes up on the agenda of a Council or committee meeting.
- 3.44 There is general agreement that Council relies on the Registrar/CEO or other staff to bring concerns about risk to their attention. A few longer-serving Council members offered the view that the risk reports that come to Council are more purposeful and intentional now than they were in the past, and that both Council and committees are slowly getting into the habit of looking at their work through a risk lens.
- 3.45 More than half of those we spoke to agreed that training about risk management would be beneficial to members of the Council and also to the committees.
- 3.46 Some members of Council questioned whether the College is overly risk-adverse, as evidenced by the fact that one or more legal opinions are frequently sought before Council can take a position on a matter.
- 3.47 We note that there is no consideration of the risks to the public from unethical or unprofessional practice by Social Workers or Social Service Workers which are and should be the primary concern of the College. The risk that the College will fail to protect the public does not appear in its corporate risk register.

4. Good governance in regulators

The purpose of governance

- 4.1 This section considers governance in general and the changes taking place in regulatory governance both in Canada and other jurisdictions. It provides the context with which the College's governance can be compared.
- 4.2 A great deal has been written about governance, not all of it helpful and not all of it clear. It may be useful therefore to consider two definitions of governance which are applicable in a regulatory context. The first is from the National Council of Voluntary Organisations in the UK:

Governance is the systems and processes concerned with ensuring the overall direction, effectiveness, supervision and accountability of an organization.¹⁷

This definition has the merit of being brief and understandable, but it begs the question of exactly what "systems and processes" constitute good governance.

- 4.3 A fuller definition is given in the Journal, *Not-for-Profit Governance*; '

Non-profit governance has a dual focus: achieving the organization's social mission and ensuring the organization is viable. Both responsibilities relate to fiduciary responsibility that a board of trustees (sometimes called directors, or Board, or Management Committee-the terms are interchangeable) has with respect to the exercise of authority over the explicit actions the organization takes. Public trust and accountability are an essential aspect of organizational viability, so to achieve the social mission in a way that is respected by those whom the organization serves and the society in which it is located.¹⁸

The value of this definition is its focus on the dual role of governance in maintaining the viability of the organization and also delivering its social role. Understanding of dual roles in the governance of professional regulators is one of the key challenges facing board members. This definition goes on to highlight that "public trust and accountability is an essential aspect of organizational viability." In other words, the dual roles are linked; an effective well-run organization builds trust and public trust contributes to viability.

- 4.4 In this report we consider that good governance is the effective, efficient, transparent and accountable delivery of an organization's objectives thus creating confidence and trust in its members, clients and the public. Good governance is as much about behaviours and their outcomes as structures.

¹⁷ National Council of Voluntary Organisations, <https://www.ncvo.org.uk/practical-support/information/governance>

¹⁸ "What is Governance?", *Not-for-Profit Quarterly*, June 9, 2017

Separation of roles

- 4.5 Understanding the roles of a professional regulator and of its governing body is an essential first step to effective governance. Many professional regulators in Canada had a dual mandate as an “association” of professionals as well as a “regulator” of professionals. Some still do although, for instance, Alberta has recently determined that the roles should separate. To promote the interests of a profession and to promote the interests of service users are not compatible. Although created as a regulator less than 25 years ago, the College’s legislation has many features of a professional association.
- 4.6 Internal roles need to be kept separate, too. Perhaps most important in terms of trust is the handling of complaints inquiries and discipline. If this process is not independent of the interests of the board, free from bias and partiality, neither registrants, nor complainants, nor the public can have confidence in the regulator.
- 4.7 Another important distinction internally is that between strategy and oversight and delivery and management. In business governance an important distinction is made between ‘executive officers or directors’ (the CEO and most senior staff) and the non-executive directors, (who are appointed or elected to the board). Non-executive board members are not there to run the regulator; they are there to set the direction of its work, oversee the delivery of its strategy and to hold the CEO accountable for running the organization within that strategy and the values the board has set. Within the structure of the College, the Council members are non-executive directors, and the Registrar is also the Chief Executive Officer.
- 4.8 The relationship between the registrar/chief executive officer and the chair is crucial. The separation of responsibility between operational delivery and strategic oversight is fundamental to success, as is a respectful partnership in decision making. Without a respectful and constructive partnership and good communication between the chair and CEO, organizational leadership will fail.

Contemporary thinking on governance

- 4.9 Contemporary thinking about effective governance is focussed on outcomes rather than structures and procedures. It looks for informed decision-making and delivery of results. It doesn’t care for *Robert’s Rules of Order*, first published in 1876, nor for Wainberg’s Rules, first published in the 1920s,¹⁹ since an effective board is not a parliament. Contemporary non-executive boards are small; they are skill based not “representative;” they use performance data and outcome measurement to monitor the delivery of their objectives; they limit committees and working groups in favour of well-researched papers by competent staff; and they call in external expertise as required. They do not interfere in operational matters but oversee the implementation of their objectives and strategy. Boards ensure that the

¹⁹ *Robert’s Rules of Order (12th Edition)*, Hatchette Books, 2020; J M Wainberg, *Company Meetings and Rules of Order (2nd edition 2021)*

organization's resources are used to deliver its goals rather than allowing its goals to be determined by the available resources. As well, boards assess their own performance and seek to learn and improve. Boards are externally accountable, whether it be to the public, to shareholders or to members, but they should not be subservient to external pressures or to professional or self-interest. (see A Checklist for Regulatory Boards, Annex 1.)

Clarity of purpose

- 4.10 The governing councils of regulators need to be very clear to themselves and to others that their purpose is to promote good standards of professional practice, to protect service users from harm and to act in the public interest. They may also have other wider responsibilities. Board members may have been elected or appointed for the first time with no knowledge of the functions of a regulator and very little, if any, experience of serving on a board. It is essential that a comprehensive, supportive induction process is in place. Of great importance is that board members have read and understood the legislation under which they operate and from which they receive their mandate on behalf of the public. Board members should discuss and agree on their purpose and role; there must be a common understanding of the public's interests if they are to be protected. Decisions should be challenged and checked by the board to ensure they are in line with the regulator's agreed purpose and with their own strategic plan and objectives.
- 4.11 Neither election nor appointment guarantees competence, nor does it guarantee a balance of skills on a board. In Canada, regulatory bodies are hampered by legislation which limits their ability to have board members chosen on merit and against published competencies. That this is so implies no disrespect for the individuals who are elected or appointed to boards. Where possible boards should use any powers available to them to ask for appointed members to be chosen to compensate for deficiencies, for instance an identified lack of financial or regulatory expertise. Some regulators have set up screening processes or committees to identify and recommend candidates standing for election; others have introduced mandatory training for potential board members. Effective boards will have an annual appraisal of board members providing an opportunity to review an individual's contribution and the performance of the board as a whole. Increased diversity of membership will also contribute to diversity of skills.

Chair or President?

- 4.12 Being chair of a regulatory body is an important role, but not an honour; a Responsibility, not a reward. Sometimes, particularly in organizations with elected boards and a "president," we see ambition and politics drive the election of a chair who may have won strong support from the membership or the board but lacks the competence and skill to lead the organization or to chair meetings effectively. Chairs need to prepare themselves for this important role, be conscious of their own strengths and weaknesses, seek support where needed and be open to regular feedback from other board members. The relationship between the chair and Registrar/CEO is

fundamental to organizational success. A mutually respectful partnership, open and regular communication, an understanding of each other's different roles and responsibilities and an agreement to challenge each other constructively are essential for success.

Conflicts of interest

- 4.13 Conflicts of interest amongst board members, or indeed staff, are detrimental to good governance.²⁰ The principles around conflicts of interest are well understood; when a board member knows that they have a personal, professional or financial interest in a decision they should declare it and withdraw their involvement. Declaring an interest is only a first step; it does not of itself remove the interest and board members must absent themselves from the meeting or activity if a direct interest or bias exists. "Perceived" conflicts of interest are as potentially damaging as direct conflicts. A board member may sincerely believe that they are able to make an objective decision on a matter, but others may perceive that they are conflicted and if so, their involvement will undermine the integrity of the decision. All boards should keep and publish a register of interests and any new interests should be declared and recorded at the start of each meeting. The importance of identifying and reporting conflicts of interest extends to committees and disciplinary panels. Failure to declare any personal or professional or financial knowledge or relationship may result in a failure of probity or even, in the latter, a miscarriage of justice.

Representation or credibility

- 4.14 There has been much debate over recent years as to whether regulatory boards should or should not be "representative" of their professional membership. There is often confusion between the concept of representativeness on a board and equity and inclusion. Elected boards are only representative of those who are willing to stand and those who vote for them. They are often likely to be drawn from a narrow socio-economic group and from older members of a profession. It has been observed that when boards believe they are representing the "democratic" interests of members they fall into error and lose sight of their primary purpose of protecting the public.²¹ The UK's Professional Standards Authority has proposed that the concept of credibility with registrants and the public should replace that of representativeness. While acknowledging professions must remain engaged and committed to their own regulation and regulators must retain the confidence of the profession, it says:

Nevertheless the time is right to break away from the idea that individual members of regulatory boards are representative of the interests of any particular group or constituency... Board members

²⁰ See for example, *Fit and Proper? Governance in the public interest*, Professional Standards Authority, 2013.

²¹ See for example, *An Inquiry into the performance of the College of Dental Surgeons of British Columbia and the Health Professions Act*, Professional Standards Authority, 2018.

need to set aside their special interests and work together on the effective governance of the regulator.²²

Regulatory boards should not be beholden to the profession they regulate but to the public they serve. Good governance, as observed above, by delivering transparent, fair, effective and efficient regulation, will build confidence and trust in all stakeholders. A board that is only interested in its shareholders or members and not its customers or its public duty will inevitably fail.

Meetings, meetings, meetings

- 4.15 Not-for-profit bodies seem obsessed with committees and working groups and taskforces. The meetings and administration that these committees generate consume considerable resources, postpone decisions, and rarely add value to performance commensurate to the voluntary, staff and financial resources expended on them. It is often suggested that because committees are comprised of unpaid volunteers, they are a cost-effective way of making decisions, but in fact they involve many costs; each committee must have staff dedicated to it, travel and accommodation expenses build up and committees tend to generate a life of their own- often living on well beyond the period of their usefulness.
- 4.16 Many regulatory bodies are hampered in achieving efficiency by a legal requirement for statutory committees that they must establish and on which board members must sit. The functions of some of these committees may be desirable, even essential but whether a committee is needed to carry them out is another matter. Boards should carefully consider the establishment of additional committees; are they necessary, will they add something the board cannot do itself, how will they be resourced, will they be advisory or decision-making, will they be time-limited, how will they report to the board?
- 4.17 The direction of reform in regulation of professions is clear across numerous jurisdictions and professions. In all leading jurisdictions except for Canada, elections onto regulatory boards have been replaced by appointments based on merit. In the UK, regulatory boards have been reduced in size and the proportion of public members is being increased to half or more. Chairs of boards are appointed separately, and public members may be chair. Terms of office may be three or four years, and renewable once only. Board members may be paid an appropriate fee for their work. Board members are no longer responsible for disciplinary decision-making and, to eliminate potential for conflicts, disciplinary tribunals are increasingly being established as independent of the regulator. Many of these changes will soon be implemented in the health regulatory Colleges in BC and have been proposed by the Ministry of Health for all health regulatory Colleges in Ontario. The requirements of transparency, accountability and public benefit are coming under greater scrutiny. Self-regulation, it is often said, is a

²² *Op. cit.* PSA 2013 p. 13.

privilege not a right. The terms on which that privilege is granted are ever more demanding.

Personal ethics and conduct

4.18 The true key to successful governance is not rules and procedures but personal values and behaviour, although of course rules are necessary to govern those whose behaviour does not reflect proper values. The values of courtesy, honesty, openness, objectivity, and respect for others should be the common culture of boards and committee meetings. Most regulatory boards have (and all should have) a Code of Conduct for board members.²³ That code of conduct must be adhered to by members individually and enforced by members collectively. Members must politely challenge colleagues who behave inappropriately. Bad behaviour unchallenged becomes acceptable. Ultimately it is the responsibility of the chair to ensure the code of conduct is observed, a quiet word outside the meeting may be sufficient or an immediate intervention during a meeting may be necessary. Being a professional person requires self-discipline. Regulators expect those they regulate to behave to the highest standards both professionally and personally. Why should registrants have respect for their regulator if its board members do not themselves observe the same high standards?

Reflection and self-assessment

4.19 Just as a registrant needs to demonstrate their competence to practise their profession, those seeking a leadership role within a regulator should demonstrate their competence to lead. Some regulators have introduced induction days for potential candidates prior to elections to ensure they are aware of the responsibilities and requirements of the role of a council member. A nominations committee may review candidates, assessing knowledge and competence before recommending a candidate for election. In other jurisdictions, a nominations committee may be independent of an existing board and fulfils a similar role to the short-listing process for candidates who apply for a job.

4.20 Good governance is not a static state. Good governance is a process, It requires reflection, revision, and renewal. Just as we ask the professionals we regulate to reflect on their own performance, learn from their successes and mistakes and continually improve, so we should do ourselves. Good governance should include an annual assessment of the performance of the board as a whole and of each of its individual members. This will identify strengths and weakness and allow for both group and individual learning.

²³ The College has a Code of Conduct and also a comprehensive Conflict of Interest policy, but it is not clear how consistently they are understood or applied.

5. Assessment against the Standards of Good Governance

This assessment against the Standards of Good Governance is based on our observation of meetings and the two training days; our discussions with individual Council members and senior staff and our reading of the College's legislation, bylaws, policies and meeting papers. Many of the Standards concern both process and outcome and for this reason it is possible to meet part of a Standard but not all.

5.1 Standard 1: *The regulator has an effective process for identifying, assessing, escalating and managing risk of harm, and this is communicated and reviewed on a regular basis by the executive and board.*

5.1.1 The College's risk register, which is well constructed, is only concerned with corporate risk. There is no consideration of risk of harm to social service or social work service users or to the public. The management and mitigation of the risk of harms caused by a profession is the primary function of a regulator. Even in terms of corporate risk we would expect to see "failure to protect the public" as a high-level corporate risk. As a professional regulator we would expect to see that the College has a strategic plan in which the top five risks of harm from incompetent or unethical practice have been identified and plans to mitigate them had been put in place.²⁴ The College's Strategic Plan does not have any mention in its objectives of the mitigation of risk of harm to vulnerable people.²⁵

5.1.2 Several Council members who said they were relatively new to the College said they knew little about risk or how to approach discussions about it. While a number of council members said that they believed risk was a standing agenda item on both Council and committees, we noted that the Risk Management Framework appeared as a designated item on the agendas of some committee meetings, whose minutes were reviewed but not on the agendas of all committees. At its April 2021 meeting, the Finance Committee's discussion about risk was focused on the potential financial risk of decreased applications for registration due to COVID-19 and included a staff report that numbers remained stable and assurances that they were monitoring the situation. At the Executive Committee we observed in April 2022, month the brief discussion of the Risk Management Framework was about recruitment of staff.

5.1.3 The College has a good corporate risk register although few Council members are well equipped to understand or challenge it. The Risk Management Framework is inward looking, concerned with the interests of the College and appears to have no interest in the protection of social work and social service clients from the risks to them posed by incompetent or unethical registrants which should be the College's main focus. We understand it is the College's intention

²⁴ See, for example, the Ontario Electrical Safety Authority, <https://esasafe.com/>.

²⁵ OCSWSSW Strategic Plan 2020-2223.

to establish a separate regulatory risk register going forward, and strongly support its doing so.

5.1.4 This Standard is partially met.

5.2 Standard 2: *The regulator has clear governance policies that provide a framework within which decisions can be made in line with its statutory responsibilities and in the interests of clients and the public.*

5.2.1 The College has more than 270 pages of governance policies, in 31 separate documents. This is an excessive number which the majority of Council members admit they haven't read. (see para 3.35 above). The policies may individually be clear, but they are not applied consistently or enforced. This is not surprising; they seem to have been developed piecemeal in response to particular problems that have arisen over time and while covering almost every eventuality from the "Credit Card Policy" to the "Role of the Registrar" and from "New Council Orientation" to "Procurement," they are not gathered together in a coherent way or presented consistently.

5.2.2 The College has a Code of Conduct for Council and Committee members which sets out "standards of conduct governing the professional and ethical responsibilities of members of Council and committees of the College, from the beginning of their term and ongoing obligations."²⁶ Although the Code includes the expectation that individuals will behave appropriately and treat each other with respect, many Council members expressed concerns that there are problematic behaviours observed at Council that are not addressed well or in a timely manner. We personally observed a meeting where a prejudicial comment was made by about a staff member's appointment to their current position and yet the comment passed without challenge by any Council member at the time. It was raised subsequently by the staff member in question and addressed by the President after the fact. Failure on the part of the Chair, or Council, to address this matter at the time, suggests a lack of commitment to the Council's approved codes or policies.

5.2.3 The incoherence of the governance policies is reflected in the lack of clarity about the relationship between the many committees and the Council. This results in the same topic being discussed in several committees, sometimes several times, without a decision being made. Reaching a decision on even an administrative matter, let alone a controversial one, seems to paralyse Council Members. For example, the Executive Committee, following a recommendation from the Governance Committee, felt obliged to seek legal advice before deciding to add a new public holiday to the College's list of recognized holidays subject to the decision of the Council at its next meeting.²⁷

²⁶ Schedule 1, Code of Conduct, s.1.0 Purpose and Application.

²⁷ As this decision related to a bylaw why was the Executive Committee discussing it at all?

The Diversity, Equity and Inclusion Task Group discussed how to engage with Indigenous and First Nations people “a number of times,” then referred the matter to the Executive Committee, which referred the matter back to the Council and also requested a perspective from this governance review. (see Recommendation 18 below.)²⁸

- 5.2.4 The role of the Executive Committee is problematic in terms of a framework for decision making. The Act grants certain statutory powers to the Executive Committee, specifically as they relate to receiving and processing reports from the Registrar; approving the appointment of an investigator; receiving reports of investigations and deciding whether to refer allegations of incapacity to the Fitness to Practise Committee, or allegations of professional misconduct or incompetence to the Discipline Committee for a hearing. Finally, the Executive Committee also decides whether to make an interim order directing the Registrar to suspend a member’s certificate of registration or to impose terms, conditions or limitations on a member’s certificate of registration. These are the functions of an investigation committee and should be carried out independently of the management of College business, which is the usual role of an executive committee.
- 5.2.5 The problem of the role of the Executive Committee is compounded by the bylaws relating to it, which give it all the powers of the Council except over rules and bylaws.²⁹ The effect of this in practice is that the Executive Committee duplicates the role of Council with the added responsibility of dealing with the first stage of part of the complaints and discipline process. The Executive Committee, therefore, discusses an enormous range of topics, some of them technical (amendments to requirements for registration), some fiduciary (the annual audit report), some managerial (corporate risk register), some external (communications strategy) and some internal (appointments to committees). It also receives questions and suggestions from other committees. At the end of all this it frequently refers matters on to the Council. In this merry-go-round of discussions and deferred decision making, it is no wonder Council members are confused and that even simple decisions require months of discussion in multiple meetings.
- 5.2.6 Although papers presented to Council or committees often refer to the public interest, there is little if any discussion of what this means in practice and no apparent concern with the impact of the College’s decisions on service users in particular or the public in general.
- 5.2.7 The College has governance policies in abundance, but it cannot be said that they “provide a framework within which decisions can be made in line with its statutory responsibilities and in the interests of clients and the public.”

²⁸ Executive Committee, Minutes of the meeting held on January 26, 2022.

²⁹ Consolidated Bylaw No. 21, 2.2.06.

5.2.8 This Standard is not met.

5.3 Standard 3: *The board sets strategic objectives for the organization. The regulator's performance and outcomes for clients and the public are used by the board when reviewing the strategic plan.*

5.3.1 The College's Strategic Plan for 2020-23 has already been mentioned. (see para. 5.1.3 above.) The plan sets out four priorities:

- Uphold ethical and professional practice
- Strengthen stakeholder engagement and Government relations
- Increase diversity, equity and inclusion
- Enhance regulatory effectiveness

The Strategic Plan sets out the College's mission and values and sets out 12 'key objectives' under the four priorities. None of those objectives mention the public or the needs of service users. Similarly, while almost all of the policies reviewed on BoardEffect included a "Purpose," none mentioned the public's interests or how these would be served through the relevant policy.³⁰

5.3.2 Progress on the Strategic Plan is regularly reported on by the Registrar/CEO and monitored by the Council. The Strategic Plan is not always, however, used as a way of focussing the College's initiatives by ensuring that everything the College does is directed to the delivery of its four priorities.

5.3.3 The Strategic Plan does not include outcome measures but is focussed on the delivery of activities, so success is presumably measured by the completion of an activity such as, "Review standards of practice and revise as necessary" or "Make registration processes available online," rather than measuring the change which comes about from the activity. The Strategic Plan is, however, clear, brief and practical. It is a pity it lacks "outcomes for clients and the public" as measures for success.

5.3.4 This Standard is partially met.

5.4 Standard 4: *The regulator demonstrates a commitment to transparency in the way it conducts and reports on its business.*

5.4.1 The College has some areas of strength in its approach to transparency; its website, although hard to read and navigate with its small, grey typeface and wordy text, does contain a lot of information and has an adequate search function. It is not at all obvious from the homepage how to raise a concern about practice. You have to navigate through four pages and a lot of discouraging and

³⁰ Of note is the Ontario Ministry of Health's College Performance Management Framework introduced in late 2020, which expects that all regulatory policies clearly include their proposed public interest rationale.

complicated text; and even then the complaints form is hard to find. It is likely that clients with poor English or learning disabilities or those from different cultural backgrounds would find this almost impossible. Most regulators have a “How to Complain” link on their homepage.

5.4.2 The College publishes disciplinary hearings in full and its public register includes “Terms, conditions and limitations” as well as “notations” (although ‘Notations’ is unlikely to be a word the public will understand). This level of publication is in line with good practice. The website’s transparency would benefit from a direct link between the register and disciplinary hearings so that anyone can move directly between the two.

5.4.3 The College’s Annual Report is well designed and readable. It contains useful statistics, clearly presented, but would be improved by an explanatory commentary and comparison with previous years to show trends in performance.

5.4.4 Curiously, it is internally that transparency seems a challenge. We heard many concerns expressed by Council members about information not being shared and are surprised by the apparent policy of not providing minutes of committees to all Council members. All committees are established by Council and act on Council’s behalf. Council members should know what these committees are doing and why.

5.4.5 We noted, too, that the Procurement Policy currently being revised contains the positive statement, “There shall be openness and clarity as regards the College procurement policy and its delivery.”³¹ It is not, however, published on the College website and although we went through a procurement process before being appointed to carry out this review, we were not given a copy of the policy. We are not sure, therefore, what the statement about openness and clarity refers to.

5.4.6 The College, we believe, does have a commitment to transparency but the translation of the commitment into practice is uneven. With the caveat that there are areas of both internal and external communication which need considerable improvement we conclude that this Standard is met.

5.5 Standard 5: *The regulator engages effectively with clients and the public.*

5.5.1 The College has an extensive programme of communications directed towards the public and this is a specific objective in the Strategic Plan; ‘continue employer and public campaigns and other stakeholder outreach initiatives.’ It may be noted, however, that “the public” are only one target and that service users are not mentioned specifically.

³¹ OCSWSSW, Procurement Policy, 2020 (revised), para. 2.3.

- 5.5.2 The communications programme is extensive, including online advertisements and advertisements on CP24 (a 24-hour news station). The College tells us it has also placed advertisements in over 80 medical offices across Ontario, and measures awareness through omnibus surveys of Ontarians. The College also makes extensive use of social media. The communications programme is primarily concerned with telling the people that they should check the College register.
- 5.5.3 These communications are focussed on telling the public about the College, a worthy objective in itself, but there is no evidence that the College wants to hear from the public or learn from them about what they need. There is nothing on the website that invites the public or service users to “tell us what you think.” There is, in the Strategic Plan, an objective to “Explore the opportunity to partner with other regulators in the establishment of a public advisory group.” This is an important objective but “exploring an opportunity” hardly conveys a sense of urgency in delivering it.
- 5.5.4 This Standard requires a regulator to engage effectively with its public; that is to listen and learn, not merely to provide information to clients and the public.
- 5.5.5 This Standard is not met.
- 5.6 *Standard 6: The regulator engages appropriately with the profession.*
- 5.6.1 The College’s engagement with the professions is very much more extensive than its communication with service users and the public. It communicates with members through its website and through email bulletins and newsletters.
- 5.6.2 The College runs educational programmes for members and an annual education day to coincide with the Annual Meeting. The Professional Practice Department provides practice advice to registrants.
- 5.6.3 There are consultations with members on a range of professional and College issues such as Covid-19 impacts on practice or the review of Standards of Practice.³² There is also an occasional member survey; the last was 2018 and another is planned for 2022.
- 5.6.4 Other stakeholders are not forgotten. There is active engagement with professional associations such as the Ontario Association of Social Workers, Ontario Social Service Worker Association, the Ontario Association of Children’s Aid Societies, and the Association of Social Work Boards. The College also communicates with employers, with educators and with prospective registrants.

³² Why are service users not consulted on the review of Standards of Practice? Standards exist for the client’s benefit.

5.6.5 This Standard is met.

5.7 *Standard 7: The board takes account of equality and diversity in its decision making.*

5.7.1 There is no doubt that the College intends to tackle racism, inequality and to welcome diversity. 'Increase Diversity, Equity and Inclusion' is one of the College's four priorities. There is however, a certain hesitancy in the language used; the College has 'a commitment to moving forward' on anti-racism and to 'proceeding thoughtfully' on truth and reconciliation with Indigenous peoples.³³

5.7.2 In June 2021 the College established the Diversity, Equity and Inclusion Task Group. Since then, it has made two recommendations to Council; the first, that the College should collect race-based and other demographic data on registrants³⁴ was approved by Council at its meeting in December; a decision on the second, that a First Nations, Métis and Inuit group be established has been put on hold pending this governance review.

5.7.3 The acronym 'DEI' is so often used and waved as a banner of righteousness in discussions that we wonder if Council has lost touch with the tough reality of the words diversity, equity and inclusion. As noted in para 5.2.2 (above) Council members do not always observe the high standards that they promote. Indeed the reduction of the powerful words, equality, diversity and inclusion, each with different meanings, to a single acronym is another way of using language to exclude those who are not insiders.

5.7.4 As reported in para 3.12 (above) many Council members assert that regional representatives being elected to Council promotes diversity and awareness of the particular needs of disadvantaged groups. We have seen no evidence to support this assertion and it is clear from the discussion recorded in minutes of the March 2022 Council meeting that not all Council members hold this view.³⁵ It is not apparent either that the unique needs and perspectives of minorities are actively responded to in the College's policies or how they might be. The Code of Ethics and Standards of Practice documents do not indicate any differentiation based on geography nor have we seen any evidence that the unique needs or perspectives of clients in rural or underserved areas are addressed in any of the College's policies. Arguing that elections create diversity, while allowing individuals to be re-elected multiple times, is merely one way of maintaining the influence of those already in position.

³³ OCSWSSW, "Why isn't anti-Black racism specifically mentioned in the College's 2020-2023 Strategic Plan?" <https://www.ocswssw.org/ocswssw-faq/why-isnt-anti-black-racism-specifically-mentioned-in-the-colleges-2020-2023-strategic-plan/>.

³⁴ Minutes of Council meeting, December 2, 2021.

³⁵ Item 9.3 Recommendations to Council: Indigenous Engagement Strategy and Indigenous/FNMI Task Group/Advisory Group/Committee.

- 5.7.5 We do not doubt the sincerity of the College's commitments to diversity, equity and inclusion, but it needs to turn good intentions into changed practice with more urgency and action.
- 5.7.6 This Standard is partially met.
- 5.8 Standard 8: *The board has effective oversight of the work of the executive.*³⁶
- 5.8.1 Although it is clear that the Council members individually and the Registrar/CEO and senior staff are all competent and expert professional people, the relationship between some Council members and staff remains problematic. Some of this may arise from the persistence of the traits of an association because of the way the College is structured. It may be that some Council members think that they 'own' the College on behalf of its members and that staff should defer to them. As a regulator, the College is truly owned by the public so staff and Council members should act in partnership for the public interest.
- 5.8.2 Many members of the Council told us that they personally have a good and positive relationship with the Registrar/CEO and College staff whom they meet at Council and at committee meetings. Several Council members said they see the role of the CEO as important in providing leadership and guidance to the Council, based on her regulatory experience, knowledge and expertise. A few Council members said they believe the CEO exceeds her authority when providing advice to the President and Council; this of course is a fundamental misunderstanding of the CEO's role which includes giving advice to Council.
- 5.8.3 We do not consider that, in practice, there is anything amiss in the roles of the CEO, senior staff and the Council. What is amiss is a difference in expectations and some misunderstanding by some members of Council of the role of the CEO and their own role.
- 5.8.4 The written reports to Council and committees are complete, detailed and clear and form the basis on which Council can make valid decisions. There is ample opportunity for Council to scrutinize the work of the CEO and staff, and it does so. The financial and corporate risk reports that come to Council enable it to exercise its fiduciary and reputational oversight, and it does. The College has an appraisal process to review the performance of the CEO.
- 5.8.5 We conclude that despite some residual personal tensions, which should be resolvable with good will, the Council has effective oversight of the Registrar/Chief Executive Officer and her delivery, along with her team, of the Council's strategy and objectives.

³⁶ The word "executive" here, as throughout the report, refers to the Chief Executive Officer and senior staff team who deliver the Council's objectives (see para. 4.6 above) and not to the Executive Committee.

5.8.6 This Standard is met.

5.9 Standard 9: *The board works corporately, with an appropriate understanding of its role as a governing body and of members' individual responsibilities.*

5.9.1 A thread running through this review has been the observed internal struggle within the Council and between Council members and staff around roles and responsibilities, internal communication and trust and mistrust. Recognition and acknowledgement of this is the basis for change and improvement. We believe that even during the course of this short review we have begun to see tensions reduce and attitudes change.

5.9.2 Council members need to work harder to make corporate decisions and to accept properly made decisions that they may not personally agree with. Any suggestion that if you are not present at a meeting, which you should have attended, you are not responsible for what was decided there must be rejected. Stress on the differences between Social Workers and Social Service Workers or between professional and public members is divisive and unhelpful to the unity of the Council. Diversity, equity and inclusion should be valued and encouraged within the Council; all Council members have the same value.

5.9.3 Our initial impressions across the observed meetings of Council and the committees were of meetings where each member attended and acted as individuals promoting their own issues rather than acting together for the good of the College and its public interest mandate. However, we saw a great potential for change in a number of the Council members, particularly during our governance training sessions.

5.9.4 The Council continues to be significantly challenged by a lack of understanding, and in some cases, a lack of respect for the respective roles, responsibilities and authorities of the President/Chair and the Registrar/CEO. Some members of Council believe that the Registrar/CEO and staff are there to 'do their bidding' and when requests for information are declined, albeit with reasonable explanations, allege that this leads to distrust.

5.9.5 The role of the President/Chair must also be clearly understood, especially by the President/Chair themselves. The current bylaw provision sets out the duty of the President as follows: "to preside at meetings of members, Council and the Executive Committee and Subject to the authority of Council, shall have the general supervision of the affairs and business of the College."³⁷ These words are unhelpful in that they may be interpreted as providing the President/Chair of the Council with sweeping authority or powers that they do not or should not have. During this review, we observed that

³⁷ OCSWSSW Bylaw No. 1 (General Bylaw), s. 16, March 2, 2022.

on a few occasions the President, without first consulting the Registrar/CEO or Council members, but believing it was an appropriate thing to do, made decisions unilaterally.

5.9.6 Consideration of what is best for the collective good, be it the Council, the College, clients and the public is not yet always evident. Council members' difficulty in letting go of representation issues, of obsession with talking in the abstract about 'DEI' instead of living diversity, equity and inclusion and of past issues and grievances, all contribute to why the Council has difficulty meeting this Standard.

5.9.7 This Standard is not met.

5.10 The College meets three of the Governance Standards, partially meets three and does not meet three. Weaknesses in its governance do not arise from lack of intention but from a lack of understanding and respect for the roles, responsibilities and respective authority of the President/Chair and the Registrar/CEO and a lack of implementation and action related to excessive caution, indecisiveness and overly-bureaucratic procedures. If Council members can address their personal relationships, focus on outcomes in the interests of service users and the public rather than process and rules, then work together as a team with their staff colleagues, all matters are remediable. The recommendations we set out below are intended to assist.

6 Recommendations

- 6.1 In this section of our report, we set out 21 recommendations which we hope will address the weakness in governance identified above and help move the College forward. Recommendations are just that; they are not instructions. It is for the Council and the senior staff to decide which are valuable, which have priority and how to implement them. Nevertheless, we hope the College will give serious consideration to our recommendations for change.
- 6.2 Some of the difficulties for the College are baked into its legislation. It is not within our remit to recommend specific changes to the law but in considering this review the College should ask where it is restricted by the *Social Work and Social Service Work Act* and engage with government officials and Ministers about the possibility of legislative change. In our view, key areas which the College may wish to review are the size of the Council; the elections to the Council; the requirement that the Executive Committee must deal with reports made about members by employers and other professionals to the College; the requirement that the College must hold an Annual Meeting of Members and the lack of independence of the Complaints, Fitness to Practise, Registration Appeals and Discipline Committees from the Council.
- 6.3 There is much that can be done and should be done to improve the governance of the College without legislative change. These actions include amending the bylaws, revising policies, removing the bureaucratic obstacles to decision making and changing behaviours. Our recommendations are about the achievable now.

Governance structures

- 6.4 *Recommendation 1*
The bylaw covering the Executive Committee and any consequent policies should be revised to make clear that it is not intended to duplicate the Council agenda and discussions. Matters relevant to Council should only be on the Executive Committee agenda if they must be dealt with between Council meetings. In those cases, the Executive Committee should make decisions and report those decisions to Council. Advisory committees should make recommendations direct to Council not through the Executive Committee.
- 6.5 *Recommendation 2*
Oversight of the annual audit should pass from the Executive Committee to the Finance Committee which should be renamed the Finance and Audit Committee. Independent people with financial or audit qualifications should be brought on as appointed members of the Finance and Audit Committee.
- 6.6 *Recommendation 3*
All committees should be categorised as either decision making, advisory or consultative and their relationship to Council clearly defined. All advisory committees and groups should justify their value at an annual review or be

discontinued. New groups should not be established unless their role is directly contributing to the College's Strategic Plan.

6.7. *Recommendation 4*

The College should open the membership of advisory committees and groups to suitably knowledgeable, experienced and diverse members of the professions and the public. The College should actively engage the public and social service and social work service users in developing its policies.

6.8 *Recommendation 5*

The papers and minutes of all Committees (except for committees and matters subject to confidentiality provisions) should be available to all members of Council.

6.9 *Recommendation 6*

Council members in Council meetings or on committees should be intent on making decisions not on deferring them. They should take corporate responsibility for the powers that have been bestowed on them and see their legislation as enabling them to act in the public interest. Legal advice should not be sought except when necessary and Council members should remember that whatever the legal advice it is only advice; they are responsible for the decision.

Governance rules and policies

6.10 *Recommendation 7*

There should be a complete review of governance policies with the aim of organizing them by topic, avoiding duplication, reducing their number and gathering them together into a single governance manual. This review should include the use of Wainberg's Rules.

6.11 *Recommendation 8*

The College should use the word 'registrant' rather than 'member' to make clear it is a regulator and not an association. The 'president' should become the 'chair' to stress that this is a role with responsibility for effective chairing of meetings and not an honour. The ceremonial titles and positions of vice-president should be abolished.

6.12 *Recommendation 9*

Bylaw 1 s.16.01 states that 'the President, subject to the authority of Council shall have general supervision of the affairs and business of the College'. This is unhelpful, outmoded in the light of the professionalization of regulation and gives rise to confusion about the proper separation of the roles of the chair and Chief Executive Officer. This provision should be revoked, and replaced with clear expectations that the primary duty of the President/Chair is effectively to chair meetings of the Council and provide leadership to it.

6.13 *Recommendation 10*

The Eligibility for Election criteria in the Elections By-law should be revised to include the requirement that professional candidates seeking to stand for election must go through a defined and accountable screening process using a skills matrix with a view to identifying the desired skills and competencies that each would bring to Council and to ensuring a collectively skilled Council. The College should share their skills matrix with the Ministry for its consideration when appointing public members.

6.14 *Recommendation 11*

Before implementing any policy change affecting social service or social work or the public's interests the College should carry out a Regulatory Impact Assessment, covering three areas; economic impact (including cost to service providers and the College), diversity, equity and inclusion impact and public benefit. Council members must take these impacts into account in making their decisions. This broader Impact Assessment should replace the 'Public Protection' statement that currently appears on many policy proposals.

6.15 *Recommendation 12*

In the practice of governance the College should give priority to outcomes not to procedures or rules. When there are disagreements and dissent, the focus should be on discussion and resolution at the time. Checking rules and policies after the event is not helpful.

Risk management

6.16 *Recommendation 13*

The College should place the risk of harm to clients and the public as the most important priority in its Risk Management Framework.

6.17 *Recommendation 14*

The College should carry out a comprehensive audit of the risks of harm to social service and social work service users and the public from failures by registrants to meet the standards in the College's Code of Ethics and Standards of Practice.

6.18 *Recommendation 15*

The College should identify the most frequent and most severe risks of harm from poor professional practice and agree on specific actions to mitigate them and should measure the result.

Promoting diversity, equity and inclusion

6.19 *Recommendation 16*

The College should consider diversity, equity and inclusion as three separate challenges within three areas needing action; within the Council, within the professions and for and on behalf of Social Work and Social Service clients.

6.20 *Recommendation 17*

In order to increase the diversity of Council, Bylaw 36 should be amended to ensure that members of Council cannot seek a further term after a break once they have already served ten years.

6.21 *Recommendation 18*

The College should recognize that reconciliation and cultural safety for Indigenous, First Nations, Métis and Inuit peoples raise their own particular issues. The College should seek to engage with representatives of First Nations and Indigenous communities to gain their advice and involvement with the College's work.³⁸ The Diversity, Equity and Inclusion Task Group has much to get on with and should not decide how to move forward on reconciliation and cultural safety until it has consulted with the people who have direct knowledge and lived experience of disadvantage. They will know how best they wish to be engaged.

6.22 *Recommendation 19*

The College should ensure that service users and the public, particularly those from disadvantaged communities, are actively engaged in the current review of Standards of Practice. Talking about 'DEI' is not good enough.

Governance behaviours

6.23 *Recommendation 20*

The Council should abandon the use of anonymised feedback surveys at the end of every meeting. They serve no useful purpose and encourage pettiness. Council members should review their own practice annually in an identifiable and accountable survey and should discuss the results together and be prepared individually to be responsible for what they have said and for what improvements should be made. Anonymity is not transparency.

6.24 *Recommendation 21*

No professions know better than Social Workers and Social Service Workers that interpersonal relationships and social interactions are necessary for harmony in life. Our final recommendation is the simplest of all: treat each other with respect and courtesy and put common sense and the benefit of service users and the public at the centre of your decision-making.

³⁸ The work of regulatory colleges in BC is worthy of note. See for example new standards from the British Columbia College of Nurses and Midwives, <https://www.bccnm.ca/bccnm/Announcements/Pages/Announcement.aspx?AnnouncementID=337>.

7 Conclusions

- 7.1 The mission of the College is that “The Ontario College of Social Work and Social Service Workers protects the interest of the public by regulating the practice of social workers and social service workers and promoting ethical and professional practice.”³⁹ There is no doubt from our review that the College’s commitment to this mission is sincere but more needs to be done to make it explicit in the policies that the College adopts, in the decisions that it makes and in its impact on the professions it regulates.
- 7.2 The College’s governance is too internally focussed. Council meetings need to give much greater priority to thinking about the needs and wishes of social service and social work service users and on its mandate to act in the public interest.
- 7.3 The College is highly bureaucratic. Council and its Committees process thousands of pages of detailed reports produced to a high quality by diligent staff but not always to any clear purpose. As we have reported the majority of Council members understandably have not read and cannot refer to all the governance policies that have been produced. Council members need to be clear about what they need to know in order to make effective decisions and not ask for information just for the sake of it.
- 7.4 Council members need to be more corporate in their thinking and actions. They need to see themselves as a team along with the staff working for the public interest and for safe, ethical and effective practice by the professionals they regulate. When disagreements arise they should be dealt with there and then through respectful discussion.
- 7.5 The College needs to talk less and act more. It should be less cautious and more determined to make decisions and to take action when action is needed. In its approach to strategic planning, it needs to be clear about the outcomes it seeks not merely its intentions.
- 7.7 We have seen much in the way of good intentions, much hard work and much self-reflection from Council members and senior staff. We hope that this review will provide insights on which to reflect and some guidance on which to act to enable the College to build on its successes and to challenge itself to do better in the future.

³⁹ OCSWSSW, Annual Report 2020.

Appendix 1: The Reviewers

Harry Cayton CBE BA BPhil DipAnth DipHA FFPH, is an advisor on professional regulation and governance and is internationally recognized for his work with regulators in the UK, Ireland, Canada, Australia and New Zealand. He has advised governments on regulatory issues in Hong Kong, Australia, Ontario, British Columbia, and The Yukon as well as the UK. In 2018, he was appointed by the Minister of Health of British Columbia to conduct a statutory enquiry into the College of Dental Surgeons and to make recommendations on the reform of the Health Professions Act. He has recently completed a governance review for the Law Society of British Columbia.

Harry Cayton was chief executive of the Professional Standards Authority in the UK from 2007 to 2018. Before that he was National Director for Patients and the Public at the Department of Health. He has written extensively about professional regulation and created the approach to regulatory decision-making, *Right-touch regulation*, which has been influential on regulators around the world. He was also the lead author for *Rethinking Regulation* (PSA 2015). With colleagues at the Professional Standards Authority he developed the Standards of Good Regulation and the Standards of Good Governance, against which regulatory performance can be assessed. Harry is experienced in reviews and public inquiries.

He is a member of the Press Regulation Panel in the UK and advisor to Thentia Global Systems Inc and to the Australian Health Practitioners Regulatory Agency. He received the CBE from Her Majesty the Queen in 2014, for services to health and regulation reform.

Deanna Williams BScPhm, R.Ph, CAE, C.Dir is known nationally and internationally for her work in professional and occupational regulation. She spent 18 years at the Ontario College of Pharmacists, Canada's largest pharmacy regulatory authority, retiring as its Registrar in 2011. The Minister of Health and Long-Term Care appointed Deanna as Supervisor to the College of Denturists of Ontario during the loss of its regulatory privileges in 2012 and 2013 and she also served as Risk Officer, for the Retirement Homes Regulatory Authority (RHRA) from 2014 through 2018.

Since 2011, Deanna has provided consulting services in areas relating to professional and occupational regulation in Canada, the US and abroad through Dundee Consulting Group Ltd. In 2017-2018 Deanna served as Expert Technical Advisor to Ontario's Minister of Health and Long Term Care, providing advice on best regulatory practices across professions and international jurisdictions, with a particular focus on processes for complaints, investigations and discipline related to the sexual abuse of patients by regulated health care practitioners.

Deanna was recognized by the international regulatory community in 2010 as the recipient of the CLEAR International Award for Regulatory Excellence, and in 2019, as the recipient of the CLEAR Lifetime Achievement Award. Deanna received her designation as a Certified Association Executive (CAE) from the Canadian Society of Association Executives (CSAE) and her Corporate Director (C. Dir.) designation from the Chartered Director program, DeGroot School of Business, McMaster University. She has served on the Finance and Audit Committee of the University of St Michael's College, University of Toronto and the Board of Directors of Haldimand War Memorial Hospital and currently serves as a director on the board of the Vistana Spas Condominium Association, in Orlando and on the Board of Joseph Brant Hospital in Burlington, ON.

Appendix 2: The Standards of Good Governance⁴⁰

1. The regulator has an effective process for identifying, assessing, escalating and managing risk of harm, and this is communicated and reviewed on a regular basis by the executive and board
2. The regulator has clear governance policies that provide a framework within which decisions can be made in-line with its statutory responsibilities and in the interests of clients and the public
3. The board sets strategic objectives for the organisation. The regulator's performance and outcomes for clients and the public are used by the board when reviewing the strategic plan
4. The regulator demonstrates a commitment to transparency in the way it conducts and reports on its business
5. The regulator engages effectively with clients and the public
6. The regulator engages appropriately with the profession
7. The board takes account of equality and diversity in its decision-making
8. The board has effective oversight of the work of the Executive
9. The board works corporately, with an appropriate understanding of its role as a governing body and of members' individual responsibilities

⁴⁰ These Standards of Good Governance were developed by the Professional Standards Authority. They have been adapted for this review.

Appendix 3: People we spoke with

Amanda Bettencourt
Lise Betteridge
Denitha Breau
Chisanga Chekwe
Charlene Crews
Angèle Desormeau
John Fleming
Sanjay Govindaraj
Shelley Hale
Frances Keogh
Mukesh Kowlessar
Carrie McEachran
Christopher McIntosh
Sue-Ellen Merritt
Pam Murphy
Alexia Polillo
Lisa Seburn
Déirdre Smith
Elayne Tanner
Beatrice Traub-Werner
Amy Vranchidis
Durel Williams

The Office of the Fairness Commissioner
The Ministry of Children, Community and Social Services

Annex 1: A checklist for Regulatory Boards

- Be clear about your purpose as a regulator; keep the public interest as your unremitting focus
- Set long-term aims and shorter-term objectives
- Agree how to deliver and monitor those aims and objectives
- Have competencies for board members whether elected or appointed and apply them to everyone through a selection or nominations process, induction and regular appraisal
- Have a code of conduct for board members and enforce it
- Declare conflicts of interest, keep a register of interests, and ensure that decisions are not tainted by partiality or bias
- Behave with respect and courtesy towards board members and others
- Commit to corporate decision-making and to corporate responsibility for decisions made
- Appoint a competent CEO and trust them
- Ask for reports that include what you need to know not everything you might want to know
- Make clear decisions and follow-up on their implementation
- Provide the resources needed to deliver your objectives
- Make independence, fairness, and justice for the public and registrants the core values of registration and complaints and discipline
- Continue to keep the public interest as your unremitting focus