

Health Professions and Occupations Act Webinar Summary

On April 25, 2023, Doctors of BC held a webinar Town Hall on the Health Professions and Occupations Act (formerly known as Bill 36). We organized the event based on feedback from members who felt they needed a more detailed understanding of the Act, and how it may impact them. The Town Hall was comprised of three public servants from the Ministry of Health responsible for developing the HPOA, three leaders from Doctors of BC, along with more than 375 physician members who tuned in. The Town Hall is just one of the ways that Doctors of BC will continue to raise awareness and share information with members in the coming weeks and months.

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Ministry of Health - Key Learnings

This segment summarizes the key points presented by Ministry of Health representatives on the HPOA and the Q&A session that immediately followed.

Why the Health Professions and Occupations Act (HPOA) was necessary

The original Health Professions Act (HPA) was outdated, and back in 2003 a report called [Self Governance in the Professions: The Ombudsman's Perspective](#) indicated that the regulatory system in BC was inefficient. That report also raised concerns that not all regulatory colleges understood that their duty was to serve and protect the public interest.

Step One – Cayton Report

The BC government asked Harry Cayton to conduct a review of the College of Dental Surgeons of BC, along with a review of the HPA itself. The [Cayton Report](#) came out in 2018, and concluded that:

- The way college boards were operating was unsatisfactory.
- The process to determine who should run the colleges needed to be reconsidered.
- There needed to be a 'relentless focus' on the safety of patients in many of the colleges.
- The original HPA built secrecy into the complaints process, and in doing so, protected registrants more than it did the public.

Step Two -- Creation of an all-party committee to deliver recommendations on next steps

The Minister of Health received the Cayton Report and government created an all-party steering committee to review it, conduct broader consultation (here is [Doctors of BC's submission](#)), and make recommendations to government. The steering committee released a paper, "[Modernizing the Provincial Health Profession Regulatory Framework](#)," that recommended the following principles to ensure that new legislation protects the public from harm:

- Commitment to cultural safety and humility.
- Improved governance.
- Improved efficiency and effectiveness via a reduction in the number of colleges (in the HPA there were 22, which has been reduced to 15 and will be further reduced to 6).
- Strengthening the oversight of regulatory colleges through creation of an oversight body.
- The need for greater transparency.
- Better information sharing to improve patient safety and public trust.

Government conducted a subsequent consultation, and received feedback from more than 4,000 people – about 70% were health professionals. (here is [Doctors of BC's response](#))

Government directed staff to write legislation that covered all six of the above points. Legislation is bound by cabinet confidentiality. Government says it rarely consults directly with stakeholders on what is in legislation, although in this case it did consult with the Colleges using Non-Disclosure Agreements. The Ministry notes that debate in the legislature lasted 47 hours, which is considered to be a significant length of time.

Status of the HPOA

The HPOA, formerly known as Bill 36, is not a bill anymore. It received Royal Assent on November 24th, 2022 and is now law. However, it has not yet come into force – that will happen following the development of regulations. Government still has a lot of work to do and will be consulting with groups such as Doctors of BC as it works on developing these regulations.

Development of regulations

The exact process for regulation development is still somewhat uncertain. The Superintendent's Office needs to be established first, which will take some time. Colleges will have to rewrite their bylaws and there will be a requirement for them to consult with stakeholders. However, any rewritten bylaws will likely have some similarities to what already exists. There are no plans to make significant changes to scope of practice or to regulate new professions until after implementation of the HPOA, at which time government will consult and determine next steps. Government will consult on all regulations that it develops.

Role of the Superintendent

The HPOA will create a Superintendent and Superintendent's Office. The Superintendent is appointed by the Lieutenant Governor in Council. As such, this is an independent office, like the Seniors advocate. Their independence is protected through legislative mandate; they cannot be directed by government or by the minister to do something outside of that legal mandate.

In addition to making merit-based recommendations for board appointments, the Superintendent's Office will also oversee and audit the regulatory colleges to make sure that the colleges are consistent, that they continue to be transparent and fair, that they are setting good standards for the profession, and that they are providing good governance.

For example, the Superintendent may review colleges' ethics codes. If one college's code of ethics differs significantly from the others', the Superintendent may examine that further. There may be a good reason for that discrepancy, however, if the Superintendent feels there is not a good reason, they can recommend the college make a change, but they cannot order it.

The Superintendent's actions are required to be transparent and must be made public. As well, the government appoint process for the Superintendent should be transparent and objective.

College boards

Under the existing system, 50% to 66% of college boards are elected by their members. The majority of elected board members represent professionals. This presented a challenge, as some board members thought they were elected to advocate for the profession.

Under the HPOA, college boards, including the CPSBC, will be entirely appointed by the Minister of Health at the recommendation of the Superintendent. The Minister has authorities that are bound by the HPOA and therefore cannot act outside of those authorities. If a Minister rejects a slate of recommended board members, then the Superintendent will come up with another transparent and merit-based selection of board members.

The appointment of members will be transparent and based on merit, with the proviso that 50% of board members must be comprised of the type of health professional that the body is regulating.

Complaints and disciplinary action

Government has heard concerns that all complaints will be made public. This is not the case. Only complaints that result in disciplinary action will be made public. In the existing HPA, only disciplinary actions that were considered a “serious matter” were required to be made public. However, in the HPOA, all disciplinary actions will be made public.

To deal with complaints that are frivolous or unfounded, the HPOA allows for dismissal of those claims more quickly. If no disciplinary action is taken, then the complaint is not published. If a professional is given a warning or advice, that is also not made public. However, if a professional has been found guilty of wrongdoing and is being disciplined, that will be published in the registry.

Director of Discipline/ Disciplinary Panels

Under the HPOA, it is not the college that will determine discipline. That will be done by an independent discipline tribunal, which will be housed in the Superintendent’s office – to ensure consistency in disciplinary action across the colleges.

Although housed in the Superintendent’s office, the director of discipline will be independent from the Superintendent. The director will create independent three-person panels or tribunals to determine disciplinary action. These panels must include:

- One member from the profession of the individual being disciplined
- One public member
- One member that is an expert in the subject matter (e.g. if a professional is being investigated for assault, then an assault expert would be a member of the panel)

This panel will determine whether discipline is required and what that discipline will be.

Investigations

Investigations under the HPOA are handled in the same manner as they are in the existing HPA. College boards still appoint a committee to investigate and handle complaints. Only in cases where wrongdoing is found and where disciplinary action is appropriate does the matter get referred to the Discipline Tribunal, which is overseen by the Superintendent’s Office.

Some concerns have been expressed that government will have the ability to obtain patients’ personal medical records. This is untrue. Only an independent investigator who is appointed by the regulatory college can access confidential and personal records, such as private medical records. This is the same process that exists in the current Act.

College transparency

The Superintendent has been created in part to ensure that colleges are acting in a transparent manner. Government is also requiring in legislation that “professional standards advisors” must

be used in creating professional standards. Those professional standards advisors must be from within the profession for which those standards are being developed.

There is also a clear requirement in the HPOA for meaningful consultation with all parties who are affected by these standards, which would include physicians and other health professionals.

College fees

The government does not set fees for the colleges -- the colleges do. College fees are set based on what they require to perform their regulatory functions for that year. This was the case under the HPA and will continue to be the case under the HPOA

The costs associated with creating and running the Superintendent's office will be taken on by government at this time.

Doctors of BC Discussion – Advocacy

This segment took place after government had left the webinar, and summarizes the key points of discussion between Doctors of BC leaders and members on opportunities for advocacy.

Doctors of BC's Involvement with the HPOA

Doctors of BC previously submitted responses and letters when government's all-party committee was consulting on the Cayton report and proposed recommendations back in 2017, but Doctors of BC was not involved in the development of the HPOA. In our two submissions, Doctors of BC asked for the opportunity to provide further input into the details of the Ministry's plans. However, we were not consulted on the legislation itself; the announcement of the 600-page legislation came as a surprise.

Advocating for Repeal of HPOA

Given that the HPOA is now law, it is extremely unlikely that it will be repealed. Therefore, it may not be strategic to advocate for full repeal of the legislation. Rather, Doctors of BC can advocate loudly and uniformly to influence the regulations that will enact and spell out the details of the HPOA. This has been our approach to this point.

Influencing Regulations

While the HPOA is already law, the regulations that are needed to fully implement it are still under development. There is a crucial window of opportunity over the next 1 to 2 years to advocate on this. Doctors of BC will be identifying particular aspects of the legislation that we want to shape or change, and we are doing extensive research to identify what those concerning aspects for the profession are. For example, the Superintendent function is one area

where there may be opportunity for advocacy. There is still a significant amount of decision-making needed around how board appointments are made by the Superintendent, and our intention is to try to influence that.

We will also be engaging with members on this moving forward, and we are coordinating with other professional associations to ensure we are speaking with a collective voice.

Engagement with members

We are consulting with members to ensure that we are advocating in your best interests.

Our first step was to get our members up to speed on the details of the HPOA so that they are informed and understand the changes. This webinar is a start, and we have been informing our members about the legislation via our President's Letters. We have also been engaging with divisions, MSAs, and other physician groups.

Over the coming months, we will continue to engage with our members to ensure that our advocacy is informed by the concerns that matter most to you.