

Harry Cayton Professional Regulation and Governance

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MEMORANDUM ON BEST PRACTICE IN PROFESSIONAL REGULATION AND THE CHALLENGES FACING THE COLLEGE OF VETERINARIANS OF BRITISH COLUMBIA

1. Introduction

1.1 The College of Veterinarians of British Columbia (CVBC) has asked me to set out in this Memorandum the best practices in professional regulation current in Canada and internationally and how the legislation under which the CVBC operates restricts its ability to regulate veterinarians in the province efficiently and effectively.

1.2 In recent decades there have been significant changes in many jurisdictions to the way professions are overseen and regulated in the public interest. The government of British Columbia has led the way in Canada in implementing reforms through the *Professional Governance Act* (2018) the *Health Professions and Occupations Act* (2022) and the *Legal Professions Act* (2024). These changes have been driven primarily by the failure of self-regulatory bodies to act in the interests of consumers and the wider public rather than in the interests of the professions. In many colleges requiring modernisation, the legal framework has restricted their ability to transform themselves and has left them under the control of the factional interests of their registrants. The CVBC is one such college.

1.3 CVBC faces an undoubted risk of existential failure. If it cannot increase its income in the face of rising demands, it is projected to become unable in 2026 to continue financially as a going concern. The failure of CVBC will result in the BC agricultural industries and the owners of companion animals being left with no protection, veterinarians left without guidance on professional standards and with harm to animals and their owners unchecked. Inevitably the provincial government will need to take oversight of the quality of animal health and the safety of the public while it creates a new framework and accompanying legislation for the regulation of the veterinary profession.

1.4 The recent decision by the Minister of Agriculture and Food to allow the CVBC a one-time special levy will enable the College to continue a little longer but is merely a temporary bandage over the gaping wound that is the *Veterinarians Act*. Addressing the causes of the CVBC's problems rather than merely the symptoms is essential.

1.5 This Memorandum aims to set out how the CVBC finds itself in this precarious position and what remedies are available to the College and to the government in order to secure its future in the interests of animals, their owners, and the competent and ethical veterinarians who care for them. In approaching these issues, I have followed in general the steps set out in Right-touch regulation¹ and have sought to suggest solutions which are in the interests of the public, of animals and their owners.

¹ Professional Standards Authority, 2015, *Right-touch regulation revised*.

2. The Challenges facing CVBC

2.1 Some of the problems facing the CVBC are, of course, the result of decisions it made or didn't make in the past. Following the finding against it by the BC Human Rights Tribunal in 2015, the College struggled to restore its credibility and effectiveness as a regulator. It seems to have been paralysed by uncertainty and self-doubt. In 2021, under new leadership, it commissioned a review of the complaints process of the College². The ensuing report found that the College needed a 'serious and energetic programme of improvement' and made 24 recommendations for change, necessarily underpinned by an increase in the resources to deliver those recommendations.

2.2 The Council, registrar and staff accepted the recommendations and committed to improvement. So far CVBC has implemented around 70% of the recommendations and is actively tracking its progress in doing so. Its ability to make progress as quickly as it would like is limited by continuing lack of resources in the face of new activities and increased costs. The College has been unable to increase its fees for 14 years because of the self-interest of its registrants who consistently oppose such a move by voting against it or not voting at all. It is not only the inability to get a fee increase approved but other improvements, such as changes to standards, modernisation of bylaws and streamlining of processes, that are thwarted by registrants, who through the powers delegated to them under the *Veterinarians Act* have blocked attempts to reform and improve how the College works.

2.3 The CVBC is required by law to hold an annual general meeting, at which registrants may table resolutions and vote on them. This is what might be expected in a membership association's constitution, not in that of a professional regulator. The very fact that the CVBC has an annual general meeting written into its procedures and that registrants can vote to overrule the Council that they have elected and the government has appointed to govern the College is an indication of how far away from best practice in professional regulation its legislation is. Nearly half the members of the Council are public members. But the public has no franchise. Membership of registrants suggests ownership. It is a misunderstanding of the role of a regulator. The practitioners who are registered to practice their profession are not members but licensees. The regulator is not subservient to the profession but the profession is governed by the regulator. Duty owed to your regulator is the price of the privilege of professional practice.

2.4 In this context it seems relevant to refer to the decision of the Superior Court of Ontario in the case of *Peterson v. College of Psychologists of Ontario* in 2023.³ In rejecting the clinical psychologist's request for a judicial review of the College's decision in a disciplinary case, the Court made clear that a professional, having agreed to be licenced to practice, was subject to the reasonable rules and decisions of their regulatory body. One legal commentary sums this up, 'The Court's decision is a reminder that holding a license to practice a regulated profession is a privilege.... Regulated professionals often occupy a position of trust in society due, in part, to the rigorous licensing and continuing competence requirements their regulatory bodies impose on them. But they also have corresponding duties and obligations to both the public and their regulators...'⁴

² Harry Cayton & Greg Cavouras 2022, *A Review and Report on the complaints process of the College of Veterinarians of British Columbia*.

³ *Peterson v. College of Psychologists of Ontario*, 2023 ONSC 4685, DIVISIONAL COURT FILE NO.: 714/22 20230823

⁴ McInnes Cooper, Striking a Balance, 2024, <https://www.mcinnescooper.com/publications/striking-a-balance-freedom-of-expression-professional-obligations/> (accessed 12 May 2025)

2.5 It is apparent that the inability of the CVBC to become more effective and efficient in fulfilling its mandate is due to its own legislation. The details of that legislation and how it fails to enable the College to work in the public interest have been set out in the earlier Memorandum to the Minister of Agriculture and Food (April 2024, attached as appendix 1) from the CVBC and it is not necessary to repeat its detailed legal analysis and argument here. I refer the reader to its careful description of the weaknesses and contradictions in the *Veterinarians Act* set out in Sections 3 and 4 of that Memorandum. Suffice it to quote the summary, ‘...the Act mandates the College to act in the public interest, but deprives it of the power to do so.’⁵ Simply put, the *Veterinarians Act* as currently in-force is not fit for its purpose.

3 Regulation for public protection

3.1 The purpose of professional regulation is to protect clients and to promote the public good not to protect the interests of any profession. In veterinary regulation this means having regard to the care and welfare of animals, the broader public health implications of that welfare, including the transmission of diseases, and the concerns and interests of their owners. Sometimes a veterinarian must also navigate ethical issues where there is a conflict between the animal’s interests and that of their owner or animals’ interests and public health. Thus, professional ethics in veterinary practice are sometimes more challenging than in other professions where there is a single client, reinforcing the need for a strong and effective regulator. There is no doubting the importance and public good that comes from the proper regulation of the veterinary profession, and the serious risks that flow from its absence.

3.2 Professional self-regulation is a privilege not a right. It is granted by governments on the assumption that a profession is capable of self-governing in the public interest. History has shown, in many different jurisdictions, that this is not always the case. (see paras 5.1-5.4 below). Indeed, concern about the self-interest of professions acting against the public good has a long history. It was most famously expressed by the eighteenth century economist Adam Smith who wrote in *The Wealth of Nations*, ‘People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices.’⁶ This observation is even more succinctly put by George Bernard Shaw in his play, *The Doctor’s Dilemma*, ‘All professions are a conspiracy against the laity.’⁷ In effect, professional regulation, particularly where it has grown from giving regulatory powers to professional associations as is common in Canada and Continental Europe, creates monopolies. Where the providers of services are given a monopoly, as Adam Smith observed, they act in the interests of the provider not the consumer. This is why all over the world, including recently in BC, governments are removing the providers from control of regulators and creating independent forms of governance to promote the public interest.

4 Regulation for Professional Standards

4.1 Setting Standards of both ethical and clinical practice, then ensuring they are followed, are the primary means by which professional regulators promote safety, quality and the public interest.

4.2 Professional regulators have four primary tasks to enable and support good practice. These are:

- Keeping an accurate register of all those qualified and licenced to work in a profession

⁵ College of Veterinarians of BC April 2024, *Memorandum to the Minister of Agriculture and Food*, p6

⁶ Adam Smith 1776, *The Wealth of Nations* Book IV Chapter VIII.

⁷ George Bernard Shaw, 1905, *Preface on Doctors; The Doctor’s Dilemma*.

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- Setting standards of technical competence and ethical conduct
- Promulgating, monitoring and enforcing those Standards
- Acting against those found to be failing to observe the standards, including removal from practice.

It is obvious that when a regulator cannot act independently of its registrants and needs to seek their consent to carry out these tasks it can easily be blocked from doing so and that registrants may put their short-term commercial or personal interests before their duty to the public.

4.3 A regulator is not a voluntary association of members. It is a statutory body charged with oversight of a profession in the public interest. Registration is mandated in order to obtain a licence to practise. In BC the interests of the veterinary profession are vigorously promoted by the Society of BC Veterinarians (SBCV), a chapter of the Canadian Veterinary Medical Association. That is indeed its proper role. But when the balance of power between professional interests and the public interest swings too far in one direction and the government does not redress that, neither a regulator nor an association is able to carry out its counterbalancing role. That seems to be the situation I observe here. The SBCV is strident in its criticism of the College and challenges its need to raise fees, although I am informed that it has regularly raised its own fees over the last eight years⁸. Broadly speaking, the SBCV's criticisms are fuelled by the interests of its members. Again, Adam Smith, in his advice to economic policy makers is admirably clear, 'the interest of the producer ought to be attended to only so far as it may be necessary for promoting that of the consumer.'⁹

4.4 The persistence of the misunderstanding that regulatory colleges are membership bodies is manifest in the outraged responses the CVBC has received from registrants following the recent announcement that the government has authorised a special levy. 'Extortion. No way am I paying more,' cries one, it is 'in defiance of a membership directive to not raise fees', says another, 'So much for democracy,' retorts a third. Regulators are not democracies, and the membership does not have the power to issue directives. Other veterinarians argue that there should be differential fees based on size of practice, income or type of occupation, clearly not understanding that the fee is for an individual licence to practice not in order to belong to an organisation. Veterinarians are not to be blamed entirely for these misunderstandings; the structure set out in the *Veterinarians Act* reflects the same confusion and, over the years, ineffective communication from the College has failed to correct it.

4.5 It is necessary to draw attention here to the conflicts of interest inherent in a governance model where registrants control a regulator's public interest decisions. It is in the public's interest to expand the veterinary workforce but veterinarians are able to vote against credential recognition for foreign practitioners and to block the recognition of Registered Veterinary Technologists. The commercial interests of veterinarians lie in a smaller workforce and higher prices to consumers. Indeed consultation by the College with veterinarians in 2014/15 showed overwhelming opposition to expanding the regulated workforce. In effect the legislature has delegated its constitutional authority to regulate a profession to an existing profession. Moreover, here, the profession that has that control has an inherent conflict of interest. Meanwhile in Ontario legislation has been passed to enable veterinary technologists to be regulated and this is currently being implemented by the College of Veterinarians of Ontario. The power of the CVBC registrants to thwart the expansion of the workforce and therefore economic growth in the agricultural sector is in

⁸ Private communication backed up by receipts.

⁹ Adam Smith, 1776, *The Wealth of Nations*, Book IV Chapter VIII.

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conflict with the Minister of Agriculture and Food's mandate letter and the public interest objectives of the *Veterinarians Act*¹⁰.

4.6 The inadequacy of College resources and its inability to control its own bylaws impede the College from doing many things it would like to achieve and which the government would like it to achieve. These include: the regulation of veterinary technologists and the expansion of the workforce, the oversight of telemedicine in veterinary practice, reporting compliance with the *International Credential Recognition Act* (which is presently in conflict with aspects of the College Bylaws), promoting labour mobility within Canada and taking meaningful veterinary action with respect to the *Declaration on the Rights of Indigenous Peoples Act*.

5. Modernisation of Professional Regulation

5.1 Across the world professional regulation is being reformed and modernised. In Australia fifteen years ago separate regulators for each profession in eight states or territories were merged into a single umbrella organisation, the Australian Health Practitioners Regulatory Agency. In the UK the Professional Standards Authority, was created in 2007, following a public inquiry into the failures of the General Medical Council to put patient interests before those of the doctors to oversee the regulators and ensure they act in the public interest¹¹.

5.2 In India both the medical and nursing regulators have been abolished and replaced, following the discovery of corruption in the recognition of qualifications and issuing of licences to practice. Teachers' regulators have been abolished in England and in BC because they were infiltrated by union interests. Real Estate regulators in BC and Alberta have been subject to government criticism and periodic restructuring. In Ontario occupational regulators must respond to the Fairness Commissioner and the health professional regulators must report annually on their compliance with a performance management framework published by the provincial government. There are concerns in several provinces about the conduct of the law societies while in the UK the power to regulate was removed from the Law Society and given to the Solicitors Regulation Authority and the Bar Standards Board along with oversight by the Legal Services Board.

5.3 In Alberta the new *Professional Governance Act* (Bill 40), will reframe governance for many regulators, including the Alberta Veterinary Medical Association. Significant changes to governance will be required under that legislation when enacted. Regulatory bodies will be required to consult on changes to bylaws but there will be no vote by registrants. In Ontario the new *Veterinary Professionals Act* was passed in 2024, it replaces the *Veterinary Act* and gives the College power to regulate veterinary technicians amongst other changes.

5.4 The majority of regulatory improvements are to governance. Reducing or removing the power of registrants to control their own regulator, ensuring board members are selected on merit (as with the Health Professions and Occupations Act), reducing board size, increasing the proportion of public members, making changes in rules and bylaws easier and quicker, promoting multi-occupation regulators and reducing their overall number are all common and effective reforms. These stand in stark contrast to the 'member' based governance model in the *Veterinarians Act*.

5.5 In 2024 The World Health Organisation published, *Health Practitioner Regulation. Design, reform and implementation Guidance*.¹² Although focussed on human health its analysis is relevant

¹⁰ https://www2.gov.bc.ca/assets/gov/government/ministries-organizations/premier-cabinet-mlas/minister-letter/mandate_letter_lana_popham.pdf (accessed 06.14.25)

¹¹ Ian Kennedy, 2001, *The Report of the Public Inquiry into children's heart surgery at the Bristol Royal Infirmary 1984-1995*

¹² World Health Organisation, *Health Practitioner Regulation. Design Reform and Implementation Guidance*, 2024.

to animal health, in particular its identification of ‘the regulatory practice gap’¹³ – the difference between regulatory intention and delivery- which is highly relevant to the challenges facing the CVBC due to the structural flaws in the *Veterinarians Act*.

Regulatory practice gap

Are the regulatory policies and laws implemented? Does implementation meet the stated objectives of regulation?

Drivers of regulatory practice gap

Contextual suitability

- *regulation model/standard from substantially different context*
- *practitioner regulation may not align with service delivery*

Assumption-based vs. evidence-based regulation

- *focus on activities and outputs, not outcomes or impact*
- *decision to regulate may not be based on objective criteria*

Capacity of regulator

- *few staff and scant resources vs size of workforce to be regulated*
- *implementation gap worsens regulator's revenue collection*

Strength of governance

- *weak governance may lead to misuse of regulation*

Regulatory Gap Assessment

1. Understand the social and environmental context
2. Identify the problem
3. Determine the outcome
4. Assess the risk of harm to the public
5. Deliberate on intervention options and associated impact
6. Develop and test (improved) regulatory intervention
7. Manage capacity requirements
8. Monitoring and evaluation

The public interest mandate of the College prescribed in the Act is clear. ‘In carrying out its objects, the college must

- (a) protect the public interest, and
- (b) exercise its powers and discharge its responsibilities under this Act in the public interest.’¹⁴

It is equally clear that a regulatory practice gap exists in the oversight of veterinary practice in BC. A primary cause is the form of governance prescribed in that legislation.

5.6 In Canada the government of British Columbia has up to now led the way in regulatory reform with the *Professional Governance Act* (2018) and the *Health Professions and Occupations Act* (2022). Both these Acts seek to improve the governance of professional regulation and regulatory practice in the many professions they affect. In addition, the Attorney General has proposed reform to the Law Society of BC under the *Legal Professions Act* (2024). In BC therefore the *Veterinarians Act* remains an unreformed outlier in professional regulation to the detriment of veterinarians, animal welfare and the public. Simply put, it is not fit for its purpose.

6. The Consequences of CVBC becoming insolvent

6.1 If the current legislation under which CVBC operates is unchanged the College will be unable beyond 2026 to protect animals, their owners or veterinarians because it will be insolvent. It will be insolvent not through any failure of its own but because it is unable to increase its fees to meet the cost of its statutory duties. It is unable to increase its fees because of the conflicts of interest inherent in its legislation which prioritises the interests of veterinarians over the interests of the public.

6.2 Without the oversight of the regulator a wider public health issue may arise if veterinary use of antibiotics is not adequately overseen and they pass into the human food chain,

¹³ Op. cit. p28-32, © WHO 2024, reproduced with permission

¹⁴ British Columbia, 1996, *Veterinarians Act*.

similarly there may be a risk of infectious animal diseases being transmitted to humans, as has been seen with Bovine Spongiform Encephalopathy, SARs and Covid 19.

6.3 When the College ceases to function the protection of animals, their owners and the oversight of veterinarians will become the responsibility of the Ministry of Agriculture and Food. The absence of the College and oversight of veterinarians will cause concern to the agricultural industries, public health, the owners of companion animals and the general public. It will also, too late, result in a loss of confidence in veterinarians themselves.

6.4 In the absence of the CVBC, government officials will have to take over responsibility for the veterinary profession, either permanently, or temporarily while a new regulator is created under new legislation. In my view, the cost and risks of such a transition will be significant and considerably greater than reforming the current structures to provide a modern and effective governance and funding model unpopular though that may be with the current profession. Since legislative change takes time there will inevitably be a period when veterinary care within the province lacks adequate oversight. It seems evident that the most economical solution is to repeal that aspect of the *Veterinarians Act* which causes the most mischief, Section 26, which requires bylaw approval by a majority of registrants. Doing this should stabilise the College's decision-making while allowing the government to consult widely with stakeholders on modernised and credible new legislation that is fit for the future.

6.5 To quote again from the Memorandum to the Minister sent by the CVBC in 2024, 'The long-term viability of the College and its ability to robustly carry out its mandate as a professional regulator will require changes to the fundamental underpinnings of the Act.'

6.6. In sum, the governance model established in the *Veterinarians Act* effectively disables the College's mandate and subordinates the interests of the public to the will of some members of the profession. In the absence of prompt legislative change, the College will be faced with the choice of either abrogating its important statutory responsibilities or watching its resources dwindle until it is no longer solvent. At which point the government will need to act one way or the other.

Appendix 1



College of Veterinarians of British Columbia

MEMORANDUM

TO: The Honourable Pam Alexis, M.L.A.
Minister of Agriculture and Food

FROM: College of Veterinarians of British Columbia

DATE: April 18, 2024

SUBJECT: *Veterinarians Act*, SBC 2010, c 15

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EXECUTIVE SUMMARY

The *Veterinarians Act*¹ (the “**Act**”) has the untenable distinction of setting out the only legislative framework governing a professional regulator in British Columbia that effectively puts every function of the regulator in the control of the registrants whom the regulator is mandated to regulate. The Act requires almost every decision of any materiality to the mandate of the College of Veterinarians of British Columbia (the “**College**”) to be approved by a majority of voting registrants. This framework is antithetical to the core responsibility of a professional regulator, being the protection of the public even where, and arguably especially where, the carrying out of that objective is contrary to the registrants’ self-interest.

Indeed, due to this legislative scheme the College is systemically hindered in or prevented from carrying out its work. The College is unable to act independently of its registrants to address topics or concerns that go directly to public protection, such as the veterinary workforce shortage, regulation of telemedicine, regulation of practice facilities, enforcement of continuing education requirements, and the provision of notice to the public of disciplinary proceedings or orders against veterinarians, to identify just a few of the issues with which the College is currently grappling.

The College is also at the mercy of its registrants to remain financially viable because the Act requires registrants to approve any increase to the College’s fees. In other words, the availability to the College of the financial resources required to fund its regulatory functions is controlled by the very registrants who may at best prefer to not pay more if they can elect not to and at worst believe that they benefit from an under-resourced regulator. The College’s registrants have refused to allow any increase to fees since 2011. The fees collected by the College fall far short of its current operating costs; in 2023, the College ran a deficit of nearly half a million dollars and the College is on track to run a deficit of nearly one million dollars in 2024. The College is projected to become insolvent within several years.

The direct consequences of the College being severely and chronically under-resourced include long delays in investigating and acting on complaints, including those involving public safety implications such as suspected unlawful use or distribution of controlled drugs by registrants or through practice facilities; long delays in approving new or renovated practice facilities, which is likely adding to the veterinary workforce shortage; lack of enforcement of various registrant obligations; and challenges attracting and retaining qualified College staff due to sub-market compensation and benefits. Moreover, registrants whose interests are particularly adverse to those of the College, such as registrants subject to the College’s investigation or discipline proceedings, have expressed their intention to leverage the College’s precarious financial position to their strategic advantage.

Under the Act, the only relief from the registrants’ control over the College is that the Minister may by order, subject to several narrow exceptions, make, amend, or repeal the College’s bylaws. This provides an avenue for an immediate solution to some discrete challenges. However, the long-term viability of the College and its ability to robustly carry out its mandate as a professional regulator will require changes to the fundamental underpinnings of the Act.

¹ *Veterinarians Act*, SBC 2010, c 15.

The College recommends a two-pronged approach:

1. an order of the Minister as soon as practicable amending the College's fees bylaw to increase all fees assessed by the College to amounts that are responsive to the 13-year stagnation of fees and are rationally connected to the College's current operating costs; and
2. embarking in parallel on a legislative amendment project to bring the Act in line with the other legislative frameworks governing professional regulation in British Columbia.

The balance of this memo further describes the legislative framework under the Act, reviews the broader regulatory context, and explores options for resolution.

All of which is respectfully submitted by the College of Veterinarians of British Columbia on this 18th day of April, 2024.



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1. Overview

The requirement for bylaw approval from registrants frustrates the College's ability to carry out its public interest mandate and is out of alignment with virtually every other public interest regulator in British Columbia. It also distorts the College's relationship with its registrants who may be reasonably led to believe that they control the College for the profession's, and thus their own, benefit.

2. The College's Role and Background - Transition from Advocacy Organization to Regulator

To understand the present problems with the Act, it is valuable to review the predecessor legislation. The Act came into force on September 15, 2010. Prior to that date, the profession of veterinary medicine was governed by the *Veterinarians Act* [RSBC 1996], c. 476² (the "**1996 Act**"). The 1996 Act provides important context to the problems with the Act.

Under the 1996 Act, the entity now continued as the College under the Act was identified as the "British Columbia Veterinary Medical Association" (the "**BCVMA**"). Veterinarians, now termed "registrants", were termed "members" under the 1996 Act. Perhaps most significantly, the 1996 Act described the objects of the BCVMA as follows:

The general objects of the association are to promote and increase the knowledge, skill and proficiency of its members in all things relating to veterinary medicine and to the veterinary profession.

Under the 1996 Act, the BCVMA's bylaws could only be created, amended, or repealed with the approval of the membership at a general or special meeting.

Taken together, under the 1996 Act it can be said that the BCVMA was entirely controlled by its members in service of an outdated statutory mandate that strongly featured the promotion and advocacy of the profession and its members which, in hindsight, is disconnected from the public interest in professional regulation.

3. The *Veterinarians Act*

The aspects of the Act relevant to the purpose of this memo are set out below.

a. Mandate

Section 3(1) of the Act clearly and directly sets out the College's duty:

Duty and objects

3 (1)In carrying out its objects, the college must

(a)protect the public interest, and

(b)exercise its powers and discharge its responsibilities under this Act in the public interest.

² <https://www.canlii.org/en/bc/laws/stat/rsbc-1996-c-476/82665/rsbc-1996-c-476.html>

Section 3(1) is the centrepiece of the Act. Everything that the College does, and how it does those things, must be tethered to the College's duty to protect the public and exercise all of its functions in the public interest.

b. Objects

Section 3(2) sets out the College's objects:

(2) The objects of the college are as follows:

- (a) to establish the requirements for registration of an individual as a registrant;
- (b) to establish, monitor and enforce standards for the practice of veterinary medicine;
- (c) to establish and maintain a continuing competence program to promote high standards for the practice of veterinary medicine;
- (d) to supervise the practice of veterinary medicine;
- (e) to receive and investigate complaints against registrants and former registrants and to deal with issues of discipline, professional misconduct, conduct unbecoming a registrant, incompetence and incapacity;
- (f) to establish and employ registration, investigation and discipline practices that are transparent, objective, impartial and fair;
- (g) to govern registrants according to this Act, the regulations and the bylaws;
- (h) to administer the affairs of the college and perform other duties through the exercise of powers conferred under this Act.

These are complex and important regulatory objectives, and they must all be seen in light of the College's duty to the public set out in section 3(1).

Carrying out these objectives in the public interest will necessarily result in occasional dissatisfaction for, for example, an applicant who is refused registration, a registrant who is the subject of a complaint investigation, or a registrant who has been disciplined.

c. Governance

The College is governed by a council that is composed of elected registrants as well as members of the public appointed by the Minister. Under section 4 of the Act, the Council's task is to "govern, control and administer the affairs of the College in accordance with the Act, the regulations and the bylaws".

d. Bylaw amendment process

The Act empowers (and in some cases, requires) the Council to make bylaws for the College, including bylaws that deal with:

- Establishing registration, investigation and discipline committees (mandatory);
- Council elections (mandatory);
- The process for registrant approval of bylaws (mandatory);

- Council meetings;
- College committees;
- Registrars and Deputy Registrars for the College;
- Registration;
- Recognition of registrants as specialists;
- The College Register and College website;
- Fees and assessments payable to the College;
- Registrant meetings;
- Standards of practice and professional ethics;
- Investigations and discipline hearings;
- General administration of the College;
- Services that certified technicians may provide;
- Certification of certified technicians;
- Practice by certified technicians; and
- Other matters the Council considers necessary or advisable.

The list above is not exhaustive, and the Act provides a very broad bylaw-making authority.

However, the ability to make bylaws is subject to a very significant limitation: with very limited exceptions, bylaws must be approved by registrants before it can come into force. Section 26 states as follows:

Bylaws to be approved by registrants

26 (1) In this section, "**bylaw**" does not include any of the following:

- (a) a bylaw made to establish a committee under section 10 (1) *[bylaws regarding committees]*;
- (b) a bylaw made under section 19 *[bylaws regarding general administration]*;
- (c) a bylaw made to establish an advisory committee under section 21 *[bylaws regarding advisory committees for certified technicians]*;
- (d) the making, amendment or repeal of a bylaw by order of
 - (i) the minister under section 28 *[minister may make or change bylaws]*, or
 - (ii) the Lieutenant Governor in Council under section 29 *[Lieutenant Governor in Council may make or change bylaws under section 20]*.

(2) A bylaw must be approved, in accordance with the bylaws made under section 7 *[bylaws regarding registrant approval of bylaws]*, by a simple majority of registrants who vote and are eligible to vote on the bylaw.

(3) Subject to subsection (4), a bylaw does not come into force until the bylaw is approved by registrants under subsection (2).

(4) A bylaw made under section 20 [*bylaws to establish services that certified technicians may provide*] does not come into force until the bylaw is approved by the Lieutenant Governor in Council, after approval by registrants under subsection (2).

(5) The council must notify the minister in writing of a bylaw approved by registrants under subsection (2).

Therefore, other than those types of bylaws excluded in sections 26(1)(a)-(d), registrants must approve any bylaws put forward by the Council.

Notably, this means that registrants control important regulatory bylaws such as qualifications for registration (including recognition of foreign credentials), standards of practice, professional obligations, procedures for investigations and discipline hearings, and the fees payable by registrants to the College.

Without registrant approval, the Council is powerless to make, repeal, or change such bylaws.

4. Bylaw Amendment and the Public Interest

The basic problem with the Act and the mechanism for bylaw amendments is simple enough to describe. The College has a statutory mandate to act in the public interest. It does this through its defined statutory objects set out above, all of which are resource-intensive. However, incomprehensibly, the authority to determine its bylaws to advance the public interest rests with registrants, who make up the very entity from which the public is to be protected.

In practice, this means that the College cannot pass bylaws to, for example, prescribe new professional standards, facilitate labour mobility, or set registration and other fees to fund its increasingly complex and numerous tasks, without obtaining the approval of registrants.

This is an obvious conflict of interest. Registrants may be apathetic or hostile towards the College, or may simply not engage with the College's public interest mandate. Thinking about the examples above, a registrant may not support such bylaw amendments because they are unwilling to assume additional professional constraints or burdens, concerned about loss of market share or increased competition, or see no reason to voluntarily increase their own expenses. A reasonable registrant might not vote in favour of such bylaw amendments out of rational self-interest.

In other words, the Act mandates the College to act in the public interest, but deprives it of the power to do so.

5. Regulatory Context and Modernization

A review of other regulatory regimes across industries in British Columbia illustrates that the Act stands virtually alone in permitting the regulated to determine the bylaws of the regulator.

Recent examples of regulatory modernization further illustrate a clear policy shift that registrants should have less control and influence, not more, over their public-interest regulator.

a. Health Professions

i. *The Health Professions Act*

BC's health professions are presently governed by health colleges established under the *Health Professions Act* [RSBC 1996], c. 183³ (the “HPA”). The HPA is probably the legislation that is most similar to the Act, and a number of provisions from the HPA appear nearly verbatim in the Act.

One significant exception to the similarities between the HPA and the Act is governance. Under the HPA, registrants have no ability to vote on a college's bylaws.

ii. *The CDSBC Cayton Review*

The HPA was the subject of a review by Harry Cayton.⁴ Mr. Cayton was formerly the Chief Executive of the Professional Standards Authority in the UK and is among the most influential voices in professional regulation worldwide. In addition to reviewing the HPA, Mr. Cayton has been retained in British Columbia to advise the College, the Law Society, Engineers and Geoscientists, the College of Dental Surgeons, and the College of Nursing Professionals.

Mr. Cayton's review was sharply critical of the HPA (which, as mentioned above, does not include registrant approval of bylaws like the Act does). Broadly speaking, Mr. Cayton strongly advocated for even less registrant control of the health colleges. The excerpt below effectively sets out Mr. Cayton's perspective:

The HPA is ambiguous in its use of 'members' and 'registrants'. The concept of membership has led to many misunderstandings about the nature of professional regulation. The idea of membership should be discarded and replaced throughout with 'registrant.' If Colleges do not have members, then there is no need for an Annual General Meeting nor indeed any of the other trappings of a club such as award ceremonies and gifts to volunteers. Some will protest that this removes the principle of professional self-regulation. It does. Unlimited self-regulation has in general proved itself unable to keep patients safe or to adapt to changing healthcare provision and changing public expectations. Professional regulation needs to be shared between the profession and the public in the interests of society as a whole.

This report was published in 2018. We suggest that Mr. Cayton's comments apply with even more force in 2024 with respect to a legislative regime that permits registrants to control the regulator's bylaws.

iii. *Enactment of the Health Professions and Occupations Act*

Following Mr. Cayton's report, an all-party steering committee was established to make recommendations to modernize the health profession regulatory framework. In November 2019, the steering committee released a consultation paper.⁵

³ https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96183_01

⁴ <https://www2.gov.bc.ca/assets/gov/health/practitioner-pro/professional-regulation/cayton-report-college-of-dental-surgeons-2018.pdf>

⁵ <https://www2.gov.bc.ca/assets/gov/health/practitioner-pro/professional-regulation/modernizing-health-profession-regulatory-framework-consultation-paper.pdf>

In August 2020, following a consultation period, the steering committee issued its recommendations.⁶

On November 24, 2022, the *Health Professions and Occupations Act*⁷ (the “HPOA”) received royal assent, though it is not yet in-force. A detailed review of the 645-section HPOA is beyond the scope of this memo, but it is fair to say that it thoroughly reconceives health professions regulation in BC. One of the clearest themes of the HPOA is the dilution of registrants’ control of their regulator. The HPOA eliminates elections and generally provides for expansive oversight and control of regulators.

The fact that the HPA, which itself is less registrant-centric than the Act, has been almost entirely discarded speaks to the need to modernize the Act.

b. Resource professions

BC’s resource professions have undergone similar changes recently, as set out below. The resource professions are today governed by the *Professional Governance Act* [SBC 2018], c. 47⁸ (the “PGA”), which received royal assent on November 27, 2018. The road to the PGA, like the road to the HPOA, is instructive when considering the current provisions of the Act.

i. The *Engineers and Geoscientists Act*

Prior to the enactment of the PGA, the engineering profession in British Columbia was regulated by the Association of Professional Engineers and Geoscientists of British Columbia (“EGBC”) under the *Engineers and Geoscientists Act* [RSBC 1996], c. 116⁹ (the “EGA”). Under the EGA, EGBC could only pass bylaws with the approval of 2/3 of its members.¹⁰

This scheme resulted in a number of failed votes¹¹, including on two occasions¹² when BC engineers rejected a proposal for mandatory continuing education.

ii. PSA review

Partly in response to failed bylaw votes, in 2018 EGBC sought a review of its legislative framework (at that time, the EGA) by the Professional Standards Authority (the “PSA”).

⁶ <https://www2.gov.bc.ca/assets/gov/health/practitioner-pro/professional-regulation/recommendations-to-modernize-regulatory-framework.pdf>

⁷ https://www.leg.bc.ca/content/data%20-%20ldp/Pages/42nd3rd/1st_read/PDF/gov36-1.pdf

⁸ <https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/18047>

⁹ https://www.bclaws.gov.bc.ca/civix/document/id/consol6/consol6/96116_01

¹⁰ Note that while the Act and other legislation describe the persons registered with the regulator as “registrants”, the EGA used the term “members”. In this memo, we will use the term that is set out in the applicable legislation – usually “registrant”, “member”, or “licensee”.

¹¹ We note that a previous version of the EGA required EGBC to set annual fees by bylaw, and this gave the membership the power to veto fee increases (and that is the present situation the College faces). The EGA was amended to allow fees to be passed by council motion rather than bylaw amendment, thereby circumventing the bylaw-approval requirement.

¹² <https://www.canadianconsultingengineer.com/companies-people/b-c-engineers-asked-to-make-professional-development-compulsory/1000343613/> and <https://www.canadianconsultingengineer.com/engineering/b-c-engineers-say-no-to-mandatory-continuing-education/1003401112/>

The PSA's review¹³ was very critical of the EGA's requirement that EGBC members approve bylaw changes. In the excerpt below, the PSA reviews and comments on the history and challenges with this requirement:

- 3.20 Even where EGBC has the legal power to make or change bylaws, the Act imposes further restrictions. EGBC must ballot members and licensees about any proposed new bylaw, and 'A bylaw does not come into force unless ratified by at least 2/3 of the votes cast'. The provincial government also has the power to disallow a bylaw.
- 3.21 **In our view, the requirement for members and licensees to approve a bylaw before it can be ratified is more consistent with a professional representative organisation than with a regulator charged with protecting the public. We consider that this is inconsistent with section 4.1 of the Act, which explicitly subordinates members' interests to those of the public.**
- 3.22 While we agree that it is important for a regulator to engage with its registrants about any changes to standards and requirements, **it is unsatisfactory for a regulator's ability to exercise its legal powers to depend on registrants' consent. This has the effect of hindering EGBC's ability to exercise its legal powers and discharge its duties. It also effectively delegates to individual members and licensees the responsibility to weigh up their personal interests against their understanding of the requirements of the public interest. This introduces a clear conflict of interests.** In our view, it should be part of EGBC's role as the regulator to assess and determine what regulatory measures the public interest requires.
- ...
- 3.24 ... [W]e note, though, that EGBC considers that mandatory CPD is necessary in the public interest, and it has been unable to introduce it because it has been unable to secure the required two-thirds of votes in favour in a ballot. Thus the Act has hindered its ability to regulate effectively...
- 3.25 One of the changes EGBC is seeking to the Act is to remove the requirement for bylaw ratification by members with regard to matters relating to professional practice and public safety. **For the reasons outlined above, we agree that removing the requirement for bylaw ratification from the Act would help EGBC be a more effective regulator in the public interest.** Accordingly, we commend the steps EGBC is taking to unfetter its ability to make and amend bylaws in the public interest.
- 3.26 We note that there appears to be some precedent for similar changes to the Act. Sections 21.1 to 21.3 were added to the Act in 2008. They give Council the power to set annual fees for members by resolution. Previously, the power to set the annual fee was contained in the bylaws. This meant that Council could not change the annual fee without two-thirds of votes in favour in a ballot of members and licensees. We

¹³ [https://www.professionalstandards.org.uk/docs/default-source/publications/international-reports/review-of-the-legislation-and-governance-for-engineers-and-geoscientists-in-british-columbia-\(june-2018\).pdf?sfvrsn=b2d7220_9](https://www.professionalstandards.org.uk/docs/default-source/publications/international-reports/review-of-the-legislation-and-governance-for-engineers-and-geoscientists-in-british-columbia-(june-2018).pdf?sfvrsn=b2d7220_9)

understand that the change to the Act followed numerous unsuccessful attempts by EGBC to increase the membership fee by ballot.

- 3.27 **This change to the Act recognised that members and licensees had a conflict of interests in deciding whether to ratify some bylaws. In this instance, members and licensees’ financial interest in keeping membership fees low conflicted with EGBC’s need to be able to determine and secure the resources required for its regulatory activities.** In our view, similar considerations apply in relation to mandatory CPD.

...

- 3.30 Council considered a proposal to amend the relevant bylaws [relating to registration] at the meeting we attended. Those discussions reflected the political reality of the need to obtain members’ approval in order to make changes to the bylaws. **The requirement for ratification by a two-thirds majority means that the balance of power is with members and licensees: EGBC cannot proceed without their approval, and so it engages with them from a position of weakness. Removing the requirement for member ratification would change the nature of EGBC’s engagement with members.** It would still be appropriate and desirable for EGBC to consult and engage with its members and licensees about proposed bylaw changes. However, it would be easier for EGBC to focus on what action it needs to take to achieve the necessary regulatory outcomes and then determine the appropriate engagement with members and licensees.

[Footnotes omitted, emphasis added]

These comments apply directly to the College’s situation under the Act.

iii. AIBC and the *Architects Act*

The architectural profession in BC was regulated under the *Architects Act* [RSBC 1996], c. 17¹⁴ until it was brought under the PGA in 2023.¹⁵ Under the *Architects Act*, the Architectural Institute of British Columbia (the “AIBC”) could not change its bylaws unless approved by the membership.

This produced similar difficulties to those encountered by EGBC under the EGA. One poignant example illustrates this: due to failed historic bylaw votes, it wasn’t until September 2017 that a bylaw requiring BC architects to hold professional liability insurance was successfully passed.¹⁶

iv. Professional Reliance Review

The catalyst for the enactment of the PGA was the Professional Reliance Review¹⁷, a report commissioned by the Minister of Environment and Climate Change Strategy. Among other things, the Professional Reliance Review considered the governance of regulatory bodies in the resource sector.

¹⁴ https://www.bclaws.gov.bc.ca/civix/document/id/consol20/consol20/00_96017_01

¹⁵ <https://aibc.ca/about/professional-governance-act-transition/>

¹⁶ <https://aibc.ca/professional-liability-insurance-bylaws-spring-summer-2017/>

¹⁷ https://professionalgovernancebc.ca/app/uploads/sites/498/2019/05/Professional_Reliance_Review_Final_Report.pdf

With respect to the governance of regulatory bodies and bylaw-making authority, the Professional Reliance Review stated as follows:

6.2.3 Council authority

Professional Practice Matters

To do their job effectively and in the public interest, councils require authority to make rules dealing with practice standards, ethics, continuing education, and related issues. The legislation across the five natural resource professions is inconsistent and in some cases outdated. Many practice and public interest matters require ratification by 2/3 of the membership, and there have been situations in which members voted against bylaws deemed important to the council. In 2015, EGBC requested a legislative change to this bylaw ratification requirement to allow council to pass bylaws relating to professional practice and public safety. Governance of the association would still require member ratification. Government has not yet agreed to EGBC's request.

...

The EGBC request for legislative changes to council's authority seems to be well founded and supported by the relevant ministries. Rather than just responding to this one proactive request, it is recommended that council authority for all five natural resource professions be reviewed. Given the significant overlap in professional functions when it comes to resource management itself, there does not seem to be justification for five different sets of rules concerning council authority. All should incorporate best practices for modern professional governance. **It makes little sense to allow members of some professions to veto some types of council rules regarding matters such as practice standards, codes of ethics, continuing professional development and annual fees. Member ability to veto fee increases can hamstring an organization and render it incapable of effectively delivering its public interest mandate, particularly for smaller professions.**

[Emphasis added]

v. Enactment of the *Professional Governance Act*

Following the publication of the Professional Reliance Review, the PGA was passed and received royal assent. The PGA responds directly to the concerns set out in the PSA's review of EGBC and in the Professional Reliance Review.

Under the PGA, the authority to make bylaws rests with a regulator's board. There is no ability for registrants to vote on bylaws.

c. Legal profession

i. *Legal Profession Act*

The legal profession in BC is regulated by the *Legal Profession Act* [RSBC 1998], c.9¹⁸ (the “**LPA**”). The LPA recognizes the Law Society of British Columbia (the “**LSBC**”) as the regulatory body for lawyers. The LPA refers to “rules” rather than “bylaws”, and the LSBC is governed by the “benchers” rather than a council or a board.

Under the LPA, the LSBC Benchers have broad rule-making authority. However, section 12 of the LPA states that certain specific types of rules require membership approval.

In November 2021, Harry Cayton published his Report of a Governance Review of the Law Society of British Columbia.¹⁹ Mr. Cayton addressed section 12 of the LPA directly, stating as follows:

S.12 of the Act requires that rules regarding certain matters cannot be amended or rescinded without the approval of two thirds of those members voting at a general meeting or in a referendum respecting the proposed rule, or the amendment or rescission of a rule. This effectively limits the power of the Benchers and the majority of members to bring about change as a minority can stop any developments they think are against their personal or professional interests. This was clearly demonstrated by the votes at the 2021 AGM when a minority of members voting were able to block a sensible rule change. One speaker in opposition to the changes said, ‘The Law Society is there to serve all members.’ No, it is not, it is there to serve the public.

It is important to emphasize that section 12 of the LPA is far narrower than section 26 of the Act. Section 12 of the LPA only requires membership approval in limited circumstances – importantly, membership approval is **not** engaged with respect to rules that concern professional standards, membership obligations, or membership fees.

d. Other professions in British Columbia

The health professions (approximately 120,000 registrants²⁰) and the resource professions (approximately 60,000 registrants²¹) make up a substantial portion of the regulated professions in British Columbia. Below, we review some other regulatory schemes and their respective rule-making powers.

i. *BCFSA and the Real Estate Services Act*

The real estate profession in BC is regulated under the *Real Estate Services Act* [SBC 2004], c. 42²² (the “**RESA**”). The regulatory authority under the RESA is the BC Financial Services Authority (the “**BCFSA**”), and many regulatory functions are undertaken by the Superintendent of Real Estate. BCFSA is an independent crown agency.

¹⁸ https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/98009_01

¹⁹ <https://www.lawsociety.bc.ca/Website/media/Shared/docs/about/GovernanceReview-2021.pdf>

²⁰ <https://bchealthregulators.ca/about-bc-health-regulators/member-colleges/>

²¹ <https://professionalgovernancebc.ca/regulatory-bodies/>

²² https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/04042_01

Under the RESA, BCFSa is vested with the authority to make rules. The process generally only requires that a proposed rule be published for public comment and approved by the Minister of Finance.

There is no ability for licensees to vote on BCFSa's rules.

ii. Insurance Council of BC and the *Financial Institutions Act*

The insurance profession in British Columbia is regulated by the Insurance Council of BC under the *Financial Institutions Act* [RSBC 1996], c. 141²³ (the "**FIA**"). Under the FIA, the Insurance Council may make a rule by obtaining the consent of the Minister of Finance and complying with "any other prescribed procedures and requirements".²⁴

There is no ability for licensees to vote on the Insurance Council's rules.

iii. Others

As far as we are aware, no other British Columbia regulator with a pure public-interest mandate equivalent to the College's requires registrant/member/licensee approval of bylaws or rules.

To our knowledge, the only other British Columbia organization with a regulatory mandate that still provides for this is the Organization of Chartered Professional Accountants of British Columbia ("**CPABC**"), which operates under the *Chartered Professional Accountants Act* [SBC 2015], c. 1²⁵ (the "**CPAA**").

Under the CPAA, proposed bylaws must be confirmed at a special or general meeting.²⁶ However, unlike the College, CPABC is an **advocacy body** as well as a regulator. Under the CPAA, the CPABC has a statutory mandate to "represent the interests of members and students".²⁷ Even with this role, which has no equivalent for the College under the Act, the Board of CPABC appears to have the ability to unilaterally set "fees, dues and assessments".²⁸

e. Summary of governance in other BC regulated professions

Voting on bylaws used to be common in regulated professions. However, experience has shown that this undermines a regulator's public interest mandate. The examples of engineers refusing to approve a requirement for continuing professional development, architects refusing to approve a requirement for professional liability insurance, and other professions refusing to approve a fee increase to fund the regulator's operations, illustrate that this structure is contrary to the public interest.

Currently, the only regulators who require approval of any of their rules or bylaws by the profession are the LSBC and CPABC.

²³ https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96141_00

²⁴ FIA, section 225.2

²⁵ <https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/15001>

²⁶ CPAA, section 28

²⁷ CPAA, section 3(e)

²⁸ CPAA, section 38

In LSBC's case, the requirement for approval of rules is very narrow – it does not include approval of professional standards or fees – and even that narrow requirement was forcefully criticized by Harry Cayton.

In CPABC's case, the requirement for approval of bylaws can be explained by the fact that CPABC also serves a member advocacy function.

Overall, to our knowledge, no other regulatory body in British Columbia with a public-interest mandate equivalent to the College's has a process that requires registrant approval for bylaw changes. Even CPABC, with its advocacy mandate, does not require registrant approval to set fees to fund its operations.

6. Options for Resolution

A range of options for resolution, with a brief discussion of some advantages and disadvantages as we see them, is set out below.

a. Ministerial authority under section 28

Under section 28 of the Act, and subject to certain exceptions, the Minister may make a new bylaw or amend or repeal an existing bylaw if doing so is considered to be in the public interest.

The advantage of this option is that it does not require any legislative amendments.

The disadvantages are that this does not provide a sustainable resolution – each required bylaw amendment requires a ministerial order.

Proceeding in this fashion, instead of changing the bylaw-making mechanism under the Act, preserves and reinforces the presumption that registrants control their public-interest regulator.

b. Add exceptions to section 26

As things stand now, there are limited exceptions to the requirement for registrant approval. The exceptions are set out in section 26(1):

Bylaws to be approved by registrants

26 (1)In this section, "**bylaw**" does not include any of the following:

(a) a bylaw made to establish a committee under section 10 (1) *[bylaws regarding committees];*

(b) a bylaw made under section 19 *[bylaws regarding general administration];*

(c) a bylaw made to establish an advisory committee under section 21 *[bylaws regarding advisory committees for certified technicians];*

(d)the making, amendment or repeal of a bylaw by order of

(i)the minister under section 28 [*minister may make or change bylaws*], or

(ii)the Lieutenant Governor in Council under section 29 [*Lieutenant Governor in Council may make or change bylaws under section 20*].

A relatively inobtrusive amendment would be to add additional exceptions to the list in section 26(1).

The advantage of this is that it would allow certain types of bylaws to be prioritized and expressly excluded from the requirement for registrant approval, and would not require extensive legislative re-drafting.

The disadvantage of this is that the list of valid exceptions would be lengthy. There is a strong argument that none of the bylaw making powers should be subject to registrant approval. Additionally, by listing ‘exceptions’, the harmful presumption that registrants control the College and its bylaws persists.

If there is a desire to preserve registrant control over some types of bylaws, the better approach may be to follow the model in section 12 of the LPA which lists the bylaws which LSBC members may approve/veto rather than the ones that they cannot. This approach presumes that registrants do not have control of the bylaws, whereas the ‘exceptions’ approach presumes that they do.

c. Repeal section 26

The most direct solution is to simply repeal section 26.

This would remove any perception that registrants control the bylaws of their regulatory college and would allow the governing council to make bylaws as deemed appropriate in the public interest. This aligns with the governance of health professions under the HPA and resource professions under the PGA.

d. Larger scale legislative amendment

A final option would be to consider a larger scale legislative amendment, which would include a repeal of section 26. There are a number of provisions of the Act that can reasonably be seen to limit the College’s effectiveness as a public-interest regulator of the profession of veterinary medicine. The Act as it currently stands is in some ways already behind its contemporary legislation (for example, the HPA), and is substantially behind the newer generation of regulatory legislation (for example, the PGA and the HPOA).

We generally believe that repealing and replacing the Act would benefit the public interest. However, doing so would be lengthy and very resource-intensive. The Act as it currently stands is, for the most part, functional, and the most urgent priority is addressing section 26.

We have not dealt in this memo with our additional concerns with the Act, but we are happy to do so in more detail if that would be of assistance.

e. the College's recommendation

In our respectful view, the best resolution is to repeal section 26 and substitute an alternative process for enacting bylaws that does not require registrant approval.

This produces the following benefits:

- It allows the College's Council to amend the College bylaws as it sees fit in the public interest, without having to overcome the conflict of interest a registrant may experience between their personal and/or professional interests and the public interest.
- It redefines the proper relationship between the regulator and the profession. The profession should not control a public-interest regulator or have reason to believe that it does. The public can have no confidence in that model.
- It aligns with other similar regulatory regimes in British Columbia, and is consistent with the advice of international experts in regulatory governance, such as the Professional Standards Authority and Harry Cayton.

Overall, we consider the repeal of section 26 to be an important and necessary amendment in the public interest. Simply put, the College cannot effectively regulate in the public interest if it must rely on the approval of registrants to take actions that are not perceived by registrants to be in their interest. The regulator's proper role involves making difficult, and sometimes unpopular, decisions to benefit the public, and that role should not be subrogated to the profession.

7. Summary and Conclusion

The College has a duty to serve and protect the public interest. To do so, the College must carry out a number of complex and resource-intensive functions, and levy registration and other fees so it is able to do so. As the Act stands now, the College is powerless to amend its regulatory bylaws or change its fees unless it can obtain the approval of its registrants.

This creates an obvious conflict of interest. Experience in many professions has shown that it is difficult or impossible to consistently persuade a body of registrants to actively support an initiative that they may reasonably see as inconsistent with their own self-interest.

Perhaps more importantly, the public can have no confidence in this system. The public can have no confidence in a regulator's authority to regulate a profession when the regulator cannot even make its own rules without the profession's approval. This leaves the clear impression of an association that serves the profession rather than a regulator that serves the public.

To resolve this problem, we are seeking an amendment of the Act to remove the requirement that bylaws, including in particular bylaws related to professional standards and fees, be subject to registrant approval. We would be pleased to draft proposed amendments for your consideration.

In recognition of the length of time that can be expected to be required to undertake and enact legislative amendments, we ask that the Minister consider amending by order as soon as practicable the

College's bylaw setting out its registration and other fees in order to allow the College to remain financially viable in the interim.

We are grateful for your consideration of this important issue and your ongoing support for the College's public-interest mandate. If there is any other information that we can provide to assist with our request, we would be very pleased to do so.