

A Long Time Coming

by Erica Richler
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In May of 2019 we predicted that Harry Cayton's report on the regulation of health professions in British Columbia would be transformative: [The Cayton Report: The Wolf Finally Arrives](#). That prediction is coming true.

That report led to recommendations from the [Steering Committee on Modernization of Health Professional Regulation](#) in August of 2020, which adopted the bulk of the Cayton report. Late last month, Bill 36, the [Health Professions and Occupations Act](#), was introduced implementing the thrust of both documents, and a whole lot more.

The Cayton report, or at least the trends that it embodies (e.g., smaller Boards, an oversight body, separation of the Board and committees), have influenced regulatory reform across Canada since 2019. Bill 36 surpasses them all.

The delay in introducing legislation may be attributed, at least in part, to its length. At 276 packed pages containing 645 sections, the Bill is massive. This reflects a "command and control" approach (somewhat inconsistent with Cayton's call for greater flexibility for the regulators) that will likely cause challenges for the regulators in the future.

Another contributing factor to the delay likely related to including comprehensive requirements for cultural sensitivity and humility, including reconciliation and meaningful consultation with Indigenous peoples.

Governance Reform

Bill 36 fundamentally restructures the governance of health professions in British Columbia. Features include:

- Language will be updated. For example, the Councils will be called "Boards" and practitioners will be called "licensees", not members.
- Smaller Boards (eight to 12 members).
- A rigorous, arms-length, competency-based selection system for Board members that is operated by neither the government nor the regulators.
- The Board will have equal public and professional members.
- The Board will focus on policy-making and oversight; they are prohibited from attempting to influence individual regulatory decisions.
- Term limits for Board members (a lifetime limit of 12 years).
- The mandate for regulators is focused primarily on safety and prevention of harm by licensees.
- Separation, and indeed, independence, of the discipline tribunal from the regulator.
- Amalgamation of regulatory bodies can be imposed by the Minister. This is expected to occur.
- A strong oversight body (i.e., the office of the Superintendent).
- The professions' role with their regulator is limited to being consulted; they will no longer be able to approve policy decisions or regulatory changes.

Going Beyond Cayton

Bill 36 contains too many innovations and directions to describe here. Many go beyond the Cayton core proposals. Some of the provisions that may be of interest to other regulators include the following:

- A streamlined regulatory regime is established for health occupations (essentially practitioners who implement care rather than

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determine care). Thus, there is a two-tiered regulatory approach.

- Much of the work previously done by committees is transferred to the Board (for policy aspects) and staff (for operational aspects). The only committees operated by the regulator are the investigation committee, licensing committee and the “permit committee” for professional health corporations.
- Regulators are required to establish a support program that includes providing information to eligible vulnerable complainants and similarly situated individuals. It is contemplated that regulators will jointly operate such a program(s). Decisions in respect of eligibility and the nature of support are anticipated to be separated from the College staff team.
- The public registry for the regulators will likely contain more information about licensees than is currently provided. However, details are still to come. Cayton’s proposal for a single registry for all health professions seems to have disappeared.
- Regulators are required to operate a program to review and act on unauthorized practice concerns.
- Not surprisingly, there are provisions that address how the Minister can conscript regulators to assist in public health emergencies.
- Discrimination, by either the regulator or licensees, is discussed in numerous places in the Bill. There is a provision that could require regulators to collect and report demographic data that might assist in understanding and addressing systemic discrimination.
- The discipline provisions contain several powers to reduce the trauma for vulnerable complainants and witnesses including limits on their cross-examination and other possible restrictions on the participation of licensees in their own discipline hearing.

The office of the Superintendent is given extensive oversight powers including the power to conduct reviews, audits, and investigations. One of the more surprising provisions imposes a duty upon the Superintendent to receive and dispose of governance complaints against regulators. This likely includes breaches of the fiduciary duties by the leadership of a regulator, such as acting in a conflict of interest or participating in a breach of confidentiality. However, one can also expect complaints challenging decisions of the Board of a regulator on the basis that a proper procedure was not followed or that relevant considerations were not taken into account.

Bill 36 may be a sign of changes to come for professional regulators across the country.