

BRIEFING NOTE

TO: Council

FROM: Executive Committee

DATE: February 26, 2020

SUBJECT: 6.0 QA Requirements for Elected and Appointed Members

☒ For Decision ☐ For Information ☐ Monitoring Report

Purpose:

To review proposed by-law and policy amendments that would make Council and Committee Members subject to disqualification for failing to comply with the College's Quality Assurance Program.

Background:

Under the current by-laws, in order for an optician to be eligible for election to Council or for appointment to a Committee, they must not be in default of the requirements of the College's Quality Assurance Program. There is no express by-law provision, however, that makes a Council or Committee member subject to disqualification if they fail to fulfill their QA requirements during their term.

In addition, there is currently no set process at the College for monitoring the ongoing QA compliance of professional Council and Committee members. While members may become subject to a random pull as part of the annual Competency Review and Evaluation (CRE) process, the Quality Assurance Committee is statute-barred from sharing information about non-compliance with any other committee of the College unless they are making a referral to the Inquiries, Complaints and Reports Committee for an investigation into allegations of professional misconduct.

For Consideration:

Some concerns have been expressed about ensuring that professional Council and Committee members are keeping up to date on their QA requirements. Council and Committee members ought to be held to a high standard so that they set an example for the opticians they are regulating.

Council is being asked to consider the following:

1. Should Council and Committee members be held to a high standard with respect to QA compliance so that they set an example for the opticians they are regulating?

2. Should the following language be added to the by-laws pertaining to the disqualification of Council Members and Committee Members (current by-law sections 7.22 and 12.3(a), respectively)?

An Elected Council Member / Committee Member shall be disqualified from sitting on Council / a committee if he or she:

... is in default of the requirements of the College's quality assurance program for a period of more than thirty (30) days.

Note: The Governance Committee has also proposed amendments to the disqualification sections of the by-laws, including an amendment that would move the disqualification section for Elected Council Members from Article 7 to Article 6. The proposed amendments from the Governance Committee are also before Council at today's meeting. A combined chart that sets out all of the proposed by-law amendments from the Executive Committee and the Governance Committee is attached as **Appendix 1**.

3. If the proposed by-law amendments are approved, should the disqualification be triggered automatically, or should it require a vote by a 2/3 majority of Council members? The Executive Committee notes that the failure by a Council or Committee Member to comply with their QA requirements may be, in whole or in part, due to extenuating circumstances such as illness. Accordingly, it may be appropriate to require a vote by Council so that any mitigating circumstances can be considered. Other disqualification criteria, such as the failure to attend 4 consecutive Council or committee meetings for any reason, currently require a vote by Council to become effective.
4. Should Council approve a policy (attached as **Appendix 2**) that would require professional Council and Committee members to submit their Professional Portfolio by January 15 of each calendar year for review by the Executive Committee?
 - Note: the attached draft policy is being proposed to replace the existing Sexual Abuse Prevention Training Policy that was approved by Council in December 2017. The original policy is attached as **Appendix 3**.

Recommendations:

That Council approve the proposed by-law amendments to sections 6.15(t) and 12.3(a)(xvii), and the proposed Council and Committee Member Responsibilities Policy.

The Executive Committee further recommends that the disqualification of a Council or Committee Member for QA non-compliance require a vote by a 2/3 majority of Council members.

Proposed By-Law Amendments

Current Language	Proposed Language	Rationale
ARTICLE 6: ELECTED COUNCIL MEMBERS		
6.3 Eligibility for Election		
<p>6.3 A Member is eligible for election to Council in an electoral district if, on the deadline for the receipt of nominations and up to and including the date of the election:</p> <p>(h) the Member has resigned, before being nominated for election, any position such as director, owner, board member, officer or employee that the Member holds with a professional association relating to opticianry;</p>	<p>6.3 A Member is eligible for election to Council in an electoral district if, on the deadline for the receipt of nominations and up to and including the date of the election:</p> <p>(h) the Member has resigned, before being nominated for election, any position such as director, owner, board member, officer or employee that the Member holds with a professional association relating to opticianry <u>any organization of or for opticians that has as its primary mandate the promotion of the opticianry profession</u>;</p>	<p>The purpose of this eligibility criteria is to preclude individuals from joining Council if they are also in a leadership positing within an organization whose mandate is in direct conflict with the College’s mandate of protecting the public.</p> <p>The proposed amendment seeks to clarify that any organization, whether or not it is considered a “professional association”, that exists to promote the opticianry profession as its primary mandate would give rise to a conflict.</p>
<p>7.22 Disqualification</p> <p>An Elected Council Member shall be disqualified from sitting on Council if he or she:</p>	<p>7.226.15 Disqualification</p> <p>An Elected Council Member shall be disqualified from sitting on Council if he or she:</p>	<p>The criteria for the disqualification of Elected Council Members is currently found in Article 7.22.</p> <p>The purpose of moving this section to Article 6 is to keep it together with other provisions pertaining to Elected Council Members, including eligibility for election, election process and vacancies.</p>
<p>(a) is found by a panel of the Discipline Committee to be incompetent or to have committed an act of professional</p>	<p>(a) is found by a panel of the Discipline Committee to be incompetent or to have committed an act of</p>	<p>No change from current.</p>

Current Language	Proposed Language	Rationale
misconduct;	professional misconduct;	
(b) is found by a panel of the Fitness to Practise Committee to be an incapacitated member;	(b) is found by a panel of the Fitness to Practise Committee to be an incapacitated member;	No change from current.
(c) in the opinion of two-thirds of Council Members present and voting, (i) fails, without reasonable cause to attend two consecutive meetings of Council, or (ii) fails, for any reason, to attend four consecutive meetings of Council;	(c) in the opinion of two-thirds of Council Members present and voting, (i)(c) fails, without reasonable cause to attend two consecutive meetings of Council, or (ii)(d) fails, for any reason, to attend four consecutive meetings of Council;	For clarity, a new proposed section 6.16 has been added below to clarify the process for disqualification. Specifically, the new section specifies which subsections trigger an automatic disqualification and which subsections require a vote by Council in order for a disqualification to be effective. Accordingly, the introductory language is being removed for redundancy, and subsections (i) and (ii) have been renumbered.
(d) in the opinion of two-thirds of Council Members present and voting, (i) fails, without reasonable cause to attend two consecutive meetings of a committee of which he or she is a member, or (ii) fails, for any reason, to attend four consecutive meetings of a committee of which he or she is a member;	(ii)(d) in the opinion of two-thirds of Council Members present and voting, (i)(e) fails, without reasonable cause to attend two consecutive meetings of a committee of which he or she is a member, or (ii)(f) fails, for any reason, to attend four consecutive meetings of a committee of which he or she is a member;	For clarity, a new proposed section 6.16 has been added below to clarify the process for disqualification. Specifically, the new section specifies which subsections trigger an automatic disqualification and which subsections require a vote by Council in order for a disqualification to be effective. Accordingly, the introductory language is being removed for redundancy, and subsections (i) and (ii) have been renumbered.
(e) holds a certificate of registration that becomes subject to a term, condition or limitation, other than a term, condition or limitation that is prescribed by Regulation;	(e)(g) holds a certificate of registration that becomes subject to a term, condition or limitation, other than a term, condition or limitation that is prescribed by Regulation;	Re-numbered.
(f) ceases to reside or practice in the electoral district for which he or she was elected;	(f)(h) ceases to reside or practice in the electoral district for which he or she was elected;	Re-numbered.

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(g) refuses to sign the agreements referred to in clause 7.13;	(g) (i) refuses to sign the agreements referred to in clause 7.13;	Re-numbered, and cross-reference to clause 7.13 has been updated.
(h) resigns from Council;	(h) (j) resigns from Council;	Re-numbered.
(i) ceases to hold a certificate of registration;	(i) (k) ceases to hold a certificate of registration;	Re-numbered.
(j) is in default of payment of any fee prescribed by College by-law for a period of more than thirty (30) days;	(j) (l) is in default of payment of any fee prescribed by College by-law for a period of more than thirty (30) days;	Re-numbered.
(k) retains or obtains a responsible position such as director, owner, board member or officer or retains employment or becomes an employee of any professional association relating to opticianry;	(k) (m) retains or obtains a responsible position such as director, owner, board member or officer or retains employment or becomes an employee of any professional association relating to opticianry organization of or for opticians that has as its primary mandate the promotion of the opticianry profession;	Re-numbered, and language referring to professional associations has been amended in the same manner and for the same purpose as section 6.3 (h), above.
(l) becomes a member of a council of any other college regulated under the RHPA;	(l) (n) becomes a member of a council of any other college regulated under the RHPA;	Re-numbered.
(m) is found guilty of a criminal offence which, in the opinion of Council, is of such a nature that warrants disqualification;	(m) (o) is found guilty of a criminal offence which, in the opinion of Council, is of such a nature that warrants disqualification;	Re-numbered.
(n) fails, in the opinion of two-thirds of Council Members present and voting, to discharge properly or honestly any office to which he or she has been elected or appointed;	(n) (p) fails, in the opinion of two-thirds of Council Members present and voting, to discharge properly or honestly any office to which he or she has been elected or appointed;	Re-numbered, and redundant language removed.

Current Language	Proposed Language	Rationale
(o) initiates, joins, continues or materially contributes to a legal proceeding against the College or any Committee or representative of the College; or	(o) (q) initiates, joins, continues or materially contributes to a legal proceeding against the College or any Committee or representative of the College; or	Re-numbered.
(p) advocates or makes a public statement (other than at a Council meeting) against a position taken by the College.	(p) (r) advocates or makes a public statement (other than at a Council meeting) against a position taken by the College.	Re-numbered.
	<u>(s) In the case of electoral district 6, ceases to be recognized by the Council as a Contact Lens Mentor in accordance with the College's contact lens mentor policy, as approved by Council.</u>	On May 28, 2018, Article 6.3(m) of the by-laws was amended to change the eligibility criteria for election to Council in district 6. Accordingly, this new subsection is being proposed which would result in the disqualification of the member sitting in district 6 if that person ceases to be recognized by the College as a Contact Lens Mentor.
	<u>(t) is in default of the requirements of the College's quality assurance program for a period of more than thirty (30) days).</u>	The addition of this criteria would make an Elected Council Member subject to disqualification if they are in default of the requirements of the College's quality assurance program at any time during their term of office. The purpose of this criteria is to ensure that all Elected Council Members are meeting their quality assurance obligations throughout their term of office.
	<u>6.16 Disqualification Process</u> <u>(a) Subsections 7.11 (a), (b), (g), (h), (i), (j), (k), (l), (n) and (s) shall result in automatic disqualification</u> <u>(b) Subsections 7.11 (c), (d), (e), (f) (m), (o), (p), (q), (r) and (t) shall result in disqualification where two-thirds of Council Members present and voting vote in favour of disqualification.</u>	This additional section clarifies which disqualification criteria result in automatic disqualification (i.e. where no action by Council is required to make it effective), and which require a vote by Council in order for the disqualification to occur. A 2/3 majority vote by Council will be required in order to disqualify an Elected Council Member for: <ul style="list-style-type: none"> failing to attend two consecutive Council or Committee meetings without reasonable cause, or

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		<p>failing to attend four Council or Committee meetings for any reason</p> <ul style="list-style-type: none">• obtaining a responsible position in an organization of or for opticians that has as its primary mandate the promotion of the opticianry profession.• being found guilty of a criminal offence of such a nature that disqualification is warranted• failing to discharge their office properly and honestly• initiating, joining or materially contributing to a legal proceeding against the College or its committees/representatives• advocating or making a public statement against a position taken by the College
<p>7.23 Eligibility Following Disqualification</p> <p>Where an Elected Council Member has been disqualified from sitting on the Council, he or she shall not be eligible to run for election for six years.</p>	<p>7.236.17 Eligibility Following Disqualification</p> <p>Where an Elected Council Member has been disqualified from sitting on the Council, he or she shall not be eligible to run for election for six years.</p>	<p>This provision has been moved from Article 7.23 to keep it together with other provisions regarding the eligibility and disqualification of Elected Council Members.</p>
ARTICLE 7: DUTIES OF COUNCIL MEMBERS AND COMMITTEE MEMBERS		
	<p><u>7.1 Code of Conduct</u></p> <p><u>All Council Members and Committee Members shall comply with the College’s Code of Conduct, which is attached as Schedule D and forms part of these by-laws.</u></p>	<p>This new proposed section makes it a duty and obligation of all Council and Committee members to comply with the Code of Conduct, and makes it clear that Schedule D forms part of the by-laws and can therefore be enforced as such.</p>
<p>7.1 Duty to Avoid Conflicts of Interest</p> <p>(a) All Council Members and Committee</p>	<p>7.21 Duty to Avoid <u>and Declare</u> Conflicts of Interest</p> <p><u>All Council Members and Committee Members shall comply with their duties, as set out in Schedule D, to avoid conflicts</u></p>	<p>Subsection (a) and the sections relating to the definition of conflict of interest have been moved to the Code of Conduct.</p>

Current Language	Proposed Language	Rationale
<p>Members have a duty to carry out their responsibilities in a manner that serves and protects the interest of the public. As such, they must not engage in any activities or in decision-making concerning any matters where they have a direct or indirect personal, professional or financial interest. All Council Members and Committee Members have a duty to uphold and further the intent of the Opticianry Act to regulate the practice and profession of opticianry in Ontario, and not to represent the views of advocacy or special interest groups.</p> <p>(b) For the purposes of this by-law:</p> <p>(i) a direct or indirect personal interest includes an issue that would benefit the Council Member or Committee Member materially more than other Council Members or Committee Members (e.g., a prize awarded by the College recognizing the contributions to the profession of the daughter of a Council member);</p> <p>(ii) a direct or indirect professional interest includes an issue that would benefit the Council Member's or Committee Member's professional interests materially more than other Council Members or Committee Members (e.g. accreditation of the</p>	<p><u>of interest and appearance of bias, and to declare any actual, potential or perceived conflicts that do exist.</u></p> <p>(a) All Council Members and Committee Members have a duty to carry out their responsibilities in a manner that serves and protects the interest of the public. As such, they must not engage in any activities or in decision-making concerning any matters where they have a direct or indirect personal, professional or financial interest. All Council Members and Committee Members have a duty to uphold and further the intent of the Opticianry Act to regulate the practice and profession of opticianry in Ontario, and not to represent the views of advocacy or special interest groups.</p> <p>(b) For the purposes of this by-law:</p> <p>(i) a direct or indirect personal interest includes an issue that would benefit the Council Member or Committee Member materially more than other Council Members or Committee Members (e.g., a prize awarded by the College recognizing the contributions to the profession of the daughter of a Council member);</p> <p>(ii) a direct or indirect professional interest includes an issue that would benefit the Council Member's or Committee Member's professional interests materially more than other Council Members or Committee</p>	<p>The new proposed language sets out the duty and makes reference to adhering to the Code of Conduct, where the detailed requirements will be found.</p>

Current Language		Proposed Language	Rationale
	<p>school that employs a Committee Member); and</p> <p>(iii) the direct or indirect financial interests includes using one's position to confer a material financial benefit or prevent a material financial loss to a parent, spouse, child or sibling of a Council Member or Committee Member (e.g., giving a contract to the brother of a Council Member). Here, the term "spouse" includes a common-law spouse or a same-sex partner of the person.</p>	<p>Members (e.g. accreditation of the school that employs a Committee Member); and</p> <p>(iii) — the direct or indirect financial interests includes using one's position to confer a material financial benefit or prevent a material financial loss to a parent, spouse, child or sibling of a Council Member or Committee Member (e.g., giving a contract to the brother of a Council Member). Here, the term "spouse" includes a common-law spouse or a same-sex partner of the person.</p>	
7.2 Recognition of Conflict	<p>Council Members and Committee Members recognize that a conflict of interest or an appearance of a conflict of interest by a Member of Council or its committees:</p> <p>(i) could bring discredit to the College;</p> <p>(ii) could amount to a breach of the fiduciary obligation of the person to the College; or</p> <p>(iii) could create liability for either the College and/or the person involved.</p>	Revoke	The subject-matter of this provision has been moved to the Code of Conduct, Schedule D.
7.3 Declaration Forms		Revoke	The subject-matter of this provision has been moved to the Code of Conduct, Schedule D.

Current Language	Proposed Language	Rationale
<p>Upon appointment or election, and annually thereafter if requested, every Council Member and Committee Member and every member of a working group shall fully complete and deliver to the Registrar a form, available from the Registrar, declaring his or her current and recent affiliations with professional associations and other professional organizations to facilitate compliance with the above provisions.</p>		
<p>7.4 Conflicts Recorded in Minutes</p> <p>Every declaration of a conflict of interest or appearance of conflict of interest shall be recorded in the minutes of the meeting together with a description of the nature of the conflict.</p>	<p>Revoke</p>	<p>The subject-matter of this provision has been moved to the Code of Conduct, Schedule D.</p>
<p>7.5 Conflicts Relating to Involvement with a Professional Association</p> <p>A Council Member or Committee Member shall be perceived to have a conflict of interest in a matter and should not serve on Council or its committees at all if he or she holds a responsible position such as director, owner, board member or officer in or is an employee of any professional association relating to opticianry.</p>	<p>Revoke</p>	<p>The subject-matter of this provision has been moved to the Code of Conduct, Schedule D.</p>
<p>7.6 Conflicts Relating to Position in Other Organizations</p> <p>A Council Member or a Committee Member would be perceived to have a conflict of interest in a matter and should refrain from participating in any discussion or voting if he or she holds a responsible position such as director, owner, board member or officer in or is an employee of another organization</p>	<p>Revoke</p>	<p>The subject-matter of this provision has been moved to the Code of Conduct, Schedule D.</p>

Current Language	Proposed Language	Rationale
<p>where his or her duties may be seen by a reasonable person as influencing his or her judgment in the matter under consideration of the Council or its committees. For example, an educator in a school should not participate in any decisions relating to the status of that school, its program(s) or the acceptability for registration of graduates from that school.</p>		
<p>7.7 Where a Conflict May Exist</p> <p>Where a Council Member or Committee Member believes that he or she may have a conflict of interest in any matter which is the subject of deliberation or action by Council or its committees, he or she shall:</p> <ul style="list-style-type: none"> (i) consult, as needed, with the President, the Registrar and/or legal counsel and, if there is any doubt about whether he or she may have or be perceived to have a conflict, prior to any consideration of the matter, declare the potential conflict to Council or the committee and accept Council's or the committee's direction as to whether there is an appearance of a conflict; (ii) where there appears to be a conflict of interest, not take part in the discussion of, or vote on, any question in respect of the matter; (iii) where there appears to be a conflict of interest, absent himself or herself from the portion of any meeting 	<p>Revoke</p>	<p>The subject-matter of this provision has been moved to the Code of Conduct, Schedule D.</p>

Current Language	Proposed Language	Rationale
<p>relating to the matter; and</p> <p>(iv) where there appears to be a conflict of interest, not attempt in any way to influence the voting or do anything that might be perceived as attempting to influence the decision of other members on the matter.</p>		
<p>7.8 Financial Conflicts of Interest</p> <p>(a) A Council Member or Committee Member shall not vote on any matters in which he or she or any related person has a direct or indirect financial interest and shall declare the details of such interest prior to the discussion and the vote on such matter.</p> <p>(b) Every Council Member or Committee Member who is, or who has a related person who is, in any way directly or indirectly interested in a proposed contract or transaction or in a contract or transaction with the College shall declare an interest and the nature and extent of such interest in the contract or transaction at a Council meeting or Committee meeting in accordance with Article 8.11 (c) below.</p> <p>(c) In the case of a proposed contract or transaction, the Council Member or Committee Member shall declare his or her interest at the Council meeting at which the question of entering into the contract or transaction is first taken into consideration or if the Council Member or Committee</p>	<p>Revoke</p>	<p>The subject-matter of this provision has been moved to the Code of Conduct, Schedule D.</p>

Current Language	Proposed Language	Rationale
<p>Member is not present at such meeting, then at the first Council Meeting held thereafter. If the Council Member or Committee Member is not at the date of that meeting interested in the proposed contract or transaction, the Council Member or Committee Member shall make the declaration at the first Council Meeting which is held after becoming interested in the proposed contract or transaction, in the case where the Council Member or Committee Member becomes interested in a contract or transaction after it is made, the Council Member or Committee Member shall declare his or her interest at the first Council Meeting held after becoming so interested.</p> <p>(d) For the purposes of this Article, a general notice given to the remaining Council Members or Committee Members by a given Council Member or Committee Member to the effect such Council Member or Committee Member or a related person is a Council Member or Committee Member, officer or shareholder of, or is otherwise interested in, any other company, or is a member of a specified firm and is to be regarded as interested in any contract or transaction made with such other company or firm, shall be deemed to be a sufficient declaration of interest in relation to a contract or transaction so made, but no such notice is effective unless it is given at a meeting of Council Members or Committee</p>		

Current Language	Proposed Language	Rationale
<p>Members or the given Council Member or Committee Member takes reasonable steps to ensure that the delivery of such notice is acknowledged and read at the next meeting of the Council Members or Committee Members after it is given.</p> <p>(e) No Council Member or Committee Member, nor any related person, shall enter into any proposed contract or transaction with the College, except:</p> <p>(i) on a competitive bid basis; and</p> <p>(ii) where the Council Member or Committee Member has declared any interest therein, and where the Council Member or Committee Member has absented himself or herself from the meeting at which such contract or transaction was approved and where the Council Member or Committee Member has refrained from voting thereon.</p> <p>(f) Any Council Member or Committee Member who has declared an interest in any proposed contract or transaction or other financial interest with the College which is being discussed, shall absent himself or herself during the discussion of and vote upon the matter and the event shall be recorded in the minutes.</p> <p>g) Any Council Member or Committee Member who has declared an interest in any proposed</p>		

Current Language	Proposed Language	Rationale
<p>contract or transaction with the College and who has not voted thereon shall not be accountable to the College, its members, or its creditors for any profit resulting from such contract or transaction. The contract or transaction will not be voidable by reason only of the Council Member or Committee Member holding that office or of the fiduciary relationship established thereby.</p> <p>(h) Despite anything in this Article, a Council Member or Committee Member is not accountable to the College or to any of its Members or creditors for any profit realized from such contract or financial transaction and the contract or financial transaction is not by reason only of the Council Member's or Committee Member's interest therein voidable if it is confirmed by a majority of the votes cast at a general meeting of the members duly called for that purpose and if the Council Member's or Committee Member's interest in the contract or financial transaction is declared in the notice calling the meeting.</p>		
<p>7.9 Use of College Information or Property</p> <p>Council Members and Committee Members shall not use College property or information of any kind to advance their own interests, direct or indirect, except in a manner that is reasonable in the circumstances¹.</p> <p>¹ For example, if the College loans a laptop to the President for College use, the President could check personal emails</p>	<p>Revoke</p>	<p>The subject-matter of this provision has been moved to the Code of Conduct, Schedule D.</p>

Current Language	Proposed Language	Rationale
<p>during the lunch break of a meeting. However, no Council member could borrow a College laptop for personal use because his or her own laptop “crashed” and was in the shop for repairs.</p>		
<p>7.10 Staff and Contract Positions</p> <p>(a) A three-month waiting period is required before a former Council Member or Committee Member may apply for a position with the College, including but not limited to, positions as peer assessor, investigator, inspector, examiner or staff.</p> <p>(b) The Chief Examiner may, under exceptional circumstances, adjust the three-month waiting period for examiners.</p>	<p>7.410 Staff and Contract Positions</p> <p>(a) A three-month waiting period is required before a former Council Member or Committee Member may apply for a position <u>as an employee or independent contractor</u> with the College, including but not limited to, positions as peer assessor, investigator, inspector, examiner or staff.</p> <p>(b) The Chief Examiner<u>Council</u> may, under exceptional circumstances, <u>authorize the adjustment of</u> the three-month waiting period for examiners.</p>	<p>This provision has been re-numbered and reference has been added to subsection (a) to clarify that it is applicable to both employees as well as independent contractors.</p> <p>Subsection (b) has been amended in light of Council’s decision at the December 2019 meeting to eliminate the position of Chief Examiner. The purpose of this provision is to ensure that contingency arrangements can be made where absolutely required to carry out examinations. The Governance Committee will be developing a policy that will elaborate on when and in what circumstances they will authorize College staff (who will be carrying out the duties that were previously the responsibility of the Chief Examiner) to adjust the waiting period.</p>
<p>7.11 Duty of Confidentiality</p> <p>Council Members and Committee Members, staff and persons retained or appointed by the College are required to maintain confidentiality of information that comes before them in the course of discharging their duties unless disclosure is authorized by Council or is otherwise permitted under section 36 of the RHPA.</p>	<p>7.311 Duty of Confidentiality</p> <p><u>(a) All Council Members and Committee Members, staff and persons retained or appointed by the College are required to maintain confidentiality of information that comes before them in the course of discharging their duties unless disclosure is authorized by Council or is otherwise permitted under section 36 of the RHPA. shall comply with their obligations to maintain confidentiality of information that comes before them in the course of discharging their duties, as set out in Schedule D.</u></p> <p><u>(b) Council Members and Committee Members, staff and persons retained or appointed by the College are</u></p>	<p>This section establishes the general duty of confidentiality for all Council and Committee members, with details set out in the Code of Conduct.</p> <p>The section has been re-numbered and amalgamated with section 7.13.</p>

Current Language	Proposed Language	Rationale
	<u>required to sign, annually, the confidentiality or fiduciary agreements approved by Council or the Registrar, as applicable.</u>	
<p>7.12 Disclosure Under the RHPA</p> <p>Council Members and Committee Members, staff and persons retained or appointed by the College are required to understand when exceptions to the confidentiality requirement apply and seek advice if they are in doubt.</p>	Revoke	The subject-matter of this provision has been moved to the Code of Conduct, Schedule D.
<p>7.13 Confidentiality Agreement</p> <p>Council Members and Committee Members, staff and persons retained or appointed by the College are required to sign, annually, the confidentiality or fiduciary agreements approved by Council or the Registrar, as applicable.</p>	Revoke	This provision has been amalgamated with section 7.11 (now section 7.3)
<p>7.14 Media Contacts</p> <p>All media contact shall be channelled and coordinated through the Registrar's office. Any Council Member or Committee Member or any member of a working group being asked by media representatives to provide interviews, respond to inquiries or to comment on issues concerning the regulation of the profession or the operation of the College shall not provide any such communication and shall instead refer them to the Registrar's office.</p>	Revoke	The rules regarding who may speak on behalf of Council and/or the College has been moved to the Code of Conduct as well as various policies in the Governance Manual.

Current Language	Proposed Language	Rationale
<p>7.15 College Communications</p> <p>The Registrar, the President or, in the absence of the President, the Vice-President:</p> <ul style="list-style-type: none"> (i) are the authorized spokespersons of the College, but either of them may request a Council Member or staff to perform this function, as appropriate, under the circumstances; and (ii) may communicate with the media to provide interviews, respond to inquiries or comment on issues concerning the regulation of the profession or the operation of the College. A Council Member or Committee Member shall not perform such communications unless authorized by the Registrar, the President or, in the absence of the President, the Vice-President. 	<p>Revoke</p>	<p>The rules regarding who may speak on behalf of Council and/or the College has been moved to the Code of Conduct as well as various policies in the Governance Manual.</p>
<p>7.16 Consistent Messaging</p> <p>All messages to the media and to the public must be consistent with the approved policies and positions of</p>	<p>Revoke</p>	<p>The subject-matter of this provision has been moved to the Code of Conduct, Schedule D.</p>

Current Language	Proposed Language	Rationale
<p>the College. Any Council Member or Committee Member shall resign all positions with Council and its committees prior to expressing public disagreement with a decision, policy or position of the College or its committees and even then, shall only do so in a manner consistent with his or her ongoing fiduciary duties towards the College. This provision does not prevent a person from stating that an issue dealt with at a public meeting was vigorously debated or that it was not decided unanimously.</p>		
<p>7.17 Invitations for Speaking Engagements All requests inviting the President, the Registrar and/or Council Member or Committee Members to speak in his or her capacity as a representative of the College must be submitted, in writing, to the Registrar’s office with details of the date, time and place of the speaking engagement as well as the topic and anticipated length of the presentation.</p>	Revoke	The subject-matter of this provision has been moved to the Code of Conduct, Schedule D.
<p>7.18 Acceptance of Invitations for Speaking Engagements The Registrar, in consultation with the President, where possible, will review all requests inviting Council Members or Committee Members to speak on behalf of the College or in his or her capacity as a representative of the College. They shall determine whether to accept the invitation and the appropriate representative to address the topic. Where feasible, Council can be asked to review any such determination. Other than as described above, no Council Member or Committee Member shall accept any request to make representations or speak on</p>	Revoke	The subject-matter of this provision has been moved to the Code of Conduct, Schedule D.

Current Language	Proposed Language	Rationale
behalf of the College or in his or her capacity as a representative of the College.		
7.19 Content of Presentations and Reports The content of every external presentation made or report issued by a Council Member or Committee Member, College staff member, or person retained or appointed by the College must be consistent with the approved policies and positions of the College and shall be submitted, preferably at least five (5) days before the date of the presentation, to the Registrar or a person designated by the Registrar for approval.	Revoke	The subject-matter of this provision has been moved to the Code of Conduct, Schedule D.
7.20 No Compensation No person speaking in his or her capacity as a representative of the College shall receive any payment or benefit related to the presentation or, if the payment or gift cannot in the circumstances be gracefully declined, it shall immediately be turned over to the Registrar. However, mementoes of nominal value (\$50.00 or less) may be accepted and retained.	Revoke	The subject-matter of this provision has been moved to the Code of Conduct, Schedule D.
7.21 Enforcement Process The following procedure shall be followed in the event that a Council Member or Committee Member is alleged to have contravened their duties or meets the criteria for disqualification set out in Articles 7.22 or 12.3. (i) A written complaint shall be filed with the Registrar. A complaint can be made by a member of the public,	7.215 Enforcement Process <u>In the event that a Council Member or Committee Member is alleged to have contravened the Code of Conduct or any other duties set out in these by-laws, the Council shall follow the enforcement process set out in Schedule D.</u> The following procedure shall be followed in the event that a Council Member or Committee Member is alleged to have contravened their duties or meets the criteria for disqualification set out in Articles 7.22	This section provides that Council must establish and follow a set enforcement process to address breaches of duties by Council or Committee members, but the details of that process has been moved to the Code of Conduct. The section has also been re-numbered.

Current Language		Proposed Language	Rationale
	<p>a Council Member or Committee Member or the Registrar. If a Council Member or a Committee Member receives such a complaint, he or she shall immediately file it with the Registrar.</p> <p>(ii) The Registrar shall forthwith report the complaint to the President and/or the Vice-President who shall bring the complaint to the Executive Committee.</p> <p>(iii) If the Executive Committee, after any investigation it deems appropriate, believes that the complaint warrants formal action, it shall call a Council meeting. Council shall determine whether there has been a breach of duties or whether the criteria for disqualification have been met and, if so, impose the appropriate sanction. The appropriate sanction can include one or more of the following:</p> <p>(a) censure of the Council Member or Committee Member verbally or in writing,</p> <p>(b) removal of the Council Member or Committee Member from any committee and/or working group on which he or she serves,</p>	<p>or 12.3.</p> <p>(i) — A written complaint shall be filed with the Registrar. A complaint can be made by a member of the public, a Council Member or Committee Member or the Registrar. If a Council Member or a Committee Member receives such a complaint, he or she shall immediately file it with the Registrar.</p> <p>(ii) — The Registrar shall forthwith report the complaint to the President and/or the Vice-President who shall bring the complaint to the Executive Committee.</p> <p>(iii) — If the Executive Committee, after any investigation it deems appropriate, believes that the complaint warrants formal action, it shall call a Council meeting. Council shall determine whether there has been a breach of duties or whether the criteria for disqualification have been met and, if so, impose the appropriate sanction. The appropriate sanction can include one or more of the following:</p> <p>(a) — censure of the Council Member or Committee Member verbally or in writing,</p> <p>(b) — removal of the Council Member or Committee Member from any committee</p>	

Current Language		Proposed Language	Rationale
	(c) disqualification of an Elected Council Member from the Council, or a report requesting removal of a Public Council member from Council to the Public Appointments Secretariat.	and/or working group on which he or she serves, (c) — disqualification of an Elected Council Member from the Council, or a report requesting removal of a Public Council member from Council to the Public Appointments Secretariat.	
(iv)	A decision finding that there has been a breach of duties or that a Council Member or Committee Member meets the criteria for disqualification set out in Articles 6.13 and 12.3, and a decision to impose a particular sanction must be approved by a majority vote of Council Members present and voting.	(iv) — A decision finding that there has been a breach of duties or that a Council Member or Committee Member meets the criteria for disqualification set out in Articles 6.13 and 12.3, and a decision to impose a particular sanction must be approved by a majority vote of Council Members present and voting.	
(v)	The Council Member or Committee Member whose conduct is the subject of concern shall not take part in the deliberation or vote, however, he or she will be given a reasonable opportunity to respond to the allegation.	(v) — The Council Member or Committee Member whose conduct is the subject of concern shall not take part in the deliberation or vote, however, he or she will be given a reasonable opportunity to respond to the allegation.	
(vi)	The President shall make his or her best efforts to report any complaints to the Executive Committee within 30 days of receiving it. The Executive Committee shall make its best efforts to conduct its investigation within 60 days of receiving it. The goal is to	(vi) — The President shall make his or her best efforts to report any complaints to the Executive Committee within 30 days of receiving it. The Executive Committee shall make its best efforts to conduct its investigation within 60	

Current Language	Proposed Language	Rationale
<p>make best efforts to bring any concerns warranting Council action within 120 days of it being brought to the attention of the College.</p>	<p>days of receiving it. The goal is to make best efforts to bring any concerns warranting Council action within 120 days of it being brought to the attention of the College.</p>	
<p>7.22 Disqualification</p> <p>An Elected Council Member shall be disqualified from sitting on Council if he or she:</p> <ul style="list-style-type: none"> (a) is found by a panel of the Discipline Committee to be incompetent or to have committed an act of professional misconduct; (b) is found by a panel of the Fitness to Practise Committee to be an incapacitated member; (c) in the opinion of two-thirds of Council Members present and voting, <ul style="list-style-type: none"> (i) fails, without reasonable cause to attend two consecutive meetings of Council, or (ii) fails, for any reason, to attend four consecutive meetings of Council; (d) in the opinion of two-thirds of Council Members present and voting, <ul style="list-style-type: none"> (i) fails, without reasonable cause to attend two consecutive meetings of a committee of which he or she is a member, or (ii) fails, for any reason, to attend four consecutive meetings of a committee 	<p>Revoke</p>	<p>As this section relates to Elected Council Members rather than the duties of Council and Committee members, it has been moved to Article 6.15.</p>

Current Language	Proposed Language	Rationale
<p>of which he or she is a member;</p> <p>(e) holds a certificate of registration that becomes subject to a term, condition or limitation, other than a term, condition or limitation that is prescribed by Regulation;</p> <p>(f) ceases to reside or practice in the electoral district for which he or she was elected;</p> <p>(g) refuses to sign the agreements referred to in clause 7.13;</p> <p>(h) resigns from Council;</p> <p>(i) ceases to hold a certificate of registration;</p> <p>(j) is in default of payment of any fee prescribed by College by-law for a period of more than thirty (30) days;</p> <p>(k) retains or obtains a responsible position such as director, owner, board member or officer or retains employment or becomes an employee of any professional association relating to opticianry;</p> <p>(l) becomes a member of a council of any other college regulated under the RHPA;</p> <p>(m) is found guilty of a criminal offence which, in the opinion of Council, is of such a nature that warrants disqualification;</p> <p>(n) fails, in the opinion of two-thirds of Council Members present and voting, to discharge properly or honestly any office to which he or she has been elected or appointed;</p>		

Current Language	Proposed Language	Rationale
<p>(o) initiates, joins, continues or materially contributes to a legal proceeding against the College or any Committee or representative of the College; or</p> <p>(p) advocates or makes a public statement (other than at a Council meeting) against a position taken by the College.</p>		
<p>7.23 Eligibility Following Disqualification</p> <p>Where an Elected Council Member has been disqualified from sitting on the Council, he or she shall not be eligible to run for election for six years.</p>	Revoke	As this section relates to Elected Council Members rather than the duties of Council and Committee members, it has been moved to Article 6.17
ARTICLE 12: COMMITTEE APPOINTMENTS AND PROCEDURES		
<p>12.2 Eligibility for Appointed Committee Members</p> <p>(a) A Member of the College is eligible for appointment as an Appointed Committee Member if, on the date of the appointment:</p> <p>(viii) the Member has resigned, before being appointed, any position such as director, owner, board member, officer or employee that the member holds with a professional association relating to opticianry;</p>	<p>12.2 Eligibility for Appointed Committee Members</p> <p>(a) A Member of the College is eligible for appointment as an Appointed Committee Member if, on the date of the appointment:</p> <p>(viii) the Member has resigned, before being appointed, any position such as director, owner, board member, officer or employee that the member holds with a professional association relating to opticianry <u>any organization of or for opticians that has as its primary mandate the promotion of the opticianry profession</u>;</p>	Language referring to professional associations has been amended in the same manner and for the same purpose as section 6.3 (h), above.
<p>12.3 Committee Disqualification</p>		

Current Language	Proposed Language	Rationale
12.3 (a) Council shall disqualify an Appointed Committee Member from sitting on a committee if such member:	12.3 (a) Council shall disqualify an Appointed A Committee Member <u>shall be disqualified</u> from sitting on a committee if such member:	The proposed amendments make it clear that the criteria for disqualification are applicable to all committee members, including Elected Council Members, Public Council Members and non-Council Appointed Committee Members. The language has also been amended to permit certain disqualification events to occur automatically, without requiring any action by Council. The details of which disqualification criteria will result in automatic disqualification and which will require a vote by Council are set out in proposed sections 12.3 (b) and (c) below.
(i) is found by a panel of the Discipline Committee to be incompetent or to have committed an act of professional misconduct;	(i) <u>in the case of an optician Member</u> , is found by a panel of the Discipline Committee to be incompetent or to have committed an act of professional misconduct;	This language has been added to clarify that this disqualification criteria is not applicable to committee members who are not opticians (e.g. Public Members).
(ii) is found by a panel of the Fitness to Practise Committee to be an incapacitated member;	(ii) <u>in the case of an optician Member</u> , is found by a panel of the Fitness to Practise Committee to be an incapacitated member;	This language has been added to clarify that this disqualification criteria is not applicable to committee members who are not opticians (e.g. Public Members).
(iii) in the opinion of two-thirds of the members of Council present and voting, a. fails, without reasonable cause, to attend two consecutive meetings of the committee or of a subcommittee of which he or she is a member, including any meeting held in whole or in part by teleconference, or b. fails for any reason to attend four such consecutive meetings;	(iii) in the opinion of two-thirds of the members of Council present and voting, a. fails, without reasonable cause, to attend two consecutive meetings of the committee or of a subcommittee of which he or she is a member, including any meeting held in whole or in part by teleconference, or b. (iv) fails for any reason to attend four such consecutive meetings;	Redundant language has been removed and the subsections have been renumbered.

Current Language	Proposed Language	Rationale
(iv) fails, without reasonable cause, in the opinion of two-thirds of Council Members present and voting, to attend a hearing or review of a panel for which he or she has been selected;	(iv) fails, without reasonable cause, in the opinion of two-thirds of Council Members present and voting, to attend a hearing or review of a panel for which he or she has been selected;	
(v) is in default of payment of any fee prescribed in the College by-law for a period of more than thirty (30) days;	(vi) <u>in the case of an optician Member,</u> is in default of payment of any fee prescribed in the College by-law for a period of more than thirty (30) days;	Redundant language has been removed.
(vi) is found guilty of a criminal offence which, in the opinion of Council, is of such a nature that warrants disqualification;	(vii) is found guilty of a criminal offence which, in the opinion of Council, is of such a nature that warrants disqualification;	Re-numbered.
(vii) in the case of an optician Member, neither practices nor resides in Ontario;	(viii) in the case of an optician Member, neither practices nor resides in Ontario;	Re-numbered.
(viii) in the case of an optician Member, ceases to hold a certificate of registration;	(viii ix) in the case of an optician Member, ceases to hold a certificate of registration;	Re-numbered.
(ix) retains or obtains a responsible position such as director, owner, board member or officer of retains employment or becomes an employee of any professional association relating to opticianry;	(ix) retains or obtains a responsible position such as director, owner, board member or officer of retains employment or becomes an employee of any professional association relating to opticianry <u>organization of or for opticians that has as its primary mandate the promotion of the opticianry profession;</u>	Re-numbered, and language referring to professional associations has been amended in the same manner and for the same purpose as section 6.3 (h), above.
(x) becomes a member of a council of any other college regulated under the RHPA;	(xi) becomes a member of a council of any other college regulated under the RHPA;	Re-numbered.

Current Language	Proposed Language	Rationale
(xi) holds a certificate of registration that becomes subject to a term, condition, or limitation other than one prescribed by Regulation; or	(xii) <u>in the case of an optician Member,</u> holds a certificate of registration that becomes subject to a term, condition, or limitation other than one prescribed by Regulation; or	Re-numbered, and language has been added to clarify that this disqualification criteria is not applicable to committee members who are not opticians (e.g. Public Members).
(xii) fails, in the opinion of two-thirds of Council members present and voting, to discharge properly and honestly his or her duties as a committee member.	(xiii) fails, in the opinion of two-thirds of Council members present and voting, to discharge properly and honestly his or her duties as a committee member; or <u>or</u>	Re-numbered, and redundant language removed.
	<u>(xiv) initiates, joins, continues or materially contributes to a legal proceeding against the College or any Committee or representative of the College;</u>	This has been added for consistency with the Council disqualification criteria under Article 6.15 (currently 7.22 (o)).
	<u>(xv) advocates or makes a public statement (other than at a Council meeting) against a position taken by the College; or</u>	This has been added for consistency with the Council disqualification criteria under Article 6.15 (currently 7.22 (p)).
	<u>(xvi) in the case of a Council Member, is disqualified from Council in accordance with Article 6.15.</u>	Under this new sub-section, a Council member that has been disqualified from Council will also automatically be disqualified from any committees that they set on.
	<u>(xvii) in the case of an optician Member, is in default of the requirements of the College's quality assurance program for a period of more than thirty (30) days.</u>	The addition of this criteria would make an Appointed Committee Member subject to disqualification from committees if they are in default of the requirements of the College's quality assurance program at any time during their term of office. The purpose of this criteria is to ensure that all Appointed Committee Members are meeting their quality assurance obligations throughout their term of office.
	<u>(b) Subsections 12.3 (a) (i), (ii), (vi), (viii), (ix), (xi), (xii), and (xvi) shall result in automatic disqualification.</u>	This new sub-section lists the disqualification criteria that will result in automatic disqualification (i.e. no action by Council is required to make it effective).

Current Language	Proposed Language	Rationale
	<u>(c) Subsections 12.3 (a) (iii), (iv), (v), (vii), (x), (xiii), (xiv), and (xv) shall result in disqualification where two-thirds of Council Members present and voting vote in favour of disqualification.</u>	<p>This new sub-section lists the disqualification criteria that require a vote by Council in order to become effective.</p> <p>A 2/3 majority vote by Council will be required in order to disqualify a Committee Member for:</p> <ul style="list-style-type: none"> • failing to attend two consecutive or Committee or subcommittee meetings without reasonable cause, or failing to attend four meetings for any reason. • failing to attend a hearing or review of a panel they have been selected for. • being found guilty of a criminal offence of such a nature that disqualification is warranted • obtaining a responsible position in an organization of or for opticians that has as its primary mandate the promotion of the opticianry profession. • failing to discharge their office properly and honestly • initiating, joining or materially contributing to a legal proceeding against the College or its committees/representatives • advocating or making a public statement against a position taken by the College
(b) An Appointed Committee Member who is removed under Article 12.3 (a) from sitting on a committee ceases to be a member of the committee.	(b) (d) An Appointed Committee Member who is removed under Article 12.3 (a) from sitting on a committee ceases to be a member of the committee.	Re-numbered.
	<u>(e) An Appointed Committee Member who is removed under Article 12.3 (a) from sitting on all committees which they had been appointed to under Article 8.2 (c)</u>	This new sub-section provides clarity that an Appointed Committee Member who has been disqualified from all

Current Language	Proposed Language	Rationale
	<u>(iii) or Article 12.4 ceases to be an Appointed Committee Member.</u>	committees ceases to be an Appointed Committee Member, as defined under the by-laws.
(c) Notwithstanding the above provisions that permit the removal of a committee member in specific circumstances, Council may at any time also remove a member of a committee to facilitate the effective and fair operation of the College.	(c) (f) Notwithstanding the above provisions that permit the removal of a committee member in specific circumstances, Council may at any time also remove a member of a committee to facilitate the effective and fair operation of the College.	Re-numbered.
12.8 Conduct of Meetings Unless otherwise provided for in this by-law, the provisions of Articles 7.5, 7.7, 7.8, 7.9, 7.10, 7.11, 7.12, 7.13, 7.14, 7.15, 7.16, 7.17, 7.18, 7.19, 7.20 and 7.21, which apply to Council Meetings shall apply to Committee meetings as though all references therein to Council and Council Members were to the committees and Committee Members <i>mutatis mutandis</i> .	Revoke	With the proposed amendments to Article 7 and Schedule D (Code of Conduct), this section is redundant.

Appendix 2 – Proposed Amended Policy

POLICY TYPE: GOVERNANCE PROCESS

4-XX Council and Committee Member Responsibilities Policy

Approved: Dec 5, 2017 (as Sexual Abuse Prevention Training Policy) Monitoring of Council: Every 3 years
To be reviewed every 3 years Date Reviewed/Revised:

The Council is dedicated to ensuring that all Council and Committee members demonstrate accountability, integrity and excellence.

To this end, all Council and non-Council Committee Members are required to comply with their duties and responsibilities as set out in this Governance Manual, the *Regulated Health Professions Act*, the *Opticianry Act*, the regulations under those acts, and the by-laws.

The Council has also determined to require Council and Committee Members to comply with the following additional obligations:

Professional Boundaries and Sexual Abuse Prevention Training

The Council is dedicated to the prevention of any form of verbal, emotional, physical or sexual abuse and endorses a zero tolerance policy toward such conduct. The Council recognizes the important role that it plays in protecting the public, including through its role in the orientation and training of Council and Committee Members to ensure that they are aware of the seriousness and extent of injury that sexual abuse can cause a patient.

Accordingly, all Council and Committee Members, including Public Council Members, shall:

1. Complete Chapter 1 of the Jurisprudence Tool, **Professional Boundaries and Sexual Abuse Prevention**, at the following intervals:
 - a. Prior to attending their first Council or Committee meeting as a newly appointed or elected member; and
 - b. Every three years thereafter.
2. Provide a copy of their certificate of completion to the Chair of the Council by no later than their first Council or Committee meeting of the calendar year, where applicable.

Proof of compliance with the Quality Assurance Program

The Council recognizes the important role that the Quality Assurance Program plays in maintaining high professional standards and enhancing public confidence in the opticianry profession. The Council furthermore recognizes that its professional Council and Committee Members are expected to set an example to registrants by demonstrating a commitment to continuing education and professional development.

Accordingly, all optician Council and Committee Members shall:

1. Complete all requirements of the College's Quality Assurance Program by December 31 of each calendar year.
2. Provide a copy of their Professional Portfolio to the Chair of the Council (or their delegate) by no later than January 15 of each calendar year.

The Executive Committee shall review the Professional Portfolio submissions of Council and Committee Members for completeness. Where any deficiencies are identified, the Council or Committee Member shall be provided with 14 days to remedy the deficiency to the Executive Committee's satisfaction. Any Council or Committee Member who fails to submit their Professional Portfolio, or fails to remedy any deficiencies identified in their Professional Portfolio, may be subject to disqualification in accordance with the By-laws.

Appendix 3 – Current Policy



Governance Policy

Sexual Abuse Prevention Training

The College is dedicated to the prevention of any form of verbal, emotional, physical or sexual abuse and endorses a zero tolerance policy toward such conduct. The College furthermore recognizes the important role that it plays in protecting the public, including through its role in the orientation and training of Council and non-Council Committee Members to ensure that they are aware of the seriousness and extent of injury that sexual abuse can cause a patient.

To this end, all Council and non-Council Committee Members are required to complete Chapter 1 of the Jurisprudence Tool, **Professional Boundaries and Sexual Abuse Prevention**, at the following intervals:

1. Prior to attending their first Council or Committee meeting as a newly appointed or elected member; and
2. Every three years thereafter.

Council and non-Council Committee Members shall provide a copy of their certificate of completion to the Chair of the Council by no later than their first Council or Committee meeting of the calendar year, where applicable.