

BRIEFING NOTE

TO: Board of Directors

FROM: Governance Committee

DATE: March 1, 2022

SUBJECT: 7.3 Proposed New Screening Committee

☒ For Decision

☐ For Information

☐ Monitoring Report

Purpose:

To consider whether to establishing a standalone Screening Committee that would be responsible for carrying out pre-election and pre-appointment screening interviews.

Background:

Over the last several years, the board has done extensive work in the area of governance reform, and in particular with respect to board elections and committee appointments. These efforts have positioned the COO as a leader in governance excellence and in substantial compliance with the standards established by the Ministry of Health under the College Performance Measurement Framework (CPMF).

Pre-election/appointment competencies were implemented in 2021

In 2021, an important milestone was reached when the Board approved a set of pre-election and pre-appointment competencies for all incoming professional board members and appointed committee members. In addition to bringing the COO in line with governance best practices generally, the introduction of these competencies also demonstrates improved compliance with standards established under the CPMF.

2021 represented the inaugural year for the new competency framework. Per the Board's direction, the Governance Committee established a sub-committee to interview candidates for election and appointment and assess whether they met the required competencies. The sub-committee was made up entirely of non-opticians in order to promote objectivity, fairness and transparency. A governance consultant was also retained to assist the sub-committee with the interview process.

Recruitment of Public Appointed Members

When providing direction on the parameters for the screening sub-committee, the Board indicated a desire for the screening panel to eventually be made up entirely of persons who were neither board members nor opticians – in other words “Public Appointed Members”.

With that in mind, the COO took steps to recruit additional Public Appointed Members, and in December 2021 the Board approved the appointment of 4 additional Public Appointed Members, bringing the total roster up from 1 to 5 for the 2022 calendar year.

For Consideration:

2021 established the basic framework for pre-election and pre-appointment competencies. The Board is now asked to consider whether enhancements to the process would more closely align with the vision articulated by the Board – namely for the screening process to be undertaken by a panel of Public Appointed Members as part of a new and separate Screening Committee.

A standalone Screening Committee is proposed for greater transparency and accountability

The Committee is recommending that the Board create a new standalone committee that will be tasked with carrying out the annual screening process. This new Screening Committee would be formed as a standing committee under the by-laws and would have unique terms of reference setting out its composition, accountabilities and mandate.

The benefits of establishing a standalone committee to undertake the annual screening process include:

- **A more robust screening process:** One of the most important features of the screening process is fairness. The screening panel has the final say on whether a registrant will be eligible to run for election. Establishing the Screening Committee as a standalone committee can enhance fairness by establishing clear parameters for its composition and mandate, and also by allowing for more targeted training to ensure the committee understands its role.
- **Greater transparency and accountability:** As a standalone committee, the Screening Committee will have clearly defined and transparent composition requirements, undergo regular training, and make regular reports to the Board on its activities. The by-laws would also ensure transparency in the screening process by making it clear that the Screening Committee, and not the Board, Executive Committee or other person or group of persons, would have the final say in whether a candidate for election has met the pre-election competencies.
- **A clear and focused mandate:** The committee will be able to remain focused on the task at hand.

Committee Composition

It is proposed that the Screening Committee be composed of all Public Appointed Members appointed to the COO. Where fewer than 4 Public Appointed Members are available, the Board could appoint additional Public Board Members (appointed by the government) to the committee.

This composition would be in line with the goal expressed by the Board to keep the screening process at arm's length from both the profession and the board to the greatest extent possible.

Other proposed responsibilities of the Screening Committee

Current by-laws provide that in certain cases, the Registrar may strike an ad hoc committee to assist with certain election duties, such as determining whether a candidate's biographical statement complies with election guidelines. It is proposed that the Screening Committee be assigned to assist the Registrar with these duties, if they are requested.

Proposed by-laws and draft Committee Terms of Reference

Attached please find draft by-law amendments (**Appendix A**) and terms of reference (**Appendix B**) that would support the creation of a proposed new Screening Committee.

Public Interest Considerations:

There is a strong public interest in ensuring that board and committee members possess the competencies necessary to carry out their fiduciary duties. This has most recently been recognized in the standards established under the College Performance Measurement Framework. It is therefore incumbent on the COO to ensure that the process for assessing candidates' competencies are robust, transparent and fair.

Diversity, Equity and Inclusion Considerations:

The Screening Committee would require training and support to ensure that the screening process is in line with the Board's expressed values and strategic objectives in the areas of the diversity, equity and inclusion.

Recommendation:

That the Board approve the establishment of a Screening Committee to carry out the annual pre-election and pre-appointment screening processes as recommended by the Governance Committee.

APPENDIX A

Current Language	Proposed Language	Rationale/Explanation
1.1 Definitions		
n/a	“Screening Committee” means the Screening Committee of the College;	The addition of a definition to support the creation of the Screening Committee as a new non-statutory standing committee of the College.
6.3 Eligibility for Election		
6.3 A registrant is eligible for election to the Board in an electoral district if, on the deadline for the receipt of nominations and up to and including the date of the election:	6.3 A registrant is eligible for election to the Board in an electoral district if, on the deadline for the receipt of nominations and up to and including the date of the election: (f) a period of at least six years has elapsed since the Registrant complied with all aspects of an order imposed by the Discipline Committee or the Fitness to Practice Committee or by a similar committee of a body that governs a profession inside or outside Ontario;	Currently, registrants are not eligible for nomination if they have a finding of professional misconduct or incompetence made against them in the preceding 6 years. The provision will provide added assurance that the candidate has also complied with all aspects of any orders that had been made with respect to those findings.
(i) the Registrant has resigned, at least three months before being nominated for election, any employment with the College;	(i) the Registrant has resigned, at least three months -years before being nominated for election, any employment with the College;	One of the most important duties of board members is to hold the Registrar (and by extension all staff) accountable for ensuring that the College upholds its public interest mandate. The fact that a registrant was recently an employee of the College may give rise to a real or perceived conflict of interest between their former role and their duties as a board member. This amendment will reduce the risk of such conflicts of interest by bringing the cooling off period in this section in line with the cooling off period for registrants who recently held other positions that may give

APPENDIX A

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		<p>rise to conflicts, such as professional associations.</p> <p>This provision will only apply to full time employees of the College and not persons who were engaged by the College as contractors or a temporary or casual basis (e.g. peer assessors, examiners, etc.).</p>
(o) the Registrant has not initiated, joined, continued or materially contributed to a legal proceeding against the College or any Committee or representative of the College within one year from the deadline for the receipt of nominations;	(o) the Registrant has not initiated, joined, continued or materially contributed to a legal proceeding against the College or any Committee or representative of the College within one <u>six</u> years from the deadline for the receipt of nominations;	<p>Board members have a fiduciary duty to act in the best interest of the College and its public protection mandate. The fact that a registrant has a recent history of adverse interactions with the College may give rise to a real or perceived conflict of interest with that fiduciary duty.</p> <p>This amendment will reduce the risk of such conflicts of interest by bringing the cooling off period in this section in line with the cooling off period for registrants with previous findings of professional misconduct, incompetence, or those who have been suspended, revoked or disqualified.</p>
(s) the Registrant has been determined by the Governance Committee, or a sub-committee of the Governance Committee, to meet the pre-election competencies as may be established by the Board from time to time.	(s) the Registrant has been determined by the Governance Committee, or a sub-committee of the Governance Committee <u>Screening Committee</u> , to meet the pre-election competencies as may be established by the Board from time to time.	This amendment will shift responsibility for assessing pre-election competencies from the Governance Committee to a newly constituted Screening Committee.
6.4 Registrar's Electoral Duties		
(a) The Registrar, or, if the Registrar so requests, the Registrar with the assistance of an ad hoc committee struck by the Board or the Executive	(a) The Registrar, or, if the Registrar so requests, the Registrar with the assistance of an ad hoc committee struck by the Board or the Executive	This amendment will recognize the Screening Committee as the committee that will assist the Registrar with carrying out their electoral duties, if requested.

APPENDIX A

Current Language	Proposed Language	Rationale/Explanation
Committee, shall supervise and administer the nomination and election of candidates to the Board and, without limiting the generality of the above, for the purpose of carrying out such duties the Registrar may, subject to this by-law and the guidelines established by the Board:...	Committee <u>the Screening Committee</u> , shall supervise and administer the nomination and election of candidates to the Board and, without limiting the generality of the above, for the purpose of carrying out such duties the Registrar may, subject to this by-law and the guidelines established by the Board:	
6.5 Nomination Procedure		
(b) The nomination of a candidate for election as a Director shall be in writing, on a form provided by the Registrar and shall be submitted along with a photograph of the candidate. If desired, a brief biographical statement of the candidate, without reference to platform, may also be submitted. The nomination must be received by the Registrar not less than 60 days before the day of the election.	(b) The nomination of a candidate for election as a Director shall be in writing, on a form provided by the Registrar and shall be submitted along with a photograph of the candidate. If desired, a brief biographical statement of the candidate, without reference to platform, may also be submitted. <u>The biographical statement must not be inconsistent with the College's public interest mandate and may not include reference to the candidate's platform.</u> The nomination must be received by the Registrar not less than 60 days before the day of the election.	This amendment will clarify the requirements with respect to biographical statements to ensure they do not include messaging that is inconsistent with the College's public interest mandate.
(b.2) Any biographical statement and photograph that is not deemed acceptable by the Registrar shall not be included in the materials sent to the Registrants under Article 6.6(c). At the Registrar's request, an ad hoc committee struck by the Board or the Executive Committee shall determine whether the biographical statement and photograph meet the election guidelines.	(b.2) Any biographical statement and photograph that is not deemed acceptable by the Registrar shall not be included in the materials sent to the Registrants under Article 6.6(c). At the Registrar's request, an ad hoc committee struck by the Board or the Executive Committee <u>the Screening Committee</u> shall determine whether the biographical statement and photograph meet the election guidelines.	This amendment will recognize the Screening Committee as the committee that will assist the Registrar with carrying out their electoral duties, if requested.

APPENDIX A

Current Language	Proposed Language	Rationale/Explanation
(d) The candidate shall sign the nomination form accepting the nomination, and complete and return a conflict of interest questionnaire and confirmation of eligibility in the form provided by the Registrar and by the deadline set by the Registrar.	(d) The candidate shall sign the nomination form accepting the nomination, and complete and return a conflict of interest questionnaire, and confirmation of eligibility, <u>and proof of completion of the Pre-Election Training Module</u> in the form provided by the Registrar and by the deadline set by the Registrar.	This amendment will clarify the information that must be returned by candidates as part of the nomination process.
n/a	<u>(d.1) The Registrar shall review the nomination form and other information submitted by the candidate. All candidates who are determined by the Registrar to meet the eligibility criteria set out in Article 6.3, other than Article 6.3(t), shall be required to participate in an interview conducted by the Screening Committee. The interview may be conducted in person, by telephone or by other electronic means.</u>	This amendment clarifies that the Registrar will conduct a preliminary review of a candidate's eligibility to stand for election, while the Screening Committee will be responsible for holding an interview to assess whether the candidate meets the pre-election competencies.
(d.1) Upon the Registrar's request, an ad hoc committee struck by the Board or the Executive Committee shall determine a candidate's eligibility for election.	(d.1) Upon the Registrar's request, an ad hoc committee struck by the Board or the Executive Committee shall determine a candidate's eligibility for election. <u>2) The decision as to whether a candidate meets the pre-election competencies within the meaning of Article 6.3(t) is within the sole discretion of the Screening Committee. The Screening Committee's decision is final and not subject to challenge.</u>	This amendment clarifies that the Screening Committee's decision on whether a candidate meets the pre-election competencies is final and cannot be challenged.
6.14 Emergency Nomination and By-Election Procedures		
(a)(iii) the nomination of a candidate for election as a Director shall be in writing, in a form provided by the Registrar, and shall be submitted along	(a)(iii) the nomination of a candidate for election as a Director shall be in writing, in a form provided by the Registrar, and shall be submitted along	This amendment is made for consistency with Article 6.5.

APPENDIX A

Current Language	Proposed Language	Rationale/Explanation
with a photograph of the candidate. If desired, a brief biographical statement of the candidate, without reference to platform, may also be submitted. The nomination must be received by the Registrar, not less than 20 days before the day of the by-election;	with a photograph of the candidate. If desired, a brief biographical statement of the candidate, without reference to platform, may also be submitted. <u>The biographical statement must not be inconsistent with the College's public interest mandate and may not include reference to the candidate's platform.</u> The nomination must be received by the Registrar, not less than 20 days before the day of the by-election;	
	<u>(v) the requirements set out in Article 6.3(d.1) and (d.2) apply with respect to by-elections;</u>	This amendment is made for consistency with Article 6.5
<u>11.4 Screening Committee</u>		
n/a	<p><u>(a) The Screening Committee shall be composed of at least four (4) Committee Members, being:</u></p> <p><u>(i) all Appointed Committee Members who are not Registrants;</u></p> <p><u>(b) The Screening Committee shall not include any Elected Directors or Appointed Committee Members who are Registrants.</u></p> <p><u>(c) Where fewer than four (4) Appointed Committee Members who are not Registrants are available, the Board may appoint Public Directors to the Screening Committee.</u></p> <p><u>(d) The Screening Committee shall:</u></p> <p><u>(i) determine whether candidates for election meet</u></p>	<p>This amendment sets out the requirements to form a new non-statutory standing committee, the Screening Committee, including committee composition and primary responsibilities.</p> <p>The purpose of the Screening Committee is to establish a neutral, objective panel that can assess whether candidates for election or appointment meet board-approved competencies. The committee will be composed of individuals who are neither board members nor members of the opticianry profession in order to best ensure fairness and objectivity. In the event, however, that there are not enough members available to meet the minimum committee composition requirements, the board may appoint Public Directors to the committee.</p>

APPENDIX A

Current Language	Proposed Language	Rationale/Explanation
	<p>the pre-election competencies as required by Article 6.3(t); and</p> <p>(ii) make recommendations to the Board on the appointment of Appointed Committee Members.</p>	
12.2 Eligibility for Appointed Committee Members		
(a) A Registrant of the College is eligible for appointment as an Appointed Committee Member if, on the date of the appointment:	<p>(a) A Registrant of the College is eligible for appointment as an Appointed Committee Member if, on the date of the appointment:</p> <p>(v) a period of at least six years has elapsed since the Registrant complied with all aspects of an order imposed by the Discipline Committee or the Fitness to Practice Committee or by a similar committee of a body that governs a profession inside or outside Ontario;</p>	This amendment is made for consistency with Article 6.3.
(ix) the Registrant has resigned, at least 3 months before being appointed, any employment with the College;	(ix) the Registrant has resigned, at least 3 months years before being appointed, any employment with the College;	This amendment is made for consistency with Article 6.3.
(xi) the Registrant has not initiated, joined, continued or materially contributed to a legal proceeding against the College or any committee or representative of the College within the preceding one year;	(xi) the Registrant has not initiated, joined, continued or materially contributed to a legal proceeding against the College or any committee or representative of the College within the preceding one six years;	This amendment is made for consistency with Article 6.3.
(xv) the Registrant has been determined by the Governance Committee, or a sub-committee of the Governance Committee, to meet the pre-appointment competencies as may be established by the Board from time to time.	(xvi) the Registrant has been determined by the Governance Committee, or a sub-committee of the Governance Committee, Screening Committee , to meet the pre-appointment competencies as may be established by the Board from time to time.	This amendment is made for consistency with Article 6.3.

APPENDIX A

Current Language	Proposed Language	Rationale/Explanation
(b) A person who is not a Registrant is eligible for appointment as an Appointed Committee Member if, on the date of the appointment:	(b) A person who is not a Registrant is eligible for appointment as an Appointed Committee Member if, on the date of the appointment:	This amendment is made for consistency with Article 6.3.
(v) they have resigned, at least 3 months before being appointed, any employment with the College;	(v) they have resigned, at least 3 months-years before being appointed, any employment with the College;	
(vii) they have not initiated, joined, continued or materially contributed to a legal proceeding against the College or any committee or representative of the College within the preceding one year;	(vii) they have not initiated, joined, continued or materially contributed to a legal proceeding against the College or any committee or representative of the College within the preceding one-six years;	This amendment is made for consistency with Article 6.3.
(x) they have been determined by the Governance Committee, or a sub-committee of the Governance Committee, to meet the pre-appointment competencies as may be established by the Board from time to time.	(x) they have been determined by the Governance Screening Committee, or a sub-committee of the Governance Committee, to meet the pre-appointment competencies as may be established by the Board from time to time.	This amendment is made for consistency with Article 6.3.
Schedule B		
Non-statutory or ad hoc Committees are composed of a minimum of three members. containing a cross-section of Elected Directors and Public Directors, with at least one Public Director on each committee.	Non-statutory or ad hoc Committees are composed of a minimum of three members. With the exception of the Screening Committee, non-statutory or ad hoc committees will contain ing a cross-section of Elected Directors and Public Directors, with at least one Public Director on each committee.	

SCREENING COMMITTEE

Terms of Reference

Committee Composition and Meetings

1. Board shall appoint the members of the Screening Committee for the following year at the last Board meeting of the year in accordance with the by-laws.
2. The Screening Committee shall be composed of all Appointed Committee Members who are not registrants of the College.
3. The Screening Committee shall not include any Directors or Appointed Committee Members who are registrants of the College.
4. Where fewer than four eligible individuals are available to sit on the Screening Committee, the Board may appoint up to four Directors appointed to the Board by the Lieutenant Governor in Council.
5. The chair and vice-chair of the Screening Committee shall be elected from among the members of the Screening Committee and the election may take place at or before the first committee meeting of the year.
6. Panels of the Screening Committee shall be selected by the chair of the Screening Committee from among the members of the committee and each panel shall be composed of at least three persons. Three members of a panel constitutes a quorum.
7. Panels of the Screening Committee, and/or the committee as a whole, shall meet as required.
8. All Screening Committee members are required to attend such training sessions as may be deemed appropriate by the committee chair and/or the Board.
9. The Screening Committee and/or panels of the Screening Committee may be assisted by an external consultant to support the screening process. The external consultant may attend meetings on an as-needed basis.

Authority and Accountability

10. The Screening Committee is a non-statutory committee of the Board of the College and is established as a standing committee pursuant to the by-laws.
11. The Screening Committee is accountable to the Board for fulfilling any duties and responsibilities authorized by the by-laws, by these Terms of Reference, and as otherwise assigned to it by the Board.

Responsibilities of the Screening Committee

The Screening Committee shall:

12. Perform such functions as are assigned to under these Terms of Reference, the by-laws and policies of the College, and as otherwise directed by the Board.
13. Ensure that candidates for election to the Board and/or appointment as Appointed Committee Members of the College demonstrate the competencies established by the Board. To that end, the Screening Committee shall:
 - a. Determine whether candidates for election meet the pre-election competencies as required under the by-laws. The decision as to whether a candidate meets the pre-election competencies is within the sole discretion of the Screening Committee. The Screening Committee's decision is final and not subject to challenge.
 - b. Make recommendations to the Board on the appointment of Appointed Committee Members. The Screening Committee shall base its recommendations to the Board on an assessment of whether the candidate meets the pre-appointment competencies as required under the by-laws. The final decision on the appointment of Appointed Committee Members lies with the Board.
14. Assist the Registrar carry out the Registrar's electoral duties under Article 6.4 of the by-laws, as needed.
15. Submit an annual report to the Board. The report will include information on the Committee's activities for the year. The Screening Committee may also submit a report to the Board in between annual reports.