SELF-REGULATION IN NOVA SCOTIA

A GUIDE FOR NOVA SCOTIA GOVERNMENT DEPARTMENTS

Prepared by the Advisory Committee on Self-regulation
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Self-regulation in Nova Scotia: A Guide for Departments

Introduction

Self-regulation has significant implications for the economy, labour mobility and immigration. Given that, any proposal in respect to establishing or altering a self-regulated profession must be considered carefully. Historically, the Province has not taken a consistently robust approach to reviewing such proposals which has sometimes resulted in decisions based on too little analysis. However, in December 2016, Treasury and Policy Board approved a new Policy respecting Self-regulated Professions. The objectives of the policy are to ensure the Board receives complete, accurate and relevant information upon which to make decisions respecting self-regulated professions and to improve the quality and consistency of submissions requesting new or amended legislation. The policy establishes tests for determining when proposals for legislation respecting self-regulated professions will be approved and requires departments to conduct a thorough examination of all proposals before they are submitted to Executive Council for review and approval.

Who is the guide for?

This guide is primarily intended to assist departmental staff responsible for examining proposals for new or amended legislation respecting self-regulated professions and making recommendations in respect to them. It will also be of assistance to staff reviewing proposed regulations made under such legislation.[1] The Guide may be shared with the individuals and groups making proposals to assist them in understanding government's approach to reviewing and analyzing those proposals. A Fact Sheet for Proponents, which is designed to assist individuals and groups interested in making a proposal for new or amended legislation, is attached as Appendix 2.

Though the guide provides useful guidance and recommendations on many of the issues departments need to consider when examining proposals respecting self-regulation, it is not exhaustive. Departments are encouraged to seek further advice and guidance from their Department of Justice solicitors, Executive Council Office (ECO) cabinet advisors, the Advisory Committee on Advisory Committee on Self-regulation[2].

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[1] Typically, staff are called on to review regulations when regulations are made or approved by a Minister or Governor in Council.

[2] The Advisory Committee on Self-regulation is a cross-departmental working group comprised of individuals with interest and experience in issues related to self-regulation. The Terms of Reference for the Committee were approved as Schedule C of the policy.

What is self-regulation?

Self-regulation is a privilege granted to professions in the public interest. Professions do not have a “right” to regulate themselves. Rather, self-regulation is one of many instruments government may choose in an effort to protect the public and reduce risks associated with incompetent and unethical practice.

Self-regulation comprises two key elements: the authority to register and license members; and the authority to investigate and discipline them. Legislation that confers self-regulated status on a profession imposes a regulatory framework, and give the profession the powers it needs to develop, implement and enforce rules to protect the public and ensure members of the profession provide services in a competent and ethical manner.

The powers and duties conferred on professions vary considerably, but usually include at least the power and duty to:

- Govern and manage the body charged with overseeing the profession;
- Set standards and requirements to be met by those wishing to enter the profession;
- Set standards of practice for members of the profession;
- Make and enforce rules with respect to complaints investigation and discipline; and
- Prosecute offences under its legislation.

It’s important to distinguish between “professional associations”, which are established to advance the interests of the profession and its members, and “self-regulated professions”, which empower professions to regulate themselves in the public interest. Members of a self-regulated profession (sometimes referred to as “registrants”) have, in all circumstances, an ethical and legal duty to put the interests of clients/patients and the general public ahead of their own interests.

Government’s approach to self-regulation

The primary purpose of self-regulation is to address risks of harm and serve the public interest. Therefore, the government grants powers of self-regulation only when it is in the public interest to do so. Self-regulation is not granted for purposes of serving the interests of the profession itself and should impede competition and increase costs only to the extent necessary to protect the public from real and substantial risks.

To determine whether self-regulation is the right policy instrument, government first considers whether the provision of by members of the profession raises serious risks of harm. Where risks are identified, it next considers the options available for addressing them. In general, government will not impose any form of regulation, including self-regulation, unless there are real and substantial risks of harm to individual consumers or clients and self-regulation is the most efficient and effective means of addressing them.

Second, government requires those proposing self-regulation to demonstrate the profession has or will have adequate resources to implement self-regulation and that its members understand the duties and responsibilities they will assume if self-regulation is granted. The resources required to implement self-regulation are significant since, in most cases, professions must fund their activities through fees paid by their members. For that reason, it is unusual for government to authorize smaller groups to self-regulate[3].

Lastly, government requires the profession to demonstrate it exercises a defined body of knowledge and skills, generally acquired through specific education and experience, which does not overlap significantly with that of any other profession. If the profession's body of knowledge is too broad or poorly defined, or is already exercised by another profession, an effort should be made to clarify the profession's proposed scope of practice and ensure any implications for other professions are understood before a formal request is submitted to Executive Council for consideration.

Roles and responsibilities

Though most legislation respecting professions is initially proposed by the professions themselves, departments have important roles to play in determining the final content of formal requests for legislation and draft bills. The policy requires that Departments review all proposals to ensure that they reflect sound policy analysis and comply with policy.

The roles and responsibilities of key players in the process of reviewing proposals and developing the final bill are described briefly below.

Profession/occupation

- Proposes the enactment of new legislation or amendments to existing legislation governing the profession
- Offers input and advice regarding the content of the legislation (but should not draft proposed legislation), often with the assistance of private legal counsel

Department

- Conducts a preliminary analysis of the proposal, which includes comparing it with other options for addressing the identified risks
- Makes a recommendation to the Minister regarding whether the proposal should be considered further
- Undertakes further examination and makes a recommendation to the Minister regarding whether a formal request for legislation should be prepared
- At the Minister's direction, prepares a formal request for legislation (including drafting instructions)

[3] Government sometimes permits smaller groups to be regulated in concert with one or more related professions – e.g. In Nova Scotia, veterinary technologists are regulated under the *Veterinary Medical Act*.

- Where the request is approved, provides Legislative Counsel with the information and direction needed to prepare the draft bill

Minister

- Considers the proposal and recommendations of departmental staff, and provides direction in respect to development of a formal request for legislation
- Signs the request for legislation
- Introduces the bill in the House of Assembly

Advisory Committee on Self-regulation

- Provides analysis and advice to assist departments as requested
- As and when requested, provides advice and recommendations to Executive Council

Legislative Counsel Office

- Drafts legislation in accordance with approved requests

Preparing a request for legislation

Requests for legislation (RFLs) respecting self-regulation follow the same process as other RFLs. They take the form of a Memorandum to Executive Council prepared by departmental staff and signed by the Minister. (Templates for required documents are available on-line at: http://www.novascotia.ca/treasuryboard/manuals/100forms.htm.)

When a proposal respecting self-regulation is received, departments should immediately advise their Executive Council Office (ECO) cabinet advisor. The cabinet advisor can provide guidance on conducting the analysis required by the policy, and confirm that a similar or related proposal is not being considered by another department.

If the department or the cabinet advisor concludes the department lacks the capacity to analyze the proposal on its own, the Advisory Committee on Self-regulation may be asked to review it and provide the department with guidance and support or recommend that another department be assigned to analyze it.

Analyzing the proposal

Policy directives

The policy contains specific directives regarding the analysis of legislative proposals in relation to self-regulated professions. Departments are encouraged to review the directives early in the process to ensure compliance with the policy.

Where a profession proposes amendments to existing legislation rather than an entirely new statute, departments should reflect on the content of this guide, and seek advice from their ECO cabinet advisors and/or the Advisory Committee on Self-regulation regarding whether it is appropriate to deal with the proposed amendments in isolation or in the context of a more comprehensive review of the existing legislation. The policy requires that the department take into account at least the following factors in making that determination:

- The history of the existing legislation;
- Whether existing legislation is consistent with government's current policy objectives in respect to self-regulated professions;
- Whether the profession has demonstrated a robust capacity and commitment to regulating itself in the public interest; and
- The significance and urgency of the issues the proposed amendments are designed to address.

Where there have been no significant issues with the legislation, the profession has demonstrated a robust capacity and commitment to governing the profession in the public interest, and the existing legislation is consistent with government's current policy objectives, a comprehensive review will rarely be needed. Likewise, amendments required to address significant and urgent risks will normally proceed without delay.

Assembling a team to analyze the proposal

Departments play an important challenge function in respect to any proposal to establish a new self-regulated profession or to amend existing legislation. Because of that, departments that employ persons who are members of the profession should ensure the team reviewing the proposal includes individuals who are not members of the profession and that any conflicts of interest are identified and addressed. For example, team members who are members of the profession should be reminded of their duty to protect confidential internal discussions from inappropriate or premature disclosure to other members of the profession, and may need to be excluded from some discussions.

The team reviewing a proposal should generally include the department's solicitor and ECO cabinet advisor, and may include staff of other departments and representatives of the Advisory Committee on Self-regulation.

The tests to be met

The policy articulates the tests to be met when new legislation is proposed. Departments should review the tests early in the process and take the steps necessary to ensure they are able to demonstrate that those tests have been met as part of their formal requests for legislation.

Analyzing proposals to establish new self-regulated professions

In general, it is recommended departments adopt a two-step approach to analyzing proposals for new legislation:

Step 1: Preliminary analysis

The department should begin with a preliminary analysis to determine whether there is any real possibility self-regulation for the profession. Appendix A includes two questionnaires designed to assist departments in gathering the information needed to conduct a preliminary analysis. The goal of the analysis is to confirm that:

- There are substantial risks to clients, patients and/or the public which are not remote and cannot be addressed more efficiently and effectively through other means; and
- The profession has or can be expected to develop the capacity to self-regulate.

If the identified risks are remote or not sufficiently substantial, or if the profession does not have and cannot be expected to develop the capacity to self-regulate, an in-depth analysis will rarely be needed to conclude the request should be rejected.

On the other hand, if the profession demonstrates there are real and substantial risks and the profession appears capable of undertaking duties and responsibilities that come with self-regulation, the department should move to the next step and carry out a more in-depth analysis.

Step 2: In-depth analysis

As part of its in-depth analysis, the department should consider matters such as:

- Likely impacts on government, consumers, clients, employers and other professions;
- Likely impacts on internationally trained/educated professionals and labour mobility applicants;
- Likely impacts on access to good and services, especially in rural areas;
- Proposed governance and accountability of the governing body;
- Mechanisms for resolving potential conflicts with other occupations or professions;
- Mechanisms proposed for registering members and ensuring they maintain professional competence; and
- Mechanisms by which complaints will be investigated and resolved.

The purpose of the in-depth analysis us to gather the information needed to enable the department to prepare a formal request for legislation and drafting instructions. Guidance

regarding many of the issues to be addressed in preparing drafting instructions is provided in the next section of the guide. Before turning to those, departments are encouraged to undertake a thorough analysis of the impacts of creating a new self-regulated profession and work with proponents to plan and implement an appropriate stakeholder engagement processes.

Considering impacts

It is sometimes assumed that self-regulation has no costs or other impacts for clients or the public because professions fund their operations through membership fees. In fact, self-regulation often has significant impacts – for members and potential members (including foreign trained professionals), other professions, clients, consumers, employers and government. Therefore, it is important that the potential impacts of any new or amended legislation (and associated regulations) be assessed, and that government withhold approval until it is satisfied the legislation will result in real and substantial benefits to stakeholders, the desired benefits are likely to outweigh the costs, and cheaper and more effective options for addressing identified risks are unavailable.

Whether the request is for new or amended legislation, departments should consider what the impacts are likely to be, and (where possible) to compare those with the impacts of other options, which may include maintaining the status quo, public education, adoption of a voluntary code, and/or government regulation.

Impacts to consider include:

- Entry to the profession: Will new entrance requirements be imposed? Who will bear the costs of complying with those requirements? Will new entry requirements discourage immigration of skilled workers or undermine labour mobility? Will regulators be able and willing to work collaboratively across jurisdictions to determine a common scope of practice that would enable labour mobility?
- Continuing education requirements: Will continuing education requirements be imposed? Who will bear the costs of complying with those requirements? Consider, for example, members of the profession, employers (including government) and clients/customers.
- Professional standards: Will new professional standards be imposed? Will there be fair and transparent pathways to registration or licensure for applicants from other jurisdictions? Who will bear the costs of complying with them? Consider, for example, members of the profession, employers and clients/customers.
- Establishing and operating the profession’s governing body: Who will bear the costs associated with supporting the governing body and investigating and remedying complaints?
- What impacts will self-regulation have on the cost and availability of services for clients, customers and employers?
- What impact will the proposed self-regulation have on other professions?
- What burden will government bear in respect to making appointments, reviewing and approving regulations and by-laws, amending legislation if required, responding to

complaints or concerns about the profession, and dealing with any issues that arise from the *Fair Registration Practices Act* and the *Agreement on Internal Trade*.

Similarly, the benefits of self-regulation should not be assumed, but instead clearly identified and (where possible) quantified. Ideally, the individual or group proposing self-regulation will be able to provide data regarding expected benefits, which may include:

- Improved delivery of goods and services;
- Anticipated reduction in the number of injuries and/or damage to clients;
- Timely and effective resolution of complaints; and
- Improved access to competent service providers.

Quantifying benefits is often more difficult than quantifying costs but cross-jurisdictional research can sometimes be helpful in filling gaps.

There is no simple formula for determining which impacts should be given the most weight. Much depends on the particular circumstances in each case. The goal of the exercise is simply to ensure Executive Council has the information it needs to make a fully informed decision.

The final step in the impact analysis is to compare the expected impacts of self-regulation with those of other available options, which may include maintaining the status quo, voluntary codes, education and government regulation. In general, government is reluctant to create a new self-regulated profession unless there is clear evidence that:

- The proposed regulation will result in tangible benefits for clients and/or the general public;
- The benefits are likely to outweigh any costs or other negative impacts; and
- Better, more cost-effective options for addressing identified risks are unavailable.

Engagement

Government expects professions and departments to work together to seek input from relevant stakeholders (including the general public in some cases) before final decisions are made.

As discussed in more detail in Appendix B, engagement can take a variety of forms but, in every case, the goal is to conduct engagement activities appropriate to the circumstances in a consistent and transparent manner. In general, engagement should focus on underlying policy issues rather than on the specific wording of draft bills or regulations.

At a minimum, an engagement plan should include:

- Clear purpose(s);
- Expected results or outcomes;
- A description of the engagement process, including how it will work, and who will be involved;

- Information on how feedback will be provided to participants and how results of the engagement process will be used; and
- An evaluation of the engagement process.

In addition, the plan should specify how any issues related to diversity and accessibility are to be addressed.

The engagement plan may be planned and implemented by the profession seeking the legislation but, where possible, input from the department and its cabinet advisor should be obtained prior to implementation. If stakeholders have already been engaged, the department and cabinet advisor should review the form and results of that engagement and provide direction and guidance when further engagement is needed to fill gaps. In some cases, departments may be advised to seek the approval of Executive Council prior to engaging with stakeholders.

At a minimum, it is recommended the following stakeholders be consulted on any request for new or amended legislation regarding a self-regulated profession:

- A cross-section of members of the profession;
- Major employers;
- Professions or occupations that perform similar or related services;
- Government departments with an interest in the goods and services provided by the profession; and
- Fair Registration Practices Act Review Office.

For further assistance on conducting engagement activities, departments are encouraged to consult Appendix B and review plans with their cabinet advisors prior to implementation.

Preparing Requests for Legislation and draft bills

Who holds the pen?

In Nova Scotia, all bills are drafted by the Office of Legislative Counsel in accordance with drafting instructions provided in approved Requests for Legislation (RFLs), which are prepared by departments and approved by Executive Council (Cabinet). If and when issues arise in the course of drafting, departmental staff (with the support of their Department of Justice solicitors) are responsible for providing Legislative Counsel with the direction needed to resolve them, and may consult with proponents and other stakeholders as necessary.

Where the final form of a draft bill deviates from the drafting instructions contained in the RFL, departmental staff are responsible for ensuring Executive Council is aware of and approves of the deviations prior to the bill being introduced in House of Assembly

Historically, professions have sometimes requested that government enact draft bills prepared by their own solicitors, but that practice is now discouraged. Draft bills prepared by private sector lawyers impose unnecessary costs on the profession and sometimes make the job of Legislative Counsel more difficult.

Policy directives

The policy contains specific directives with respect to the preparation of legislation governing self-regulated professions. Departments are encouraged to review the directives early in the process and ensure final drafting instructions provided in RFLs and draft bills comply with the policy.

Issues to consider

This section of the Guide contains an overview of key issues that need to be considered as RFLs and draft bills are being prepared. The information is organized around the following themes:

- Fair registration practices and the Agreement on Internal Trade;
- Mandate;
- Governance and accountability;
- Powers to make regulations and by-laws;
- Complaint investigation and discipline;
- Offences and enforcement; and
- Licensing business organizations.

The guidance below is not exhaustive. It is designed to assist departments in understanding key policy objectives, evaluating proposals made by professions, preparing RFLs, and providing instructions to Legislative Counsel with respect to the preparation of draft bills.

For further guidance, departments are encouraged to consult their departmental solicitors, legislative counsel, ECO cabinet advisors, the Advisory Committee on Self-regulation.

Fair registration practices and the Agreement on Internal Trade

Nova Scotia's *Fair Registration Practices Act* (FRPA) is intended to apply to all self-regulating professions[4] and requires them to establish registration practices that are transparent, objective, impartial and procedurally fair. The act implements the Province's commitments under the Agreement on Internal Trade (AIT)[5], which puts the Province at risk in the event another jurisdiction successfully prosecutes a dispute on behalf of a certified worker. Satisfying FRPA requirements has the added benefit of supporting the immigration of skilled workers with foreign training and credentials.

Key FRPA requirements include the following:

- Where an applicant is denied registration, the regulating body must provide written reasons to the applicant within a reasonable time;
- The regulating body must provide an internal review process within a reasonable time;
- The applicant must have the opportunity to provide new information and make submissions with respect to an internal review;
- The applicant must be afforded the right to access records held by the regulating body, except in limited circumstances;
- No one who was a decision-maker in respect to the initial denial of registration may act as a decision-maker in the internal review; and
- Regulatory bodies must ensure individuals who act as decision-makers on internal reviews are appropriately trained.

As part of the general oversight of fair registration practices under FRPA, regulatory bodies are required to file reports with the Review Officer. For a full list of the matters to be included in the report to the Review Officer, see section 16 of FRPA.

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[4] The Act applies only to regulating bodies listed in Schedule A to the Act, and currently Schedule A does not reference all self-regulated professions. However, Nova Scotia's obligations under the Agreement on Internal Trade apply in respect to all such professions so work is underway to amend the Act and/or Schedule A to ensure they more closely align with those obligations.

[5] In Canada, regulating bodies are only permitted to regulate within their own provincial or territorial jurisdictions. Under the Agreement on Internal Trade (AIT), professions may not refuse to register/certify an applicant who practices a profession with the same scope of practice in another jurisdiction. Registration or certification may only be refused where there are material differences in scope of practice. Exceptions must be based on a legitimate objective and approved by Executive Council.

For further information about the AIT and the process for resolving disputes under it, departments should contact the Labour Mobility Coordinator at the Department of Labour and Advanced Education.

Mandate

Government's main goal in regulating a profession is to protect the public from harm that may result from an imbalance in knowledge between service providers and recipients. Consequently, the primary duty of any self-regulating profession is to regulate the practice of the profession in the public interest. It is this duty to serve the public interest rather than the interests of the profession itself that distinguishes regulatory bodies from professional associations. To that end, the profession should ensure admission to the profession is guarded by appropriate standards of qualification and that members continue to satisfy standards of competence and conduct once they are admitted.

As required by the policy, legislation governing a self-regulated profession must articulate a clear mandate and impose on the profession a primary duty to regulate its members in the public interest. Typically, that mandate will also incorporate duties to carry out the following activities:

- To regulate the practice of the profession and govern its members through registration, licensing, investigation, discipline and other processes specified in legislation and regulations;
- To develop and promote a code of ethics;
- To establish and promote standards of practice of the profession;
- To establish and promote continuing professional development programs; and
- To prosecute offences under its legislation.

While self-regulated professions sometimes offer support and services to their members/registrants, the provision of such support and services must never compromise their ability to regulate effectively by, for example, creating real or perceived conflicts of interest. In fact, increasingly, the trend (particularly in the health sector) is away from allowing one organization to carry out both sets of functions. However, government may permit a self-regulated profession to provide membership support and services, where it is satisfied that any risks associated with doing so can be effectively mitigated. In making that decision, government will generally take into account the nature of the risks raised by the delivery of supports and services provided to members, the proposed mechanisms for mitigating those risks, and the history and capacity of the profession.

Governance and accountability

Legislation governing a profession should establish governance and accountability mechanisms that enable it to be fairly and effectively governed and appropriately accountable to members, government and the general public. The mechanisms vary but should generally address at least the following matters:

- Ministerial roles and responsibilities;
- Composition of the profession's governing body;
- Annual general meetings and special meetings; and

- Reporting to members, ministers and the public.
- Approval of by-laws and regulations

Each of these matters is explored below.

Ministerial roles and responsibilities

Historically, legislation that did not specify a responsible minister was treated as being the responsibility of the Minister of Justice. To avoid that result, legislation should always specify the minister responsible for the legislation and for fulfilling any duties imposed on the minister by the legislation.

Generally, it is appropriate to assign responsibility for the legislation to the minister whose department works most closely with the profession, and/or has the best understanding of the services it provides. However, in making that determination, it is important to consider possible conflicts of interest.

For example, if the department that works most closely with the profession also employs numerous members of the profession, it may be prudent to assign responsibility to another department in order to address real or perceived conflicts of interest. Alternatively, the minister could be provided with support and advice by staff from other departments.

The legislation may also impose specific duties on the minister with respect to oversight of the profession. For example, the minister may have responsibility for receiving annual reports, periodically reviewing the legislation, appointing public representatives and/or approving regulations. At a minimum, it is recommended the minister be granted power to request and obtain any information the needed to ensure the profession is fulfilling its duties and responsibilities under the legislation.

Composition of the profession's governing body

Self-regulated professions are typically governed by a body composed of persons elected by members of the profession and public representatives appointed by government. The role of public representatives is to bring broader public interest perspective to the body's deliberations, while fulfilling the same duties as other members.

In general, a profession's governing body should be composed of between 7 and 11 members, with at least one third of those members being public representatives appointed by the Governor in Council or the responsible minister. The legislation should also ensure that:

- The governing body of the profession is broadly representative of its members, including those who practice in different sectors and regions of the province;
- Election and appointment processes for selecting members provide opportunities to enhance diversity over time; and

- Public representatives are selected from amongst persons who are independent of the profession and able to bring a broader public interest perspective to deliberations.

In addition, any statutory committees (typically, those responsible for reviewing registration decisions and dealing with investigation and disciplinary matters) should include at least one of the public representatives appointed by government.

Members of the governing body other than public representative members should be elected by the profession's membership in accordance with fair, open and transparent election procedures.

Persons with personal or professional conflicts of interest should be expressly prohibited from appointment as public representatives.

Annual general meetings and special meetings

Legislation governing a profession should establish clear requirements for holding annual general meetings and special meetings. For example, legislation often requires governing bodies to organize annual general meetings to which all members are invited and give members reasonable notice of such meetings. In addition, legislation should provide some mechanisms by which ordinary members may request that special meetings be held.

Reporting to members, ministers and the public

The policy requires that legislation create appropriate mechanisms for ensuring accountability of the governing body to members of the profession, the responsible minister and the general public.

The mechanisms for accountability and reporting can vary but, in general, should at least include requirements that:

- The governing body provide annual reports (including financial statements) to members;
- The governing body file annual reports with the responsible minister in a form, with the content and in a timeframe acceptable to the minister; and
- The public be notified when a member has been suspended, has had their practice restricted, or has been barred from practice.

Approval of regulations and by-laws

One of the most challenging issues in respect to governance and accountability is deciding which regulations and/or by-laws should require the approval of government and/or members of the profession. Historically, practices have varied considerably across jurisdictions and professions. In some cases, governing bodies have the power to make by-laws and regulation without obtaining the approval of either members or government. In others, the approval or one or both is required.

The main objectives of approval requirements are to encourage governing bodies to consult adequately with those affected by the rules; to provide transparency in regards to decision-making; to ensure rules serve the best interests of the public; and to engage members in the regulation of their profession.

However, approval requirements can have undesirable consequences as well. In particular, they can cause unreasonable delays in decision-making, and enable members or other stakeholders to block decisions that are not in their own best interests.

In determining whether approvals should be required, therefore, it is important to consider the content of the regulations or by-laws, who will be affected by them, how much transparency is needed, and whether delays in decision-making would pose significant risks to the public. In addition, departments should consider whether other mechanisms could be used to meet government's objectives. For example, legislation might include a requirement that members and/or government be consulted or notified before rules are made, and grant the Minister a power to amend or revoke regulations or by-laws where the Minister concludes they are not in the public interest.

Determining the content of legislation, regulations and by-laws

The policy provides that any powers to make regulations and by-laws be granted in accordance with a number of principles, namely:

- Legislation and regulations governing self-regulated professions should be drafted in accordance with the drafting conventions that apply to other sorts of legislation and regulations;
- Powers may be distributed in various ways across legislation, regulation and by-laws, provided they are distributed in a manner that strikes a balance acceptable to government between granting the flexibility and autonomy professions need to regulate themselves effectively and furthering other key policy objectives (such as minimizing unnecessary regulation, and establishing an appropriate degree of transparency, stakeholder engagement and accountability to clients, members, government and the public);
- In the interest of transparency, matters of interest to those outside the profession (including government, the general public, potential members, employers and or clients/patients) should normally be dealt with in legislation or regulations made or approved by government rather than in by-laws;
- In determining whether a matter will be dealt with in legislation, regulations or by-laws, the department should consider the following questions:
    - Whose interests may be affected?
    - Who needs ready access to the rules?
    - Is public accountability and transparency needed to maintain public confidence in the profession and/or the legislative scheme?

- Is the matter one that could have significant implications for clients, the public and/or some segment of the profession?
    - How frequently do the rules respecting the matter require updating?
- The legislation should establish rules respecting the creation of regulations and by-laws that enable members have an appropriate degree of involvement in their development but do not impede the profession's ability to regulate itself in the public interest; for example, legislation should generally include a requirement that members be consulted on proposed regulations and by-laws and may, in appropriate circumstances, require that by-laws be approved or ratified by members.

The chart below summarizes matters typically addressed in each instrument.

Instrument	Matters typically addressed by the instrument
Legislation	• Required composition of the governing body of the profession, including requirements respecting public representation and key committees (e.g. complaints investigation and disciplinary committees) • Scope of practice • Key elements of investigation and complaints procedures • Basic requirements for licensing, obtaining permits, etc. • Offences and enforcement • Rights of appeal • Conferral of powers to investigate, compel testimony, etc. • Conferral of powers to prescribe fees, exempt persons from requirements, delegate duties, or sub-delegate regulation-making powers • Incorporation of other documents by reference
Regulations	• Qualifications, standards, tests and educational requirements for registration and issuance of licenses and permits • Procedures for registration and licensing, including registration processes and licensing of labour mobility applicants and internationally trained/educated professionals • Codes of ethics** • Practice standards*** • Administrative procedures for review, investigation and disposition of complaints, hearings and reviews of registration decisions • Categories of membership and the rights, privileges and obligations attached to each • Requirements respecting conflict of interest • Minimum requirements in liability protection • Advertising • Registration of business associations, including eligibility and requirements • Requirements in relation to holding special meetings • Notice and service requirements in respect to documents to and from the governing body
By-laws	• The number, terms of office and remuneration* of board members and officers • Procedures for the appointment or election of officers

	• Fees for registration and licensing* • Rules for governing the council/association • Rules for calling and conducting meetings • Procedures for holding meetings

*Arguably, these items should be subject to government review because they have significant implications for the public and individual members. However, they are typically dealt with in by-laws so they can be updated more easily.
** Codes of conduct are sometimes incorporated by reference. It is recommended, however, that documents only be incorporated by reference when they are readily accessible to the public (e.g. available on-line free of charge).
*** Where practice standards require frequent updating, it may make sense to allows professions to adopt them by way of by-laws, in which case the legislation should include a requirement that standards be made publicly available (e.g. through web publication) and that members of the profession be notified of the changes in a timely way.

Complaint investigation and discipline

The way a regulatory body deals with complaints from the public about the actions of its members is the litmus test of self-regulation. The complaints process must be fair and participatory for complainants while respecting members' rights to procedural fairness and natural justice.[6]

The legislation should establish the process for laying a complaint, the regulatory body's powers with respect to investigating and resolving complaints, and any mechanisms for appeal. In crafting the process, it is important to balance the primary purpose of professional regulation (that is, to protect the public) against the public's interest in access to affordable service, anticipated costs to government, and members' rights to procedural fairness and natural justice as well as protections afforded by the Canadian *Charter of Rights and Freedoms*.

Procedural fairness, natural justice and *Charter* rights are not fixed standards, but vary depending on the stage of the complaint process, the potential prejudice to the professional and the risk to the public. The more significant the potential impacts on members, the higher the standard. Because these are legal concepts, complaint investigation and disciplinary processes should be developed in consultation with Department of Justice solicitors, legal counsel for the profession and the Office of Legislative Counsel, and take into account the specific risks and circumstances of each profession.

There are differences amongst professions and the risks they pose so the powers required to investigate and discipline members may differ as well. Typically, the most intrusive powers of investigation and discipline will only be conferred where the risks associated with misconduct are most serious.

[6] Stephen Owen, Q.C. Professionalism in the Public Interest. 1991 Annual Report of the Ombudsman on British Columbia.

For example, bodies should only be empowered to direct members to undergo physical and psychological examinations when less intrusive means of avoiding misconduct are clearly insufficient and failure to provide such powers would put clients or patients at risk of substantial physical or emotional harm. Where such powers of investigations are justified, they should be specifically conferred by the legislation and the legislation should provide for appropriate procedural safeguards.

At a minimum, legislation should require that members receive notice of any allegations made against them and be provided with an opportunity to respond before an unbiased decision-maker.

The table below highlights some key issues respecting complaints investigation and discipline that need to be addressed when drafting legislation.

Issues respecting complaints investigation and discipline		
	Issues	**Commentary**
Filing a complaint	• Who is permitted to initiate a complaint – directly affected parties, third parties, and/or the regulatory body? • What formal requirements must be met to initiate a complaint? • Are complaints against former members permitted?	Many statutes require complaints to be in writing or some other permanent form. They should specify to whom complaints must be submitted and any time limits that apply. In general, a governing body should have limited powers to initiate investigations in circumstances where there is no evidence of misconduct.
Complaint investigation	• Who is responsible for investigating complaints? • Are investigations a one or two-step process? • How is an investigation committee appointed and composed? • What notice requirements apply in respect to an investigation? • What powers does the investigator have? • What rights does the member being investigated have? • What timelines apply in respect to an investigation and decision making? • What sorts of orders may an investigator issue?	In establishing investigatory powers and procedures, the level of intrusion and potential prejudice to members and the public's interest in ensuring complaints are appropriately investigated should be taken into account. The two-step process involves staff completing a preliminary investigation to determine whether a full investigation should be undertaken or the matter can be resolved informally. Generally, investigation committees should include one or more public representatives.

	• What authority/duty will an investigator have to refer matters to a hearing committee or disciplinary panel? • What rights does a complainant have? • Does the complainant have a right to request a review by an independent review committee? • Are the results of investigations communicated? If so, how?	Members must be advised of complaints against them and provided with reasonable opportunities to respond. Investigators should be given only those powers required to investigate complaints. Typically, statutes provide them with powers to interview individuals with relevant knowledge, enter certain types of buildings and require documents to be produced. In addition, most allow investigators to seek court orders to seize documents and objects and require documents to be produced. The use of more intrusive powers (e.g. the power to force members to undergo medical examinations) should be limited to those circumstances where there is a significant risk to clients/patients that cannot be addressed through less intrusive means. There is a trend towards publishing the results of complaints.
Alternate dispute resolution	• Do investigators have the authority to resolve/settle complaints using alternative dispute resolution mechanisms (ADR)? • If so, in what circumstances is ADR/settlement available? • Is a disciplinary or other committee required to approve the resolution or settlement? • Must the resolution or settlement be made public?	Informal resolutions should be documented to ensure complainants and members are fairly and equitably treated. Publication of a resolution or settlement contributes to ensuring transparency and accountability of the profession. It is common for a resolution/settlement to be made public in the same way decisions issued by investigation or disciplinary committees are published.
Interim suspensions/restrictions (prior to full	• Who may order interim suspensions or restrictions? • What test must be met for issuing	Generally, interim suspensions and restrictions should only be permitted when there is an imminent and

investigation or review by a hearing committee or disciplinary panel)	interim suspensions or restrictions? • What notice requirements and other procedural safeguards apply when an interim suspension or restriction is being considered? • What time limits apply in respect to interim suspensions or restrictions? • Must notices of interim suspension or restrictions be published?	significant risk to the public that cannot be addressed by other means.
Disciplinary proceedings	• How is the disciplinary panel or hearing committee appointed and composed? • What notice requirements apply in respect to hearings, including disclosure of evidence to parties? • What procedural rights do members have? • Are hearings open to the public? • What time limits apply in respect to procedural matters and resolution? • What sanctions are available at the conclusion of a hearing? • Does the disciplinary panel or hearing committee have authority to issue or recommend sanctions or must it make recommendations to another body that imposes sanctions? • What requirements apply with respect to rendering decisions? • Are decisions published? • Can publication be banned? If so, in what circumstances? • What impact does criminal conviction have on disciplinary proceedings? • What are the rights and roles of complainants in hearings? • What authority does the panel or committee have to issue penalties and recover costs associated with hearings?	Professional disciplinary bodies are subject to the principles of fundamental justice, which require an unbiased and disinterested adjudicator, appropriate notice of allegations, an open and fair hearing, written reasons, and appropriate sanctions. Some courts have concluded there is a Charter obligation to hold open hearings unless there is a compelling reason to do otherwise. To ensure transparency and accountability, at least one-third of a disciplinary body's members should be public representatives. Individuals who participate in an investigation should be prohibited from being members of the disciplinary body hearing the matter. There is a trend towards making the results of disciplinary proceedings public for an appropriate period of time, in order to ensure transparency and accountability of the professions. However, it is important to balance the public interest in ensuring ready access to the information with the risk of unreasonable damage to a member's reputation. Many statutes allow disciplinary

		bodies to award costs against members who are successfully prosecuted. In NS, courts have indicated disciplinary bodies should avoid awarding costs that would in effect deny members a fair opportunity to dispute allegations against them.
Appeals	• Who may appeal a disciplinary decision? • What body hears appeals? • On what basis may an appeal be brought? • What are the timelines for filing an appeal? • Can a decision be stayed pending appeal? If so, in what circumstances?	In establishing an appeal process, it is important to take the skills, resources and experience of the particular profession into account. In general, disciplinary decisions should be appealable to the courts on errors of both fact and law unless the profession has sufficient resources and experience to justify limiting members' rights of appeal.

Offences and enforcement

The Department of Justice generally recommends that penalties be addressed in some detail in legislation. In particular, the legislation should establish the mental element of any offence, specify enforcement options and penalties available, and establish applicable limitation periods. If directors and officers of corporations are to bear personal responsibility for the actions of corporations, that too, should be spelled out.

The 2013 "Guide to Legislation and Legislative Process in British Columbia," provides the following additional guidance: If sanctions are to be included, the rule of law requires that the legislation be capable of being enforced in practice and not be written in the expectation that it will be enforced only in limited circumstances which are not described in the legislation (that is, as a matter of discretion). Provisions establishing penal sanctions should be reviewed to ensure they will be effective in obtaining compliance, are supported by effective enforcement mechanisms (such as inspection and search powers), are appropriate to the seriousness of the non-compliance, and are flexible enough to allow fair treatment of accused people.

In addition, it is recommended the following principles be applied when drafting provisions related to offences and enforcement:

- Offences involving prosecution through the courts should be reserved for the most serious infractions such as practicing without a license and fraudulent misrepresentation;
- Penalties associated with offences should be proportionate to the seriousness of the risk to the public. Imprisonment should be reserved for situations in which infractions raise serious risks of physical, psychological and/or economic harm to individuals;

- Other infractions (e.g. professional misconduct) should be dealt with through the association and/or college's disciplinary procedures to minimize the impact on public resources and reinforce the authority of the self-regulated profession; and
- In determining the allocation of fines payable upon conviction of an offence (as opposed to at the conclusion of a disciplinary proceeding), costs incurred by the Province as well as those incurred by the profession should be taken into account.

The table below highlights issues respecting offences and enforcement that need to be addressed in the course of preparing drafting instructions.

Issues respecting offences and enforcement	
Issues	**Commentary**
Should specific violations be identified as offences?	Identifying specific violations as offences in an act provides clarity and serves as a "visible" deterrent.
Should fines be specified in the Act?	Doing so provides clarity.
How much should the maximum fine be for each offence?	In determining the continuum of appropriate fines, consider potential for harm to the public, profession, members and clients; gravity/ seriousness of the offence/proportionality; reasonable/adequate deterrence; accountability; and public interest.
Should the maximum fine increase for subsequent offences?	This could be considered based on disregard for the initial penalty and continuing culpability.
Should imprisonment be available as a penalty?	Imprisonment should be reserved for those offences that pose major risks of physical, psychological or economic harm to individuals.
What is the time limit for commencing a prosecution?	Regulatory acts often have deadlines, which provide certainty. Generally, acts require that prosecutions commence within two years of the date of the alleged offence.
Who lays the information?	The act should specify who is empowered to lay an information. Generally, informations can only be laid by specific members of the profession's governing body and are prosecuted privately.
If there is a fine imposed, who gets the money?	Fine proceeds may be payable to the Province or the profession, but a balanced approach in which proceeds are shared as determined by the court may also be considered.
If an offence continues for more than one day, is each day that it continues a separate offence?	This must be specified if that is the intention.
Should the legislation shift the onus of proof for any offence (e.g. in a prosecution for practicing without a license, shifting the onus on the accused to prove they have a license)?	For more serious offences or where the accused faces potential imprisonment, a reverse onus provision could be held to be unconstitutional.

Should the Act specify the provisions of the *Summary Proceedings Act* apply?	There is no need to do so since the Act always applies.

Licensing business organizations

Traditionally, self-regulated professions licensed and regulated individual professionals and not companies, limited liability partnerships or other business organizations. The underlying assumption was that professionals should be held personally liable for the advice and services they provide. In addition, it was recognized that regulating business organizations is often more complex than regulating individuals.

In recent years, many jurisdictions have enacted or amended legislation to authorize some professions to license/register the business organizations through which individual professionals provide their services. Typically, that legislation also creates mechanisms designed to prevent individual professionals from using business organizations to avoid personal responsibility and liability. The mechanisms vary but in each case their primary purpose is protection of the public.

When a profession requests that legislation be enacted or amended to include provisions that would enable regulated activity to be undertaken through business organizations, the following should be considered:

- Protection of the public and the public interest is the primary goal of self-regulation. Not all circumstances warrant enabling professional practice through a business organization so the benefits to professionals should be weighed against the risks to the public in each case;
- There should be demonstrated demand within the profession, which is less likely in cases where most members are employed by institutions;
- The profession should be willing and able to fulfill its oversight responsibilities with respect to business organizations. In general, new professions should only be permitted to register and license individual members until such time as they can demonstrate they have the resources and maturity to regulate business organizations effectively;
- Proposed legislation should incorporate provisions designed to protect the public and maintain the individual responsibility and liability of the regulated professional; and
- The use of corporations or other business organizations should only be permitted in concert with mechanisms to ensure professionals continue to be held personally liable for the advice and services they provide. Such mechanisms may include:
    - Requiring that the board of directors to be controlled by licensed individuals or, where appropriate, that all members of boards be licensed individuals;
    - Restricting board membership to licensed individuals;
    - Requiring that a majority of shares be legally and beneficially owned by one or more licensed individuals;
    - Requiring that those who provide services through a corporation be licensed, and that the corporation also be registered, licensed or permitted;

- Restricting licenses to individual members but permitting corporations to practice under the authority of individual licenses;
- Requiring that licensing structures ensure responsibility for professional activities remains with the licensed individuals;
- Extending disciplinary powers so that they apply equally to licensed individuals and business organizations; or
- Restricting or requiring approval by the regulatory body of corporate names.

Departments should seek the advice of their Department of Justice solicitors regarding which mechanisms are most appropriate in each case.

Other resources

In addition to the resources contained in this guide, departments may wish to consult with the Executive Council Office (cabinet advisors), the Advisory Committee on Self-regulation, and the Fair Registration Practices Act Review Office.

The Council on Licensure, Enforcement and Regulation (http://clearhq.org) provides various resources and training that may be of assistance as well.

Appendix A: Fact Sheet for Proponents: Proposals respecting Self-regulation in Nova Scotia

Introduction

Treasury and Policy Board approved a new Policy respecting Self-regulated Professions on January 25, 2017. The objectives of the policy are to ensure the Board receives complete, accurate and relevant information upon which to make decisions respecting self-regulated professions and to improve the quality and consistency of submissions requesting new or amended legislation. To that end, the policy establishes tests for determining when legislative proposals respecting self-regulated profession will be approved and requires departments to conduct a thorough examination of all of such proposals before they are submitted to Executive Council for consideration. (The Policy may be viewed online at the Executive Council website.)

Professions do not have a “right” to self-regulate. Self-regulation is a privilege that is only granted when government is satisfied that a profession has the capacity and commitment to regulate itself in the best interests of the public, rather than in its own best interests. The powers granted to a self-regulated profession should only be exercised when and to the extent necessary to protect the public from real and substantial risks.

What self-regulation involves

The powers and duties associated with self-regulation should never be assumed lightly. The resources required to carry out the responsibilities of a self-regulated profession effectively are considerable. By definition, it is the profession – not government – that bears responsibility for establishing and enforcing professional rules and standards, and individual members who bear the costs of self-regulation through the payment of membership fees.

Specific responsibilities of a self-regulated profession include:

- governing and managing the body charged with overseeing the profession;
- setting standards and requirements to be met by those wishing to enter the profession;
- setting standards of practice for members of the profession;
- making and enforcing rules with respect to complaints investigation and discipline; and
- prosecuting offences under its legislation.

Proposing new or amended legislation

Legislation is usually required to create a new self-regulated profession or amend the powers and responsibilities of an existing profession.

New legislation: The first step in proposing new legislation is to complete the questionnaire attached as Appendix A, "Preliminary questionnaire respecting proposed self-regulation of a profession in Nova Scotia". Health care professions should also provide information regarding the factors set out in Appendix B. "Information required by the Department of Health and Wellness".

The next step is to forward a written proposal to the appropriate Minister. (For example, health care providers should direct proposals to the Minister of Health and Wellness.) The proposal should include at least the following:

- a letter requesting that the government enact new legislation respecting the profession;
- a brief description of the proposed legislation; and
- a completed questionnaire (Appendix A) and, if applicable, the additional information required by the Department of Health and Wellness (Appendix B).

Please note that proponents are discouraged from including draft legislation with their proposals. In Nova Scotia, legislation is drafted by the Office of Legislative Counsel and only after a formal request from the Minister has been approved by Executive Council.

Amendments to existing legislation: The first step in proposing amendments to existing legislation is to complete the questionnaire attached as Appendix C, "Preliminary questionnaire respecting proposed amendments to legislation governing a self-regulated profession in Nova Scotia".

The next step is to forward a written proposal to the Minister responsible for the legislation. The proposal should include at least the following:

- a letter requesting that the government amend legislation governing a self-regulated profession;
- a brief description of the proposed amendments; and
- a completed questionnaire (Appendix C).

Please note that proponents are discouraged from including draft amendments with their proposals. In Nova Scotia, all amendments are drafted by the Office of Legislative Counsel and only after a formal request from the Minister has been approved by Executive Council.

Departmental Review of Proposal and Decision Making

New Legislation: When a proposal for new legislation is received, departmental staff undertake a preliminary analysis to confirm that:

- There are substantial risks to clients, patients and/or the public that are not remote and cannot be addressed more efficiently and effectively through means other than self-regulation; and

- The profession has or can be expected to develop the capacity to self-regulate.

Based on the preliminary analysis, staff may recommend that the proposal proceed no further or, alternatively, ask the proponent to provide further information to enable them to do more in-depth analysis to determine whether the proposal complies with directives set out in the policy.

Once staff are satisfied that the proposal complies with those directives and should be recommended, staff prepare a formal request for legislation, which must be approved by Executive Council before legislation is drafted.

Amendments to existing legislation: When a proposal for amendments is received, departmental staff undertake a preliminary analysis to determine whether the proposed amendments address pressing or substantial issues, and will enhance the profession's ability to regulate itself in the public interest.

Based on the preliminary analysis, staff may recommend that the proposed amendments proceed no further or, alternatively, ask the proponent to provide further information to enable them to do more in-depth analysis to determine whether the proposed amendments comply with directives set out in the policy.

In conducting their analysis, staff will normally take a narrow approach that focusses on the specific amendments requested by the profession. However, they may recommend a more fulsome review of the entire statute after considering the history of the existing legislation, the extent to which the existing legislation is consistent with government's current policy objectives, the past performance of the profession and the significance and urgency of the issues addressed by the amendments.

Please note that, although departments review proposals and make recommendations in respect to them, only Executive Council (Cabinet) has the authority to decide whether legislation respecting a self-regulated profession will be prepared and introduced in the House of Assembly.

Appendix A: Preliminary questionnaire respecting proposed self-regulation of a profession in Nova Scotia

Before engaging in a formal analysis of any proposal for self-regulation, government requires certain information. This questionnaire will assist you in providing that information. In general, the Province of Nova Scotia only considers granting the powers of self-regulation when an evidence-based case can be made that it is in the public interest to do so.

Section I: Tell us About the Profession Proposing Self-Regulation
Provide the name and description of the profession, including the general services it provides.
What are the educational requirements to practice the profession? *If no specific education is required, describe the types of education attained by those currently practicing the profession.*
Is the proposal for self-regulation supported by a substantial majority of the profession's practitioners? *If not, why not? Please describe the method used to consult with practitioners, including with those who are members of other organizations and who are not members of any organization.*
Attach a copy of any standards being proposed for the profession. *Standards should include at least a description of the profession's scope of practice, the competencies required to practice safely (including who developed them) and any programs that provide the education & training needed to ensure individuals meet the standards.*

Section II: Tell us About the Organization Proposing Self-Regulation
Name of the organization.
Describe the organization including its purpose, membership and governance structure. What percentage of those practicing the profession does the organization represent?
What other organizations (if any) exist to represent those practicing the profession?
If other organizations exist, have they been consulted and what was the outcome of that consultation?

Section III: Risks to the Public
What are the specific risks to the public that would be addressed by self-regulation? *The primary reason for any decision to enable self-regulation is to mitigate risks to the health and safety of the public. The applicant should demonstrate that there is a substantial risk to the public associated with the delivery of the profession's services and that self-regulation is the most efficient and effective means of mitigating that risk. Complete the table below and fully describe each risk to the public, how self-regulation would mitigate the risk and any other options for mitigating the risk other than self-regulation (for example,*

voluntary codes or public education).		
Describe the risks to the public if this profession is not self-regulated.	**How would self-regulation mitigate this risk ?**	**Other options considered by the organization for addressing the risk**

Who are the primary clients of this profession? *This may include individuals and/or organizations*
What percentage of practitioners deliver services independently and what percentage work with or under the supervision of others (including other regulated professions)?
What options currently exist for clients to address concerns about goods or services provided by the profession's practitioners? *For example, are there voluntary investigative or disciplinary processes for the profession?*
What complaints, if any, has your organization received from clients in the last 5 years? *Provide specific examples of complaints received which could have been addressed through self-regulation.*
Describe how public safety is at risk because the profession is not regulated. *Include specific examples of incidents in which a lack of self-regulation resulted in harm to members of the public. Include statistics on the number and types of complaints received from the public.*
How will the public and those receiving services from the profession benefit from self-regulation?
Briefly summarize any research or other evidence that supports self-regulation of the profession. *Attach copies of any documents referenced.*

Section IV: Competition, Trade and Regulation in Other Jurisdictions

Do national or international standards for education and/or practice of the profession already exist? *If so, please attach a description of those standards and explain how they align with the standards being proposed.*
Is the profession self-regulated in any other province or U.S. state or other international jurisdiction? *If so, please provide specific examples and compare the standards/requirements in those jurisdictions with the ones being proposed for Nova Scotia.*
What percentage of the profession's current practitioners will be prevented from practicing if the proposal is accepted by government? *Please explain why they would be prevented from practicing the profession.*
Describe any opportunities for bridging that are to be provided to current practitioners who could not satisfy the minimum qualifications to be registered or licensed under the proposed standards?
Does the scope of practice for this profession overlap with that of any other profession? *If so, describe how such overlaps would be addressed? Also describe how self-regulation of the profession would affect people working in related professions.*

Appendix B: Information required by the Department of Health and Wellness

1) The extent to which the practice of the health profession may involve a risk of physical, mental, or emotional harm to the health, safety, or well-being of the public, having regard to:

(a) the services performed by practitioners of the health profession;

(b) the technology, including instruments and materials, used by the practitioners;

(c) the invasiveness of procedures or mode of treatment used by the practitioners.

2) The degree to which the health profession is:

(a) practiced under the supervision of another person who is qualified to practice as a member of a different health profession, or

(b) practiced in a currently regulated environment.

3) The extent to which the health profession has demonstrated that there is a public interest in ensuring the availability of regulated services provided by the health profession.

4) The extent to which the services of the health profession provide a recognized and demonstrated benefit to the health, safety, and well-being of the public.

5) The extent to which there exists a body of knowledge that forms the basis of standards of practice for the health discipline.

6) Whether members of the profession are rewarded a certificate or degree from a recognized post-secondary educational institution.

7) Whether it is important that continuing competence of the practitioner be monitored.

8) The extent to which there exists within the health profession recognized leadership which has expressed commitment to regulate the profession in the public interest.

9) The likelihood that a college established under legislation would be capable of carrying out the duties imposed by the Act, having regard to factors which may affect the viable operation of the college.

10) Whether regulation would be likely to limit the availability of services contrary to the public interest.

Appendix C: Preliminary questionnaire respecting proposed amendments to legislation governing a self-regulated profession in Nova Scotia

1) Statute to be amended
2) Name of individual or organization proposing the amendments
3) Briefly describe the purpose of the proposed amendments
4) Why are the amendments being proposed at this time?
5) Is it anticipated that further amendments will be proposed in the next 2-3 years?
6) What risks would be addressed by the amendments?
7) How would the amendments contribute to improving regulation of the profession in the public interest?
8) Would the amendments result in additional costs for members or potential members of the profession, clients or the public? If so, please quantify the expected costs.
9) Would the amendments affect access to service in some areas of the province?
10) Would the amendments make it more difficult for practitioners to gain entry to the profession upon relocating to Nova Scotia from other jurisdictions?
11) Have members of the profession been consulted in respect to the proposed amendments? If so, please describe the consultation undertaken and any feedback obtained.
12) Would other professions or other stakeholders be affected by the amendments? If so, have they been consulted? If so, please described the consultation undertaken and any feedback obtained.

Appendix B: Engagement

Why Engage?

Proper engagement enables better planning for better outcomes in relation to any regulatory regime because engagement:

- Enables an understanding of the attitudes and positions of those affected;
- Contributes to ensuring alternatives have been considered in developing recommendations, options or positions;
- Confirms the evidence, information and other data used to form conclusions;
- Helps to identify barriers or issues relating to implementation;
- Helps to uncover unexpected consequences; and
- Improves or maintains relationships with important stakeholders.

(Adapted from The Australian Government Guide to Regulation, Government of Australia, 2014)

What is engagement?

Engagement involves exchanging communications with an audience, usually thoughtfully selected, for a particular purpose. It can and should take different forms depending on the reasons for the engagement and the outcomes sought. Engagement with stakeholders or the public includes a variety of practices that can be conceptualized as a continuum of engagement.

One of the best known representations of that continuum has been developed by the International Association of Public Participation (IAP2). Called the *IAP2's Spectrum of Public Participation*, it illustrates an increasing level of stakeholder (or public) impact on decisions which result from the form of engagement chosen. The form of engagement corresponds to the participation required to accomplish the goals of the engagement, including how the information and opinions voiced and received will be treated and used.

The Spectrum is a tool for determining what form of engagement is most appropriate in a given case and for planning the engagement. In the context of dealing with requests for self-regulation, the preferred options will usually be to "consult" or "involve" stakeholders while ensuring government retains the ultimate power to make decisions.

Engagement practice	**Inform**	**Consult**	**Involve**	**Collaborate**	**Empower**
Participation Goal	To provide participants with balanced and objective information to assist them	To obtain feedback on analysis, alternatives or decisions	To work directly throughout the process to ensure that concerns and aspirations are	To partner with participants in each aspect of the decision including the development of	To place final decision making into the hands of participants

	understanding the problem or issues, alternative opportunities or solutions		consistently understood and considered	alternatives and identification of the preferred solution	
Feedback to participants	We will keep you informed	We will keep you informed, listen to and acknowledge concerns and aspirations, and provide feedback on how participants' input influenced the decision or way forward	We will ensure that concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how the input influenced the decision	We will look to participants for direct advice on formulating solutions and incorporate the advice and recommendations into the decision to the maximum extent possible	We will implement what you decide
Sample techniques	Fact sheets, websites, open houses	Public comments, focus groups, surveys, public meetings	Workshops, deliberate polling	Advisory committees, consensus building, participatory decision making	Participant juries, ballots, delegated decision making

(adapted from IAP2's Spectrum of Public Participation, 2007)

<u>Principles of Engagement</u>

Regardless of the reach, extent or complexity of the planned engagement, there are best practice principles for engaging stakeholders. These principles include:

- Openness – Be open about the purpose of the engagement with stakeholders, regardless of the sophistication of the techniques used; articulate clearly the goals or purpose of engaging with stakeholders.
- Transparency – State the reasons for engaging with stakeholders at this time; clearly describe the entire engagement process; appropriately share expert information and data to inform the debate or discussion.
- Accountability – Communicate the uses to which information or input will be put, the role participants are to play in regards to informing decisions and what will happen to their input; specify how and when participants will receive feedback on their input and its subsequent use.

- Fostering understanding – Structure the engagement process to enable learning, the sharing of perspectives and opinions.
- Social and economic inclusiveness – Be sure all engagement techniques and events are barrier free; use techniques that are accessible to desired participants.

Who should be engaged?

In many cases, there will already be well-established means of communicating with the stakeholders who will be most affected. Typically, engagement in respect to establishing a new self-regulating profession or altering the structure or governance of one would start with those stakeholders.

Problems will arise, however, if the target group for the engagement is too limited in size or scope. It is essential to consider not only those directly involved, but others who may be indirectly affected, including in some cases the broader public. Who might be significantly affected? Who should be entitled to have a voice during the initial engagement? Should the targeted audience be different in subsequent consultations? Rather than assume limited impact, it is best practice to obtain input from the broad stakeholder groups.

It should also be borne in mind that a government department or office may have a legislated or other interest in the development of a self-regulating body and is therefore an important potential stakeholder.

The participation of these departments or offices in an engagement or its planning can be critical in terms of providing information or other insights. It is also possible that expertise or other forms of government assistance could be available from these departments or offices in planning and conducting an engagement.

When should engagement happen?

In general, engagement should not be considered a one-time event. In the case of developing a self-regulating profession, the initial contact is usually with the individuals, stakeholders, and allied professionals who would be directly affected. However, given the potential complexities, issues and range of opinions, engagement should be a well thought out process that extends until a way forward is recognized and accepted. This can mean different forms of engagement at different stages of developing and implementing the self-governing body, or with different groups of affected stakeholders.

Planning to engage

Good engagement is not just about being polite and courteous. Stakeholders need to know their opinions count on matters that affect them. Pre-determining the engagement process is essential to gaining useful input and maintaining stakeholder interest, participation and good will. Once the goals and purposes of engagement have been clarified, a plan should be developed in advance of reaching out to stakeholders.

Because engagements with stakeholders can take many forms, there is no single way to create a plan. Knowledge of the stakeholders' awareness of the issues, information already obtained or received, and experience with stakeholder groups will help shape an appropriate engagement plan.

While engagements vary, sound engagement plans typically include the following elements, though they need not be addressed in a particular order:

1. **Alignment**: Ensure the rational for engaging with stakeholders is legitimate, the intent of the process is clear, and alignment with all legislated or regulatory requirements, or government department/office strategies, policies and principles.
2. **Decisions**: Define the scope of the decision to be made or frame the discussion to be held.
3. **Participants**: Identify the participants and their issues (if possible) and use the information to refine the scope of the discussion if necessary.
4. **Design:** Identify the details and logistics for the engagement exercise.
5. **Engage:** Depending on the purpose of the engagement, communicate broadly with stakeholders using a variety of tools and opportunities, or, create a two-way dialogue for deeper discussions and input.
6. **Analyze and decide:** Create a process to sort, theme, and distill information gathered through the engagement process. Validate the process with stakeholders to ensure objectivity. Decisions should reflect the information gathered through the engagement process.
7. **Report:** Communicate the discussion results, the rational for decisions made, or other findings to stakeholders using established methods from the process design.
8. **Evaluate:** Evaluate the process and outcomes of the engagement process as well as its results.

(Adapted from the Patient and Public Engagement Model in *Involving Patients and Citizens in Decision Making: A Guide to Effective Engagement*, Capital Health, Halifax, NS.)

Other Resources

International Association for Public Participation (IAP2), www.iap2.org

Capital Health, Nova Scotia Health Authority, Central Zone www.cdha.nshealth.ca/involving-patients-citizens

Australian Government, Guide to Regulation, www.cuttingredtape.gov.au