

# The Changing Regulatory Landscape: Considering the Path Forward



**Nurses Association of New Brunswick**

September 26, 2022

MCINNES  
COOPER

# Topics to cover

- Historical context of regulation of professions
- Evolution toward regulatory v/s Association mandates
  - Informed by lack of confidence of public and desire to focus on public interest
  - Informed by formal Reviews initiated by either regulator or government
- Current Trends/Legislative developments
- Why change is needed now



# The Foundation of Self-regulation

- Self-regulation is a **statutory privilege** granted to a profession, enabling the profession to regulate itself in the public interest.
- Supreme Court has frequently stated that primary purpose of self-governing professions is the protection of the public.
- The current *Nurses Act* includes reference to the public interest:

(o) respecting and governing such other matters and things as the Board considers appropriate to advance the interests of the public, the Association or the members;

# The Foundation of Self-regulation

- However, the current *Nurses Act* puts welfare of members of the profession, the Association and members of the public on the same plane, without emphasizing public interest priority, which is recognized as the key to effective self-regulation.



# The Foundation of Self-regulation

- **Preamble:**

- *“Whereas it is desirable, in the interests of the public and the members of the nursing profession to continue the NB Association of Registered Nurses as a body corporate for purpose of advancing and maintaining the standard of nursing in the Province, for governing and regulating those offering nursing care and for providing for the welfare of member of the public and the profession.....”*

# Historical Context of Self-Regulation

- **Confederation - WWII**

- Professional regulation under jurisdiction of provinces, rather than fed gov't
- Various bodies sprang up with a focus on interests of members and standards of professions – eg Graduate Association of New Brunswick, 1916

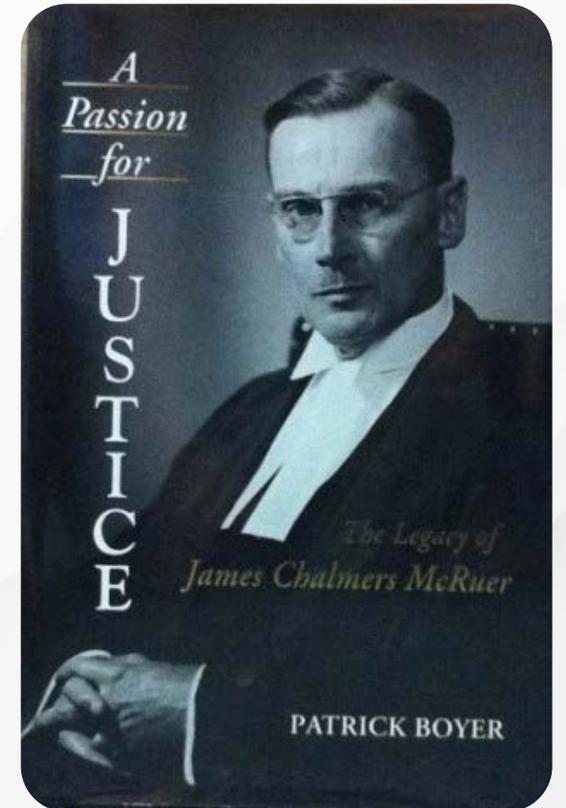
- **Post-WW II**

- Governments began to recognize the advantages of administrative tribunals, including professional regulatory bodies
  - Peer adjudication
  - Cost effective for government
- Rise in union movement – often within the Associations



# Historical Context Cont'd

- **1960's – 1970's**
  - Questions began to be asked as to whether a self-governing model was in the best interest of the public, and sufficiently protected the rights of the individual
    - Pendulum swinging toward focus on members
- **McRuer Report (1971)**
  - Conflict of interest
  - Closed shop
  - Old boys/girls



# Historical Context Cont'd – McRuer Report

*“The traditional justification for giving powers of self-regulation to any body is that the members of the body are best qualified to ensure that proper standards of competence and ethics are set and maintained. There is a clear public interest in the creation of and observance of such standards... **but there is a real risk that the power may be exercised in the interests of the profession or the occupation rather than that of the public. This risk requires additional safeguards to ensure that injury to the public does not arise.**”*

*- The Honourable James McRuer (1971)*

# Historical Context Cont'd



- **1980's**

- Charter of Rights lead to more “rights consciousness” by both public and members of the profession
- Statutes began to change in their structure to reflect balance between rights of/duties to public and rights of/duties to members
- Competition Bureau began to question “monopolies” of professions

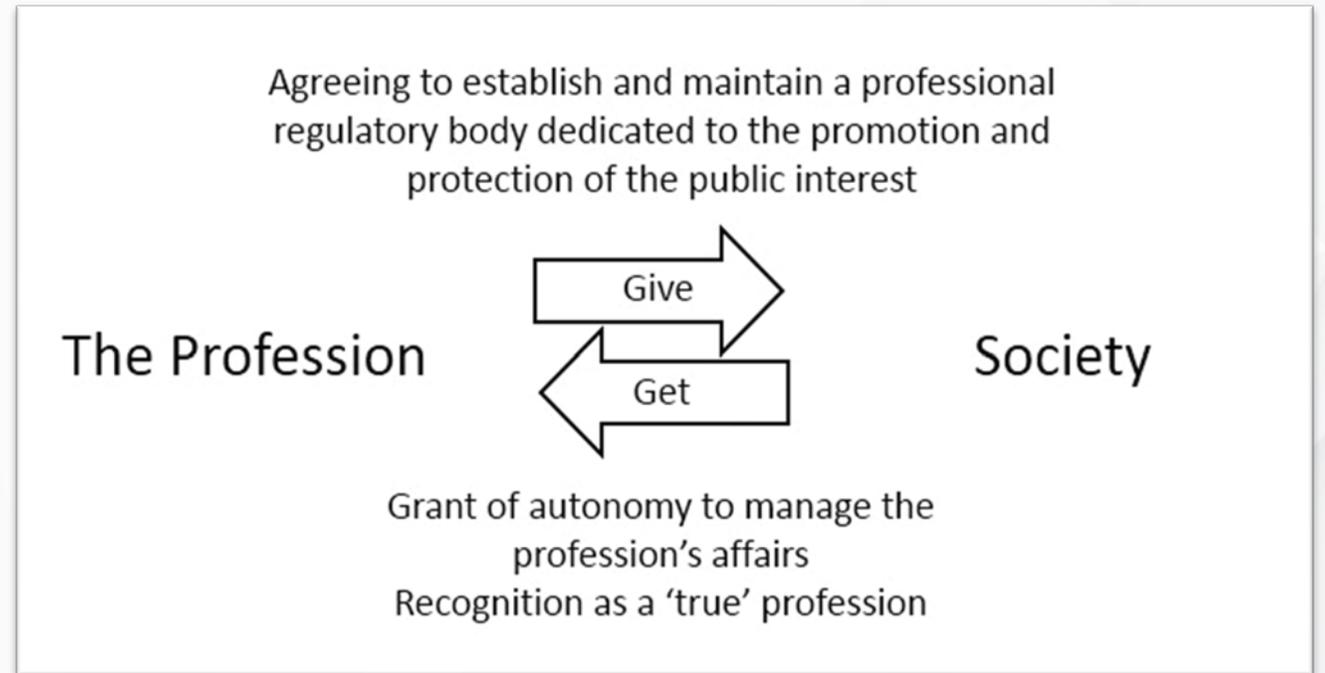
# Historical Context Cont'd

- **1990's – 2000's**
  - Public concern that pendulum was swinging too far in favour of members of the profession
  - Public outcry over outcomes of certain disciplinary cases
    - Insufficient transparency
    - Increase in sexual misconduct violations
  - Began to see statutory language mandating that public interest was paramount purpose of regulatory body

# Historical Context Cont'd

- **2010 - Present**

- Pendulum swinging toward more public interest focus/more patient focus driven by series of Reviews/Inquiries – some initiated by government and some initiated by regulators



# Regulators are Increasingly Subject to Scrutiny...

- From the public
- From the governments
- From registrants

**B.C. doctors urge action on colleague spreading COVID-19 misinformation**



**Ontario directs regulator to register internationally trained nurses more quickly**

*Sylvia Jones has asked for reports from the colleges in two weeks on how they will accomplish that.*

**Supervisor appointed to oversee denturists**

*Ontario's Health Minister is taking the unprecedented step of recommending an outside supervisor take over the regulatory body for the province's denturists, after an auditor's report uncovered numerous serious shortcomings with the agency.*

Blackwell  
December 16, 2011 • 3 minute read • [Join the conversation](#)

**Law Society of B.C.'s governance structure 'not fit for a modern regulatory body': expert review**

British Columbia  
**Report slams B.C. College of Teachers**



Montreal  
**Quebec doesn't trust engineers to regulate themselves**

**B.C. to end self regulation of real estate industry**

Province will hire a new superintendent of real estate, who will take over the rule-making, oversight and disciplinary powers

By Laura Kane, The Canadian Press  
June 29, 2016

# College of Nurses of Ontario – Wettlaufer



# College of Nurses of Ontario: The Wettlaufer Inquiry Report

**Public Inquiry into the Safety  
and Security of Residents in  
the Long-Term Care  
Homes System**

The Honourable Eileen E. Gillese  
Commissioner



**Commission d'enquête  
publique sur la sécurité des  
résidents des foyers de soins  
de longue durée**

L'honorable Eileen E. Gillese  
Commissaire



**COLLEGE OF NURSES  
OF ONTARIO**

**ORDRE DES INFIRMIÈRES  
ET INFIRMIERS DE L'ONTARIO**

<https://longtermcareinquiry.ca/en/final-report/>

# Government Intervention: College of Denturists of Ontario

## Supervisor appointed to oversee denturists

*Ontario's Health Minister is taking the unprecedented step of recommending an outside supervisor take over the regulatory body for the province's denturists, after an auditor's report uncovered numerous serious shortcomings with the agency.*

Tom Blackwell

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## Rapports du ministère

### Examen opérationnel et vérification de l'Ordre des denturologistes de l'Ontario

Par PricewaterhouseCoopers

8 mars 2012

En mai 2010, la ministre de la Santé et des Soins de longue durée a engagé Pricewaterhouse Coopers afin de réaliser un examen opérationnel et une vérification de l'Ordre des denturologistes de l'Ontario. La ministre de la Santé et des Soins de longue durée a exigé cet examen opérationnel et cette vérification après qu'un certain nombre de préoccupations a été soulevé concernant les activités de l'Ordre.

# College of Denturists of Ontario



- Ontario Ministry of Health and Long-term Care appointed a college supervisor for the CDO on March 26, 2012.
- Supervisor had exclusive right to exercise Council powers, and to provide direction to all employees and appointees of the College:
  - Exception – members of statutory committees.

# Transparency Initiatives



- Full Notices of Hearing
- Criminal findings of guilt
- Bail conditions
- Cautions\*
- Remedial Activities\*
- Registrations in other jurisdictions
- Discipline findings in other jurisdictions
- Criminal charges related to a Denturist's practice
- Avis d'audience complet
- Constatations de culpabilité au pénal
- Cautionnement sous conditions
- Mises en garde\*
- Activités correctives\*
- Inscriptions dans d'autres juridictions
- Conclusions disciplinaires dans d'autres juridictions
- Accusations criminelles liées à la pratique d'un denturologiste

# The First Canadian “Cayton” Report

## An Inquiry into the performance of the College of Dental Surgeons of British Columbia and the Health Professions Act

December 2018

### Rip up current system and start over, recommends review of B.C.'s professional health colleges



Review comes after a year of issues in colleges for dental surgeons, chiropractors and naturopaths



Bethany Lindsay · CBC News ·

Posted: Apr 11, 2019 12:07 PM PT | Last Updated: April 12, 2019



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

# Additional Reports/Reviews of Canadian Nursing Regulators

A review conducted for the  
Saskatchewan Registered Nurses  
Association

May 2019

<https://www.srna.org/wp-content/uploads/2019/05/Professional-Standards-Authority-Review-May-2019.pdf>

 Governance Solutions

May 2020



[http://www.nanb.nb.ca/media/news/CARN\\_A -Governance Executive Summary -  
\\_E.pdf](http://www.nanb.nb.ca/media/news/CARN_A-Governance_Executive_Summary_-_E.pdf)

A review conducted for the  
College of Registered Nurses of  
British Columbia

April 2016

[https://www.professionalstandards.org.uk/docs/default-source/publications/special-review-report/a-review-conducted-for-the-college-of-registered-nurses-of-british-columbia-\(april-2015\).pdf?sfvrsn=49db7120\\_14](https://www.professionalstandards.org.uk/docs/default-source/publications/special-review-report/a-review-conducted-for-the-college-of-registered-nurses-of-british-columbia-(april-2015).pdf?sfvrsn=49db7120_14)

# Regulatory Developments

- **Regulatory reviews have continued**

- Government initiated and self-initiated:

- [Harry Cayton, Professional Regulation and Governance, Report of a Governance Review of the Law Society of British Columbia \(2021\)](#)
- [October, 2021 Report Card issued by the Ontario Ministry of Health and Ministry of Long-Term Care respecting the regulatory performance of the regulated health professions in Ontario](#)
- [Regulating Healthcare Professionals, Protecting the Public - a consultation document prepared by the government of the UK in 2021](#)

- **GOVERNMENTS HAVE INTERVENED WITHOUT WAITING FOR REVIEWS**

# Example of “directing” a College



Health Minister Tyler Shandro has directed the College of Physicians and Surgeons of Alberta to change its standards of practice for physicians in an attempt to stop doctors from leaving their practices. (CBC)

# Standard: Job Action



**An entire group of regulated members or an entire hospital department must not engage in a withdrawal of services for the purpose of job action unless all the requirements of clauses 3-6 are met.**

# Other examples of government intervention

- Mandatory Revocation for Sexual Misconduct (Amendments to Ontario Health Professions Procedural Code)

To Zero: Independent Report of the Minister's Task Force on the Prevention of Sexual Abuse of Patients and the *Regulated Health Professions Act, 1991*

STANDARD OF PRACTICE  
S-014

- A sexual relationship with a patient is prohibited. Under the *RHPA*, the following types of sexual abuse will result in the revocation of a member's licence:

# Other examples of government intervention



- **Proposed Common Foundation Legislation**
- **Objectives:**
  - Ensure that health profession regulation oversight keeps pace with evolving best practices in the public interest
  - Ensure consistency of legislation and regulatory mechanisms, while improving the timeliness and efficiency of updates to legislation and regulation
  - Provide flexibility for health profession oversight including mechanisms for sharing expertise and resources through multidisciplinary oversight; Provide a clear long-term strategy for health profession
  - Provide a clear long-term strategy for health profession regulation

# NS Proposal



- **Support for:**

- Multi-jurisdictional practice
- Telehealth consistency
- Standardization of information available to the public
- Common standards for issues like sexual misconduct; social media
- Common duties for all regulated professionals (eg, duty to cooperate, duty to report, etc)
- Ministerial intervention

# Other examples of Government intervention

Alberta: Bill 23 (introduced May, 2022)

*The current legislation regulating these organizations causes inconsistencies and inefficiencies, and parts of it are outdated. Streamlining Alberta's professional laws would reduce red tape, assist in attracting job-creation investment, help professionals from other provinces and countries have their credentials recognized in Alberta and protect public safety.*

-Extract from Alberta Government announcement

# College Performance Measurement Framework

- **Government in Ontario has taken performance measurement to heart:**

***October, 2021 Report Card issued by the Ontario Ministry of Health and Ministry of Long-Term Care respecting the regulatory performance of the regulated health professions in Ontario***

# Best Practices Implemented by Regulators and Applauded by Government - Ontario

- College of Midwives posts meeting materials publicly and identifies public interest rationale and evidence supporting each topic – also includes regulatory impact assessment that identifies risks and assesses potential impacts and options to mitigate those risks
- College of Audiologists developed internal DEI strategy and initiated an anti-BIPOC racism working group with regulatory partners to influence a broader DEI approach across Colleges
- College of Pharmacists partnered with physicians, Ministry of Health, academics, patients and registrants to develop quality indicators for profession that are aligned with Ontario health system indicators.

# Closer to Home...

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## Stabilizing Health Care: An Urgent Call to Action



# Closer to Home...



**Recruitment and training** – Government will work with New Brunswick’s health-care professional regulatory bodies and its post-secondary institutions on three specific goals: developing innovative education and clinical training models; shorter training programs combined with experiential learning; and speeding up the recognition of the foreign qualifications of health professionals trained abroad. The New Brunswick Medical Society will become partners in the province’s medical recruitment and retention efforts.

# Closer to Home...

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- **New Brunswick Fair Registration Practices Act**

# So, what Happens when Regulators Fail to Regulate in the Public Interest?

**When the public and governments lose confidence in a regulator's ability to regulate in the public interest, we have seen the following scenarios:**

- Governments ordering external reviews, investigations, and audits of the regulator (**Various Cayton Reports**);
- Governments taking control of, or appointing a third party to take control of a regulator (**College of Denturists of Ontario, BC Teachers College**); and
- Governments directing a regulator to take specific action (Ontario report card; Alberta; NS Common Foundation Legislation; NB gov't initiatives).



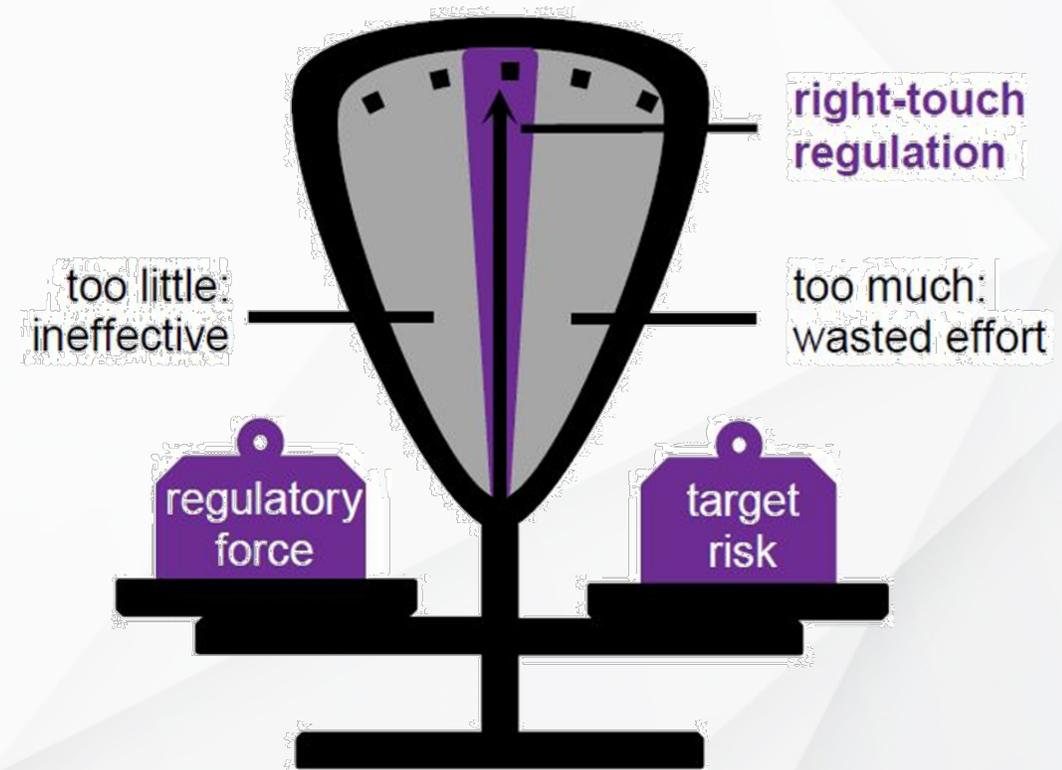
# Focus on public interest/patient interests must be paramount

- Self-regulating bodies must not put the individual interests of members/registrants/the profession above the public interest.



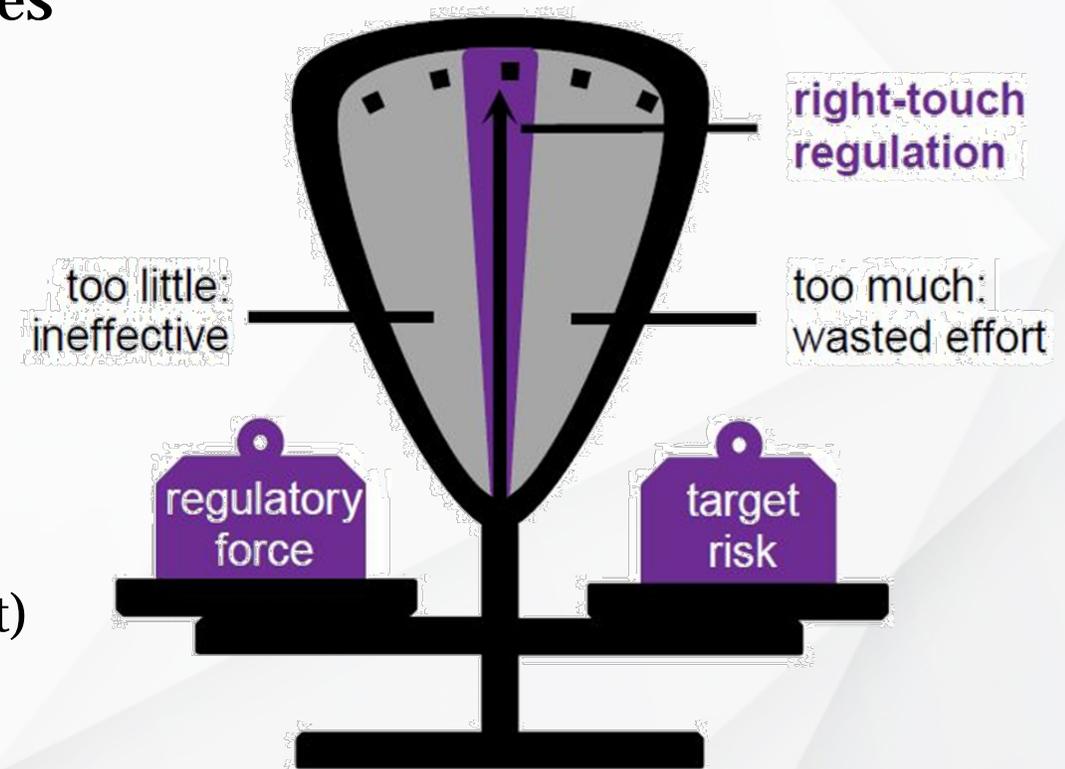
# Key Trends and Best Practices: Right Touch Regulation

- **Proportionate, Consistent, Targeted, Accountable, Agile, and Outcome-focused.**
  - Closed hearings → open hearings
  - No or limited publication of decisions → Publication in varying ways
  - No public members → mandating a minimum number of public members
  - Professional conduct process is punitive → process must be remedial
  - Complainants told little → Full decisions



# Key Trends and Best Practices: Right Touch Regulation Cont'd

- Transparency and accountability key themes of concern from governments
- Some regulators taking approach to new heights:
  - Open Board meetings; publication of Agendas and minutes;
  - Holding hearings in location of complainants;
  - Support to complainants (eg sexual misconduct)
  - Publication on website of all undertakings; conditions or restrictions



# Key Trends and Best Practices: Standards of Good Regulation – Professional Standards Authority

## 1.) General:

- Regulator provides accurate and accessible information to public, is clear about its purpose, reports on its performance and addresses concerns from governments and public.

## 2.) Guidance and Standards:

- Regulator maintains up-to-date standards, guides registrants in applying the standards, and prioritizes patient service and user-centered care and safety.

## 3.) Education and Training:

- Regulator maintains up-to-date standards for education and training, has mechanism for ensuring educational providers meet regulators requirements, and takes action when concerns about training arise.

# Key Trends and Best Practices: Standards of Good Regulation – Professional Standards Authority Cont'd

## 4.) Registration:

- Regulator publishes an accurate register including restrictions and conditions, maintains fair and transparent registration process, and has system to ensure registrants continue to be fit to practise.
- Risk of harm to the public and damage to public confidence in the profession is managed in a “right touch” and proportionate manner.

## 5.) Professional Conduct/Fitness to Practice:

- Regulator enables anyone to raise a concern about a registrant and ensures all parties to a complaint are supported to participate effectively in the process.
- Regulator’s process for examining and investigating complaints is fair and efficient, and ensures that the public is protected at each step: prioritizes complaints based on risk to public, seeks interim orders when appropriate.

# Regulatory Developments

- **Key themes arising from recent reviews & reports:**
  - Dual mandates gone
  - Well articulated public interest focus (patient safety focus)
  - Fewer regulators better than more (encouragement to group complementary regulators together under one body)
  - Governing bodies should be right size: 7-12
  - Governing bodies should be elected/selected based on competencies not geography or other constituencies

# Regulatory Developments

- **Key themes arising from recent reviews & reports:**
  - Move toward more appointment processes (100% UK and Australia)
  - Increased number of Public Representatives (minimum 50% in Alberta)
    - “Shared regulation” or “Co-regulation”
  - Focus on rigorous vetting process before election/selection and rigorous orientation for onboarding, and ongoing PD for Board members
  - Red Tape reduced in registration/licensing

# Regulatory Developments Cont'd

- **Key themes arising from recent reviews & reports:**
  - Fitness to Practice processes to address issues of addiction, health issues as alternative to discipline
  - Greater transparency in terms of publication of hearing decisions and restrictions/conditions on licences
  - Increased accountability requirements to government
  - Ability to appoint replacements for governing Boards/Councils
  - Increased use of Advisory Groups of members of the public as part of stakeholder strategies to promote transparency and accountability

# Key Trends and Best Practices: How Regulator's Have Reacted

## Alberta:

- Nursing regulator's voluntary shift to single mandate, strengthened focus on PSA's "Right Touch Regulation" to inform regulatory decisions.

## Nova Scotia:

- 2019 "**One Nursing Regulator**"

## Ontario:

- "**Vision 2020**" Report which received gov't support in form of legislative change.

# Why Now is the Time to Consider Legislative Change in New Brunswick

- Increasing public criticism and loss of confidence in healthcare system/patient safety with dual mandate structure
- Public confidence equals government confidence
- Public confidence requires clarity of role and focus on public interest
- Public confidence requires regulatory processes that are fair and transparent
- Better to learn from others, rather than have legislation imposed upon you



# Conclusion

- Process for change needs to be consultative
- Stakeholder support important
- Process for consultation starts now



# Questions?



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