



An assessment of Yukon's framework for regulating health professionals

May 2022



Background

Mandate

In light of recognized risks and challenges associated with the Yukon's current model of health professional regulation, the Premier's July 5, 2021 mandate letter to the Minister of Community Services included direction to "begin work to revise the *Health Professions Act* to improve how we regulate healthcare service professionals." As a first step to advance this commitment, the Department of Community Services undertook an assessment of the territory's current systems and processes for regulating health professionals.

To support this work, the Department worked with two expert contractors. Mr. Harry Cayton is a former chief executive of the United Kingdom's Professional Standards Authority, and an internationally recognized expert in professional regulation. The British Columbia College of Nurses and Midwives (BCCNM) regulates nurses and midwives in British Columbia, and regularly provides support and advice to other regulators on a cost recovery basis. Mr. Bradley Chisholm, the BCCNM's Chief Officer-Strategy and Governance, provided advice and support in this self-assessment.

The findings of this assessment will inform the development of options and recommendations for fulfilling the Minister's mandate to improve health professional regulation.

Regulation of health professionals

The purpose of regulating health professionals is to protect the public by ensuring that professionals practice safely, competently and ethically. The British Columbia Steering Committee on Modernization of Health Professional Regulation summarized the purpose of regulating health professionals in this way:

- Regulation of health professionals is one of the key mechanisms that assures patients that the care they receive is provided by qualified, capable and competent professionals. Health profession regulation is also a critical



foundation supporting health professionals to work effectively and safely. It enables professionals to have confidence that they are following appropriate standards¹.

Governments establish, maintain and update the legislative frameworks under which regulation takes place, and oversee the work of regulators. Health profession regulators engage in four core functions to fulfill the fundamental purpose of public protection:

- registration and licensing (authorizing practice for those who meet the legislated requirements);
- practice standards and guidance (establishing and interpreting the rules professionals must follow);
- quality assurance (ensuring ongoing competence through assessment, ongoing training and development); and
- complaints and discipline (holding professionals accountable by investigating complaints, negotiating a resolution when appropriate, and conducting disciplinary hearings when needed).

Regulation in Western countries such as Canada, the United Kingdom and Australia has evolved rapidly in the last 10 years. A recognized centre of regulatory expertise is the Professional Standards Authority (PSA) in the UK, created by the UK government to standardize and modernize regulation. A major concept introduced by the PSA is that of “right touch regulation²”, which calls for the level of regulation to be proportionate to the level of risk to the public – ensuring that regulators clearly understand their objectives and only use the regulator force required to meet these objectives. A right touch approach to regulation also requires transparency, adaptability and agility of the regulator.

¹ <https://engage.gov.bc.ca/app/uploads/sites/121/2020/08/Regulating-health-professions-What-we-heard.pdf>

² <https://www.professionalstandards.org.uk/publications/right-touch-regulation>

The prevention of harm is the central public objective of regulation³. The regulation of health professions aims to prevent harms in healthcare by ensuring that only those who are qualified are registered and permitted to practise, by setting standards, by keeping professionals up-to-date and competent and by remediation or removal of who are not. By doing this, health profession regulation also helps to ensure that healthcare services are modern, client-centred, culturally safe and equitable. Professional regulation therefore is an important arm of public policy in promoting the safety and well-being of citizens.

Yukon's health professional regulatory framework

Given the Yukon's relatively small numbers of health professionals, the Government of Yukon directly regulates nearly all health professions through the Professional Licensing and Regulatory Affairs (PLRA) branch of the Department of Community Services. This differs from the self-regulation model of the provinces, where arms-length regulatory bodies, or "colleges", are generally responsible for the work of regulation, led by members of the profession in question, with varying degrees of public participation and oversight.

Unlike jurisdictions such as British Columbia in which one piece of legislation sets out the framework for health profession regulation, Professional Licensing and Regulatory Affairs administers 6 Acts and 11 regulations that provide regulatory frameworks for the following 12 health professions:

- chiropractors
- dental hygienists
- dental therapists
- dentists
- denturists

³ Sparrow, Malcolm *The Character of Harms: Operational Challenges in Control* (Cambridge University Press, 2008)



- licensed practical nurses
- midwives
- optometrists
- pharmacists
- physicians
- physiotherapists, and
- registered psychiatric nurses

The Yukon Medical Council regulates Yukon's physicians under the *Medical Profession Act* by the Yukon but is entirely funded and administratively supported through PLRA. As per the *Registered Nurses Profession Act*, registered nurses and nurse practitioners are fully self-regulated by the Yukon Registered Nurses Association.

In most Canadian jurisdictions, as noted above, health professions are regulated under the framework of an umbrella Act. In 2003, the Yukon's *Health Professions Act (HPA)* was enacted to serve this purpose. However, to date, only the four health professions that were newly regulated after 2003 have been brought under the *HPA*: physiotherapists, registered psychiatric nurses, pharmacists and midwives.



Methodology

In this assessment we have reviewed the current legislation relating to health professional regulation in the Yukon and its implementation in practice. We have used the Professional Standards Authority's 'Standards of Good Regulation, as adapted to the context of the territory. These Standards have been widely used by professional regulators as a benchmark against which to assess both the scope and effectiveness of their legal frameworks and their delivery of effective regulation in the public interest.

In particular we have assessed the way in which the regulation of health profession in the Yukon achieved the public policy objective of reducing the risk of harm and promoting the safety and well-being of citizens. In our findings (below) we indicate our assessment of the extent to which the current arrangements enable those objectives to be achieved.

The information we have gathered to support our findings has come from numerous sources.

- Data concerning the number of regulated health professions and the number of registrants.
- Data concerning complaints and the outcome of those complaints.
- Interviews were conducted with representatives of each regulator to familiarize them with the assessment process and seek their views on the current state of health professional regulation in the territory and how it could potentially be improved.
- Each regulator's legislative framework was assessed to determine to what extent it enables or impedes the regulator from fulfilling the four core regulatory functions.
- Each regulator's legislative framework and regulatory practices were assessed against the adapted Standards of Good Regulation.



Findings

Legislative assessment

Each regulatory framework for a health profession was assessed to determine if and how well it enables the four core regulatory functions.

Below is a summary of the findings, broken down by regulatory function.

Registration and licensing

Expectation: Ensuring compliance with the minimum requirements for licensure outlined in the act or regulation, such as education, entry-to-practice exams, liability insurance and good standing in other jurisdictions. These should align broadly with the minimum requirements throughout Canada as part of our Canadian Free Trade Agreement obligations. Licensing includes an annual renewal process, ensuring the registrant remains eligible.

Yukon legislative authorities: Acts and regulations include registration requirements for practice in Yukon that are generally consistent with those of other Canadian jurisdictions. In some cases (e.g. denturism, midwifery), holding a licence in another jurisdiction is required to enter practice in the Yukon. Yukon signed the Agreement on Internal Trade (AIT) in 1995, and in 2010 all health profession legislation was updated to recognize specific licence/registration classes from the other signatory jurisdictions (except Nunavut). In 2017, the Canadian Free Trade Agreement, which includes all jurisdictions, replaced the AIT.

One significant challenge identified is that, in the Yukon, registration requirements are generally specified in the Act and/or regulation governing a profession. In most other jurisdictions these would be specified in a regulator's bylaws, which are much easier to change quickly to reflect evolving practice requirements. Another challenge identified is that regulators have limited ability to place terms, limits and other conditions on initial registrations or renewals on an interim basis if there are concerns regarding competence or conduct, unless there is an equivalent limit or condition on the applicant's practice in another jurisdiction. Another deficiency in the legislation is that it

does not clearly set out what information needs to be included on the public registry (e.g. information on negotiated resolutions to complaints or disciplinary actions), or what information is to be kept private (e.g. personal contact information). In some cases, legislation prescribes a requirement contrary to modern principles of transparency, public protection or protection of privacy. For example, the *Medical Profession Act* and regulations require that disciplinary action be only disclosed to other regulators or in a limited set of other circumstances. The regulation under the *Registered Nurses Profession Act* requires that the register include a registrant's date of birth, and that the register be available for inspection by the public.

Assessment: While all regulated health professionals have workable registration, licensing and renewal provisions in the relevant legislation, the significant deficiencies noted above present a medium risk to public safety.

Practice standards and guidance

Expectation: Development and maintenance of standards of practice, codes of ethics, policies and practice guidelines are core activities of professional regulation. Standards of practice and codes of ethics set out the rules professionals must follow in their practice, and policies and guidelines help professionals to navigate complex or emerging practice issues or challenges.

Examples of areas of practice for which regulators in other jurisdictions routinely develop standards, policies or guidance are: standards for ethical practice; documentation and record-keeping; prescribing of schedule 1 drugs within the profession's scope of practice; ordering and administering diagnostic tests; and managing conflicts of interest. Regulators also develop standards, policies or guidance to address emerging or exceptional issues. For example, in recent years, the College of Physicians and Surgeons of British Columbia has developed or updated practice standards for physicians on: medical assistance in dying (published 2016, revised 2021); prescribing cannabis for medical purposes (2016), and sexual misconduct (published 1995, revised 2021). Many regulatory bodies have staff dedicated to developing practice guidance and responding to registrant requests for guidance.

Yukon legislative authorities: In the Yukon Territory:

- Some older legislation (e.g. legislation governing dentists, dental hygienists, dental therapists and denturists) does not provide for standards or guidance at all.
- Some more recent legislation (such as the legislation governing licensed practical nurses, physiotherapists, and registered psychiatric nurses) specifies the standards and/or code of ethics of another regulator as being applicable in the Yukon. While this ensures that standards developed by a better-resourced regulator applies in the Yukon, it can lead to inconsistencies between the Yukon framework and another jurisdiction's standards. This results in a lack of clarity as to what rules the professional is being required to follow and can affect quality of care.
- The *Medical Profession Act* provides the Yukon Medical Council with the authority to investigate whether a physician is meeting generally accepted standards, but does not grant clear authority to develop standards of practice or guidance.
- The *Registered Nurses Profession Act* grants the YRNA's Board the ability to make bylaws to develop standards of practice and other guidance; and
- Legislation enacted in the past three years provides authority for the Yukon Registrar to develop standards and guidance, and/or specify those of another regulator (e.g. regulations governing pharmacists and midwives). However, very limited capacity exists to review, revise and keep standards up to date

Assessment: Lack of consistent and up-to-date Standards of Professional Practice or mechanisms for revising and implementing standards presents a high risk to public safety.

Quality assurance (Continuing Competence)

Expectation: Regulators cannot grant a licence based on entry-to-practice standards and then assume that professionals are competent to practice until the end of their careers. Quality assurance refers to activities or requirements intended to ensure



ongoing competence to practice in the profession, through continuing education, practice assessments or other measures.

Identifying a minimum number of hours of professional practice and/or continuing education required was an early approach to maintaining currency of practice, known as the continuing competence approach. Regulators increasingly see this approach as inadequate, with a limited ability to assess and support an individual's competence and professionalism in the workplace.

A current baseline standard among regulators for quality assurance involves assessing a professional's competence at regular intervals and identifying training or other supports to address identified competency gaps or areas of practice the professional wishes to strengthen. Overall, a strong quality assurance program includes education, practice hours and assessment.

Yukon performance: If included in the Yukon's legislation at all, quality assurance is addressed as continuing competence, requiring a minimum number of practice hours and continuing education hours.

Denturists, dental hygienists, and dental therapists do not have any continuing competence requirements to maintain their professional licences in the Yukon. The 2019 pharmacist regulation requires ongoing licensure in another jurisdiction, and so pharmacists must meet the continuing competence requirements of that jurisdiction.⁴

Legislation governing other professions typically requires specified numbers of continuing education and practice hours, with no ability to require other quality assurance measures. One exception is the *Registered Nurses Profession Act*, which grants the YRNA's Board the ability to specify continuing competency requirements for annual licence renewal.

⁴ Addendum 09/14/2022: Pharmacists are also required to complete 15 hours annually for their Yukon licence.



Assessment: Lack of continuing competence programs and of requirements to demonstrate continuing competence at the time of renewal of licences for some professions presents a medium to high risk to public safety, depending on the profession.

Complaints and discipline

Expectation: The baseline requirement is the ability to receive, investigate, evaluate and addressing complaints regarding a professional's conduct, competence, or fitness to practice. The ability to address complaints goes beyond the complaints-driven approach. Regulators increasingly prefer a proactive approach, which includes:

- early identification of issues, potentially through a robust quality assurance program;
- enabling the registrar to investigate issues without a formal complaint;
- the ability to adapt the process to the type and severity of the issue or complaint;
- mechanisms for consensual resolution of complaints where appropriate; and
- the ability to hold formal disciplinary hearings and issue binding decisions.

Transparency regarding complaints and disciplinary actions are important for building trust between the regulator, professionals and the public. This includes the authority to publish information on agreements with, or undertakings by, licence holders arrived at through dispute resolution and the existence and outcomes of disciplinary processes.

Timely resolution of complaints is also important, as are clear and

consistent decisions made by competent and unbiased adjudicators. Increasingly, there is an expectation that complaints processes will be culturally safe for Indigenous and other marginalized groups, and that appropriate support will be available for those who may face barriers in accessing and navigating complaint systems, such as persons making complaints about sexual boundary violations by health professionals.

Yukon legislative authorities: Legislation governing dental hygienists, dental therapists and denturists provide for summary convictions in court, but does not provide the regulator with authority to investigate complaints, attempt dispute resolution or set up boards of inquiry.



Other health profession legislation provides a complex, burdensome and costly complaints framework. Most legislation allows no flexibility based on the severity of the complaint, requiring a Board of Inquiry for everything from minor complaints or communication breakdowns to serious allegations of incompetence or misconduct. Striking a Board of Inquiry can be challenging, given the need for Cabinet to appoint members, the frequent need for out-of-territory members to ensure appropriate experience and avoid conflicts of interest, and an inability to pay adequate compensation due to policy restrictions. The *Health Professions Act* allows some registrar flexibility, but is unclear about the extent to which alternate dispute resolution is possible. The *Registered Nurses Profession Act* provides for a workable but somewhat outdated system of investigation and complaint resolution, though without the power to compel production of evidence at the investigation stage.

No legislation clearly enables publication of undertakings and disciplinary outcomes, and this is explicitly disallowed by the *Medical Profession Act*. Yukon does not have the legislative authority to meet our responsibility to manage complaints in a transparent fashion that supports the public interest.

Assessment: The inconsistent provision or absence of powers in relation to complaints and discipline combined with lack of capacity for investigation presents a high risk to public safety.

1. General standards

Standard one: The regulator provides accurate, fully accessible information about its registrants, regulatory requirements, guidance, processes and decisions.

Professional Licensing and Regulatory Affairs

Professional Licensing and Regulatory Affairs provides comprehensive information for applicants and registrants on licensing and renewal, continuing competence requirements for renewal, and, where applicable, practice guidance. Information is provided for each licence class within each profession. This information is available on



the Government of Yukon website, Yukon.ca. These web pages include step-by-step information on what is required for licensure / renewal, and basic information on how applications are assessed.

PLRA maintains public registers of those who are licensed to practice each profession. These are generated automatically on a daily basis from the information in each profession-specific registration database. Information on these registers is limited to: name, licence number, registration class and expiry date of licence. Information made available on the public register is determined in accordance with Yukon's *Access to Information and Protection of Privacy Act* and the *Health Information Privacy and Management Act*. Policy 3645-00-002: Information on the Public Register outlines what information is available on the public register and the justification for disclosure. PLRA intends to begin publishing information on hearing outcomes and disciplinary action, where relevant, but no process or guidance have as yet been established.

No formal process exists for collecting feedback from users on the register and other published information. While it is clearly stated that regulated health professionals require a licence to practice, no information is provided regarding any role the regulator has in addressing illegal practice.

Where required by legislation, continuing competence is addressed through the annual renewal process. Each profession for which there are continuing competence requirements has access to a published continuing competence guide that details the requirement and acceptable proof of having met it.

A basic webpage on the complaints process has been developed and was made available in January 2022.

Yukon Medical Council

YMC provides comprehensive information for applicants and registrants on licensing and renewal, continuing competence requirements for renewal, and, where applicable, practice guidance. Information is provided for each licence class within each profession. This information is available on the YMC website, yukonmedicalcouncil.ca. These web pages include step-by-step information on what is required for licensure, but not how



applications are assessed. Registrants are contacted by e-mail annually with information about renewal. A renewal website is in development.

YMC maintains public registers of those who are licensed to practice in each licence category. These are generated automatically on a daily basis from the information in the physician database.⁵

Information on these registers is limited to: name, licence number, register, year of graduation, place of graduation and any specialties or advanced competencies. Information made available on the public register is determined in accordance with Yukon's *Access to Information and Protection of Privacy Act* and the *Health Information Privacy and Management Act*. YMC does not publicly disclose complaints or the outcomes of disciplinary processes, though these are disclosed to other regulators of physicians.

No formal process exists for collecting feedback from users on the register and other published information. While it is clearly stated that physicians require a licence to practice, no information is provided regarding any role the regulator has in addressing illegal practice.

Continuing competency is addressed through the annual renewal process. Currently, the only continuing competency requirement is completion of the Yukon First Nations 101 course.

A link to the complaints form is included on the YMC website, but there is no information about the complaints process.

Yukon Registered Nurses Association

YRNA provides comprehensive information for applicants and registrants on licensing and renewal, continuing competence requirements for renewal, and practice guidance. Information is provided for each licence class within each profession. This information is

⁵ Correction 09/14/2022: YMC's register is created and uploaded manually, usually weekly.



available on yrna.ca. These web pages include step-by-step information on what is required for licensure / renewal, and information on how applications are assessed.

YRNA maintains a public register of those who are licensed to practice in each licence category. These are generated weekly from a registration database. Information on these registers is limited to: name, licence number, registration class, effective date and expiry date of licence. Information on complaints and disciplinary outcomes is not available.

No formal process exists for collecting feedback from users on the register and other published information. While it is clearly stated that regulated health professionals require a licence to practice, no information is provided regarding any role the regulator has in addressing illegal practice.

Where required by legislation, continuing competence is addressed through the annual renewal process. Each profession for which there are continuing competence requirements has access to a published continuing competence guide that details the requirement and acceptable proof of having met it.

A detailed webpage on the complaints process with a link to the intake form is available.

Assessment: This standard is partially met by all regulators. Lack of consistency between regulators regarding what information is available is a concern, as is the lack of clarity regarding what information regarding registrants needs to be available on the public register. Regulators may wish to consider establishing formal mechanisms to solicit feedback from users regarding the accessibility of registers and other regulatory information.

Standard two: The regulator is clear about its purpose and ensures that its policies are applied appropriately across all its functions and that relevant learning from one area is applied to others.



Professional Licensing and Regulatory Affairs

PLRA is a branch of the Yukon government that administers the regulatory frameworks for 12 health professions, as well as a number of non-health professions.

Communication with stakeholders is generally regarding the regulatory requirements of the relevant profession. These are generally documented on the Yukon government's website.

With regard to the professions it regulates, PLRA undertakes activities across all four core regulatory functions. Unlike most regulators, PLRA also leads the development of new regulatory frameworks or changes to existing frameworks. Finally, as a branch of government, PLRA is also responsible for briefing and advising senior officials and the responsible Minister on its areas of responsibility, and is often heavily involved in policy or programmatic initiatives that touch on its regulatory responsibilities.

PLRA develops an annual "branch plan" to guide its work – this includes operations responsibilities such as managing renewal cycles, and strategic initiatives such as the development and implementation of an online licensing system to replace the current paper-based process. This branch plan is not made public, though it is reflected at a very high level in departmental plans. Unlike other regulators, there is no board providing oversight - oversight is through the branch's accountability to the Minister responsible, and the legislative approval process for the government's budget. There is no process for identifying and managing any conflicts of interest that may arise.

PLRA maintains an inventory of policies that is accessible to all staff. These policies generally clarify regulatory requirements or address legislative gaps and are intended to guide staff in their work to assess applications for licensure and renewal, assess continuing competency and manage complaints. New policies are added to the inventory and shared as approved with relevant stakeholders (generally registrants in the relevant profession).

As a relatively small organization, PLRA is able to share emerging issues and learnings regularly at staff meetings and through informal discussion. For example, debriefs from renewal cycles, which typically result in adjustments to processes and sometimes requirements, and development of new policies for the next cycle. In 2020 and 2021,



many LPNs and physiotherapists experienced significant challenges in providing all elements of the documentation PLRA was requiring to prove completion of the required number of continuing competency hours. As a result, for the 2022 renewal cycle, documentation requirements were adjusted. The impact of these changes is still being assessed, but so far seems to have resulted in more registrants being easily able to comply.

Yukon Medical Council

As PLRA provides secretarial and administrative support to YMC, much of the information above is equally relevant. The main differences are below:

YMC is governed by the Council, consisting of members appointed by the Yukon government. Three of its six members must be in-territory physicians nominated by the Yukon Medical Association, and a fourth physician from outside the territory is appointed in consultation with the Yukon Medical Association. There are also two lay members, appointed by the Yukon government. When addressing complaints and disciplinary action, Council members are required to declare any conflicts. On several occasions, a surrogate council made up of out-of-territory members has been appointed to deal with complaints. There are no other formal processes for identifying and dealing with potential conflicts.

Yukon Registered Nurses Association

While the YRNA's legislation provides the organization with both a regulatory and advocacy mandate, the organization's current Board supports a primary focus on the regulatory mandate of patient safety and public protection. This focus is not outlined clearly on the organization's website, and could be better highlighted in its annual report and other public communications.

As a small organization, learnings are shared across the organization organically.

Assessment: This standard is met by PLRA and partially met by YMC and YRNA.

- **All three regulators could improve their communication of their purpose and the ways in which they document and share learnings.**



- The legislative requirement that the Yukon Medical Association's nominate of a majority of members of YMC institutionalizes an apparent conflict of interest
- The legislated status of the YRNA, as both regulator and professional association, institutionalizes a conflict of interest.

Standard three: The regulator understands the diversity of its registrants and their patients and service users and of others who interact with the regulator and ensures that its processes do not impose inappropriate barriers or otherwise disadvantage people.

PLRA, YMC, YRNA: Information on registrants and how they are affected by processes is not collected. PLRA and YRNA staff do avail themselves of opportunities to learn about emerging equality, diversity and inclusion issues in regulation, but there is not a clear understanding of the regulator's responsibilities, and therefore there is no reporting. For PLRA and YMC, data on the composition of boards and committees is collected at the government level, but is not shared with PLRA. There are no systems in place to ensure that processes are free from bias, and no equality impact assessments have taken place. No issues have been raised in this area by stakeholders, but this may be due to a lack of clear processes for enabling these to be raised. There are no formal systems for assisting vulnerable persons who contact the regulator, though referrals to community supports are sometimes made informally. YRNA and YMC are beginning joint work to better understand the cultural safety needs of First Nations patients and how the territory's regulators can support registrants in addressing these.

Assessment: For all regulators, this standard is NOT met.

Standard four: The regulator reports on its performance and addresses concerns identified about it and considers the implications for it of findings of public inquiries and other relevant reports about healthcare regulatory issues.



PLRA and YMC: basic information about the number of licences issues in all licence classes and professions is available, but not shared or published. No regulatory performance framework is in place, against which performance could be assessed. Given PLRA's status as a branch of government, accountability is to the Minister responsible, and through the Minister to the Legislature. There is no direct mechanism for collecting complaints about the branch as a regulator. Stakeholders sometimes raise complaints with the Minister responsible, which are sent to PLRA for response and action as appropriate. PLRA does scan for regulatory trends and take these into account to the extent possible. For example, the trend towards holistic quality assurance influenced the development of the midwifery regulatory framework to allow for the registrar to specify and adjust quality assurance measures. BC's ongoing process of modernizing health professional regulation was one of the factors that prompted this self-assessment.

YRNA: Annual reports and financial statements are posted to the organization's website, but there is no regulatory performance framework in place against which performance is assessed. Concerns raised about the regulator are addressed on an ad-hoc basis – no formal systems or processes are in place. The organization scans for regulatory trends and has adjusted its strategic goals and operations to take these into account.

Assessment: this standard is NOT met for all regulators.

Standard five: The regulator consults and works with all relevant stakeholders across all its functions to identify and manage risks to the public in respect of its registrants.

PLRA and YMC: Both regulators work with legislated advisory committees, employers and professional associations to share information and perspectives. In particular, they engage with advisory committees on continuing competency requirements and with employers on licensing and renewal requirements. Neither has formalized processes for sharing data. Neither shares information on complaints directly with others under any



circumstances, except with other regulators through formal certificates of standing or similar documents.

YRNA: has recently begun engaging formally with First Nations, the Yukon Hospital Corporation, the Yukon Government, the Yukon Medical Association and other stakeholders to identify and address risks. Instability and turnover of staff within the YRNA and in government has made consistency of communication a challenge.

Assessment: This standard is NOT met for all regulators.

2. Professional standards and guidance

Standard six: The regulator maintains up-to-date standards for registrants which are kept under review and prioritise patient and service user centred care and safety.

PLRA: legislation does not support the development of standards for dentists, denturists, dental hygienists, dental therapists. Detailed but technically-focused and outdated professional practice guidelines are part of the regulation under the Optometrists Act. The Chiropractors Act references standards and a code of ethics that no longer exist. The regulation under the Licensed Practical Nurses Act specifies the standards of the Alberta regulator. Regulations specify the standards of other jurisdictions for physiotherapists (British Columbia) and registered psychiatric nurses (Manitoba). While standards from other jurisdictions adopted by reference in the Yukon may be more regularly updated than those developed in-territory, there is a risk that they may conflict with Yukon regulatory frameworks, which creates risks for patient safety. Regulations for pharmacists and midwives allow the Registrar to specify standards, though in practice there is very limited capacity to develop and maintain these.

YMC: While YMC's legislative authority to develop enforceable standards is unclear, it does develop and maintain them. The suite of standards is not as broad as it should be, and standards are not consistently updated.

YRNA: While the YRNA develops and maintains practice standards, the suite of practice standards is not as broad as it should be, and existing standards are not consistently kept up to date.

All regulators: Some lack of clarity exists as to what practice issues require standards (which set a required minimum standard for behaviour or conduct) versus guidance (which outlines a recommended course of action, but can be deviated from based on professional judgement).

Assessment: this standard is partially met by all three regulators. All regulators face significant challenges in keeping standards up to date. Legislation does not support enforceable standards for dental professions, chiropractors or optometrists, and is unclear for physicians. Standards from other jurisdictions adopted by reference may conflict with the Yukon's regulatory framework, creating safety risks.

Standard seven: The regulator provides guidance to help registrants apply the standards and ensures this guidance is up to date, addresses emerging areas of risk, and prioritises patient and service user centred care and safety.

PLRA: Professions following standards of other regulators are also referred to the published guidance of that regulator, but PLRA does not have the capacity to provide practice guidance itself. PLRA can sometimes facilitate provision of situation-specific guidance by another regulator.

On rare occasions, guidance is developed in-house to address emerging issues (e.g. Botox as part of dental practice). However, this is generally in reaction to an emergent issue rather than forward-looking, and is not proactively reviewed, evaluated or revised.

YMC: The Yukon Medical Council develops some issue-specific practice guidance, but does not review, evaluate or revise it on a consistent basis.

YRNA: The YRNA provides some guidance on an ad-hoc basis, but this is not generally formalized or accessible to all registrants.

Assessment: this standard is NOT met for all regulators.

3. Registration

Standard eight: The regulator maintains and publishes an accurate register of those who meet its requirements including any restrictions on their practice.

All regulators: online registers provide basic information about registrants: generally licence class and expiry date. YRNA provides information about licence conditions or restrictions. No regulator provides information about complaints or disciplinary outcomes. Information is automatically published from the regulator's (more complete) internal database. Generally, regulators publish information as per statutory requirements, which are sometimes unclear.

Assessment: this standard is partially met by all regulators. Only the YRNA publishes information on practice restrictions, and no regulators publish information on disciplinary outcomes, which is a significant gap in publicly available information.

Standard nine: The process for registration, including appeals, operates proportionately, fairly and efficiently, with decisions clearly explained.

PLRA and YMC: registration requirements, process and basic evaluation criteria are outlined on the relevant website. To address certain complex circumstances, policies have been developed to guide decision-makers. These are shared with applicants as appropriate. Regulatory decisions in complex or unusual cases are documented for future reference, and decisions are shared with applicants. A service standard has been developed outlining the timeline for decisions on complete applications. There is no formal process for raising concerns, though these are regularly raised and addressed on an ad-hoc basis. No formal appeal processes exist.

YRNA: Requirements and processes are outlined on the website. Registration is generally done by referral, i.e. a licence (or documented eligibility to be licensed) in



another jurisdiction is required for initial licensure in Yukon. There have been no appeals in recent memory.

Assessment: this standard is partially met by all regulators.

Standard ten: Risk of harm to the public and of damage to public confidence in the profession related to non-registrants using a protected title or undertaking a protected act is managed in a proportionate and risk-based manner.

PLRA and YMC: basic legislative tools are generally in place to address illegal practice, but there are no specified processes. No significant cases have been brought to the regulators' attention in recent years.

YRNA: employers are known to YRNA and collaborate to mitigate the risk of illegal practice.

All: The emerging trend of remote service provision presents a growing potential risk, which it is challenging to address within the current legislative framework. That said, the risk is also challenging to quantify.

Assessment: there is no publicly available information on how such cases are dealt with. This standard is partially met by all regulators.

Standard eleven: The regulator has proportionate requirements to satisfy itself that registrants continue to be competent and safe to practise.

PLRA: There is no legislative authority for any continuing competence requirements for dental hygienists, dental therapists, and denturists. For most other professions, continuing competence requirements consist of specified numbers of continuing education and professional practice hours, within a specified period. Proof of completion of these requirements must be provided with an application for annual licence renewal. For example, licensed practical nurses must provide acceptable proof of completion of at least 1000 professional practice hours and 60 continuing education

hours within the 4-year period immediately prior to their renewal application, in order to be eligible for renewal. A continuing competence guide is available online for each profession, outlining the requirements and what constitutes acceptable proof. For profession-specific unique issues, policies have been developed to guide decision-makers. For physiotherapists, registered psychiatric nurses, pharmacists and midwives, there is the legislative ability to conduct practice inspections, but no capacity to do so. For midwives, the registrar is able to specify continuing competency requirements, and PLRA has established requirements including completing specified numbers of professional practice and continuing education hours, participating in peer case reviews, a self-assessment and personal learning plan, and attendance at specified numbers of birth.

YMC: For the upcoming renewal cycle, YMC is requiring that registrants complete a specified Yukon First Nations 101 training. There are currently no other continuing competence requirements for physicians. YMC is considering requiring compliance with the continuing professional development requirements of either the Royal College of Physicians and Surgeons of Canada or the College of Family Physicians of Canada. Section 11 (1) (b) provides legislative authority for continuing competence.

YRNA: YRNA administers a well-defined and supported continuing competence program. However, it is based solely on self-reflection and development of a learning plan.

Assessment: This standard is partially met by all regulators. There is no legislative authority for continuing competence requirements for a number of professions. For others, legislated continuing competence requirements do not include practice assessments or learning plans, precluding the possibility of assessing and addressing risks. Physicians have no continuing competence requirements except the Yukon First Nations 101 course. The YRNA administers a continuing competence program consisting of self-reflection and a learning plan. Lack of authority for practice assessments creates risks, as does tremendous inconsistency in quality assurance requirements between professions.

4. Complaints

Standard twelve: The regulator enables anyone to raise a concern about a registrant.

PLRA: Early in 2022, PLRA deployed a web page outlining the public's ability to raise a complaint about a regulated health professional, providing basic information about what kinds of complaints can be addressed through the regulatory process, and providing contact information for initiating a complaints. While there is no legislative authority to receive or address complaints for dental hygienists, dental therapists or denturists, except through the courts, PLRA can accept them and use them to initiate a dialogue with the professional in question. A dedicated Complaints Coordinator manages complaints processes and supports disciplinary panels.

YMC: There is clear legislative authority to receive, investigate and adjudicate complaints, which are managed through the PLRA process.

YRNA: Clear legislative authority exists to receive, investigate and adjudicate complaints. YRNA's website provides information on the complaints process and how to make a complaint.

Assessment: this standard is met by YRNA and YMC, and partially met by PLRA, as there is no legislative authority to receive or address complaints for some dental professions.

Standard thirteen: The regulator's process for examining and investigating cases is fair, proportionate, deals with cases as quickly as is consistent with a fair resolution of the case and ensures that appropriate evidence is available to support decision-makers to reach a fair decision that protects the public at each stage of the process.

PLRA: Processes for accepting and addressing complaints are established by legislation. Documentation of processes is a work in progress, but templates have been developed for communications at relevant stages of the process. Legislated processes

are generally not flexible – in all cases but HPA professions, there is no registrar discretion for investigation or negotiated resolutions. As such, the process is often not proportionate – even minor complaints must go to a committee of inquiry. Because of this, processes are also typically not timely. Committees of inquiry must generally be established by Cabinet, and as such there is often a significant delay. In addition, given the very small numbers of registrants in each profession, conflicts of interest often prevent in-territory registrants from participating in committees of inquiry – as such, additional time must be taken to identify out-of-territory participants. An additional challenge is the inability to adequately compensate members of committees of inquiry due to Yukon government policy restrictions, making these roles less attractive. These factors frequently lead to significant delays in resolving complaints.

Key performance indicators have not been formally established, but PLRA is beginning to track some indicators such as time required to establish a committee of inquiry and the length of time an investigation lasts.

YMC: The Medical Professions Act lays out a clear complaint process, but does not allow registrar discretion in investigation or negotiated resolutions.⁶

YRNA: The complaints process established by the *Registered Nurses Profession Act* and the resources of the YRNA generally allow for fair, proportionate and reasonably quick resolution. Resources are an ongoing challenge, and could conceivably affect the regulator’s ability to continue to meet this standard.

Assessment: this standard is met for the YRNA and partially met for YMC and PLRA.

Standard fourteen: Evidence is available to support decision-makers to reach a fair decision that protects the public at each stage of the process.

⁶ Addendum 09/09/2022: While the registrar does not have discretion, YMC does have some discretion under s. 24(5)&(6) and s. 32 of the Medical Profession Act.



The power to compel the production of documents, information or things during an investigation or disciplinary process ensures that evidence is available.

PLRA: Committees of inquiry generally have the ability to compel the production of evidence. For HPA professions, the registrar is able to investigate and has the power to compel the production of evidence.

YMC: A committee of inquiry is able to compel the production of evidence.⁷

YRNA: There is no legislated ability to compel the production of evidence at the investigation stage, though a discipline committee does have this power.

Assessment: this standard is partially met by all regulators.

Standard fifteen: The regulator ensures that all decisions are made in accordance with its processes, are proportionate, consistent and fair, take account of the statutory objectives, the regulator’s standards and the relevant case law and prioritise patient and service user safety.

PLRA and YMC: Processes for investigating and adjudicating complaints are established by legislation and are followed in all cases. Due to the legislative challenges flagged above, they may not always be proportionate. Legal advice is generally available to committees of inquiry and so the relevant case law is taken in to account. The degree to which patient safety is prioritized depends on the relevant legislation – in some cases, the requirement is to prove incompetence, incapacity, malpractice or a violation of the legislation, which does not necessarily provide the flexibility to identify and address patient safety issues. There is no review process for decisions taken not to investigate.

YRNA: The YRNA’s complaints and discipline process generally supports proportionate, consistent and fair decision-making that prioritizes public safety.

⁷ Addendum 09/09/2022: s. 24 (5) and s.32 under the Medical Profession Act allows YMC also to compel evidence.



Assessment: this standard is met for YRNA and partially met for PLRA and YMC.

Standard sixteen: The regulator identifies and prioritises all cases which suggest a serious risk to the safety of patients or service users and seeks interim orders where appropriate.

PLRA and YMC: the ability to triage and prioritize complaints is severely limited by legislation. However, as there is a comparatively small number of complaints, all are addressed to the extent allowed by legislation. In the event of a capacity issue, more serious complaints would be prioritized. Of note, the *Health Professions Act* allows the registrar to take extraordinary action to protect the public, while a complaint is being investigated. An inquiry committee can also do this under the *Medical Profession Act*.⁸

Other legislation does not allow this. Both risk assessment and any decision of the registrar to take extraordinary action are done informally – there is no formal assessment process or criteria.

YRNA: the YRNA identifies and prioritizes serious complaints, but interim orders are not allowed by legislation.

Assessment: this standard is not met by all regulators.

Standard seventeen: All parties to a complaint are supported to participate effectively in the process.

PLRA and YMC: This is not done in any systematic way. There are occasionally informal referrals to support services where appropriate, but there are no formal supports, training for staff, or opportunities to provide feedback on the process.

⁸ Correction 09/09/2022: Under s. 27 of the *Medical Profession Act* the inquiry committee can suspend until the next meeting of the YMC. YMC, not the inquiry committee, may take extraordinary action.



YRNA: Legislation does not provide the ability to compel evidence during investigations, which means that respondents and third parties can frustrate investigations and complainants are not supported as they should be.

Assessment: this standard is NOT met for all regulators.

Analysis

Themes:

1. Inconsistency in legislative authorities

Legislative authorities for fulfilling core regulatory functions vary significantly from profession to profession. These differences generally have no clear rationale, and are in many cases departures from regulatory standards in other Canadian jurisdictions. For example, legislative authority to address complaints range from only being able to seek summary conviction in court for denturists to a fairly comprehensive range of abilities to investigate, seek negotiated solutions and/or proceed to a disciplinary hearing for *Health Professions Act* professions. The impact of this variation is uniquely felt by PLRA, as the regulator of 12 health professions with varying frameworks. Particularly given the regulator's limited capacity, administering a number of distinct legislative frameworks precludes finding administrative efficiencies and increases the incidence of administrative errors. Lack of consistency has a potential impact of undermining the credibility of the professional regulatory framework to members of the public trying to navigate through the complaints process. This lack of consistency also has the potential to decrease professionals' confidence in the regulator, as in a small community members of all professions become aware of differing regulatory requirements with no clear rationale.

2. Legislative authorities do not permit regulators to properly fulfil all regulatory functions.



In many cases, legislative authorities do not include the tools needed to properly fulfil one or more of the core regulatory functions. This issue affects all three regulators, and examples are numerous.

- Registers are not clearly defined, required information is not clearly prescribed, authority to publish appropriate information or to protect personal information is not clear.
- Legislation either does not allow or is not clear on ability to share information on complaints and disciplinary outcomes on the public register.
- For some professions, legislation does not provide the authority for practice standards or guidance.
- For some professions, there is no legislated scope of practice or ability to define one
- For some professions, there are no legislated continuing competence requirements or ability to specify these
- For some professions, there is no legislated authority to receive, investigate or adjudicate complaints

Inadequate legislative authorities mean that the regulator is unable to properly protect the public. A related issue is unclear legislative authorities, which give rise to the risk of differing interpretations and resulting inconsistency.

3. Lack of capacity, including profession-specific expertise, to fulfil all regulatory functions consistently and in a timely manner

All three regulators operate with a lack of both specific professional expertise and of general capacity. The staff complement administering regulatory frameworks are fundamentally not resourced to fulfil all regulatory functions. As a result, some functions such as investigating complaints are contracted out, which results in significant delays. In addition, while staff are strong generalists, none are regulated health professionals themselves and there is a resulting lack of profession-specific expertise needed to do things like provide practice guidance or conduct practice assessments. Tools from other jurisdictions help to address this, but do not come



anywhere near to filling the gap. Finally, recruitment and retention in a remote location are ongoing challenges.

4. Information on complaints made regarding registrants and their outcome is not publicly available.

No Yukon regulator shares information about complaints, negotiated resolutions or the outcomes of disciplinary processes with the public. This is due to non-existent or unclear regulatory authorities, as well as the privacy requirements that public bodies in Yukon are subject to. While it is reasonable not to share information about a complaint that has yet to be investigated or that has been found to be not valid, not publicizing information regarding complaints under any circumstances is contrary to the basic transparency expected that is generally expected of regulators, and endangers public trust in both the regulators and the regulated health professionals. Long-term, this could also impede Yukon's ability to participate in national regulatory initiatives, as regulators in other Canadian jurisdictions generally share information regarding complaints and discipline publicly.

5. No formalized mechanisms for reporting or accountability to the public

Of the Yukon regulators, only the YRNA publishes an annual report on its activities and finances. PLRA is accountable for its finances and those of YMC through the legislative process. However, as the accounts presented to the Legislature are aggregated to a very high level, this does not provide for meaningful accountability as a regulator. Neither YMC nor PLRA publish information on their regulatory activities.

With regard to other accountability mechanisms, no Yukon regulator provides a formal mechanism for complaints against the regulator. Depending on legislative authorities, those not satisfied with a complaint outcome may appeal, either through a mechanism established by the regulator such as a review panel, or to the courts.

In the absence of formalized reporting, the public has no clear way to assess the effectiveness of regulation. In the absence of a formalized way to make a complaint about the regulator, the public has no clear way to make any concerns heard, and the

regulator does not have the opportunity to hear the public's perspective and to respond with clarifications or changes to process.

6. Inadequate, inconsistent quality assurance across professions

For some professions (e.g. denturists, dental hygienists), legislation precludes enforceable quality assurance requirements. For many others (e.g. licensed practical nurses, physiotherapists, dentists), legislation requires only a specified number of continuing education and professional practice hours annually, with no ability to assess the quality of a professional's practice and address any gaps. By contrast, the YRNA's quality assurance process is almost entirely based on self-assessment and development of a learning plan to address gaps – however, there is very limited capacity for practice audits. For the 2022 renewal cycle, the YMC began requiring successful completion of the Yukon First Nations 101 course, but does not currently have any other quality assurance requirements. These inconsistencies suggest that there is no agreement on what quality assurance should look like across professions or between regulators. In the absence of a full suite of quality assurance tools, including the ability to conduct practice audits and require action to correct any identified gaps, there is no way to be sure that professionals remain safe and competent. Finally, a lack of aggregate data from quality assurance precludes the identification of existing or emergent risks in the system.

7. Lack of flexibility to adjust regulatory processes to the situation to support a proportionate response

Legislated requirements for registration, standards, quality assurance and complaints and disciplinary processes leave all Yukon regulators with little flexibility to support proportionate responses to risk, or to adapt requirements to address urgent circumstances. For example, registration categories and requirements are legislated for all PLRA professions, leaving no ability to adjust registration criteria to reflect evolution in professional practice such as expanded scope or changes to entry to practice requirements. During the COVID-19 pandemic, the legislated scope of pharmacists had to be expanded on a temporary basis by means of a Ministerial order under the Civil Emergency Measures Act to provide additional prescribing powers and to allow

pharmacists to renew prescriptions more than once. For many professions, the process for addressing complaints and conducting disciplinary hearings is also legislated, with no discretion or flexibility for regulators to respond in a manner proportionate to the nature and severity of the complaint. For example, it may be appropriate to address a relatively minor breach of standards through a negotiated and documented agreement with the professional that they undertake remedial education. However, for most professions, regulators are currently required to follow a set process that typically includes striking a committee of inquiry for even the most minor of complaints. As a result, all regulators lack flexibility to implement proportionate responses to risks and to adapt regulation to emerging circumstances.

8. Almost no consideration of the regulator's role in addressing systemic racism, the legacy of colonization and other equity issues, including access to care for vulnerable populations and cultural safety and humility for First Nations and other racialized communities.

In recent years, and particularly since publication of the 2020 *In Plain Sight* report by Mary Ellen Turpel-Lafond on anti-Indigenous racism in the British Columbia health system, it is increasingly acknowledged that regulators have an important role to play in addressing this issue. However, Yukon regulators have only just begun to consider this issue, and to date no systematic work has taken place to identify or address barriers created by systemic racism, colonization or other equity issues. As a result, barriers that First Nations persons and members of marginalized and/or vulnerable populations may face to accessing care and/or regulatory services (such as making a complaint) have not been identified or addressed.

YMC and YRNA have begun to require successful completion of the Yukon First Nations 101 course. PLRA and YRNA staff have taken part in learning opportunities related to diversity, equity and systemic racism. Additional areas to examine could include: how regulators can support cultural safety in care and in regulatory processes for First Nations and other Indigenous persons; and safety and supports for those reporting sexual boundary violations in health care.



9. *Some misalignment between the governance framework established in legislation and the regulatory mandate to protect the public*

The overarching purpose of health professional regulation is to protect the public by ensuring that professionals are safe and competent to practice. For YRNA and YMC, the structure of governing councils and the manner of their appointment conflicts with this mandate. As per the *Medical Profession Act*, a majority of the members of the YMC Council must be nominated by the Yukon Medical Association, whose mandate is to advocate for the interests of the medical profession. Similarly, the *Registered Nurses Profession Act* provides for members of the YRNA (i.e. members of the nursing professions the organization regulates) to elect their governing Board. The public may question whether these regulators are structured to protect the interests of the regulated professionals, rather than the public.

