



# Summary of assessment of health professional regulation in the Yukon

May 2022



This report summarizes the results of a self-assessment (supported by contracted experts in regulation) of Yukon's current regulatory frameworks against the UK-based Professional Standards Authority's Standards of Good Regulation. The assessment confirms significant challenges within the current system:

Key:

PLRA = Professional Licensing and Regulatory Affairs branch of Community Services

YRNA = Yukon Registered Nurses Association

YMC = Yukon Medical Council

## Summary of issues and challenges identified against Standards of Good Regulation

### **1. Inconsistency in legislative authorities**

Legislative authorities for fulfilling core regulatory functions vary significantly from profession to profession. 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 professions under the Health Professions Act. The impact of the varying frameworks is uniquely felt by PLRA as the regulator of 12 health professions. 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.

### **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. Inadequate legislative authorities mean



that the regulator is unable to properly protect the public and does not align with the authorities and practice of other health regulators in Canada. This issue affects all three Yukon regulators, and examples are numerous:

Public and non-public 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 the registrar's 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.

### **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 specific professional expertise and adequate capacity. Some functions, such as investigating complaints, are contracted out, either because the expertise is not available, or because in a small jurisdiction like Yukon there is almost always a conflict of interest because of the small pool of available professionals.

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

Yukon regulators do not currently share information about complaints, negotiated resolutions or the outcomes of disciplinary processes with the public. This lack of reporting is due to non-existent and 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 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, Yukon regulators do not currently provide 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.

## **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 entirely based on self-assessment and development of a learning plan to address gaps, with 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 are only very limited ways to ensure that health professionals remain safe and competent.

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

For all regulated professions, registration classes and requirements are specified in legislation. This provides regulators with no ability to respond to evolutions in professional practice, or to adapt to address urgent issues. For example, in most cases, Yukon regulators have no flexibility to adjust legislated scopes of practice or documentation requirements during the early days of the COVID-19 pandemic.

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 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.

### **8. Almost no consideration of the regulator's role in addressing systemic racism, the legacy of colonization and other equity issues**

Yukon regulators have only just begun to consider system racism in our health care system. 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 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.

