



April 13, 2010

Dear Colleagues:

We are writing to inform you of a decision made by the College of Registered Nurses of British Columbia (CRNBC) Board on Saturday, April 10, 2010 regarding the College's membership in the Canadian Nurses Association (CNA).

As you are likely aware, the College has been engaged in an extensive consultation and review process related to the Board's concern about the increasing incompatibility between the CRNBC and CNA mandates and functions since the establishment of the College under the Health Professions Act in 2005. As with all colleges that come under the Health Professions Act, CRNBC functions within legislation established by the provincial government and is required to work within its regulatory mandate. Unlike its predecessor, the Registered Nurses Association of B.C., CRNBC does not have a dual role as a professional association and a regulatory body. The College's singular mandate is the regulation of registered nurses and nurse practitioners. CRNBC, as a regulator, cannot undertake some of the activities that RNABC could as an association, including advocacy, because of the perceived, if not actual, conflict of interest.

Following presentations of a policy and legal review and stakeholder consultation as well as options proposed by CNA on the matter, the CRNBC Board voted to "initiate a measured and managed withdrawal from CNA as a jurisdictional member." A copy of the report summarizing the policy and legal review and the stakeholder consultation is attached and can also be found on the College's website.

This decision was very difficult and was made only after lengthy debate. The CRNBC Board determined that it is not appropriate for the College, as a regulator, to be a member of an organization with a function of "lobbying government" and that it would be impossible to be only partially involved with the activities of CNA as recommended by CNA.

CRNBC's next steps include the presentation and voting on a resolution at the CRNBC Annual General Meeting authorizing the delivery of a written resignation of membership to the Canadian Nurses Association. CNA's Bylaws require one-year's notice of withdrawal from CNA as a member.

The College is committed to developing and implementing a withdrawal plan that will be transparent. The plan will anticipate and address the myriad of details required by both CRNBC and CNA for a respectful ending of our relationship.

Recently, CRNBC became a founding member of a new organization, the Canadian Council of Registered Nurse Regulators. This group was established in recognition of the need for a greater pan-Canadian focus and voice in nursing regulation. We are pleased that this new entity is open to all provinces and territories and already includes four other major provincial stakeholders: Alberta, Manitoba, Ontario and Quebec. Ontario and Quebec are not currently represented as regulators at the CNA Board. The Board believes that this new structure will provide substantial value to the regulatory work of CRNBC and nursing regulation in Canada.

We recognize that the Board's decision will be of concern to registered nurses in British Columbia and elsewhere. CRNBC is aware and concerned that not all professional needs and interests of B.C. registered nurses are currently being met. We are further aware that considerable work is taking place to determine if there is a way to create a new professional association to meet these needs.

To this end, the CRNBC Board voted to provide one-time funding to the RN Network of BC to build a business case to inform this need. The Board is pleased to have been able to support this group in its efforts. It is our hope that this initiative will mean that B.C. nurses will continue to be represented at the CNA Board table.

CRNBC will continue to provide information as the transition plans are developed. In the meantime, if you have any questions, please do not hesitate to contact Laurel Brunke, Registrar/CEO at 604.736.7331 (ext. 319) or brunke@crnbc.ca Any questions concerning the RN Network should be directed to Rebecca.Armstrong@nursing.ubc.ca

Sincerely,



Val Cartmel, RN, MA
Board Chair



Laurel Brunke, RN, MSN
Registrar/Chief Executive Officer

Attachment:

CRNBC/CNA Evaluation

<http://www.crnbc.ca/crnbc/Documents/EvaluationCRNBCCNA.pdf>

An Evaluation of the Relationship Between the College of Registered Nurses of British Columbia and the Canadian Nurses Association

**George Bryce and Lillian Bayne
March 15, 2010**

1. Background

The College of Registered Nurses of BC (CRNBC) was created in August 2005 when the regulation of Registered Nurses was moved under the umbrella framework of the *Health Professions Act (HPA)*. CRNBC replaced the Registered Nurses Association of BC (RNABC) which had a dual mandate as a professional association and a regulatory college.

As set out in Section 16(1) of the *HPA*, CRNBC's primary duties are to "serve and protect the public", and to "exercise its powers and discharge its responsibilities ... in the public interest". Under Section 18.1 and 18.2 of the *HPA*, the Government has the ability to investigate and take action in relation to any health profession college established under the *Act* that does not fulfil its duties. With the duties of a health profession college and the powers of government spelled out clearly in the *HPA*, it behoves CRNBC to carefully assess the consistency of its organization, policies, and practices with the *Act* and to seek opportunities to remedy any weaknesses that may be identified.

As part of this assessment, the CRNBC engaged external consultants to conduct a review of the nature of the relationship between the CRNBC and the Canadian Nurses Association (CNA). CRNBC inherited its membership in the national association from its predecessor, the RNABC which served both a regulatory and membership association role. Given the more narrowly focused mandate of the CRNBC under the *HPA*, it is essential to review whether membership in the CNA remains appropriate.

2. Purpose

The evaluation of the relationship between CRNBC and CNA was undertaken in two phases: (a) a comprehensive policy and legal review, including an assessment of similarities and differences and degree of congruency between the two organizations, and (b) a consultation with stakeholders. This report presents a summary of the findings from these two parts.

PART A: Policy and Legal Review

3. Policy and Legal Review

3.1 Method

The first component of work involved a review of the literature and of judicial commentaries. From this knowledge base a proposed set of comparative assessment criteria were derived as the basis for assessing congruencies of mandates, structures and functions of the two organizations and for determining the appropriateness of CRNBC's continued membership in CNA.

3.2 Emerging Themes

A series of themes emerged from the policy review that have bearing for the evaluation of the relationship between the CRNBC and CNA.

3.2.1 Evolving Roles of Professional Organizations:

The issue of the appropriate roles of regulatory bodies, professional associations, and other organizations such as educational programs, trade unions, and employer associations is common to many professions in Canada. The need to define, refine, and redefine the relationships arises as part of the natural maturation process of the profession and the need to adapt to changing public and government expectations. Professional organizations are often formed around common interests and engage in functions that advance these. As the profession becomes more clearly defined and delineated, there may be a need to, or an interest in, establishing it as a distinct self-regulated profession and creating the structures and processes to fulfil this role.

3.2.2 Public Interest Mandates of Regulatory Bodies:

The act of self-regulation is essentially a delegation of government's duty to protect the public interest to those – the respective profession - with the scientific and technical competence to formulate, and monitor adherence to, relevant professional regulations. The public interest mandates and roles of regulatory bodies are now often expressly stated in the legislation that establishes and governs these bodies. Section 16 of BC's *Health Professions Act* sets out the duties of a health professional college, noting its responsibility to “protect the public” and to execute its affairs “in the public interest”.

Duty and objects of a college

16 (1) It is the duty of a college at all times

(a) to serve and protect the public, and

(b) to exercise its powers and discharge its responsibilities under all enactments in the public interest.

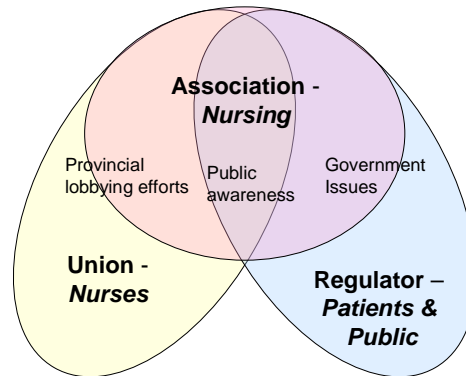
3.2.3 Different Mandates (Separation of Functions):

There is a need to ensure a clear separation of function between the public protection mandate held by regulatory bodies and the socio-economic and professional interest mandate held by trade unions and professional associations. This separation is necessary to ensure that the public interest is not compromised. The failure to recognize the need for a separation of functions has resulted in confusion and, on occasion, in conflicts within and outside some professions.

3.2.4 Distinct Organizations Lead to Separate Functions:

If there are two or more distinct professional organizations with different physical, administrative and governance structures, a separation of function should automatically flow as a result of those separate structures. But, as illustrated in Exhibit 1 below, even separate organizations can have overlapping foci and functions.

Exhibit 1: Organizational Type and Prime Focus



Adapted from: Benton, David C.; CEO, ICN; 2009 and Ontario Speech Language Association

3.2.5 Bifurcated Mandates:

In some jurisdictions governments have determined that it may be acceptable to allow one organization to hold a bifurcated mandate, that is, to have both a public interest and a professional interest mandate. Where these mandates are permitted to co-exist within a single organization, the legislation must expressly allow the organization to hold or act on both types of interests, the respective functions must be clearly separated, with distinct administrative structures, and the public interest mandate must be kept paramount.

Alberta, for example, has determined that it is acceptable for a professional organization to hold a bifurcated mandate. Following a review of the matter, and convinced by the arguments that structural separation imposed “an excessive cost burden” and that “forced separation” may serve to polarize the professions’ “moderates or more publicly minded” members from those “more radical supporters of practitioner interests”, Alberta’s Health Workforce Rebalance Committee concluded in 1995 that it was possible for a single organization to address both mandates.

We continue to support the principle that the public interest and the economic interests of practitioners be separate and we believe that the best way to achieve this is through structural separation. Nonetheless, we understand the concerns that many groups have and we agree that functional separation would be acceptable if it can be demonstrated that the functions have separate administrations, reporting structures, and mandates.

Health Workforce Rebalance Committee, *Principles and Recommendations for the Regulation of Health Professions in Alberta*, Alberta, 1995.

The evolution of policy in BC shows a different path. From the Foulkes report in 1974, through the Sullivan report in 1988, the Seaton Commission in 1991, and the Health Professions Council report in 2001, there has been a reinforcement of the message that the different mandates of a membership and a regulatory body demand separate organizations. It is not permitted for bodies created under the *Health Professions Act* to hold a bifurcated mandate.

It is only reasonable to recognize that professions, like other groups and individuals in society, may well be expected to have certain private self-interests of their own which are not coincident with the public interest. Recognition of a degree of real or at least potential conflict between the private interest of the profession and the public interest is the root of the necessary distinction between the professional or licensing body on the one hand, whose purpose is to enforce standards of quality and service, and the voluntary association of the profession on the other hand, whose legitimate function is to advance the particular interests of the profession and its membership. This important distinction between the public function of the licensing body and the private function of the voluntary association is now widely recognized in Canada. From the standpoint of both the professions and the public, it is desirable that the separation of the two functions be kept sharp and distinct.

Foulkes, R.D. *Consumer Participation, Regulation of the Professions, and Decentralization*, 1974, Chapter 3.

A profession is seen to provide a specialized and valued service to the public; in theory at least, it is accountable to the public interest for the conduct and performance of its members. A profession, therefore, typically has a governing body which establishes standards of entry, certification, conduct, and performance and which imposes sanctions against members who fail to meet the conditions for continued practice.

BC Royal Commission on Education (B. Sullivan). *A Legacy For Learners: The Report of the BC Royal Commission on Education*, Vancouver: Queen's Printer, 1988, p.146

... the commission recommends that:

...two separate bodies be created for all regulated or licensed professions so that there is a clear separation of membership promotion functions and licensing and discipline functions. If there are not sufficient members to have a separate college, then a college should not be established.

BC Royal Commission on Health Care and Costs, Chapter D16 "Governance of the Health Care Professions", Closer to Home (1991), pages D-36-7

The Council agrees with these comments and believes it important that there be a clear separation between the professional association and the regulatory body.

Health Professions Council, *Safe Choices: A New Model for Regulating Health Professionals in British Columbia, Part II: Legislative Review*, British Columbia, 2001

3.2.6 Mandatory Association Fees (Collecting Fees as Agents):

In some jurisdictions, governments have determined that, if certain conditions are met, a regulatory body could be allowed to collect membership fees for the professional association from all members of the profession and remit those fees to the association. In June 1998, BC's Minister of Health requested the Health Professions Council to address the issue of whether it is in the public interest for members of a regulated health profession to be required to belong, or to pay dues, to a professional association. The Ministry had not generally been supportive of mandatory membership because it was

seen to deny freedom of choice to members of a profession and because the collection of association membership dues by a regulatory body served no apparent public interest.

To help address the question, the Council conducted a survey of the health professions in British Columbia and the ministries of health of all other provinces and territories, as well as other professions, such as accountants, architects, engineers, lawyers, social workers and teachers. While a number of advantages of mandatory membership were identified, the Council concluded that

[p]ublic trust and confidence in the self-regulating process is reinforced with a clear separation of the regulatory body and professional association... [and that] it is not in the public interest for members of a regulated health profession to be required to belong, or to pay dues, to a professional association

Following a Court decision related to a similar situation with the BC Law Society, however, the BC government introduced a bylaw-making provision in its 2008 amendments to the *Health Professions Act* that gives a College Board the authority to make bylaws to:

provide for payment by registrants, to the college as the agent for a health profession association or similar organization, of an amount equivalent to the fees of the association or organization, whether or not the registrant is a member of the association or organization.

Arguments in Favour of Mandatory Membership

- improves the financial viability of the association, particularly in professions with a small membership base
- in the absence of a viable professional association, pressure may mount on the regulatory body to undertake the role of the association and in turn, undermine the regulatory body's role in serving the public interest
- since all members of the profession benefit from the association's activities, for example in negotiating fee agreements with government or third party payers, all members should share in its funding

Identified Benefits of Membership in a Professional Association

- enhances educational activities and promotes research ventures;
- provides a facility for continuing education, and public information dissemination;
- would be in a position to advocate in support of the economic interests of members;
- is more proactive in government/media relations than the regulatory body which must be careful and circumspect in its public statements;
- provides a vehicle for exchanging information, mentoring and educational activities;
- provides greater opportunity to inform members of legislative and legal changes relevant to their practice standards, and to receive regular information concerning findings pertaining to their area of specialty;
- may provide liability insurance for the protection of the public.

Arguments Against Mandatory Membership

- violates a professional's right of freedom of association under the Charter of Rights and Freedoms
- may result in a blurring of the respective roles of professional association (promoting professional interests) and the regulatory body (serving the public interest)
- would result in increased fees

- confusion may arise about which professional association a member will be forced to join where there may be several groups competing for membership

Adapted from: Health Professions Council, *Safe Choices: A New Model for Regulating Health Professionals in British Columbia, Part II: Legislative Review*, British Columbia, 2001

3.3 Legal Review

A review of relevant Canadian case law over recent decades reveals an evolving view of regulatory bodies within the Courts from one that saw them legitimately focused on protecting the monopoly granted to members of the profession by the Legislature, to one that has increasingly underlined the public protection mandate of regulatory bodies. In *R. v. College of Physicians & Surgeons* (1970), the BC Court of Appeal had the following comments to offer on the purposes of a regulatory body:

As a general observation I think it is important to keep in mind the purposes for which considerable authority and power has been given by the Legislature to the Council of the College Of Physicians and Surgeons of British Columbia with particular reference to the qualifications and discipline of members of the medical profession in this Province. The provisions of the statute show that these powers are given not principally for the benefit of the medical profession but for the primary purpose of protecting public health and safety. This primary purpose should, I think, provide a guide to interpretation of the statute and to the actions of the Council when exercising or purporting to exercise the powers conferred by the Act.

R. v. College of Physicians & Surgeons (British Columbia) (1970), 18 D.L.R. (3d) 197 at 198 (B.C.C.A.).

And, in *Pharmascience Inc. v. Binet* (2006), the Supreme Court of Canada reinforced the importance of the functions that are performed by regulatory bodies as part of their role in upholding the public interest

*This Court has on many occasions noted the crucial role that professional orders play in protecting the public interest. ... The importance of monitoring competence and supervising the conduct of professionals stems from the extent to which the public places trust in them. Also, it should not be forgotten that in the client-professional relationship, the client is often in a vulnerable position. ... I have no hesitation in applying the comments I wrote for this Court in *Finney*, at para. 16, generally to the health field to emphasize the importance of the obligations imposed by the state on the professional orders that are responsible for overseeing the competence and honesty of their members: _*

The primary objective of those orders is not to provide services to their members or represent their collective interests. They are created to protect the public, as s. 23 of the Professional Code makes clear....

*The privilege of professional self-regulation therefore places the individuals responsible for enforcing professional discipline under an onerous obligation. The delegation of powers by the state comes with the responsibility for providing adequate protection for the public. *Finney* confirms the importance of properly discharging this obligation and the seriousness of the consequences of failing to do so.*

Pharmascience Inc. v. Binet, 2006 SCC 48, J.E. 2006-2096, 353 N.R. 343, 273 D.L.R. (4th) 193, [2006] 2 S.C.R. 513, 151 A.C.W.S. (3d) 717; para.36 (S.C.C.)

3.3.1 Conclusions

A review of Canadian case law dealing with professional organizations of various types reveals the need for careful attention, first, to identifying the nature and source of any professional organization's mandate, and then, to considering the consequences of acting or failing to act on that mandate. Some key features of professional regulatory bodies and voluntary associations become apparent, including that:

- membership in an association cannot be denied without due process;
- membership organizations can set – and adhere to – criteria for membership provided they are fairly applied;
- a voluntary professional association may play a role in regulating a profession that is substantially similar to that of a regulatory body; and
- government may intervene if a regulatory body fails to act in the public interest.

4. Similarities and Differences between the CRNBC and the CNA

Taken together, the policy and legal review give rise to a series of dimensions along which assessment of the similarities and differences between the CRNBC, a regulatory body, and the CNA, a voluntary association, may be undertaken.

4.1 Mandate

Not unexpectedly, the College and CNA have different legislative foundations and the role that government has played in establishing each one is also different. In particular, while the BC government gave the College its mandate, the CNA's mandate was effectively self-proclaimed.

Another major difference is in relation to the scope or nature of the two mandates. For the College, its mandate is clearly if not narrowly focused on serving and protecting the public, by supervising the practice of registered nurses, and to govern their conduct applying the *HPA*. The College is clearly operating within an expressed social contract for professional regulation. Not so for the CNA. While the Association pursues a public interest mandate in promoting high standards of nursing practice, as well as uniform and high quality regulatory practices, its role in those forums is not mandated by government and, in particular, it lacks the legislative authority to take any direct action to address individual nurse behaviour.

Setting aside the obvious national focus of the CNA, its mandate includes acting in the public interest for Canadian nursing and nurses, and providing leadership in relation to nursing and health issues. In particular, the Association holds specific goals that have not been assigned to the College under the *HPA*. For example, the CNA advocates for healthy public policy and a quality, publicly funded, not-for-profit health system. The College does not hold such a mandate. If the BC government decided to pursue more privately funded health care and promote for-profit health care system in BC, the College would not have the legislative mandate under the *HPA* to lobby the government against such a change in health policy (even if it was acceptable under the *Canada Health Act*). If

the College was to challenge the government's decision, it could well find itself under investigation by the Minister and subject to a cease and desist directive under sections 18.2 of the *HPA*. The CNA would not face such a possible sanction from the federal government.

4.2 Membership

The nature of the memberships of the two organizations is also markedly different. While the College has individual nurses as registrant members, the CNA's membership is essentially corporate. Nursing organizations are its only membership. In a similar fashion, the criteria for membership are different and only the College has an effective monopoly over registered nurses who must be members of the College to perform the restricted activities and use the occupational titles granted to registered nurses in BC.

The role that individual registered nurses can play within the two organizations can also be contrasted. Registered nurses in BC elect the "registrant" members of the College Board; they have no such capacity to elect the directors of the CNA.

One of the few areas that are common to both the College and the CNA is in relation to the authority of individual registered nurses to change the organization's mandate. Albeit for different legal reasons, in both organizations individual nurses have no capacity to change their organization's mandate or bylaws. For the College, this is because the BC Legislature alone holds the authority to amend section 16 of the *HPA*, which provides the College's mandate, and the College Board holds the exclusive authority under section 19 of the *HPA* to amend the bylaws (subject to later approval by the Minister). For the CNA, individual registered nurses in BC or elsewhere in Canada have no direct capacity to vote to change the Association's Letters Patent or its bylaws. Any such change must be made by voting delegates at the Annual Meeting. These voting delegates are selected by the jurisdictional members of CNA. Changes must also be approved by Industry Canada.

4.3 Relationship with government

Another area of similarity is that both organizations must submit annual reports to government. And under both of their governing statutes, the government has the power to investigate the organization. However, the triggering event for the BC Ministry to investigate the College is focused more on whether the College has failed to act on its public interest mandate. The federal government's investigative powers are focused on its failure to meet administrative requirements of its governing legislation.

The BC government plays a more direct role in reviewing or approving the College's bylaws or amendments to its bylaws. The federal government role is more administrative than substantive when it comes to changes to the CNA's bylaws.

4.4 Accountability

Interestingly, but again for different legal reasons, neither organization is directly accountable to individual registered nurses. For the College, this is because the *HPA*

prescribes that the College and its Board is accountable to the Minister of Health Services. BC registered nurses have the limited power to elect new registrant members to the board, however these elected members serve in a “trusteeship” and not a “representative” capacity. BC nurses have no power to direct the Board to change the bylaws or make other decisions that might be contrary to the *HPA*. For the CNA, the lack of accountability to individual registered nurses exists for the simple reason that they are not “members” of the Association *per se*. Individual nurses have no legal authority to elect the directors or to pass resolutions requiring them to make certain decisions.

Both organizations have seats on their board for public representatives, however the College’s public representatives have the authority to take their concerns to the Minister of Health Services, which could then trigger an investigation of the College Board. The CNA’s appointed public representatives do not hold similar powers.

4.5 Transparency

While there are some differences, both organizations are fairly similar in how open or transparent they are to the public about their decision-making processes.

Only the College is required by legislation to ensure there is a minimum period of public review of its bylaws or proposed changes to same. The CNA may also consult with the public, but that is not a mandatory requirement of its bylaw amendment process.

Both organizations allow the public to attend meetings of their boards, but only the College is required to also keep its committee meetings open, subject to the need for confidentiality over sensitive decisions.

Both organizations also disclose similar information to the public, in that both have established websites that provide a great deal of information about their various programs and activities. However, only the College is required by its legislation to maintain a website and to ensure that certain information is posted there; the CNA has done so as a matter of policy.

4.6 Specific functions

While there are some specific functions that both organizations carry out that are essentially the same, many more are carried out exclusively by one organization or one organization plays the primary role.

The College plays the primary role in setting standards that applicants to become registered nurses in BC must meet and has also participated in the development of a national RN registration examination maintained by the CNA. In this respect, the national association plays an important role in helping the College ensure that applicants have the required entry level competencies.

Another contribution the CNA makes to nursing standards is that it is the source of the

Code of Ethics that the College has adopted by reference and applies to assess the ethical conduct of BC registered nurses. While the national association has no capacity to enforce its Code on individual nurses, its role in defining a common national standard for ethical practice has, in the past, complemented the College's role in adopting and applying that standard. It is worth noting, however, that neither the College of Nurses of Ontario (CNO) nor the Ordre des infirmières et infirmiers du Québec (OIIQ) has adopted the standard and that it is open to the College under the *HPA* to create a BC-specific Code that it would then apply to its registrants. Thus, it is fair to say that the CNA's role in this sphere is one that the College has agreed to allow the national association to continue to play within BC.

Significant differences arise in relation to the functions of complaint investigation, mediation and disciplinary hearings. In part driven by the absence of appropriate provisions within its Bylaws and the fact that individual registered nurses are not its direct members, the CNA plays no role in the direct investigation or resolution of public complaints against individual registered nurses. As is the case for the other regulatory bodies across Canada, the College holds the exclusive legal authority over these aspects of professional regulation. While the national body asserts an interest in ensuring that there is commonality and on-going improvements in how the different regulatory bodies undertake their exclusive public protection mandates, it does not have the legal capacity to direct the regulatory bodies take particular approaches or avoid others. So long as the College and the other regulatory bodies agree to allow the CNA to play this limited policy-coordination role, it can continue to do so.

Both the College and CNA promote continuing professional development for registered nurses, CNA's focus being primarily on clinical matters and CRNBC's focus being on assisting registrants to understand and apply Standards and reflect on their personal practice review. Only the College has the legislative mandate and capacity to make continuing education a condition for registration renewal. CNA's role appears to be limited to being a source for directing nurses to programs put on by other organizations. The College has gone further and creates learning opportunities in both electronic and blended formats.

Both organizations have public and media relations functions, although the foci of their activities in this area are different. The College focuses on informing the public of its work in support of its public interest mandate. The CNA's communications reflect the Association's broader interest in social policy issues.

Both organizations are also subject to information protection and access legislation, which provides the public with rights to access certain information that both organizations have collected or maintain.

Only the College has a direct responsibility under the BC-Alberta and the national labour mobility agreements. While it has no legal responsibilities under these agreements, the

CNA has assisted in coordinating the development of the mobility agreement for registered nurses.

To a certain extent, the CNA promotes registered nursing services to the public or facilitates the public's access to those services. The College plays no direct role in this sphere. And neither organization plays a meaningful role in terms of operating a referral program, although the College is required to allow the public to have access to its registry of members.

The final area with a significant difference is in relation to what could be described as "lobbying government". There are no examples posted at the College's website of initiatives, reports, submissions, etc. that could be described as examples of where the College has petitioned either the BC or the federal government for changes to legislation (other than to the *HPA* itself), policies, programs of funding. On the other hand, there are many examples at the CNA website where the national body has taken positions on a wide range of topics that address public health, environmental issues, and health care funding.

4.7 Conclusion

While there are significant differences between the roles and functions of the two organizations, it is not the fact that these differences exist that is of central importance. Rather the critical issue is that the relationship between the College and the CNA can be strained when there is a divergence or a conflict in relation to specific mandates or functions. It is this interaction of their dissimilar mandates and functions where the differences become incongruent or problematic.

5. Considering Mandates and Functions

5.1 The "Appropriate Functions Test"

To assist in evaluating whether any particular function or program being undertaken by the CNA is appropriate for the College, three questions can be asked, as follows:

- In relation to any proposed function or activity, how would it complement or support the College's public protection mandate, taking into consideration the specific objectives given to the College?
- And how would any proposed function or activity compromise or conflict with the College's public protection mandate, taking into consideration the specific objectives given to the College?
- If the proposed function or activity creates problems for the College, what steps should the College take to avoid or eliminate those problems?

These questions form what can be described as an "appropriate functions test".

5.2 Application of the test

Perhaps the most contentious issue currently before the College would be its role in advocating for nurses or lobbying government for improvements to health and social policy and legislation

The above three-part test can be applied to the function of lobbying government to then explore whether or not that function is one that the College could continue to undertake as a member of the CNA. If it is a function that the College should avoid then that would be a strong argument for the College to then remove itself as a member of the CNA or seek some other change in its relationship with the national association.

5.3 Does lobbying government complement or conflict with the College's mandate?

Lobbying any level of government for changes to legislation, policies or funding may well be “in the public interest” in that such changes are hopefully going to result in improvements in public health, etc. However, in order to justify this activity as one that falls within its narrow public protection mandate under section 16 *HPA*, the College would be hard pressed to create justified linkages between its lobbying efforts (be they direct or through the CNA) and its specific legislative objectives, as set out in subsection 16(2). If the College was to involve itself in direct lobbying of government through the CNA or otherwise, it would in effect be unilaterally extending the legislative mandate given to it under the Act. Without the support of some other legal foundation, the College would face difficulties in justifying its actions before the BC government.

Through its membership fees, the College must fully fund its primary statutory obligations, which it has correctly stated as being directed to promoting good nursing practice and correcting poor nursing practice. But, the revenue the College needs to perform these functions is not unlimited. By devoting staff time or its limited resources to lobbying government, it could be argued that the College was then not funding its statutory obligations as fully as it should be. Alternatively, it could be argued that, if it has additional funds to spend on lobbying government, the College could be charging lower membership fees. The potential that, by lobbying government the College may be under-funding its public protection mandate and thus possibly exposing the public to harm, is likely to be sufficient grounds for the Minister to direct an investigation of the College under section 18.1 of the *HPA*. That is obviously a response from government that the College wants to avoid

As noted in the course of the policy review above, many commissions of inquiry recommended a clear separation of functions. Foulkes recommended in 1974 that this distinction be kept “sharp and distinct”. In 1991 the Seaton Commission recommended that at least two different organizations be created for all regulated health professions “so that there is a clear separation [of functions]”. By calling for this separation, the Commission was not particularly concerned whether or not one or more professional associations would be created for any single profession. The Commission's primary concern was that regulatory authorities act and be seen to act in a circumspect fashion, focusing on their basic mandate, to protect the public from harm which may result from the incompetent or unethical conduct of their members. That mandate should not be compromised directly or indirectly by other activities. In 2001, the Health Professions

Council also concluded that there should be a clear separation of function, and pointed out that the *HPA* creates a structure “that prohibits the melding of roles between the regulatory body and the professional association.”¹ A few years later, the Ombudsman of BC also expressed concern that some health professions “still carry out both [professional and public interest] functions under the same roof, potentially blurring the primary mandate to act in the public interest.”²

The Canadian Courts have consistently pointed out the need for regulatory bodies to act only to “protect public health and safety”. To do otherwise can lead governments to take drastic actions, ranging from replacing boards through to taking-over college functions or even revoking the professions designation. Indeed, it is the lack of government’s ability to exercise some oversight of regulatory bodies that has led some Courts to differentiate between purely professional associations (that are not accountable) and regulatory bodies (that are accountable). Setting aside the corrective mechanisms that are available to the BC government under the *HPA*, there are a series of reported cases where the courts have stepped in and applied different legal principles to find that a regulatory body has acted beyond the sphere of its legislative mandate. The College would want to take steps to avoid these sorts of court challenges.

The College may also hear complaints from the public if it were to engage in or be seen to support lobbying activities. A reasonably well-informed person looking at the College and taking into consideration its public protection mandate may question why the College is behaving other than as an impartial, non-activists organization and moving instead into the political sphere of lobbying government.

When a member of the College Board takes their oath of office, they are required under the *HPA* to swear or affirm (in part): “I will uphold the objects of the College and ensure that I am guided by the public interest in the performance of my duties.” This wording is set out in a schedule to the Health Professions General Regulation and could also be used as a means to ensure that individual members of the College Board do not take steps that detract from or compromise the College’s statutory objects.

While the College has now apparently divested itself of its own programs for lobbying government for changes to health and social policies, etc., by continuing to be a member of the CNA, a reasonably well informed person might nonetheless conclude that the College has retained this activity, albeit one-stepped removed as a jurisdictional member of the national association. Thus, the current relationship of the College within the CNA

¹ A major exception to this is when regulatory authorities seek appropriate changes to their enabling legislation. Another is that it would be reasonable for a governing body to respond to requests from the government to offer commentary on other legislation or new policies or programs. But in such situations, their response should be limited to considering the impact of the government's proposal on their mandate.

² Ombudsman of BC. *Acting in the Public Interest? Self-Governing Professions: The Ombudsman’s Perspective*. Special Reports No. 24, May 2003. P 7

still has the potential to create an appearance of a conflict with the College's public protection mandate under the *HPA*.

For all of these reasons, the College should take specific steps to resolve the problem it now faces as being a member of the CNA engaged in lobbying activities, even if no other examples of other conflicts can be identified.

5.4 Other factors to consider

In support of this conclusion, it is worth noting that other registered nursing regulatory bodies have decided that they should not become members of the CNA or they have ended their jurisdictional membership within the CNA, if it existed previously. For example, the College of Nurses of Ontario does not hold a seat on the national body. Instead, a professional association, the Registered Nurses' Association of Ontario, represents this province's registered nurses on the CNA.

The fact that other regulatory bodies are also currently members of the CNA or have remained as members is not a strong argument in favour of the College maintaining its current relationship. Other regulatory bodies that are members of CNA are from provinces that have either adopted legislative policies that do not require a clear separation of function or their governments have chosen not to adopt such a policy. Clearly, the BC government has adopted such a policy.

The requirement that there should be a clear separation of functions so as to avoid compromising a public protection mandate is an issue that the BC nursing profession has faced in the past. For example, in the late 1970s, there were discussions as to whether the Labour Relations Council could continue to bargain for registered nurses as part of RNABC. The issue at that time was framed by asking: Can union and professional bodies co-exist within the RNABC structure? After some debate, the answer was: No. This resulted in a separation of the Council from the Association, which led to in the creation of what is now the B.C. Nurses Union.

During this debate, members expressed confusion about the rationale for separation. However, eventually there was a recognition that the then Council's labour relations and wage negotiating functions were at odds with the Association's mandate to protect the public from incompetent or unethical nursing practice. More specifically, it was eventually acknowledged that these two divergent functions were being performed pursuant to two different legislative foundations that contributed to a conflict of philosophies between the two areas within the single organization.

In summary, and in considering only the "lobbying government" function, it is clear that such activity compromises or even conflicts with the College's public protection mandate. As such, it is necessary for the College to redefine its relationship with the CNA.

5.5 Redefining the relationship

If all or part of its current role within the CNA is inappropriate, should the College redefine its relationship with the CNA to make it more acceptable? What legal grounds support or prevent such a change?

While it may be possible for the College to no longer be directly involved in those CNA functions or projects that can create a conflict for the College or an appearance of a conflict, such as lobbying government, the public may not appreciate the distinction that the College might try to create. The public is likely to expect the College would divorce itself completely from those CNA functions that could be seen as undermining its public protection mandate pursuant to section 16 of the *HPA*.

More to the point, it is likely that the Ministry of Health Services has articulated a similar position to the College. At the least, if the College was to ask the Ministry if it could remain as a jurisdictional member organization of the CNA and – by that relationship – remain involved in association functions, including those that fall outside the scope of its section 16 of the *HPA* mandate, the most likely response from the Ministry would be “No”. Government is now more than prepared to act to take legislative action in relation to any health profession established under the *HPA* that fails to ensure a clear separation of functions. It gave itself new powers to so act by introducing sections 18.1 and 18.1 into the *HPA* by way of the 2003 amendments. That alone is an indication that the Ministry is prepared to impose corrective actions on colleges that it feels are compromising their public protection mandates. The College should now look closely at redefining its relationship with the CNA.

It is therefore necessary for the College to consider the different ways it could redefine its current relationship with the CNA.

5.6 Conclusion

Legal and policy research and analysis leads to the conclusion that the CNA function of “lobbying government” creates perceived, if not an actual, conflict for the College, given its public protection mandate under section 16 *HPA*. To remove that problem, a new provincial nursing association could be created that would take the College’s place as a jurisdictional member of the national association. Other options would be to create a direct voice for individual BC registered nurses on the national body, or to change the CNA’s mandates and functions so as to remove any conflict with the College’s mandate and functions.

Part B: Stakeholder Consultation

6. Consultation with Stakeholders

6.1 Background

As noted above, policy and legislation is influenced by context – social, economic and political developments, changing public opinion, government positions on the role of the state, and legal precedence. The current government of Canada’s position on federalism, the “new federalism”, for example, seeing no role for the federal government in areas of provincial jurisdiction such as health services, differs somewhat from previous administrations’ views on the importance of “national” efforts in this area of ongoing concern to the public. This will have an impact on the way provincial bodies engaged in “health” view national efforts. Recent developments in the business sector, including prosecution of leading figures where personal gain has trumped shareholder interests, have helped to raise public awareness and change public opinion regarding conflict of interest. This will have an impact on public sensitivity to what constitutes a conflict of interest, real or perceived, and how it should be remedied. A recent Competition Bureau review³ has turned attention to self-regulated professions, including health professions. It has underlined the potential for conflict interest and the need to limit regulation that needlessly inhibits competition. This will have an impact on self-regulated bodies’ perceptions of conflict of interest and how they proscribe their roles in protecting the public.

Just as assessing the environment is critical to keeping public policy and legislation current, understanding the views of key stakeholders is critical to determining how to approach and manage needed change. In the interests of securing the views of key interests – nurse leaders such as Chief Nursing Officers and academic heads, representatives of relevant branches of the Ministry of Health Services, other health professional regulatory bodies, and other nursing organizations in BC, as well as counterpart nurse regulatory bodies across the country and the CNA – a pan-Canadian stakeholder consultation was undertaken as part of the evaluation of the relationship between the CRNBC and the CNA.

6.2 Method

An interview guide was developed, with an opportunity for input from the CNA, and pre-circulated to respondents. Face-to-face and/or telephone interviews were conducted with 37 key informants. A further 7 informants participated in focus group style interviews, for a total of 44 respondents country-wide. Exhibit 2 below shows a breakdown of respondents.

3 <http://competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02523.html>

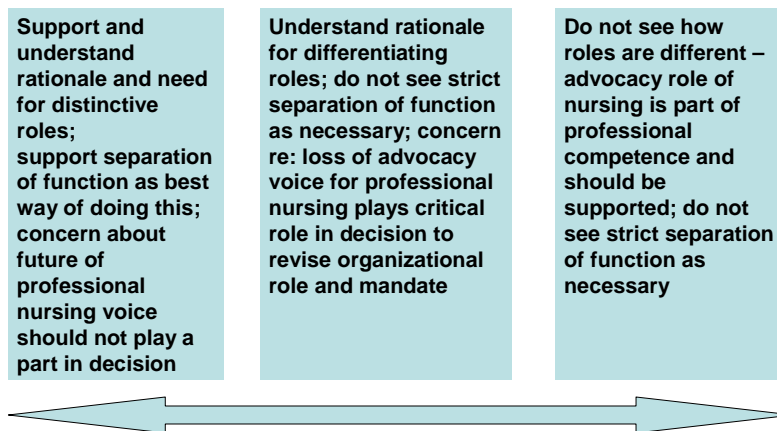
Exhibit 2: Stakeholder Survey Key Informants

Respondent Type	Number
Other nursing Association/College	12
BC Nurse Educators	7
Other BC Professional Regulatory Bodies	6
Ministry of Health Services	5
Chief Nursing Officers	6
Canadian Nurses Association	3
CRNBC Board	2
Other (BCNU, NP Association)	3
Total	44

6.3 Perceptions of Differences and Similarities

All respondents were either extremely or quite familiar with the role and mandate of the CRNBC and all but three were equally familiar with the CNA or its analogue for their profession. Respondents were asked to identify the major differences and similarities in (a) role/mandate and (b) organization/operation of a professional college and a professional association. Many respondents saw considerable congruency in the two types of organizations with respect to the role of “ensuring high quality nursing practice in the public interest”, however, differences arose in “how” this role was perceived to be appropriately played out in the respective types of organizations. Exhibit 3 below highlights the range of views regarding the differences between the organizations.

Exhibit 3: Range of Views



Major differences were seen to relate to the accountabilities of the two organizations and the consequent intra-organizational skill set necessary to fulfil duties and responsibilities.

The accountabilities are to different groups – the nurse members on the one hand and the public on the other. (Provincial Association/College)

There's a different skill set and different way of thinking. The college functions are very structured, more 'black and white', while the association functions are a 'softer skill set'. (Provincial College/Association)

We hold the profession to account... and we don't have to account to the profession. (BC Regulator)

An association is an autonomous body while a college exists at the discretion of government. (BC Regulator)

As noted above, major similarities were seen to relate to the “public interest” mandate of the organizations. Many respondents noted the role of the nursing profession in advocating for patients’ needs, with this being a key competency for practice. Others, most often other regulatory bodies, distinguished the difference between “protecting the public”, the role of the regulator, and “protecting the public interest”, a role which many organizations could profess to fill.

Both trend and monitor, both support nurses, and both endorse quality of care for the public. (CNO)

Both are there to develop and shape nursing to meet future needs in the public interest. To me, CNA doesn't do things that aren't in the public interest. (Provincial Association/College)

There are overlapping mandates in protection of the public but different strategies for doing this: regulation vs. advocacy. (Educator)

6.4 Where Conflicts Arise

Respondents were asked whether they saw any potential for conflict of interest in the roles of voluntary associations and regulatory colleges and, if so, how these might be managed.

Views varied depending on the type of organization the respondent came from. For those from regulatory bodies, the different mandates of “regulation” and “representation” were so significant that conflict of interest was inherent. For these respondents, separation of function in separate organizations was essential to retaining public confidence.

For others, notably organizations with dual (bifurcated) mandates, the obligation to advocate for issues of concern to the public was of critical importance, second only to

their public protection mandate. For these respondents, when perceived conflicts in mandates arise the organization's obligation, at very least, is to enable linkages between those working on relevant issues in the public interest. Some went further, to recommend work "behind the scenes" to ensure that critical issues were supported with needed information and knowledge. Still others suggested that the government's intention and will to act in the event that the public interest mandate was seen to be compromised, should be tested by action and engagement on issues deemed of critical import to the public.

Several respondents noted that, adding to the confusion about when conflict of interest arises, what is acceptable and appropriate activity, and how conflict ought to be managed, was the fact that policy and legislation vary significantly across the country. The mobility of the nursing workforce means that many RNs will have practised in different provinces, under very different policy and legislative frameworks. What they have come to expect of their "mandatory membership" association in terms of representation and advocacy in one province may not be able to be fulfilled by such an organization in another jurisdiction. Some of the messaging by the CNA was seen to confuse the matter further. Those with a sophisticated understanding of the division of powers, for example, noted that it is confusing for the national association to have an object regarding regulation when this falls squarely under provincial jurisdiction and under the purview of regulatory – or dually-mandated - bodies.

How can the public have confidence when they see advocacy for the profession while still declaring focus on the public interest? (Regulator)

There's a significant struggle that goes on. The expectations of the members of the association are that you will go out there and 'put up the good fight'. (Provincial Association/College)

Some would say there should be NO similarities between the organizations. Regulating in the public interest means you may have to do things that are contrary to the interest of individuals or members. (Regulator)

Many respondents pointed to the need to be clear about the differences in mandates of regulatory bodies, membership associations, and even other organizations such as trade unions, to identify the nature and basis of conflicts, and to communicate these – "early and often" - to stakeholders.

6.5 Difference in Views of Stakeholder Groups

As noted above, views of respondents differed quite significantly depending on the organization they were from and the respective perspective they brought. For example, there was a marked difference in views of professional bodies across the country

depending on whether these organizations held a “dual” or a “single” mandate. Though some noted significant challenges in ensuring clear separation of function, real or perceived, within a single organization, those with dual or bifurcated mandates tended to see less conflict of interest in the roles of regulation and representation, with action in “the public interest” being the unifying objective.

A fear of “fracturing the voice” of professional nursing was expressed by many stakeholders, particularly by those organizations with a dual association and regulatory mandate who relied heavily on the support of counterpart organizations across the country and the presence of a strong, national voice for the nursing profession. By contrast, those organizations with single mandates – either regulatory or advocacy – were strongly supportive of the clear separation of function as the only means of ensuring the optimal fulfilment of public, government, and nursing professionals’ expectations.

While those with dual mandates mourned the loss of a respected and highly valued “voice of BC nurses” on issues of interest to the profession and to the public, those with a single regulatory mandate welcomed the presence of a new colleague to engage with on common regulatory concerns. Those with solely regulatory mandates voiced concerns regarding the role that CNA has played in regulatory matters, pointing to a lack of jurisdiction and expertise at the “national” level. They welcomed the prospect of establishing a new body that could deal exclusively with regulatory issues on a pan-Canadian basis.

Many BC respondents noted the need for a provincial voice on professional nursing, ideally from a new organization that could play a focused role in this regard. Nurse educators highlighted the role that the RNABC had played in supporting and mentoring new nurses and of providing a readily identifiable and recognizable “home” for professional nursing. Chief Nursing Officers identified the loss of several valued functions with the departure of the RNABC, including the supportive role of a membership association, the voice it provided for professional nursing, the existence of geographic “chapters” and of special practice groups to facilitate and focus the engagement of nurses across the province.

The Ministry of Health Services, too, noted the desirability of a provincial voice for professional nursing for many of the reasons outlined in the Health Professions Council’s review of 2001 (see section 3.2.6 above). These include that a professional association could provide a vehicle for exchanging information, a facility for public information dissemination, and greater opportunity to inform members of changes in policy and legislation relevant to their practice standards. While the Ministry’s Nursing Advisory Council plays a role as a “go to” table for questions on nursing practice, education, labour issues and the future of nursing, participants come to the table with narrow, focused mandates. A professional nursing association could help to bridge the knowledge pools and unify the voice of the profession within the province.

Other BC regulatory bodies expressed strong views on the need to separate roles and mandates for professional regulation and professional representation. Governed by the same legislation as the CRNBC, these regulatory bodies had little patience for the view that the practise of nursing was, in essence, in the “public interest” or that it was acceptable for the provincial regulatory body to belong to what was perceived to be a national advocacy association.

The roles and mandates must be separated. The public is increasingly sophisticated about conflict of interest. It doesn't wash any more that 'what's good for nursing is good for the public'. (BC Regulator)

6.6 Relationship with the CNA

Many respondents expressed support for a national voice for professional nursing, however, there were clear differences in opinion about whether the CRNBC should belong to the CNA. Most of those from organizations with a bifurcated mandate felt strongly that the CRNBC should continue to be a member of the CNA and, even more, that it should re-join the debates that it has excused itself from in recent years. Those who were most passionate in their support of the CNA expressed grave concerns about the sustainability and legitimacy of the “national” voice of the organization without BC at the table. While an active member of the CNA, RNABC, had been seen as a leader and an enormous support to many smaller organizations with bifurcated mandates. And, although no longer participating in non-regulatory matters under discussion at the Board, the CRNBC remains the largest financial contributor amongst CNA member organizations.

As noted above, those organizations with a single regulatory mandate, both those health professional regulatory bodies consulted in BC and nursing regulatory bodies across the country, felt strongly that membership in the national association was inappropriate. For some, participation in an organization with a “national” mandate was in conflict with the provincial jurisdiction of health, particularly in the matter of professional regulation. For these, as well as most of the Ministry of Health Services respondents, some of the activities of the CNA were at best an “annoyance” and at worst, a direct interference with provincial or pan-Canadian initiatives and efforts. They favoured the development of a separate pan-Canadian federation of regulatory bodies where focused expertise could be developed and exchanged and where discussions pursuant to inter-jurisdictional harmonization of policy and regulation could legitimately be undertaken.

7. Conclusions of the Review

The stakeholders consulted expressed strong and passionate views about the role of the CRNBC and its relationship with the CNA. However passionate their positions, these should not, nor cannot, influence the decision of the CRNBC Board regarding its membership in the CNA. This decision must be firmly based on analysis of the policy

and legal context and consequences for self-regulated health professions in BC. Here, the most relevant opinions on what is appropriate and feasible are from those who operate under this same framework.

There can be no doubt on the findings of the policy and legal review, namely that the CNA function of “lobbying government” presents perceived if not actual conflict with the CRNBC’s mandate to protect the public under section 16 of the *HPA*. The other health professions in this province, governed by this same legislation, face the same dilemmas as those faced by the nursing profession. While CNA members from other jurisdictions may have strong views on why the CRNBC should remain a member of the national association, these have little bearing on the context of BC.

Notwithstanding the need for a voice of professional nursing in BC and at the national level, the high regard which was accorded to the RNABC, and the passionate support expressed for the CNA, the conclusions of this review are clear: that the CRNBC should initiate a measured and managed withdrawal from the Canadian Nurses Association.