

**CANADIAN DENTAL
REGULATORY AUTHORITIES
FEDERATION**



**FÉDÉRATION CANADIENNE
DES ORGANISMES DE
RÉGLEMENTATION DENTAIRE**

REPORT OF THE REGISTRARS RESPONSIBLE FOR FILE OF THE ROYAL COLLEGE OF DENTISTS OF CANADA

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PREAMBLE

On 13 December 2014, the Canadian Dental Regulatory Authorities Federation Management Group (the Management Group) approved the allocation of the Canadian Dental Regulatory Federation (CDRAF) administrative files to individual and groups of registrars.

Responsibility for the administrative file related to third party assessment of individuals seeking dental specialty status (RCDC file) was provided to a collective of registrars - Mme. Caroline Daoust, Dr. Gordon Thompson and Dr. Marcel Van Woensel. Mme. Daoust was appointed chairperson of the collective by the Management Group.

The Royal College of Dentists of Canada (RCDC) was created by an Act of Parliament in 1965 with a mandate to establish qualifying examinations for fellowships in each of the nationally recognized dental specialties. The RCDC develops and produces ten examinations (9 nationally recognized dental specialties and dental science) in both official languages. Successful completion of the RCDC National Dental Specialty examinations (NDSE) is a prerequisite to registration and licensure for all provincial dental regulators in Canada as evidence of having met national standards.

The mandate of the registrars responsible for the RCDC file (R³) is to communicate and work with the RCDC on issues and opportunities of interprovincial interest in the third party assessment of individuals seeking dental specialty status. The intent is to enhance and build on previous efforts by CDRAF and individual provincial regulatory authorities to ensure the appropriateness of the NDSE as an assessment tool for registration of dental specialists. R³ recognizes its role is not exclusive and that each provincial regulatory authority may need to pursue individual issues.

The Management Group approved a survey of provincial regulatory bodies to identify issues, concerns and opportunities in the relationship with RCDC. This report shall analyze the issues identified in the survey for the purpose of developing recommendations to the CDRAF Board for an action plan for R³ interactions with RCDC. The recommendations will include identification of priority issues.

THE SURVEY

The survey questionnaire is included in Appendix One for information purposes.

The survey was sent to the registrars and CDRAF representatives of each provincial regulatory authority electronically on 12 March 2015. Eight regulatory authorities provided a written response and one regulatory authority provided an oral response by telephone by 30 March 2015.

THE ISSUES

R³ appreciates the efforts and timeliness of the responses. Of the submitted responses, the survey provided the following information:

- four identified no issues or concerns with the relationship or function of RCDC;
- two articulated the benefit of developing written agreements with third party assessors to clarify rights and responsibilities in the relationship;
- two expressed concerns with the current RCDC governance model;
- one concern related to the volunteer relationship of examiners developing and presenting the NDSE;
- one identified an opportunity to develop a blueprint of the characteristics of a dental specialist necessary for regulatory purposes;
- one identified concerns with the NDSE Component I; and
- two identified concerns with the NDSE Component II.

Each issue shall be analyzed based on the information provided; the nature of the issue and information available to R³.

THE ANALYSIS: ISSUE ONE - WRITTEN AGREEMENTS

This report shall consider three aspects to written agreements between RCDC and dental regulatory authorities to clarify the relationship, roles and responsibilities in the registration process:

1. the need for written agreements;
2. the appropriate parties for written agreements; and
3. the content for a written agreement.

For organizational ease of use, recommendations specific to the aspects of a written agreement shall be included after the analysis of each aspect.

1. THE NEED FOR WRITTEN AGREEMENTS

No written agreements are in place between provincial regulatory authorities and RCDC. The lack of a written agreement has not precluded dental regulatory authorities from exercising their obligations to ensure fair regulation practices are observed. The roles, responsibilities and obligations in this third party assessment relationship have developed through a mutual evolving history, shared interests, accepted practices, oral arrangements, common understandings and informal requests.

A written agreement does have clear benefits for dental regulatory authorities, third party assessors and the public. A written agreement provides clarity and certainty to the parties and the public as to the expectations, roles and responsibilities necessary to ensure fair registration practices. A properly designed agreement would allow for similar flexibility and opportunity for innovation as exists under the current unwritten arrangements.

The recommendation of a written agreement has developed as a current issue, but it is not new. While focused on the appeal and internal review processes, the 2005 Report to the Ontario Minister of Citizenship and Immigration by Mr. George Thomson, *Review of Appeal Processes from Registration Decisions in Ontario's Regulated Professions* (The Thomson Report) provides the preliminary insights into the role of third party assessors and responsibilities of regulatory authorities in their use of third party assessors in the registration process.

The Thomson report identifies a *"basic principle is that ultimate responsibility for registration decisions rests with the regulatory body"* (page 48). This would require that for processes where an individual must successfully complete a series of third party assessments before application for registration that there is a responsibility on regulatory authorities to ensure the use of third party assessors does not eliminate procedural protections like the right of review or appeal (page 27, 28).

The Thomson report does not preclude the use of third party assessors in the registration process. It recommends for fair registration practice, *"regulators should make expectations clear and reach agreements with third party assessment bodies"* (page 49) when they rely on third party assessments. On pages 48 and 49, it identifies a realistic and practical approach:

Regulatory bodies who rely on third party assessments to assure themselves that basic procedural protections are in place, as applicable, within the third party:

- *published criteria for decision-making*
- *written decisions*
- *reasons indicating the basis for unsuccessful assessments*
- *right of internal review or appeal*
- *the opportunity for the candidate to retake tests and exams*

It is a valuable document as its recommendations appear as elements of fair registration legislation. It is the first document to recommend clear agreements between regulatory authorities and third party assessors.

The *Professional Code* in Québec established the Commissioner for Complaints concerning the Recognition of Professional Competence (Commissioner) within the Office des Professions du Québec in 2009. A role of the Commissioner is to monitor the functions of the various professional orders in Québec similar to a fairness commission in some other provinces.

Recent interest in written agreements has occurred with the Commissioner's investigative monitoring report, *Parameters agreed between professional orders and third parties respecting the involvement of third parties in the processing of applications for equivalence (2014)*, (The Report). The Report identifies the following issue related to accountability of regulatory authorities with recommendations for the management:

"The absence of parameters weakens the protection of the public - for which professional orders are responsible - and the governance of the system for regulating professions in Québec... centralizations should not be in detriment to the legal obligations of professional orders in carrying out their functions and responsibilities, hence the importance of properly defining the parameters for the third party's involvement." (page 2).

The Report views the relationship between regulatory authority and third parties as a delegation of activities with increased necessity to report on those activities. In jurisdictions where delegation by regulatory authorities is not legislated, the relationship between regulatory authority and third party assessor may be more appropriately described as that of recognition. Regardless of the relationship being of delegation or recognition, a written agreement would be important for demonstrating a third party assessor is compliant with fair registration practices.

The Commissioner's mandate is to monitor, investigate and report on issues in the public interest relevant to registration. While the Commissioner reports are limited to recommendations, they influence government policy.

Current legislation in Québec does not require or preclude written agreements between regulatory authorities and third party assessors. Communications with the Registrar for the ODQ indicates that legislative changes are being developed in consideration of the recommendations from the Commissioner in this report.

There are no current statutory requirements for provincial dental regulatory authorities to have a written agreement with its third party assessors.

An analysis of guidelines and criteria for health regulatory authorities produced by the fairness commissioners in Manitoba, Nova Scotia and Ontario does not identify a written agreement as a requirement or recommendation.

A study on third party assessors produced by the Ontario fairness commissioner produced in 2009. This study emphasizes the importance of the role of third party assessors in the registration process and the necessity of a relationship between the third party assessor and regulatory authorities that allow regulatory authorities to ensure assessment processes meet the required standards of fairness, objectivity, accountability and transparency. The study does not make recommendation on formalism or establishing written agreements.

Actual fair registration practice reviews of the Manitoba Dental Association, Provincial Dental Board of Nova Scotia and the Royal College of Dental Surgeons of Ontario did not identify a written agreement as a recommendation or requirement.

RECOMMENDATIONS ON NEED FOR A WRITTEN AGREEMENT

While there is no current statutory requirement for a written agreement, it is a reasonable expectation for a dental regulatory authority to develop a written agreement with its third party assessors as they carry out essential functions for our registration responsibilities.

R³ recommends all dental regulatory authorities develop written agreements with third party assessors. The benefits of providing clarity and certainty to the relationship outweigh the inconvenience of establishing a document. Provinces with fair registration practice commissions should anticipate written agreements shall become criteria of future reviews.

2. APPROPRIATE PARTIES FOR WRITTEN AGREEMENTS

Dental regulatory authorities have achieved much through interprovincial cooperation. The efforts to establish uniform practices have allowed for the effective use of resources regardless of organization size. On issues of importance to regulation of the profession for public protection, a single voice has been influential.

Third party assessors benefit from the ability to engage one organization to establish a standard agreement to address issues on interprovincial concerns. A single agreement would minimize duplication, costs and uncertainty of responsibilities to any particular provincial dental regulatory authority.

Balancing the benefits of a Pan-Canadian agreement is the reality that each provincial authority may have different needs from an agreement. This is emphasized in the Québec Commissioner's investigative report. The Report placed some emphasis on concerns about a regulatory authority adopting standards established by another body or jointly among regulatory bodies. The concern extends to any appearance that professional regulation is a federal responsibility:

Professional orders may find it helpful and beneficial for their profession to adopt standards established by another body or jointly with other bodies. However, it is the most delicate aspect of third-party involvement, because it affects a normative responsibility that, in the Québec professional system, is shared between the professional order and the public authority—which must approve these standards as part of the regulation process.

On a related subject, a pan-Canadian logo, as well as a pan-Canadian portal or single window can lead to think that a profession is regulated federally. Québec professional orders must make sure that they and the pan-Canadian organization associated with the profession correctly communicate their respective responsibilities, as well as the seat of decision-making power with respect to recognition of professional competence and regulation of the profession.

In short, Québec professional orders (and the regulatory bodies of the other jurisdictions) should pay attention to risks in the way they delegate functions or activities to a Canadian or foreign body, particularly in the event of pressure to centralize operations and harmonize standards. (page 9).

Professional regulation is a provincial matter. The provincial dental regulatory authority is responsible for registration and delegation or recognition of third party assessors or assessments.

RECOMMENDATIONS FOR PARTIES TO THE AGREEMENT

R³ recommends the agreement should be between each dental regulatory authority and the third party assessor. R³ encourages the development of a standardized template agreement with RCDC that a regulatory authority may use with preferably minimal modifications to avoid duplication and costs to regulators and third party assessors.

3. AGREEMENT CONTENT

While there are no statutorily established requirements for the terms of a written agreement, the Thomson Report, the Ontario study of third party assessments and Québec investigative report provide some direction on the content of an agreement. The Thomson report provides:

Regulatory bodies who rely on third party assessments to assure themselves that basic procedural protections are in place, as applicable, within the third party:

- *published criteria for decision-making*
- *written decisions*
- *reasons indicating the basis for unsuccessful assessments*
- *right of internal review or appeal*
- *the opportunity for the candidate to retake tests and exams*

The Ontario study did not consider the need for a written agreement but did make recommendations to regulators on their responsibilities with regards to the use of third party assessors in their registration activities. Study provides:

It is incumbent upon the regulatory bodies to ensure that the practices of their external partners are in keeping with the fair registration practices that they themselves are working toward.

As a first step, regulators should engage directly with the qualifications assessment agencies that they rely on. Regulators should ask whether the agencies participated in this study and ask participating agencies to share their responses. Second, regulators and assessment agencies must endeavour to establish an ongoing dialogue about how their processes can align most effectively. Every effort should be made to streamline processes and eliminate duplication so that the costs borne by applicants and the time needed to complete assessments can be reduced. (page 24).

The investigative report provides the most specific recommendations:

That the subjects to be dealt with in agreements be prescribed by the Professional Code. Depending on the type of activity concerned and on whether the third party has a direct or indirect role with candidates, agreements should include the following subjects:

- *nature of the tasks the third party is entrusted with, and role of each party to the agreement,*
- *results expected in terms of goods and services, and in terms of the objectives to be achieved,*
- *commitment by the third party to apply the standards established under the Professional Code, the act constituting the professional order (if applicable) and the regulations made under these,*
- *commitment by the third party to apply the generally accepted principles for admission to a professional practice, particularly with respect to recognition of professional competence,*
- *methodology and criteria used,*
- *terms and conditions for processing candidates' files or sharing information or expertise,*
- *periods of time for performing various tasks,*
- *fees payable by candidates or portion of the costs beared by the professional order,*
- *terms and conditions for an unbiased and objective review of the recommendations made or decisions rendered by the third party,*
- *nature and scope of information to be shared,*
- *protection of personal information,*
- *terms and conditions for reporting to the professional order on all aspects of the agreement,*
- *term, renewal, amendment and periodic review of the agreement. (page 13, 14).*

RECOMMENDATIONS FOR CONTENT OF THE AGREEMENT

Based on the recommendations in the identified three reports, a standardized template should be developed in cooperation with RCDC addressing the following issues in the following context:

1. Written agreement between the third party assessor and regulatory authority establishing the relationship, responsibilities, processes and standards of assessment;
2. Written agreement shall facilitate recognition of competence from candidate's perspective:
 - a. avoid duplication and unnecessary additional costs;
 - b. third party assessor involvement should simplify process and not increase burden on candidate as compared to assessment by the regulatory authority;
 - c. third party assessor involvement should be cost neutral or reduce costs to candidate as compared if assessment performed by regulatory authority.
3. Written agreements should be directly with the third party assessor and not through an interprovincial organization.
4. Written agreement separate from being a member of a Canadian or interprovincial body is necessary where a professional order delegates functions or activities no matter how sophisticated the body's internal policies, procedures and methods;
5. Effective written agreement are:
 - a. well structured facilitating readability through organization and presentation;
 - b. degree of formalism;

- c. ensure adequate supervision of third party assessments;
- 6. The written agreement should contain:
 - a. objective criteria for eligibility for third party assessment;
 - b. assessment methodology and criteria for determining equivalence outcomes:
 - i. beyond listing of fields, areas or subjects;
 - ii. append referenced existing standards and grids.
 - c. policy and terms of appeals/reviews by third party assessors
 - i. clear accessible information available to candidate;
 - ii. impartial, objective review at candidate request;
 - iii. reviewers different than initial assessors.
 - d. distinguish costs, fees and responsibilities for costs;
 - e. identify status of third party assessor - not-for-profit;
 - f. clear, publicly accessible information on role of regulatory authority and third party assessor;
 - g. clear information to candidate on role of regulatory authority and third party assessor;
 - h. regulatory authority oversight process for information in 3(d)(vi, vii);
 - i. agreement on collection, use and disclosure of personal and information;
 - j. agreement on collection, use and disclosure of specified statistical information for regulatory reporting purposes;
 - k. periodic review provisions for the agreement:
 - i. operational - policies and procedures for assessments; and
 - ii. methodological - manner assessment tasks performed.
 - l. agreement amendment provision if legislative or regulatory change;
 - m. third party assessor reporting to regulatory authority provisions:
 - i. number of applications received;
 - ii. number of applications processed;
 - iii. processing time;
 - iv. number of appeal/review applications;
 - v. provide commentaries explaining nature of tasks and challenges;
 - vi. third party assessor recommendations to assist regulatory authority in exercising its functions.

THE ANALYSIS: ISSUE TWO - GOVERNANCE

In the surveys, the suggested positions on governance ranged from inclusion of the two CDRAF representatives as voting members of Council and the current Council being appointed similar to the NDEB. A summary of the two models and relevant legislation is provided in the appendices.

In her study on third party assessments, the Ontario fairness commissioner confirmed the appropriateness for the use of third party assessors expressed in the Thomson report. She explained:

Regulatory bodies may rely on agencies to assess qualifications for a number of reasons. These organizations may offer expertise in assessments that the regulator lacks. A regulator may rely upon a national agency that provides services to provincial regulators. Agencies may also offer qualifying or bridging programs that candidates are required to take in order to enter a profession.

Outside of dentistry, there are a myriad of qualification assessment agencies used by regulatory authorities. These assessment agencies or third party assessors include post-secondary educational institutions, credentials assessment agencies and profession-related assessment agencies. As described in her study

"Credentials assessment agencies" are services that provide credentials evaluation to individuals. The organizations referred to in this report as "profession-related assessment agencies" include a range of entities such as professional associations and examining or certification boards established by the professions. These organizations perform assessments as part of their mandate to advance their professions, and most also perform other tasks.

The agencies used outside of dentistry have a variety of governance models. Many are private organizations (usually not-for-profit). Some are consortiums of regulatory authorities or membership services organizations. A few have federal charters which determine their governance. There does not seem to be any limitation on the type of governance model acceptable for use by a third party assessor delegated or recognized in registration assessments.

The limited time provided to produce this report has restricted detailed reviews of the variety of governance models used by third party assessors and accepted by other health regulatory authorities. As medicine is similar in the nature of their practice and recognition of specialties, the governance for the Royal College of Physicians and Surgeons of Canada (RCPSC) has been summarized for comparison purposes in the appendices along with a summary of the governance model for NDEB and RCDC.

The statutory established governance model for RCDC and RCPSC is substantially similar. The Council and executive committee are similarly composed with the majority of councillors elected by the membership of identified specialty divisions. The NDEB legislation established a different governance model for that Board. A NDEB model would require legislative action by Parliament which would focus resources away from examination development and delivery.

A review of fairness commission reports for medical regulatory authorities did not identify any issues with the governance or activities of RCPSC as a third party assessor.

In dentistry, there are a limited number of recognized third party assessors beyond the dental and dental specialty training programmes - the Commission on Dental Accreditation of Canada, NDEB and RCDC. All are profession-related assessment agencies. The mandate of each of these assessors is narrowly focused on a particular activity requiring the development of particular expertise. The expertise for the roles these assessors play is undeveloped or unobtainable for many dental regulatory authorities in Canada.

The issue of RCDC governance has been before the CDRAF Board in the past. A significant issue is the current governance structure is - similar to RCPSC and NDEB - based on federal statute. Beginning in 2009 a series of discussions of the issue at the CDRAF Board led to the CDRAF executive negotiating with RCDC executive an arrangement to allow two CDRAF representatives and a public representative to be members of the examinations committee. The changes to the committee were approved by RCDC Council at their September 2011 meeting. Reports in the minutes of the CDRAF Board by Council observers and Examination committee members have been positive about the relationship.

Third party assessor governance has not been specifically identified by fairness commissioners in their guidelines or studies. Actual reviews of registration practices by dental regulatory authorities do not discuss concerns with governance of third party assessors. Oral communications between a fairness commissioner and a regulatory authority did express a concern with the potential for conflicts of interest or bias.

The Québec monitoring report identified the need for written agreements between provincial professional orders and third party assessors. The report stated that the involvement of a professional order whether directly or indirectly in the governance of a federal, interprovincial or Pan-Canadian third party assessor is not sufficient to preclude direct written agreements. Moreover, the report recommended that agreements between interprovincial regulatory authority organizations and third party assessors would also not be sufficient to preclude a direct written agreement. The report was silent on the nature of governance of a third party assessor. It did not provide a specific recommendation for professional orders to control governance of a third party assessor.

Professional orders may find it helpful and beneficial for their profession to adopt standards established by another body or jointly with other bodies. However, it is the most delicate aspect of third-party involvement, because it affects a normative responsibility that, in the Québec professional system, is shared between the professional order and the public authority—which must approve these standards as part of the regulation process.

On a related subject, a pan-Canadian logo, as well as a pan-Canadian portal or single window can lead to think that a profession is regulated federally. Québec professional orders must make sure that they and the pan-Canadian organization associated with the profession correctly communicate their respective responsibilities, as well as the seat of decision-making power with respect to recognition of professional competence and regulation of the profession.

In short, Québec professional orders (and the regulatory bodies of the other jurisdictions) should pay attention to risks in the way they delegate functions or activities to a Canadian or foreign body, particularly in the event of pressure to centralize operations and harmonize standards. (page 9).

A review of available reports on RCDC examination practices does not identify issues of bias or conflict involving the governance of the organization.

RECOMMENDATIONS FOR GOVERNANCE

R³ recommends a cautious approach to advocating for changes to RCDC governance. Current involvement at the Council and examination committee level allows for a direct regulatory voice on issues as well as oversight opportunities to ensure bias and conflicts of interests do not impact on the fairness, objectivity, accountability and transparency of the assessments.

Potential issues may be managed through the development of written agreements including direct province specific oversight.

An opportunity may be to engage RCDC on changing its bylaws to allow nomination of examiners by dental regulatory authorities. This would allow opportunities for increased diversity of examiners and reduction of potential for conflicts of interest.

THE ANALYSIS: ISSUE THREE - VOLUNTEER EXAMINERS

Examiners for RCDC volunteer to develop, review, deliver and evaluate the written and oral examinations. RCDC develops, forty distinct examinations (a written and oral examination for nine dental specialties and dental science in two official languages) to meet psychometric expectations and accuracy. The annual candidate numbers have increased but are still less than 200.

The volunteer examiner model is substantially similar to the model used by RCPSC.

The potential issues related to a lack of remuneration are that it may limit qualified individuals from participating or raise concerns that individuals are participating for non-altruistic reasons.

Available reports reviewing the examination process suggest the administrative processes and monitoring by chief examiners and calibrated, independent observers would identify unqualified individuals participating. There does not seem to be any particular self interests for an individual that would impact fair registration practices especially considering the large collection of individuals from a variety of backgrounds that participate in the process.

The cost of compensating to attract a dental specialist would be significant. It would raise similar issues as to the reason for participating in the process. The additional costs would be directly borne by the small number of candidates.

RECOMMENDATION FOR VOLUNTEER EXAMINERS

R³ recommends the issue not be a priority for discussion with RCDC at this time.

THE ANALYSIS: ISSUE FOUR - REGULATORY BLUEPRINT

At the October 2013 CDRAF Board meeting, the CDRAF executive was requested to establish a Working Group on reciprocity, relationship between CDAC and regulatory authorities and other relevant issues. One relevant issue was responsibility for setting the standards regulatory authorities rely on for determining the necessary

competencies or characteristics of a new dentist or dental specialist. The Management Group approved in December 2014 that a group of registrars responsible for the file with Mssrs. Fefergrad and Marburg acting as co-chairpersons continue with this file.

In dentistry, third party assessors have developed their blueprints for their assessments which guide training programmes, accreditation reviews and examination development. The role of regulators has been to observe, participate and recognize at varying degrees the blueprint development of third party assessors. Regulatory authorities in most jurisdictions have not developed a clearly documented blueprint.

Interprovincial regulatory issues related to certification standards or blueprints for dentists and dental specialists are being managed by another group or registrars. The relevance to the RCDC file is the opportunity to utilize the expertise of RCDC in the development of a regulatory blueprint and the need to avoid unnecessary disruption to current registration criteria.

RECOMMENDATIONS FOR REGULATORY BLUEPRINT

R³ requests the co-chairs provide a timeline for the development and presentation an action plan at the CDRAF Board meeting. Based on the information at the Board meeting, R³ shall provide information to RCDC on the opportunity to work with CDRAF on this project and that further information shall follow as it becomes available.

R³ recommends that information about this opportunity be coordinated through R³ until an action plan for the blueprint is approved by the CDRAF Board.

THE ANALYSIS: ISSUE FIVE - NDSE COMPONENT ONE

RCDC has been developing technologies to support the NDSE process. The intent is to improve documentation storage and analysis; reduce timelines for the marking of Component One; allow for the eventual use of multiple locations for Component One while maintain security and transition to an examination experience more familiar to candidates.

Last year was the first year of the new online delivery system. External issues disrupted the examination for a few candidates. All candidates who experienced the disruption were provided an opportunity to re-write the Component One.

This year there were fewer challenges, but still some issues for candidates occurred mostly related to the incompatibility of the computers that the candidates brought. RCDC was prepared with contingencies and issues were addressed quickly. RCDC is having an external audit to evaluate the process and options to further avoid issues for candidates

A review of the information provided for candidates is clear as to the technology requirements.

RECOMMENDATIONS FOR NDSE COMPONENT ONE

R³ recommends ongoing follow up on this issue. As RCDC completes its external review and considers the causes and alternatives to managing the problem, R³ shall update CDRAF and seek guidance as appropriate.

THE ANALYSIS: ISSUE SIX - NDSE COMPONENT TWO

As with many regulatory authorities, the Manitoba Dental Association regularly sends observers to third party assessments to monitor and report on those activities. The reports form the basis of discussions on expectations and opportunities with the third party assessor. The nature of the RCDC appeal processes is an ongoing discussion.

In 2013, Office of the Manitoba Fairness Commissioner reviewed the registration practices of the Manitoba Dental Association. While recognizing the efforts to ensure fair assessment, the limited nature of the RCDC appeal process was identified as an issue.

The Royal College of Dentists of Canada (RCDC), the national body responsible for specialist exams, offers a \$500.00 appeal process that is restricted to matters of procedure; the content of its exams is not subject to appeal.

Although mitigated to some extent by the extensive psychometric work invested in the development and execution of these exams, restricting appeal opportunities to rescoring or more broadly to matters of procedure ,risks denying appeals of merit from being heard.

In her 2013 review of third party assessor, the Ontario fairness commissioner stated:

While there are agencies whose practices are open and timely, others have practices that are costly and lengthy and leave candidates without reasons for decisions made in their case and without opportunities to challenge those decisions.

These qualifications assessment agencies must improve their practices. (page 21).

Based on her review of third party assessors, she recommended:

Provide Opportunities for Appeal

As established by Judge George M. Thomson in Review of Appeal Processes from Registration Decisions in Ontario's Regulated Professions, the opportunity to appeal decisions is an important aspect of fair registration practices. All qualifications assessment agencies should have an appeal process so that candidates may challenge decisions made in their case.

The NDSE Component Two is an oral examination. Oral examinations are common practice for evaluation of competency for specialists in dentistry and medicine in North America. A significant challenge with oral examinations in meeting fair registration practice expectations is the limited documentation of candidate responses. Without documentation, there are limits on the ability to appeal results on the facts.

The need for appropriate review mechanisms in registration decisions underlies the Thomson report. It is a criterion of review for all fair registration practice commissioners. There are a variety of opportunities to address this issue - many relatively simple changes to the existing process. A more detailed discussion is available in an excerpt from an MDA report in the appendices.

RECOMMENDATION NDESE COMPONENT TWO

R³ recommends ongoing follow up on this issue. There are some legitimate practical limitations to change. Unintended consequences and costs associated with changes must be considered. R³ shall update CDRAF and seek guidance as appropriate.

FINAL COMMENT

R³ would like to express its appreciation to everyone for their support. The success of any efforts by R³ will be affected by the consensual support of each dental regulatory authority.

Respectfully submitted,

Maître Caroline Daoust
Directrice générale et secrétaire, Ordre des dentistes du Québec

Dr. Gordon Thompson
Registrar and Executive Director, Alberta Dental Association and College

Marcel Van Woensel
Registrar, Manitoba Dental Association

APPENDIX I - DENTAL REGULATORY AUTHORITY SURVEY

Please submit your responses electronically (mvanwoe@mts.net) or on a separate piece of paper (Manitoba Dental Association, 202-1735 Corydon Avenue, WINNIPEG, MB, R3N 0K4)

- 1. Based on your organizations reviews of the National Dental Specialty Examination (NDSE), does your organization have issues or concerns with:**
 - a. NDSE Component I (written)**
 - b. NDSE Component II (oral)**
 - c. administration of the NDSE**
 - d. underlying processes related to the NDSE**

Please provide any relevant documentation, including:

- a. observation reports**
 - b. correspondence with RCDC**
 - c. written analysis of specific or general issues**
 - d. governmental, registration practices or other third party reports**
 - e. relevant proposed or current provincial legislation (please identify material sections of any statutes)**
- 2. Are there opportunities for change that your organization would like R³ to engage with the RCDC?**
 - a. have these issues been discussed by your organization with RCDC?**
 - i. if yes, please provide a copy of correspondence.**
 - b. is there a specific basis for your organizations interest in engaging for this change (please provide any relevant legislation, reports (internal or external) and examples of models that would assist in clarifying the opportunity.**
 - 3. Are their funding resources in your province to support changes?**

APPENDIX II - ROYAL COLLEGE OF DENTISTS OF CANADA GOVERNANCE STRUCTURE

CONSTITUTING LEGISLATION

Enabling Legislation - Federal - *An Act to incorporate The Royal College of Dentists of Canada, 1965.*

- Relevant legislated objects - *3(a) to set up qualifications for and provide for the recognition and designation of properly trained dental specialists;*
- Relevant legislated governance - *8(a) the Council may, by by-law, provide for the organization of the College into divisions representing the dental specialties recognized...*
10(1) the business and affairs of the College shall be administered by a committee of the Fellows to be known as the Council.
10(2) the Council shall include Fellows from all divisions...
10(3) the Council shall have the power to hold special examinations for candidates and may make such by-laws, rules and regulations concerning such examinations...as the Council may deem expedient
11 the Council shall make such by-laws, rules and regulations, consistent with the provisions of this Act as it may deem necessary or advisable for the government, and management of the business and affairs of the College...number of members of the Council, their qualifications and mode of election; powers and duties of the Council, of any subcommittees thereof and the officers of the College

COUNCIL

Policy making body with duties including:

- conduct of the affairs of RCDC;
- bylaw enactment, amendment and repeal;
- appointment of committees as specified in the bylaws;
- establishment and collection of fees;
- establishment and collection of dues;
- management of funds; and
- appointment of auditor.

Membership - voting:

- one representative of each dental specialty division elected by Fellows in division
- one representative for the Dental Sciences Group elected by Fellow in this division
- president elected by Council from Council members
- vice-president elected by Council from Council members
- the immediate past-president
- examiner-in-chief elected by Council from former and current chief examiners

Membership - non-voting:

- secretary-treasurer appointed by Council
- registrar appointed by Council
- public representative elected by Council from list of nominees

Observers - non-voting:

- two each from CDRAF, CDAC, ACFD and NDEB.

Formal meetings: annual

EXECUTIVE COMMITTEE

Acts on behalf of Council as assigned and between meetings.

Membership - voting:

- president elected by Council from Council members
- vice-president elected by Council from Council members
- the immediate past-president
- examiner-in-chief elected by Council from former and current chief examiners
- council representative elected by Council from Council members

Membership - non-voting:

- secretary-treasurer appointed by Council
- registrar appointed by Council

Formal meetings: quarterly

EXAMINATIONS COMMITTEE

Examination oversight body with duties that include:

- develops examinations structures and processes for approval by Council;
- training and standardization of examiners for all division examinations;
- recommends future examination development from received psychometric data.

Membership - voting:

- president elected by Council from Council members
- examiner-in-chief elected by Council from former and current chief examiners
- chief examiners for each specialty division and Dental Science Group
- two representatives from the Canadian Dental Regulatory Authority Federation
- public representative elected by Council from list of nominees
- executive director of RCDC

SPECIALTY EXAMINATIONS COMMITTEES

A committee for each dental specialty division and the Dental Science Group (10). Each committee is responsible for the development, production and delivery of the NDSE Component One and Two for the division in both official languages.

Membership - voting:

- chief examiner for dental specialty division;
- senior examiners for specific sections of the NDSE designated by chief examiner from amongst the group of examiners composing the committee;
- examiners for the division selected to be representative of dental specialty in training (different schools); language (English and/or French); region and focus (teaching, research, and clinical practice).

Examiners:

- selected from applications by Fellows with a minimum three years experience.
- must agree to time, training, contribution and confidentiality requirements.

APPENDIX III - NATIONAL DENTAL EXAMINING BOARD OF CANADA GOVERNANCE STRUCTURE

CONSTITUTING LEGISLATION

Enabling Legislation - Federal - *An Act respecting the National Dental Examining Board of Canada*, 1952, amended 1973.

- Relevant legislated objects - *6(a) to establish qualifying conditions for a single national standard certificate of qualification for general practitioner dentists;*
6(c) to ensure that the rules and regulations governing examinations will be acceptable to all participating licensing bodies and provide for the conducting of examinations in a manner fair and equitable for all concerned;
6(d) to promote enactment, with the consent and at the instance of the provincial licensing bodies, of provincial legislation necessary or desirable to supplement provisions of this Act.
- Relevant legislated governance - *4(1)(a) The Board shall be composed of one member appointed as its representative by the appropriate licensing body of each province in Canada*
7(a) The Board shall have the power to establish qualifications for general practitioner dentists to ensure that the qualifications may be recognized by the appropriate licensing bodies in all provinces of Canada
7(c) establish the conditions under which a general practitioner dentist may obtain and hold a certificate of qualification; 10(2) the Council shall include Fellows from all divisions...
7(g) establish and maintain a body of examiners to hold examinations and to recommend the granting of certificates.
8(1) the Board may make such by-laws and regulations, not contrary to the law or the provisions of this Act as it may deem necessary or advisable for the government, and management of the business and affairs; the selection, election or appointment and remuneration of officers and employees; imposition and collection of dues or fees.

BOARD

Policy making body with duties including:

- conduct of the affairs of NDEB;
- bylaw enactment, amendment and repeal;
- appointment of committees as specified in the bylaws;
- establishment and collection of fees;
- establishment and collection of dues;
- management of funds; and
- appointment of auditor.

Membership - voting:

- one representative appointed by each provincial dental regulatory authority
- two representatives appointed by Commission on Dental accreditation of Canada

Membership - non-voting:

- public representative appointed by Board
- registrar appointed by Board

Formal meetings: annual

EXECUTIVE COMMITTEE

Acts on behalf of Board as assigned and between meetings.

Membership - voting:

- president appointed by Board from president-elect members
- president-elect elected by Board from Board members
- the immediate past-president
- two other Board members appointed by the Board

Membership - non-voting:

- registrar appointed by Board

Formal meetings: two or three times per year

APPENDIX IV - ROYAL COLLEGE OF PHYSICIANS AND SURGEONS OF CANADA GOVERNANCE STRUCTURE

CONSTITUTING LEGISLATION

Enabling Legislation - Federal - *An Act to incorporate The Royal College of Physicians and Surgeons of Canada, 1929, amended 1939 and 1945.*

Relevant objectives - *Prescribes the requirements for specialty education in 80 areas of medical, surgical and laboratory medicine plus three special programs,
Accredits specialty residency programs,
Assesses the acceptability of residents' education,
Conducts certifying examinations,
Administers the Maintenance of Certification Program, a mandatory continuing professional development program for all members,
Sets standards for professional and ethical conduct among its member*

Relevant legislated governance - *8(a) the Council may, by by-law, provide for the organization of the College into medical and surgical divisions.....
10(1) the business and affairs of the College shall be administered by a committee of the Fellows to be known as the Council.
10(2) the Council shall include Fellows from all divisions...
10(3) the Council shall have the power to hold special examinations for candidates and may make such by-laws, rules and regulations concerning such examinations...as the Council may deem expedient
11 the Council may make such by-laws, rules and regulations, not inconsistent with the provisions of this Act as it may deem necessary or advisable for the government, and management of the business and affairs of the College...number of members of the Council, their qualifications and mode of election; powers and duties of the Council, of any subcommittees thereof and the officers of the College*

COUNCIL

Policy making body with duties including:

- conduct and management of the affairs of RCPSC;
- bylaw enactment, amendment and repeal;
- appointment of committees as specified in the bylaws;
- receipt of reports of committees
- ratification of the annual budget;
- discretionary delegation or withdrawal of authority to Executive Committee, standing committees or CEO;
- appointment of auditor and approval of audited statements;
- to ensure legal and ethical integrity;
- to define the values, mission, vision, goals, objectives and strategic direction to formulate and approve general policies;
- to monitor and support Implementation of policies, directives and general functions.

Membership - voting:

- 24 to 32 members depending on appointments by elected councillors
- four to six representatives (divided equally between the medicine and surgical divisions) from each of five geographic regions elected by Fellows in division in that geographic region (total 24 elected councillors)
- up to two members at large appointed by elected councillors
- up to five public representatives appointed by elected councillors

- up to one resident member registered in a specialty training programme appointed by elected councillors

Participants - non-voting:

- president appointed by Council from president-elect
- president-elect elected by Council from current or past councillors alternating between the medical and surgical divisions
- the immediate past-president appointed by Council from president
- CEO appointed by Council from among members of College

Formal meetings: minimum three times per year

EXECUTIVE COMMITTEE

Acts on behalf of Council as assigned and between meetings in the administration of College activities and affairs..

Membership - voting:

- five councillors appointed by Council with a minimum of four also being standing committee chairs
- vice-president elected by Council from Council members
- the immediate past-president
- examiner-in-chief elected by Council from former and current chief examiners
- council representative elected by Council from Council members

Participants - non-voting:

- president appointed by Council from president-elect
- president-elect elected by Council from current or past councillors alternating between the medical and surgical divisions
- the immediate past-president appointed by Council from president
- CEO appointed by Council from among members of College

Formal meetings: as necessary

Remuneration and Payment of Expenses

- councillors and the members of Executive Committee shall serve as such without remuneration and no such person shall directly or indirectly receive any profit from such position.
- the Council may by resolution fix a reasonable remuneration for the President, from time to time
- councillors, members of the Executive Committee and officers of the Royal College shall be entitled to reimbursement for out-of-pocket expenses incurred on behalf of the Royal College or when engaged in Royal College activities and affairs.

ASSESSMENT COMMITTEE

Examination advisory body with duties that include:

- develop standards and policies governing the conduct and quality of specialty and sub-specialty examinations;
- perform annual reviews of the content and administration of all specialty and subspecialty examinations and provide feedback to chairs of examination boards;
- review and approve requests from Specialty Committees for changes to examination formats, and
- participate on Formal Review panels (appeals) for examinations when required.

Membership - voting:

- 18 voting members including chair and vice-chair
- chairperson, a member of College education committee
- vice-chairperson
- college fellows in good standing appointed by council
- two specialty residents appointed by council

Membership - non-voting:

- two non-voting members, one each from CAIR and FMRQ
- one ex-officio non-voting Postgraduate Dean from the Association of Faculties of Medicine of Canada (AFMC)
- one non-voting member from the Collège des médecins du Québec (CMQ)
- one non-voting members from the Medical Council of Canada (MCC).

Formal meetings: bi-annually

SPECIALTY EXAMINATIONS BOARDS

The College Examination Boards are empowered by the Assessment Committee and by the Council to make final decisions on the examinations of all candidates, following procedures approved by the Assessment Committee and Council.

A Board exists for each specialty and subspecialty division. Each Board is responsible for the development, production and delivery of the RCPSC written and oral component examinations in both official languages.

APPENDIX V - OTHER RELEVANT LEGISLATION AND GUIDELINES

Provincial legislation enabling dental regulatory authorities and dental regulatory authority regulations or bylaws require successful completion of the NDSE for registration as a dental specialist with limited exception.

The *Fair Registration Practices of Regulated Professions Act* in Manitoba enables the use of third parties in the assessment process with similar provisions to Ontario:

Reliance on third party to assess

8(3) *If a regulated profession relies on a third party to assess qualifications, it must take reasonable measures to ensure that the third party makes the assessment in a way that is transparent, objective, impartial and fair.*

The Office of the Manitoba Fairness Commissioner has identified three criteria in its reviews for determining if third party assessments in the registration process are transparent, impartial, objective and fair:

- 1. Applicants are provided clear, complete and accurate information about the role of third party assessments in the registration process.*
- 2. Measures are in place to ensure third party assessment policy and practice is fair.*
- 3. Third party assessment decisions are subject to appeal.*

The *Fair Registration Practices Act* in Nova Scotia does not have similar provisions as Ontario and Manitoba, but does define the term; require an outline of third party assessor roles and internal review mechanism and has general obligations on the regulatory body that would reasonably apply to third party assessors:

2(k) "third-party assessor" means a body external to a regulating body relied on by the regulating body to assess the equivalence of the qualifications of an applicant for registration;

6 A regulating body has a duty to carry out registration practices that are transparent, objective, impartial and procedurally fair.

16(3) The report required under subsection (2) must include all of the following information respecting the registration practices of the regulating body:

- (i) an outline of the role of third-party assessors;*

The *Regulated Health Professions Act* in Ontario has provisions for use of third parties in the assessment process:

Qualifications

22.4(2) *If the College makes its own assessment of qualifications, it shall do so in a way that is transparent, objective, impartial and fair and, if it relies on a third party to assess qualifications, it shall take reasonable measures to ensure that the third party makes the assessment in a way that is transparent, objective, impartial and fair. 2006, c. 31, s. 35 (3).*

The Office of the Ontario Fairness Commissioner has identified ten criteria relevant to this section of the legislation in their 2013 document, *Registration Practices Assessment Guideline - For Health regulatory Colleges*. The Guidelines distinguish the criteria for third party assessors from that of regulatory authorities:

- 1. Qualifications assessments are based on transparent criteria. [Transparency]*
- 2. Qualifications assessment criteria are directly linked to the requirements/standards for entry to the profession. [Transparency]*
- 3. Qualifications assessment criteria are applied consistently to all applicants. [Objectivity]*
- 4. Information about educational programs used in qualifications assessment is current and accurate. [Fairness, Objectivity, Transparency]*
- 5. Assessment methods are reviewed for objectivity, validity and reliability. [Objectivity]*
- 6. The results of qualifications assessment are communicated to the applicant in writing (electronically or in*

hardcopy). [Fairness, Transparency]

7. Applicants have an opportunity to appeal the results of a qualifications assessment or to have the results reviewed. [Fairness]

8. On its website, the regulatory body informs applicants about the following items related to assessment of qualifications:

- a. the criteria that qualifications assessments are based on*
- b. how those criteria are linked to the requirements/standards for entering the profession*
- c. the costs*
- d. opportunities to appeal the results of a qualifications assessment or have the results reviewed*
- e. any policies and procedures relating to special considerations [Transparency, Fairness]*

9. The regulatory body ensures that the following are done within a reasonable amount of time:

- a. assessing the qualifications*
- b. communicating the results to applicants*
- c. providing reasons in writing for unsuccessful applications. [Fairness, Transparency]*

10. Regulatory bodies that rely on third-party assessments take measures to ensure that the third-party assessments are transparent, objective, impartial and fair. [Fairness, Transparency, Objectivity, Impartiality]

Practices 1–9 refer to qualifications assessments that are conducted by the regulatory body itself. Only practice 10 refers to assessments conducted by third parties. Qualifications assessment includes assessment of the following: academic credential/educational programs, work experience, language, exams, prior learning assessment, and (in some cases) currency of qualifications.

In 2009, the Office of the Ontario Fairness Commissioner was the first to review third party qualification assessment agencies. The report, *Study of Qualifications Assessment Agencies*

The assessment of qualifications is the most critical part of the registration process. Decisions about qualifications determine whether an individual may enter the profession, how quickly that entry can occur and what additional steps, if any, must be taken in advance of registration.

Regulatory bodies may rely on agencies to assess qualifications for a number of reasons. These organizations may offer expertise in assessments that the regulator lacks. A regulator may rely upon a national agency that provides services to provincial regulators. Agencies may also offer qualifying or bridging programs that candidates are required to take in order to enter a profession.

Qualifications assessment agencies that participated in the study are of three types: post-secondary educational institutions, credentials assessment agencies and profession-related assessment agencies. "Credentials assessment agencies" are services that provide credentials evaluation to individuals. The organizations referred to in this report as "profession-related assessment agencies" include a range of entities such as professional associations and examining or certification boards established by the professions. These organizations perform assessments as part of their mandate to advance their professions, and most also perform other tasks. (page 4).

Key observations for third party assessors providing examinations were:

All examination organizations ensure that knowledge and skills being tested reflect the current state of the professions by utilizing practice or content experts to validate exam questions, basing questions on a competency profile or conducting a practice analysis.

Most examinations must be written in Canada, although the application process can be initiated abroad. Several examining agencies reported that internationally trained candidates may have difficulty obtaining visas to enter Canada to write exams. (page 17).

The Report identified the following potential issues for regulatory authorities to consider in reviewing third party assessors:

Training

13 qualifications assessment agencies provide no training to individuals on making internal review or appeal decisions.

FARPA and the RHPA require regulated professions to ensure that decision-makers receive training. Results of this study show that there are inconsistencies with regard to training in two areas: the conduct of assessments, and internal review or appeal decisions.

Assessment Decisions

Candidates are not always provided with the rationale for decisions made in their case. These decisions are not transparent and are therefore inconsistent with the concept of fair access. (page 20).

Qualifications assessment agencies have their own processes, costs and timelines that shape the experience of candidates who must undergo assessment in order to practise in their professions. While there are agencies whose practices are open and timely, others have practices that are costly and lengthy and leave candidates without reasons for decisions made in their case and without opportunities to challenge those decisions.

These qualifications assessment agencies must improve their practices. (page 21).

Recommendations to Qualifications Assessment Agencies**Streamline Overlapping Processes**

Regulatory bodies and qualifications assessment agencies should take every opportunity to streamline overlapping processes so that candidates do not have to go through costly and lengthy duplicate verification processes.

Provide Clear Assessment Criteria

Respondents often stated that internationally trained applicants face challenges in satisfying assessment criteria. Qualifications assessment agencies can enhance information provided to candidates by including clear assessment criteria. Internationally trained candidates may begin the assessment process from overseas; providing information about language requirements and assessment online may enable individuals to prepare in advance of their arrival in Canada.

Candidates may have gaps in their training that make it difficult for them to meet assessment criteria. Providing information about assessment criteria at the outset would help candidates to fill those gaps before applying for registration. Qualifications assessment agencies can play an important role by clearly communicating the criteria required in order for a candidate's credentials to be deemed equivalent to Canadian credentials, and the level of knowledge required to pass a particular assessment. Some qualifications assessment agencies offer self-assessment tools (such as online questions, quizzes and checklists) that allow candidates to determine their own likelihood of being successful in the actual assessment. This is a promising practice that helps candidates prepare adequately for the assessment process.

Provide Opportunities for Appeal

As established by Judge George M. Thomson in Review of Appeal Processes from Registration Decisions in Ontario's Regulated Professions, the opportunity to appeal decisions is an important aspect of fair registration practices. All qualifications assessment agencies should have an appeal process so that candidates may challenge decisions made in their case.

Clarify Requisite Language Skills

Qualifications assessment agencies reported that internationally trained candidates often face language difficulties. If language testing is required, agencies should publish the language test scores that are required for candidates to advance in the assessment process.

Even when language testing is not part of the process, qualifications assessment agencies stated that internationally trained candidates may be unable to meet other assessment criteria because of language barriers. By clarifying the level of language proficiency that is necessary to be successful in the assessment, agencies can play a helpful role in enabling candidates to prepare. One approach would be to identify language test scores associated with the level of ability necessary to be successful. (page 23).

Recommendation to Regulatory Bodies

Engage with Qualifications Assessment Agencies

Whenever a regulatory body relies on an external agency to make qualifications assessments, it is the responsibility of the regulator to ensure that the practices of the agency are consistent with the principles of fairness outlined in the legislation to which the regulatory body is subject.

Regulatory bodies must take this responsibility seriously not only because it is the law, but also because of the impact that qualifications assessment agencies have on applicants and the professions that they regulate. As noted in Ontario's Regulated Professions: Report on the 2007 Study of Registration Practices, most regulatory bodies are moving toward registration practices that are transparent, objective, impartial and fair. It is incumbent upon the regulatory bodies to ensure that the practices of their external partners are in keeping with the fair registration practices that they themselves are working toward.

As a first step, regulators should engage directly with the qualifications assessment agencies that they rely on. Regulators should ask whether the agencies participated in this study and ask participating agencies to share their responses. Second, regulators and assessment agencies must endeavour to establish an ongoing dialogue about how their processes can align most effectively. Every effort should be made to streamline processes and eliminate duplication so that the costs borne by applicants and the time needed to complete assessments can be reduced. (page 24).

This study emphasizes the importance of the role of third party assessors in the registration process and the necessity of a relationship between the third party assessor and regulatory authorities that allow regulatory authorities to ensure assessment processes meet the required standards of fairness, objectivity, accountability and transparency. The study does not make recommendation of formalism or establishing written agreements.

APPENDIX VI - RELEVANT INFORMATION FROM INVESTIGATIVE MONITORING REPORT

The *Professional Code* in Québec established the Commissioner for Complaints concerning the Recognition of Professional Competence (Commissioner) within the Office des professions du Québec in 2009. A role of the Commissioner is to monitor the functions of the various professional orders in Québec similar to a fairness commission in some other provinces.

The Commissioner has produced guidelines for review of registration practices in *Principes et bonnes pratiques guidant l'analyse critique faite par le Bureau du Commissaire*, (2014). For accountability, the principle requires:

In matters of recognition of professional competence, professional orders are accountable for compliance with standards of competence and for the operation of recognition mechanisms, even when they entrust third parties with some activities. There are issues surrounding the delegation of functions or activities to third parties, and surrounding the influence of other parties involved in the recognition of competence.(page 3).

The investigative monitoring report, *Parameters agreed between professional orders and third parties respecting the involvement of third parties in the processing of applications for equivalence* (2014), (The Report) identifies the following issue with recommendations for the management:

"The absence of parameters weakens the protection of the public - for which professional orders are responsible - and the governance of the system for regulating professions in Québec... centralizations should not be in detriment to the legal obligations of professional orders in carrying out their functions and responsibilities, hence the importance of properly defining the parameters for the third party's involvement." (page 2).

The Report views the relationship between regulatory authority and third parties as a delegation of activities with increased necessity to report on those activities.

The report provides the following recommendations:

7. Written agreement between the third party assessor and regulatory authority establishing the relationship, responsibilities, processes and standards of assessment;
8. Written agreement shall facilitate recognition of competence from candidate's perspective:
 - a. avoid duplication and unnecessary additional costs;
 - b. third party assessor involvement should simplify process and not increase burden on candidate as compared to assessment by the regulatory authority;
 - c. third party assessor involvement should be cost neutral or reduce costs to candidate as compared if assessment performed by regulatory authority.
9. Written agreements should be directly with the third party assessor and not through an interprovincial organization.
10. Written agreement separate from being a member of a Canadian or interprovincial body is necessary where a professional order delegates functions or activities no matter how sophisticated the body's internal policies, procedures and methods;
11. Effective written agreement are:
 - a. well structured facilitating readability through organization and presentation;
 - b. degree of formalism;
 - c. ensure adequate supervision of third party assessments;
 - d. contain:
 - i. objective criteria for eligibility for third party assessment;
 - ii. assessment methodology and criteria for determining equivalence outcomes:
 1. beyond listing of fields, areas or subjects;
 2. append referenced existing standards and grids.
 - iii. policy and terms of appeals/reviews by third party assessors
 1. clear accessible information available to candidate;
 2. impartial, objective review at candidate request;

3. reviewers different than initial assessors.
- iv. distinguish costs, fees and responsibilities for costs;
- v. identify status of third party assessor - not-for-profit;
- vi. clear, publicly accessible information on role of regulatory authority and third party assessor;
- vii. clear information to candidate on role of regulatory authority and third party assessor;
- viii. regulatory authority oversight process for information in 3(d)(vi, vii);
- ix. agreement on collection, use and disclosure of personal and information;
- x. agreement on collection, use and disclosure of specified statistical information for regulatory reporting purposes;
- xi. periodic review provisions for the agreement:
 1. operational - policies and procedures for assessments; and
 2. methodological - manner assessment tasks performed.
- xii. agreement amendment provision if legislative or regulatory change;
- xiii. third party assessor reporting to regulatory authority provisions:
 1. number of applications received;
 2. number of applications processed;
 3. processing time;
 4. number of appeal/review applications;
 5. provide commentaries explaining nature of tasks and challenges;
 6. third party assessor recommendations to assist regulatory authority in exercising its functions;

The Report placed some emphasis on concerns about a regulatory authority adopting standards established by another body or jointly among regulatory bodies. The concern extends to any appearance that professional regulation is a federal responsibility:

Professional orders may find it helpful and beneficial for their profession to adopt standards established by another body or jointly with other bodies. However, it is the most delicate aspect of third-party involvement, because it affects a normative responsibility that, in the Québec professional system, is shared between the professional order and the public authority—which must approve these standards as part of the regulation process.

On a related subject, a pan-Canadian logo, as well as a pan-Canadian portal or single window can lead to think that a profession is regulated federally. Québec professional orders must make sure that they and the pan-Canadian organization associated with the profession correctly communicate their respective responsibilities, as well as the seat of decision-making power with respect to recognition of professional competence and regulation of the profession.

In short, Québec professional orders (and the regulatory bodies of the other jurisdictions) should pay attention to risks in the way they delegate functions or activities to a Canadian or foreign body, particularly in the event of pressure to centralize operations and harmonize standards. (page 9).

Current legislation in Québec does not require or preclude written agreements between regulatory authorities and third party assessors. Communications with the Registrar for the ODQ indicates that legislative changes are being developed in consideration of the recommendations from the Commissioner in this report. One recommendation is to prescribe the form of the agreement specifying subject matter:

That the subjects to be dealt with in agreements be prescribed by the Professional Code. Depending on the type of activity concerned and on whether the third party has a direct or indirect role with candidates, agreements should include the following subjects:

- *nature of the tasks the third party is entrusted with, and role of each party to the agreement,*

- *results expected in terms of goods and services, and in terms of the objectives to be achieved,*
- *commitment by the third party to apply the standards established under the Professional Code, the act constituting the professional order (if applicable) and the regulations made under these,*
- *commitment by the third party to apply the generally accepted principles for admission to a professional practice, particularly with respect to recognition of professional competence,*
- *methodology and criteria used,*
- *terms and conditions for processing candidates' files or sharing information or expertise,*
- *periods of time for performing various tasks,*
- *fees payable by candidates or portion of the costs beared by the professional order,*
- *terms and conditions for an unbiased and objective review of the recommendations made or decisions rendered by the third party,*
- *nature and scope of information to be shared,*
- *protection of personal information,*
- *terms and conditions for reporting to the professional order on all aspects of the agreement,*
- *term, renewal, amendment and periodic review of the agreement. (page 13, 14).*

APPENDIX VII - EXTERNAL COMMENTS RELEVANT TO CERTIFICATION STANDARDS (BLUEPRINTS)

The Office of the Ontario Fairness Commissioner had identified ten criteria in their 2013 document, *Registration Practices Assessment Guideline - for Health Regulatory Colleges*. The relevant criteria for standard setting are:

1. *Qualifications assessments are based on transparent criteria. [Transparency]*
2. *Qualifications assessment criteria are directly linked to the requirements/standards for entry to the profession. [Transparency]*
6. *The results of qualifications assessment are communicated to the applicant in writing (electronically or in hardcopy). [Fairness, Transparency]*
8. *On its website, the regulatory body informs applicants about the following items related to assessment of qualifications:*
 - a. *the criteria that qualifications assessments are based on*
 - b. *how those criteria are linked to the requirements/standards for entering the profession*
10. *Regulatory bodies that rely on third-party assessments take measures to ensure that the third-party assessments are transparent, objective, impartial and fair. [Fairness, Transparency, Objectivity, Impartiality]*

Practices 1–9 refer to qualifications assessments that are conducted by the regulatory body itself. Only practice 10 refers to assessments conducted by third parties.

The guideline distinguishes the criteria for third party assessors from that of regulatory authorities.

The responsibility of regulatory authorities to establish the standards that third party assessors rely on is more clearly identified in the Québec commissioner's investigative monitoring report:

In matters of recognition of professional competence, professional orders are accountable for compliance with standards of competence and for the operation of recognition mechanisms, even when they entrust third parties with some activities. There are issues surrounding the delegation of functions or activities to third parties, and surrounding the influence of other parties involved in the recognition of competence.(page 3).

Professional orders may find it helpful and beneficial for their profession to adopt standards established by another body or jointly with other bodies. However, it is the most delicate aspect of third-party involvement, because it affects a normative responsibility that, in the Québec professional system, is shared between the professional order and the public authority—which must approve these standards as part of the regulation process.

On a related subject, a pan-Canadian logo, as well as a pan-Canadian portal or single window can lead to think that a profession is regulated federally. Québec professional orders must make sure that they and the pan-Canadian organization associated with the profession correctly communicate their respective responsibilities, as well as the seat of decision-making power with respect to recognition of professional competence and regulation of the profession.

In short, Québec professional orders (and the regulatory bodies of the other jurisdictions) should pay attention to risks in the way they delegate functions or activities to a Canadian or foreign body, particularly in the event of pressure to centralize operations and harmonize standards. (page 9).

In *BC College of Optics, Inc. v. College of Opticians of British Columbia*, the British Columbia Supreme Court identified “delegation and fettered discretion” outside of statutory authority as issues in the case(para. 24, available at: <http://www.courts.gov.bc.ca/jdb-txt/SC/14/18/2014BCSC1853.htm>). The decision suggests that unless a regulatory authority has a clear statutory authority, it should not delegate its responsibilities.

APPENDIX VIII - NDSE COMPONENT TWO, EXCERPT FROM MDA REPORT

The RCDC observers and examiners are well prepared. Observers monitor the entire examination process while the candidate is in the room with the examiners. Examiner methodology for asking candidate questions is reasonably consistent amongst all the teams.

One issue that may be a concern relates to examiner communication after the candidate and RCDC observer have left. While most teams do not speak during this period, a few teams do discuss the candidate and their marks. There is no suggestion the conversations have directly lead to marks being changed or are intended to impact any candidate - either positively or negatively. A review of the discussion guides for examiner training videos (see Document 5 commentaries for video 13 and 14), provides that examiners can discuss candidates after grading to assist in calibrating and review differences in marking.

Oral examinations have benefits - especially in assessing the depth of a candidate's knowledge - but also difficulties - it is an increasingly uncommon examination environment for many candidates which may affect the candidates success rate and equally challenging there is no objective record of the candidate response to review for marking errors which precludes any appeal on the facts. RCDC is continuing to improve the environment for candidates as well as the online resources so candidates can prepare for this type of examination.

The MDA understanding is RCDC has designed the NDSE to address concerns with validity of results by the use of examination by different teams each with two examiners as well as a process of key validation to identify anomalies or deviations in marking by the two examiners. This process requires two calibrated examiners to mark each candidate on their response to the questions presented independent of each other. Key validation can only effectively identify issues with examination questions or examiner marking if the examiners mark independently. It is a primary feature the MDA has relied on with the provincial fairness commissioner to justify this type of examination and the lack of any ability to appeal on the facts. It is critical for the fairness and validity of the examination results and any appearance it may be undermined is a concern.

The examination and the marking template should be well developed and clear. The MDA preference is that examiner calibration occurs as a group and before the examination begins. Effective calibration should avoid differences in marking between examiners. Re-calibration between team members between candidates should not be necessary. If there is a need to identify why examiners have different marks for a candidate response, written notes that can be submitted with the marks to key validation may be a option.

As stated previously, there is no indication that marks were changed for a candidate based on a conversation. However in listening to the conversations, the nature of them may impact the marking for subsequent candidates. For two individuals initially calibrated together, the suggestion that one is an "easy marker" may lead to the examiner marking harder than his group training prepared him to do. Please note most groups observed do not have any conversation about the candidate or their marking.

As an external observer these communications may affect the utility of key validation to identify issues. If team members re-calibrate to each other, any potential for differences is reduced. The appearance of these communications undermines the examination process at a time when fairness commissioners, human rights tribunals and governments are demanding increased objectivity and demonstrations of fairness. The fairness commissioner report to the MDA raised the lack of an appeal process based on the record in the NDSE as a key concern.

There are a variety of solutions to address the concern. A simple short term solution would be to review the parameters of what and when examiners can discuss between candidates; establish clear written protocols and have observers remain to monitor the conversations between candidates to verify that are within the established protocols. In my observations the conversations were different when examiners were aware they were being observed.

The planned electronic marking system should be initiated. With it, the use of new analytical software would

greatly improve the ability to evaluate the examination validity. The MDA appreciates the growing pains with this year's component I, but understood the issue was external to the system.

A more long term solution would be to continue to evolve the structure of the NDSE. It has changed significantly over the last decade with the introduction of standardized cases and an increasing structured approach. A potential next stage would be to convert it to a objective structured clinical examination. this type of examination would re-focus RCDC resources and its examiners to question development from examination delivery. It would be challenging to develop the necessary database but would allow for a more objective process and long term a reduction in the intensive human resource needs for the component II examination.