



# Briefing Note

## Proposed Amendments to Vary Term Lengths

### Issue

The College proposes that Council request that the Minister of Education amend the *Ontario College of Teachers Act, 1996* (“the Act”) and O. Reg. 563/21 (General) to provide flexibility around term lengths.

### Background

Following a major governance review, significant changes were made to the College’s governance structure, culminating in revisions to the Act. As of January 1, 2022, a Selection and Nominating Subcommittee was established that is responsible for making recommendations regarding appointments to Council, subcommittees, committees and rosters.

In what may have been an attempt to facilitate turnover in the governance structure, the government enacted term limits that include a prohibition against any member of Council, a committee or a roster from serving more than a total of six consecutive years, unless three years has elapsed since the member’s last term (s. 5(4)). Additional requirements were enacted via O. Reg. 563/21 (General), prescribing that the terms of office for OCT members of Council, SNS subcommittee members, and all committee members “shall be two years.” It is notable that roster appointments are for “up to” two years, which underscores the need to align Council, subcommittee and committee

appointments with the same degree of flexibility.

The College supports the concept of total service caps and governance renewal, however the very prescriptive criteria raised questions at the SNS table about the subcommittee’s ability to reappoint individuals if they have less than two years of eligible service left before reaching their six-consecutive-year cap. Or, put differently, could SNS nevertheless reappoint an individual whose mandatory 2-year appointment would cause them to exceed their six-year cap? SNS also sought interpretation on the term “consecutive”.

While the College agrees with the clarity around requiring appointments to be “two years” in length in most cases, the College inquired as to whether a person—appointed to a 2-year term—could be vacated from their role upon becoming ineligible to serve (reaching the six-consecutive-year cap). In response, legal counsel advised that “the Regulation does not provide a mechanism for disqualifying a Council member once they exceed the six-year limit.” This omission was felt to have been intentional, given that other disqualification criteria are explicitly listed in O. Reg. 563/21.

Therefore, the only way to ensure compliance with the Act and Regulation is for Council to “not appoint a person to a two-year term if the two year period would

result in the person eventually being in breach of section 5(4) of the Act.”

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### Subsequent Legal Opinion

Although SNS accepted the initial legal opinion, significant operational challenges resulting from this interpretation were identified both during and after the most recent SNS meeting.

For example, non-OCT members of Council are appointed by government under an Order in Council for a three-year term while appointments to SNS, for example, are prescribed as 2-year terms – no more, no less. At the conclusion of the first appointment to SNS, the non-OCT Council members would only have one year of eligibility on Council remaining and therefore could not be reappointed to SNS (given that they can only receive a mandatory 2-year term). While other remaining non-OCT Council members could theoretically fill that role, they too would only have one year remaining and would therefore also be ineligible. As a result, there would be no non-OCT Council members available and SNS could not be duly constituted.

Following this and other inquiries, legal counsel identified a number of considerations. While recognizing that granting a 2-year SNS appointment to a non-OCT who *theoretically* has multiple years of service remaining—despite not knowing if their Order in Council will be renewed—would make life easier, legal counsel reiterated that no explicit mechanism exists to remove that individual from SNS if they were *not* reappointed to Council. This remains consistent with their original legal opinion, with the caveat that the concern may be merely hypothetical, given their expectation that any reasonable person would agree that they would not

remain a member of the SNS if they were no longer a member of Council.

Legal counsel have therefore identified regulatory amendments intended to:

- vary appointment lengths to give more flexibility to match future appointments to remaining terms of office and remaining eligibility within the 6-year limit;
- vacate a seat if a subcommittee member ceases to be on Council, which will ensure that if a member of SNS is not reappointed to Council or is no longer a member of Council for any reason, they automatically cease to be a member of SNS; and
- disqualify a person from continuing to serve if they exceed the six-year limit.

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### Additional Considerations

Should regulatory changes be made to allow greater flexibility regarding terms of office, Council may wish to establish best practices around reappointment, namely the minimum duration remaining for a governance participant to be eligible for reappointment (e.g. a minimum of 12 months, 18 months, etc).

For greater clarity, the regulatory amendments should also make clear that the changes apply to all three subcommittees of Council.

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### Recommendations

SNS recommends that Council request that the Minister of Education make the following changes to O. Reg. 563/21 (General):

1. Amend section 9(1) to permit appointments of “up to” 2 years.

2. Amend section 11(1) to add that the seat becomes vacant if the member is no longer a Council member.
3. Amend section 35(1) to add that Council can disqualify a person from continuing

to serve because they exceed the six-year limit described in s. 3(2)(f).

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