

## Decision Note

<b>Decision:</b> Possible Conflict of Interest of Council Member
<b>Prepared for:</b> Council
<b>Date:</b> June 10, 2021

The College has received an anonymous complaint alleging that Council Member Elwin Lau is in a conflict of interest. The anonymous complaint alleges that Mr. Lau is too heavily involved in OATA that this has resulted in a COI with his duties as Council member. The anonymous complaint has been shared with Mr. Lau.

The purpose of this Briefing Note is to set out the issue for Council and come to a consensus as to how Mr. Lau and Council can move forward. This item is for discussion only. Although the President will seek the input of Council no vote will be taken.

### Background

- Mr. Lau is a member of OATA. That is not problematic. Most regulated professionals belong to an association which advocates for its members. Therefore professional members of Council are not in a conflict if they are a member of a professional association
- Mr. Lau was recently involved in meetings of OATA (via zoom) which discussed concerns with OATA governance. Mr. Lau spoke at these meetings and was visible on the zoom screen. Following these meetings, Mr. Lau, and other members of OATA, wrote a letter to the OATA Board setting out their concerns and requiring certain steps be taken at the upcoming annual general meeting. The President of the Board responded to Mr. Lau directly. Mr. Lau has agreed to refrain from communicating with the OATA Board, and engaging in OATA governance discussions, until Council has an opportunity to discuss this matter.
- Mr. Lau is not member or officer of the Board of OATA.
- Mr. Lau has consistently declared a COI when issues of Athletic Therapists come up at Council.

### Excerpts of College Bylaws

#### ***10.29 Grounds for Disqualification***

*The Council shall disqualify an elected or selected member from sitting on Council if the elected or selected member:*

*ix -breaches the conflict of interest provision(s) for members of Council and committees, in the opinion of the Council, after being given notice of the concern and an opportunity to respond to the concern;*

### **15.01 Expectations and Duties**

*Every member of Council and every Committee member shall, in the performance of his or her duties:*

*i. familiarize himself or herself with the Act, the RHPA, the by-laws and any policies of the College;*

*ii. familiarize himself or herself with any other records, documents and guidelines that may be necessary for the performance of his or her duties;*

*iii. comply with the provisions of the Act, the RHPA, the by-laws, any policies of the College and rules that are adopted by Council, from time to time;*

*iv. make reasonable efforts to attend all meetings of Council and Committees of which he or she is a member, and to do so in person, save in exceptional circumstances with the approval of the Chair of Council or the Committee;*

*v. attend meetings on time and participate constructively in discussions;*

*vi. ensure that confidential matters coming to his or her attention as a member of*

*Council or as a member of a committee or working group are not disclosed by him or her, except as required for the performance of his or her duties or as permitted by the RHPA;*

*vii. conduct himself or herself in an appropriate manner with College staff, other members of Council or members of the committees, members and members of the public;*

*viii. comply with the College's Code of Conduct, which is attached as Schedule 3 to the by-laws and forms part of these by-laws;*

*ix. avoid, or where that is not possible, declare all conflicts of interest in the manner set out in the by-law; and*

*x. perform the duties associated with his or her position conscientiously and with due care and diligence in a manner that serves and protects the public interest.*

### **15.02 Removal of Council or Committee Member**

*The following procedure shall be followed in the event that a Council or committee member is alleged to have contravened the duties of a Council or committee member or meets the criteria for disqualification set out in articles 10.29 and 13.12.*

*i. A written complaint shall be filed with the Registrar. A complaint can be made by a member of the public, a Council or committee member or the Registrar. If a member of*

Council or a committee receives such a complaint, he or she shall immediately file it with the Registrar.

ii. The Registrar shall forthwith report the complaint to the President or the Vice- President, or both, who shall bring the complaint to the Executive Committee.

iii. If the Executive Committee, after any investigation it deems appropriate, believes that the complaint warrants formal action, it shall call a meeting of the Council. Council shall determine whether there has been a breach of duties or whether the criteria for disqualification have been met and, if so, impose the appropriate sanction. The appropriate sanction can include one or more of the following:

a) censure of the member verbally or in writing;

b) removal of the member from any Committee on which he or she serves;

and

c) disqualification of an elected member of Council from the Council, or a report requesting removal of the member concerned from the Council to the Public Appointments Secretariat.

iv. A decision finding that there has been a breach of duties, or that a Council or committee member meets the criteria for disqualification set out in articles 10.29 and 13.12, and a decision to impose a particular sanction must be approved by a majority vote of the Council members present and voting.

v. The Council or committee member whose conduct is the subject of concern shall not take part in the deliberation or vote, however, he or she will be given a reasonable opportunity to respond to the allegation.

#### **16.01 Duty to Avoid Conflicts of Interest**

All Council and committee members have a duty to carry out their responsibilities in a manner that serves and protects the interest of the public. As such, they must not engage in any activities or in decision-making concerning any matters where they have a direct or indirect personal or financial interest.

#### **16.03 Conflicts Relating to Involvement with a Professional Association**

A member of Council or a committee member shall be perceived to have conflict of interest in a matter and should not serve on Council or its committees at all if he or she holds a responsible position, such as director, owner, board member, officer in or is an employee of any professional association relating to Kinesiology.

#### **Possible Questions**

- Is Mr. Lau in a conflict of interest?
- If yes

- Is it sufficient that Council ask Mr. Lau to immediately cease his work with the OATA group and/or
- Is it necessary to file a governance complaint?