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Wednesday 28 February 2007

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Mercredi 28 février 2007

**Standing committee on
government agencies**

Agency Review:
Health Professions
Appeal and Review Board

**Comité permanent des
organismes gouvernementaux**

Examen des organismes
gouvernementaux :
Commission d'appel et de révision
des professions de la santé

Chair: Julia Munro
Clerk: Tonia Grannum

Présidente : Julia Munro
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LEGISLATIVE ASSEMBLY OF ONTARIO

**STANDING COMMITTEE ON
GOVERNMENT AGENCIES**

Wednesday 28 February 2007

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**COMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX**

Mercredi 28 février 2007

The committee met at 1010 in room 151.

**AGENCY REVIEW
HEALTH PROFESSIONS
APPEAL AND REVIEW BOARD**

The Chair (Mrs. Julia Munro): Good morning. Welcome to the standing committee on government agencies. I welcome you here for your opportunity to give us some insight into the Health Professions Appeal and Review Board. For the purposes of Hansard, I'd ask that you introduce yourselves. You have time then to provide us with a presentation and after that we'll go in rotation for questions.

Ms. Linda Lamoureux: Thank you. I'm Linda Lamoureux, chair of the Health Professions Appeal and Review Board. With me today I have David Jacobs, who is board counsel, and Abby Katz Starr, registrar and chief operating officer of the Health Boards Secretariat. Thank you for the opportunity to speak with you today. I'd like to use my time to bring you up to date on the Health Professions Appeal and Review Board and the vital role we play in ensuring the quality of Ontario's health care system. Let me start by giving you a bit of background on our board, who we are, our mandate and what we are doing, and then I'll tell you about our strategic priorities going forward.

In Ontario, human health professionals and veterinarians regulate themselves through the colleges. So, for example, the College of Physicians and Surgeons of Ontario regulates the doctors, the Royal College of Dental Surgeons of Ontario regulates the dentists, and so on from there. The Health Professions Appeal and Review Board is a quasi-judicial body that provides one of the key safeguards in Ontario's health care system. Our board is made up of members of the public, none of whom can be members of the regulated health professions. The Ontario regulatory system, which combines professional self-regulation with public accountability and input, was set up in 1974 with the support of all parties. Its purpose is to further the government objective of ensuring that the activities of the health professionals are regulated and coordinated in the public interest. This includes the objectives of developing and maintaining appropriate standards of practice and ensuring that individuals are treated with sensitivity and respect in their dealings with health professionals.

Ontario created the Health Professions Appeal and Review Board as the prime vehicle for public oversight. We are an independent appeal and review tribunal that has jurisdiction over the regulatory activities of 22 human health professions and veterinarians. Under our mandate, we fulfill four important roles. At the request of members of the public or individual health professions we review decisions made by the complaints committees of the colleges. When it comes to the registration of health professionals, we are an appeal body. Specifically, if applicants are dissatisfied with the decisions of the registration committees of the colleges, they can ask us to conduct reviews or hold hearings of their applications. We also review or hear applications in relation to the decisions of the accreditation committees of the pharmacists and the veterinarians. Last but not least, we hold hearings concerning physician hospital privileges under the Public Hospitals Act.

Typically, three board members are involved in every hearing, and here's how our process works in practice. Each college has a complaints committee. Members of the public who have a complaint about a health professional can ask the complaints committee to investigate that complaint. Our board then has the authority to confirm the decision of the complaints committee, make recommendations to that committee or require the complaints committee to take further action.

We also review or hold hearings of the applications by health professionals for registration or accreditation in the case of a pharmaceutical or veterinarian facility. In these cases, our board has the authority to confirm the decision of the registration committee, require the college to issue a certificate of registration or a licence in certain circumstances or with certain terms or conditions. We can also refer the matter back to the registration committee.

We also hear appeals of decisions concerning the practice privileges of physicians in about 135 of the public hospitals, and our board has the authority to reinstate those physician privileges.

We hear issues that pertain to all aspects of health care in Ontario, including dramatic life-and-death issues. This includes everything from complaints involving the death of a child or a parent, prescription errors, misdiagnosis and allegations of incompetent treatment and rude and uncaring behaviour to major medical errors and medical opinions affecting child custody cases, personal injury suits, provision of workers' compensation benefits and

improper medical care for animals. These issues, and our decisions, are critical elements in safeguarding Ontario's health system. So that's who we are, our mandate and what we do.

I'd like to tell you a bit about our direction for the future. Since joining the board in late 2005, I've focused on three key themes for the board: fairness, openness and accountability.

I've also set four key strategic objectives for my tenure. My first objective is to ensure that our board's role in the delivery of health care in Ontario adds value to our stakeholders. Our stakeholders include recipients of health services, the health professionals, the colleges, other institutions involved in health services and the public. My second objective is to ensure that our board brings quality and objectivity to its decisions. Thirdly, I'm working to ensure that the members of the board represent and respect the diversity of Ontario. Fourthly, it's my objective to have members of the board and the staff focused on continuous improvement of our services.

I'm happy to say that we are making significant progress on all these initiatives. We are improving the delivery of the board's services, enhancing the public's understanding of our work and developing the board's capacity and effectiveness. Here's how. We're improving our service through a complete review I've undertaken into recruitment, administrative processes and procedures. We've made our board more representative by adding new members from across Ontario who reflect the province's geography and demographics and are sensitive to its issues. They bring a diverse set of skills and experiences. We're improving our adjudicative capacity by providing members with ongoing professional development and training. We've made significant changes to improve access by improving and introducing pre-review conferences, launching a review of our rules of practice and reviewing our procedures to ensure that they are consistent with our themes of fairness, openness and accountability.

That, briefly, is an outline of our board, our mandate, our responsibilities and our direction. If you have any questions, I would be pleased to answer them.

The Chair: Thank you very much. We'll begin this morning with the government caucus. Ms. Mitchell.

Mrs. Carol Mitchell (Huron-Bruce): Thank you very much for your presentation. You have laid out your four key strategic objectives that you want to see go forward in your tenure. But I want to give you the opportunity to speak specifically about the training for your members and how you are enhancing their ability to make a decision.

Ms. Lamoureux: That's one of the areas I have done a considerable amount of work on. When I joined the board in late 2005, it was clear that members had not received training and education in a formal capacity or an informal capacity. One of the first things I did was to introduce monthly board meetings. Those meetings provide an opportunity for members to share their experiences, to discuss legal issues that are arising and to be-

come familiar with changes in the law that are applicable to the kinds of cases they would hear.

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Secondly, at those board meetings, we always have a speaker from one of our stakeholder communities, such as the colleges, to provide an overview of the work that they're doing, provide understanding and present the context to members so that they can understand the context in which decisions are being made at the college level.

I'm also pleased to advise you that since November up until the present time, we've had outstanding support from members of the legal community, the health community and our stakeholders, who have come to the board—most of them pro bono—to volunteer their services to provide us with some very significant educational sessions. There's been an increased focus on decision-writing, and coming up in April of this year, we have a session with Mr. Justice John Laskin, who will be providing us with a workshop. I started a workshop immediately in 2005 when I joined, and I think we've had it every quarter thereafter to improve the quality of our decisions. All of our courses have been focused on the nature of the work that we do.

One of the most interesting courses for board members that we attended recently had to do with the cultural and religious aspects of end-of-life decision-making in an intensive care unit. We were privileged to hear from all members of the various religious communities and cultural groups that are represented in Ontario so that we could understand the legal and health care contexts in which we operate. It's really been invigorating and intellectually stimulating for everyone involved to get this kind of education and training as we've progressed.

We had a week-long session early in 2006 to introduce members to the legislation. We are responsible for being familiar with the Ministry of Health Appeal and Review Boards Act, the Regulated Health Professions Act, the code under that act and the college-specific legislation applicable to the 22 colleges. We are also responsible for the regulations, the policies, procedures and guidelines for each of those colleges, and related legislation, such as the Human Rights Code, the charter, family services legislation, consent legislation—a whole myriad of material and legislation that our members must be aware of in order to make informed and relevant decisions.

Our whole focus has been on continuous training and development. You probably can tell I was very excited about it. It's just been phenomenal, and I think the members have appreciated that as we've moved forward. We're starting to see it reflected in the quality of our decision-making as well as the quality of the decisions—how they look, how they read. I think they're more easy to read; you know up front what the decision was. We're emphasizing analysis and reasoning. I've also provided increased support from board counsel to support the members in their decision-writing so that we can add value and our decisions are meaningful to the colleges.

Mrs. Mitchell: Thank you very much for your answer, and I do want to make comment on the enthus-

iasm that you are bringing to your answers too. I'm sure that's reflected.

Ms. Lamoureux: Thank you.

The Chair: Mr. Gravelle.

Mr. Michael Gravelle (Thunder Bay-Superior North): Good morning. Thank you very much for being here today. We appreciate you giving us an opportunity to study what you're doing. You won't be surprised: I'm from Thunder Bay; I'm the member for Thunder Bay-Superior North—

Ms. Lamoureux: Pine Portage, Nipigon.

Mr. Gravelle: I know the Vice-Chair from Thunder Bay will be very pleased to see it.

The question always does come to mind in a variety of ways in terms of access for northerners to your agency. I think even a bit of history might be helpful as well, but how do people outside the GTA access the services of your agency? How do they do that? Have there been some adjustments to make it easier for them to do so? As I say, that's always a concern for those of us who represent people, in my case, far away from Toronto.

Ms. Lamoureux: As I mentioned or alluded to, I am from northern Ontario originally. When I joined the board, it was clear to me that we needed to ensure that our members were recruited from across Ontario. Your question is specific to northern Ontario, but certainly Ontario is a large province. It was important, in my opinion, that our board represent the geography of Ontario as well as its demographics in order to provide appropriate service.

Our hearings are traditionally held in Toronto. People can participate by a teleconference if it's more convenient, because reviews are not like a trial. We do hold reviews, which are a paper review. People come and make submissions. They can do that by teleconference as well if they so choose, or they can simply submit written material as well. When we conduct hearings, however, that's a different matter. It's important for people to appear in person because you're calling witnesses and it's necessary to have them attend.

What we've done is offer teleconferencing and have now started to recruit members from across the province. We now have members from Thunder Bay, Sault Ste. Marie and Sudbury. We have members from Windsor and London, Aurora, and variety of places, I guess, throughout the province.

We will be holding our first review in London, actually, in the next couple of months, to accommodate two parties who are from the London area. I'm able to take advantage now of the fact that I do have three members in that area. For the north, it's a little more difficult, because being from the north you realize that even though I say I have three people from the north, the distances are very vast. So we'll be working hard to ensure that we can accommodate those requests as we move forward.

Mr. Gravelle: So that is a goal that you have in terms of being able to hold hearings?

Ms. Lamoureux: It certainly is.

Mr. Gravelle: It's good that there's teleconferencing. I know of some agencies where you just have to be there. You actually have to appear in person. I've always thought that was a bit of a problem.

There have been some high-profile cases, may I say, out of the north fairly recently that you were involved with. Indeed, if your goal is to try to increase your service in that regard, I think that would be a positive thing.

Ms. Lamoureux: One of the things we did as well which will help us too is move to set hearing weeks. Prior to my arrival, reviews and hearings could be held throughout the month. What we've done is move to set weeks throughout the year so people know when those will be held.

Mr. Gravelle: So you can plan differently.

Ms. Lamoureux: We can plan; they can plan their attendance. As well, the colleges can plan providing resources to assist us with our reviews and our hearings. This should also enable us to consolidate our reviews and perhaps hold them in one specific area, such as in the north, because as the complaints come in, we can make note of where people are coming from and be able to accommodate those requests. We're also looking into having video conferencing capabilities, also to assist with that particular item.

So a lot of things are being done. Everything does not have to be held in Toronto. We do receive a lot of concerns from the Toronto and GTA area, however.

Mr. Gravelle: I appreciate your answer. Thank you very much.

The Chair: Mrs. Jeffrey.

Mrs. Linda Jeffrey (Brampton Centre): I didn't know a lot about the board so this has been really helpful for me understanding what your role is. I was interested in your stewardship role. You spoke about how you were relatively new to the board and you wanted some new themes. A question came to mind with regard to one of the themes. You talked about representation and diversity. Does the board have an ability to address the issue of foreign-trained professionals? My question is, do you have the ability through some of your decisions to encourage the colleges to register more doctors and nurses who represent that diversity across Ontario?

Ms. Lamoureux: The board does have the jurisdiction to hold reviews and hearings in respect of registration applications to the various colleges. Cases involving internationally trained applicants count for the majority of our registration applications. That number, though, is fairly small relative to the rest of our caseload. We can require a college to register an applicant. There are limited circumstances and the law with respect to registering professionals is fairly complicated. But we do have that ability. We have the ability to send it back to the registration committee to take a look at it.

Through our introduction of pre-review conferences, which I mentioned in my opening remarks, we've also had the ability to resolve some issues at an earlier stage, so it doesn't have to get to an actual hearing or a review.

1030

We had a recent case where an individual's material was missing. They were in a country where they could not obtain access to certain documentation due to the circumstances in that particular country. Through discussions with the college, we were able to have the college re-look at that particular application. It's my understanding that in that particular case that professional was registered, as well.

We also have the ability to take into consideration the Human Rights Code and any charter concerns that may be involved with the regulation of foreign-trained professionals.

The Chair: Ms. Scott.

Ms. Laurie Scott (Haliburton–Victoria–Brock): Thank you very much for appearing here before us this morning. Welcome. I was going to follow up on the question of the structure and your board members. You have 25 members right now—

Ms. Lamoureux: We're up to 27.

Ms. Scott: Okay, I just wanted to clarify. You were explaining about enhancing the training, the availabilities, and you certainly have a broad spectrum of orientations for people coming on to the board. Roughly, how long would it take to train a new board member with the adjustments that you've made for a new training program?

Ms. Lamoureux: For complaint reviews, I think a member is up and fully functioning within a six-month period, keeping in mind that part of the training program is observation and mentoring. So members are placed with more experienced members in order to assist them. In terms of observation, they sit in on actual reviews and hearings, they read the file, they observe the proceedings, they listen to the deliberations with the consent of the parties, and they participate in terms of reviewing the decision. They can't participate in the actual decision-making, but they get to observe, to listen and to ask questions. They're then placed on panels, again as a side panel member, as part of their education process on an ongoing basis.

With respect to registration matters, because of the complexity involved, that takes longer, and I use more experienced members who are well versed in that. Again, we use a similar process in terms of the formal education component as well as the informal component, which is the observation and the mentoring program.

Also, a number of the members who are joining us bring to the board already—as part of recruitment, we're looking for strong analytical skills, reasoning capabilities and decision-writing skills that they can bring forward already when they come into the organization as part of our program.

We also have a great resource in board counsel, who can provide advice and guidance on request. One of the provisions in our legislation is that we are to retain outside legal counsel, and when they provide a written or oral opinion on a particular case, that must be provided to everyone. So that's good for the board members and also

good for the parties appearing in front of us. Our board counsel attends our board meetings to keep us updated on recent changes in the law and to address any issues or concerns that we might have.

Ms. Scott: Are members trained in, say, licensing directions, more so? Are the different board members trained for different—

Ms. Lamoureux: All board members receive training in the legislation, and the pieces of legislation, as well, that may apply to a certain case. Registration matters require more intense education and learning. So while everyone has a general overview, we're developing a small team, almost like a fast track, for registration matters so that they can address those issues, because they affect people's livelihoods. So it's important that we get to those faster and that our decisions are issued faster, as well, with respect to those matters. That's an initiative, this year in particular, that I want to address: to get the decisions out even faster than they are getting out with respect to those and also developing the capacity for registration matters with the board members.

Ms. Scott: That's good to hear, because you had mentioned previously that it's mostly newer Canadians coming in with the registration—so the fast track. Can you give an example of someone coming with registration—a situation that would have occurred that involved the board and the fast-tracking? Was there a month turnaround or a two-month turnaround type of thing? Is there any example you can give?

Ms. Lamoureux: Yes. In a recent case we had a month turnaround time for someone applying to one of the colleges. We were able to hear their case relatively quickly and we were able to issue a decision within one month. We certainly don't meet that target on all occasions. We're working hard to do so with respect in particular to registration matters. The registration matters typically take longer if a person has requested a review. That's a paper review where they don't attend; we just review the material. If it's a hearing, it's really dependent upon the information the parties bring, the witnesses that they propose and the process that results. So there may be a series of motions that are being brought forward that will take longer in a particular case and the availability of the parties. Sometimes the applicant can't sit for three or four days for a hearing so we hear it at different times to accommodate everyone involved in that particular matter. I can't discuss particular circumstances. I can just provide generalities to you.

Ms. Scott: That's fine. Would most of the registration matters be physician-related or other professionals? What would they be, just out of interest?

Ms. Lamoureux: Actually, we have very few appeals from the College of Physicians and Surgeons. I'd say our numbers are primarily from—I'd turn to Abby.

Ms. Abby Katz Starr: In 2006, there were only eight requests out of the CPSO on appeals of denial of registration.

Ms. Smith: Can you speak up?

Ms. Scott: Just move the microphone a little closer.

Ms. Katz Starr: In 2006, we had eight requests out of the College of Physicians and Surgeons with respect to registration matters. In 2005, it was six. It does represent a smaller number of our caseload.

Ms. Scott: And other health care professional registrations? What would the other cases be for—

Ms. Katz Starr: For the CPSO?

Ms. Lamoureux: No, for the other colleges.

Ms. Scott: Other colleges, yes.

Ms. Katz Starr: I can give you an example. For the College of Nurses, for example, in 2006 there were 15 requests and in 2005 there were 12, and then they get smaller with the colleges—

Ms. Scott: So physicians and nursing, and then it goes down from there. Okay, just out of interest. You know, we don't have any idea of the number of cases you hear in regard to the registration. Because it's in the news a lot—right?—about registration of newer Canadians coming into the professions and not being able to work.

Ms. Lamoureux: One of our objectives and one of the objectives identified is that it doesn't seem to be common knowledge that this right is in existence for members who are applying for application, or the jurisdiction of the health professions board. We've been working very hard in terms of outreach activities as well so that we can actually inform people as to their rights. For example, we just had a session at the invitation of the Canadian Hispanic Congress to come and speak to interested parties with respect to complaint reviews, registration in particular. We were able to provide them with an information pamphlet in English and Spanish as well, because that's the audience. In a couple of months we've been invited to speak to the Chinese Interagency Network, which is an umbrella organization of 34 organizations throughout the GTA, again with a focus on registration matters so that people are aware of their rights and appeal rights under the legislation.

Ms. Scott: I know that you're improving public awareness of appeals. How did it normally work? It is very difficult for someone, especially a newer Canadian coming in. Is it mostly through the network of their specific culture coming in, like organizations, that make them aware, or is there some centre point? I know I'm asking a question that might be hard to answer.

Ms. Lamoureux: It's the responsibility of the colleges to inform people applying of their rights and what they're entitled to. I think there are difficulties for any person when English isn't their first language, in a new country. There are several issues that they need to contend with, but it's the responsibility of the colleges to provide that education. From the perspective of our board, though, it was clear that perhaps the rights under the legislation weren't as clear to them, and we've used an opportunity with the diversity of our membership to tap into it so we can actually inform people about their rights.

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Ms. Scott: There's a bill before the Legislature right now, Bill 171, that's going to recommend that homeopathy, naturopathy, kinesiology, psychotherapy, and

hearing instrument practitioners be added as new professions recognized and regulated under RHPA. That's going to significantly increase your workload, with all probability of adding more professions. It was brought out in New Directions under HPRAC—I use acronyms for us internally—that they be regulated and recognized. So that, I would think, would create more of a workload for your board. Are you thinking down the road of the possible implications of that?

Ms. Lamoureux: I don't want to seem evasive of your question, but our mandate is to apply the legislation as it stands. If there is additional work as a result of anything coming forward, I would have discussions with the ministry and address those questions. Certainly, though, through the increase in board members which I have been experiencing, I feel that we have been able to handle our current workload that we have. I have a very good relationship with the ministry and I'm confident that in any future discussions we would raise any issues that may come forward, but they're not before me at the present time.

Ms. Scott: It's just something to think of that's coming down.

Ms. Lamoureux: Thank you.

Ms. Scott: It's a large bill. I just wanted to get your comments on that.

I think that's fine for now. Thank you very much.

The Chair: Ms. Martel.

Ms. Shelley Martel (Nickel Belt): Thank you very much for being here this morning. I actually want to start where Ms. Scott left off. I'm not sure where the reference came from. There's background material that was provided to the committee members. The background material suggested that the board had indicated that the current level of funding is not adequate to keep up with increased demands for service that would be created by increasing the number of professionals under the RHPA. I'm not sure where that information came from, but that is the nature of Ms. Scott's comments, and it was also going to be one of my questions. In looking at Bill 171 and the possibility of a number of health care providers now being regulated, who suggested that the current level of funding was not adequate, and what kind of price tag or what kind of assessment have you made about the human and financial resources you're going to need if the bill passes?

Ms. Lamoureux: We haven't made any assessment with respect to Bill 171. In responding to that question, the budget is negotiated each year with the Ministry of Health in conjunction with the Health Boards Secretariat. We have a shared-services model with other boards. I'm going to ask Abby to respond to that in more detail as a background piece first of all, and then I'll comment further.

Ms. Katz Starr: Let me first tell you a little bit about our model, because it is a bit unusual in the adjudicative world.

I am the chief operating officer of the Health Boards Secretariat, and that's a shared administrative model that

provides all the operational and administrative support to both the Health Professions Appeal and Review Board as well as the Health Services Appeal and Review Board. We provide additional administrative services to the Ontario Review Board and the Consent and Capacity Board and have the capacity to support, on the administrative side, the Ontario Hepatitis C Assistance Plan Review Committee. So we have a pretty robust capacity and a very experienced group of staff and set of processes to support multiple boards. But in recognition of growing caseloads and the need to keep up with the technology, we've introduced some improvements in anticipation of what we likely will see in ever-increasing caseloads. For example, we've now established a new case management system for the Health Professions Appeal and Review Board which is the same as the one we use for our other boards, so again, increased capacity; staff resources can be shared. We've been doing cross-training of staff so that people can pitch in for one another and either do the caseload or plan around planned absences so we don't have to have any interruption in our administrative process.

We've also, with the support and encouragement of our new chair, done a full business process review since her arrival of how we do our business, and whether there are ways to do our business a bit better to eliminate unnecessary or duplicate steps; to increase our use of technology, both for the board members and for the staff; to have more remote connections in order for more information to be shared and not have to have everybody present to send materials, for example; and other ways of reducing the amount of time just for exchange of material. So on the staff side, we are constantly looking at ways to improve our current service, with a mindset to looking to the future in anticipation of the issues that may come with caseload.

Additionally, I work regularly with my ministry contacts around budget projections and forecasts. I provide monthly forecasts, quarterly reports. I'm always identifying any potential for some budget issue, although we try very hard to work within our budget. We've introduced new billing processes for the members, more controllership, whereby there's a standard now that members must bill by, and they can only have an exception to those rules with approval of the chair. So again, we have better controllership of our spending.

In recognition of the public service component of our OICs, we've shared those new rules and we've done training with the board members to bring them on side to also be careful with the public dollar. So we're trying, on the administrative side, to support the Health Professions Appeal and Review Board in dealing with what will perhaps be an adjudicative burden coming forward and being prepared to handle those issues.

Ms. Lamoureux: If I could just add a further remark to that, Bill 171 has yet to be passed, and certainly it would be my experience that I would be entering into discussions with the ministry if and when it is passed. Part of that would be a discussion—if there is an anticipated increase in workload, we'd have those discussions at that time.

Ms. Martel: Maybe I can just read into the record what was said and then you can understand why I'm asking this question. In the briefing notes we were provided, it says, "In its response to the committee's questionnaire, the board suggested that its current level of funding is not adequate to keep up with increased demands for service that would be created by increasing the number of professions under the RHPA, especially given that 'recent jurisprudence has significantly and appropriately added to the complexity of proceedings before the board.'"

I'm not an ongoing member of this committee, so I don't know about the questionnaire and I never saw the answers. But I assume that somebody wrote that, and I'd be interested, then, in the reasoning for it. I was interested in two parts. First, if the current level of funding is not adequate, what would be adequate? And the second part of this: "Especially given that ... 'jurisprudence has significantly...added to the complexity of proceedings before the board.'" I don't understand what that means either and how that may add to new staff demands.

Ms. Lamoureux: I take responsibility for answering that question, and I did write that. The reason for that was that the budget the question related to was a budget done prior to per diem increases for members. We had not anticipated that increase at that time, so I confess that I answered it quite literally that my budget was not reflective of the increases at year-end. However, again, my experience with the ministry is such that in our next budget negotiations, we'll be taking that into consideration. So I certainly didn't mean to suggest, but I did answer, that my budget did not reflect what my expenditures were going to be for this year, and that's really what the answer was directed at.

With respect to anticipated complexities, that's referencing the Human Rights Code and a recent decision in a case called *Tranchemontagne*, which I'll ask our board counsel to provide you an overview of. That is something that all boards and tribunals must take into consideration now when they are arriving at decisions. We're addressing that in part through increasing training focus.

David, would you like to speak briefly to that case?

1050

Mr. David Jacobs: Sure. In the recent and very important decision of the Supreme Court of Canada in a case called *Tranchemontagne*, the Supreme Court of Canada ruled that all administrative tribunals, including ourselves, are bound by the provisions of the Ontario Human Rights Code. So we now have an obligation to look to the Human Rights Code, to apply the Human Rights Code and interpret the Human Rights Code. In some situations, we are authorized, in fact obligated by the law and by what the Supreme Court said in *Tranchemontagne*, to ignore provisions of legislation, regulations, bylaws and policies which we would find to contravene the Human Rights Code.

In that case, the Supreme Court of Canada dealt with a decision of a social services agency which decided not to

provide welfare benefits to somebody who was an alcoholic because that's the way their legislation and regulations read. The Supreme Court said that they should have read that out of the legislation and that the social services board should have in fact read the legislation as if that didn't happen, because alcoholism is taken to be a disability within the meaning of the Human Rights Code. So it was discriminatory not to provide benefits to somebody who was alcoholic.

That also applies to us. We're going to have to, for example, in the registration decisions, look very carefully at registration regulations and policies of colleges in order to determine whether they conform to human rights law, and if they don't conform to human rights law, we have a number of challenges to face and decisions to make as to what action we can take, including overriding the regulations of the colleges which we find to be discriminatory, if we ever do. But it does provide a serious burden on the board to look carefully at registration regulations and legislation in order to determine whether they conform to the Human Rights Code.

I think it also says to us that we have to pay very close attention to the Charter of Rights and Freedoms, and that we have to pay attention to this not just in the context of registration matters, but also in the context of physician privileges and rights at hospitals and complaints against professionals.

Ms. Martel: So what does that mean in terms of the training that your staff are going to have to now have in order to make sure that you're complying with those obligations?

Ms. Lamoureux: That's been part of the overall training program. When I joined the board in 2005, I took a very careful look and, in conjunction with counsel, identified areas that we needed to focus our attention on. We are working very hard, particularly to ensure that we develop the appropriate training programs, again, to focus on human rights and the charter. It's an ongoing training and professional development; you can't just have one week of training and suggest that that's sufficient. It's something that in every single board meeting we do address: What's the latest issue that we need to contend with? What are the types of problems that panel members are encountering? What kind of support do they need from board counsel in particular? What kinds of specialty training programs do we require? This is just something that is now embedded in the work that we are doing and something that we're doing continuously.

One of the programs that we've just developed, actually, with the University of Toronto law school and Pro Bono Students Canada is a program which I call the Access to Justice program. It deals with accessibility but also focuses on training and education. It's the development of appropriate materials for members—member resource materials—which eventually will be available to the public as well—public education materials—and eventually, we hope, available online, that will assist everyone appearing in front of the board, consistent with our themes of fairness, openness and accountability, so

that they know exactly what they're facing when they come forward, what the issues are that they need to deal with.

The second part of that program, which is equally important, is eventually the production of a manual for law students so that they can provide advice and assistance to unrepresented parties. Part of the hallmark of the administrative justice system is to allow access by unrepresented parties; however, they do need some material and some advice and guidance to ensure that they can put forward the best possible case when they're coming before a tribunal like ours.

The Chair: Thank you, Ms. Martel. I'll pick you up on the next round, okay?

Ms. Martel: Thank you.

The Chair: Ms. Smith.

Ms. Smith: I'm actually going to ask the question this time.

Thank you for coming and for providing us with all the information that you have today. As a fellow northerner, thank you for what you're doing in the north.

I just wanted to ask you a question around the MOU, your memorandum of understanding with the ministry. I understand that presently you don't have a signed MOU. It's been some time since the board has had one and I just wondered if you could give us a status update on that: what the situation is currently, why you're in that present situation, and how you're looking to resolve that.

Ms. Lamoureux: The board hasn't had an MOU, actually, and I think it's very important that we do have an MOU. It's certainly a requirement and feeds right into accountability and good governance. We're now on our second draft of an MOU with the ministry. We've had those discussions. I anticipate we'll have one signed very shortly and that we'll be complying with that.

Despite the fact of not having had an MOU, we have been complying with the government requirements for regular reporting, complying with all the government directives issued by Management Board in terms of various directives, expense and travel guidelines, and regular reporting through the annual report, and I have regular meetings with ministry staff. But I do anticipate the memorandum of understanding will be signed within probably the next six weeks.

Ms. Smith: Great. Thanks. Mr. Duguid?

Mr. Brad Duguid (Scarborough Centre): I'm not from the north. Do you have any members of your board who are not from the north?

Ms. Lamoureux: I'm going to have every area represented, I'll tell you.

Mr. Duguid: I get the feeling the north is taking over here. Ms. Martel over there doesn't seem to object to that either.

My question goes back to the 1999 investigation that the Ombudsman had of your board and organization. It's always of interest to us, in particular as government, because a question that often will come up when a report does come out from the Ombudsman is, how have you responded to the recommendations? Have the recom-

mendations been addressed or are they in the process of being addressed? My question is, how have you responded?

Ms. Lamoureux: The 1999 report focused on delays in process issues. At that time, in response to the report, it's my understanding we were provided with increased resources to address those delays. As a result of those changes, under the prior chair, the delay in time of 24 months for a review was reduced 50% up until that time. Since I've joined, I've reduced it a further 25% for a review.

We've had no other formal investigations by the Ombudsman's office since 1999. Indeed, our former deputy registrar was awarded an Ombudsman's service medal, a recognition award. Abby, what year would that have been that Jim received that?

Ms. Katz Starr: It was 2002, I believe.

Ms. Lamoureux: Jim Terry, who was deputy registrar of our board, received an Ombudsman award in recognition of service provided.

The Chair: Mr. Gravelle.

Mr. Gravelle: When you have a decision that's made in terms of one of the regulatory bodies and you disagree with the college that the complaint is being brought about, how does the board proceed then? What happens when you disagree with the college, or when you in fact agree with the complainant, I guess? How does the board then proceed in terms of the process? What happens next?

Ms. Lamoureux: We issue a written decision which could indicate three results. We could disagree with the complaints committee, and in that case we would either make recommendations to the complaints committee, to the college—it goes back to the college. We can direct them to do something such as direct a health professional to receive education, training; they could be sent to quality assurance, if we disagree; or we could, additionally, as I said, provide recommendations on a change in process or ask the college to look at this again within the boundaries of our decision.

Mr. Gravelle: I don't want to get into the details of one particular case that those of us from northwestern Ontario are familiar with, but there was a situation with a physician who was unhappy with the relationship in terms of the hospital. I guess I probably shouldn't go any further than that, but I suspect you know the case I'm talking about. You have the authority there to—yours becomes the final decision in that sense in terms of how the hospital has to respond. Is that true? Because that's a little different than the college, right?

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Ms. Lamoureux: Yes, it is.

Mr. Gravelle: It's quite different, in fact.

Ms. Lamoureux: It's a different jurisdiction under the Public Hospitals Act and what we can and can't do. I'm going to ask our counsel to respond to that, Mr. Gravelle, in more appropriate detail.

Mr. Gravelle: Okay. I hope I'm not stepping over the line asking the question, but this is of particular interest. Tell me if I am; I won't be offended.

Ms. Lamoureux: We won't answer about the specific case, but certainly the question as to our authority with respect to the Public Hospitals Act.

Mr. Gravelle: Yes, I guess that is the question. Thank you.

Mr. Jacobs: We have fairly broad authority under the Public Hospitals Act. If a physician is dissatisfied with a decision to not appoint him to medical staff or not reappoint him to medical staff or to withdraw hospital privileges, that physician can appeal the decision to us, the Health Professions Appeal and Review Board. The Health Professions Appeal and Review Board can then actually substitute its opinion for the opinion of the hospital board and can order the doctor's privileges or appointment to be reinstated. Then there's a further opportunity for appeal.

In complaints matters—that is, a physician, a member of the public or a health professional complains about the conduct of a health professional—that's a matter that goes to the complaints committee of a college. If either party, the complainant or the health professional, is dissatisfied with that decision, they can bring that to the Health Professions Appeal and Review Board for a complaint review. But in respect of a decision of a complaints committee of a college, our remedies are between the complainant and the health professional. We can essentially, as the chair said, order the complaints committee of the college to do a variety of things, including conduct a new investigation, all the way up to send the member to discipline, or to take no action in respect to the member.

The Chair: Mrs. Mitchell.

Mrs. Mitchell: I'm just going to make a comment and then ask a question. I certainly am pleased to see that you have sought northern representation. We've looked at the composition of your board, but I would encourage you, as I represent a rural riding in the province of Ontario—there were no rural communities mentioned in the composition of the board.

Ms. Lamoureux: Is there a specific rural community you have in mind?

Mrs. Mitchell: I have many. Southwest is good. Rural: Keep that in mind.

One of the comments that was made in the questionnaire was your concern about representation to the board if they do not have the ability to have legal representation, and to ensure that they have a fair hearing if legal representation is not available for whatever reason. I wanted to give you the opportunity to speak to that. I know that fairness, transparency and accountability are what you're about, so just specifically speak to that. How can I be assured that if one of my rural residents comes forward and doesn't have legal representation, they would have a fair hearing?

Ms. Lamoureux: They don't need legal representation. I'm going to speak generally, setting aside registration matters, which are much more complex, and certainly, I think, require it.

For complaint reviews, when you have a concern about the health services that you or someone else has received—because you don't have to be the recipient of

the service to complain before a board—we've undertaken a number of initiatives. The first one is that we've introduced pre-review conferences. That's an opportunity for all parties to come to a confidential setting with a facilitator. They receive education on the board's jurisdiction: "Here's what the board is. Here's what it can do for you." For example, some people believe that we can award monetary compensation; we cannot. So we clarify what we can and can't do for them. We clarify what their issue is, what information they have and what information they require. The college is not a party, but they participate and, again, they can provide information about their jurisdiction.

What I found is that when I first joined, the number of adjournments was phenomenal, because somebody would appear before a standing committee. They'd never been here before. They didn't know what the room looked like. They were intimidated by the setting and what they were exposed to. Normally, if they were complaining against a health care professional, if it was a larger college, that professional had legal representation, and it's usually a leading health care advocate. It was a very intimidating setting. So the pre-review conference enables people who are not represented or are self-represented to have an opportunity to figure out what the process is all about.

The second thing that we've done, that is under way, is changing the rules of practice. I'm a lawyer by background, and the rules of practice can get unduly complicated, just because that's an area of comfort for everyone. So we're rewriting the rules of practice using plain language so they set out what the process is, what the procedure is, so that, again, someone who doesn't have a legal background or who isn't represented can actually understand where they're going. In assisting us in developing that, for the first time we invited full consultation from as many people and groups as wished to provide their input so we can figure out what those should look like to provide the best service. I mentioned earlier to Ms. Martel our project called Access to Justice with the University of Toronto and Pro Bono Students Canada. That's another way we're addressing that, and again, through the fact that we have the ability, when board counsel do provide an opinion, that it's an opinion for all the parties.

Last but not least, I'm going to turn back to education. A great component of our education has been, how do we deal with unrepresented parties? We've just had some outstanding insight provided to us from people such as Mr. Justice Ormston and Mr. Justice Carnwath, who provided great insights on how we can handle that: What line can we cross as a panel? Because we're there for all parties, we cannot be advocates, but what can we and can we not do appropriately to ensure that there's a level playing field for people appearing in front of us? We've worked very hard to walk that line so we are providing a fair hearing and ensuring appropriate issues are raised.

Mrs. Mitchell: Thank you, and just one more plug for the rural communities. Part of your scope is the veterinarians, correct?

Ms. Lamoureux: Yes, it is.

Mrs. Mitchell: So, as that is the bulk of their practice in rural communities, I would make that plug again. Thank you.

Ms. Lamoureux: Well, I have put forward recommendations for eastern Ontario and I understand, hopefully, subject to the requirements, that we'll be getting representation from it, but I think I have all areas of the province covered and didn't mean to emphasize the north.

Interjections.

Mrs. Mitchell: Thank you.

The Chair: Thank you very much, Mrs. Mitchell. We'll move on. Ms. Scott.

Ms. Scott: Certainly a plug for eastern Ontario, where I represent Haliburton–Victoria–Brock, while we're plugging rural Ontario representation, but I'm sure you're adequately covering all the bases.

Now, when you say you go and seek recruitment for board members, how do you advertise? I'm sorry if I missed it earlier.

Ms. Lamoureux: The Public Appointments Secretariat actually is the vehicle through which people have to apply and appointments are made, but as chair, I identify business needs for the board in terms of skill sets, and in my case I'm also identifying geographic and demographic requirements that I feel are necessary for the board. I have discussions with representatives from the Public Appointments Secretariat to identify those members who have applied through the appropriate website and what kind of requirements I have, and I interview potential candidates. Also, candidates are put forward, so someone may say, "I'm interested." You say, "Well, you can go to the website," and you either interview them—I make recommendations in addition to suggestions that come forward from me.

Another project—I'm so glad you asked that—that we've just developed is with the Maytree Foundation. They are an organization located in Toronto representing a variety of groups. We'll be launching a program in the next couple of months whereby they'll be identifying from their organization qualified candidates who will come and observe our proceedings, because they are public, and they will then receive an education program on the rights and obligations of becoming a board member. We hope to identify for recommendation further members through that process so that we can recommend additional appointments, again to ensure that we're appropriately reflecting Ontario's demographics.

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Ms. Scott: So other than the Maytree Foundation that you just mentioned, it's really just through the website and the Public Appointments Secretariat. It's kind of like whoever may be interested can go on the website.

Ms. Lamoureux: Yes. There doesn't seem to be any shortage of people wanting to become members of our board.

Ms. Scott: That's what I was going to ask you. All right. So there's no shortage of that. You were just put-

ting your requirements, which I agree should be a broad spectrum from Ontario.

Ms. Lamoureux: When I joined there were 12 members, which is the statutory minimum. We're now at 27. My goal is 40, because I'm the only full-time member of the board. Every other member is part-time. Again, in order to ensure that we have the appropriate skill set, the appropriate representation, I think that's probably the right number, based on my estimates of what I require.

Ms. Scott: Do you have to get approval from the ministry to increase to 40? What's the budget line difference?

Ms. Lamoureux: Well, they are part-time members and they get paid a per diem, so it depends on the workload and the caseload. I don't need approval. I have hearing weeks. Six matters a day is what we hold, on average. If there is an extraordinary issue, we hold it outside of the regular hearing week.

In addition, the other thing that we do is pre-review conferences. I have facilitators who handle those, also for a per diem rate. So we're actually able to handle a large number of those. All of it's being done, I'd have to say, because of the institution of guidelines, cost guidelines and directives. We're doing it within our budgetary allotment. I'm quite pleased about that. We're doing a great job, too. My members are phenomenal.

Ms. Scott: They must be very dedicated. This is a very complex range of issues.

Ms. Lamoureux: They are. Health care is so pervasive. It touches every aspect of our lives. I've had no shortage of people who want to serve the public, who would like to participate and become members regardless of what the per diem is or is not. The level of commitment has just been incredible. As I said, I have people from everywhere representing a wide variety of groups. The health care area itself is fascinating. Our educational programs are so interesting that there's been no shortage of people wishing to become members of the board.

Ms. Scott: I think it should be open to members of the Legislature to take your educational programs.

Ms. Lamoureux: I'd be glad. You're welcome to attend.

Ms. Scott: And you do have the veterinarian side to it.

Ms. Lamoureux: Absolutely.

Ms. Scott: How many cases would you say in the last couple of years or the last year for the veterinarians—I know Mrs. Mitchell mentioned it—would there be complaints, just to kind of go off-topic for a minute?

Ms. Lamoureux: Let me take a look at my numbers. For complaint reviews in 2006, we had 24 requests for reviews and we had two requests for registration, so not a large number. Our veterinary cases are often the most passionate cases, too.

Ms. Scott: How many board members would be trained? Is there specific training in regards to veterinary issues?

Ms. Lamoureux: No. Everyone receives training with respect to all of the general cases. I divide it more into complaint and registration. They have to be familiar with

the Veterinarians Act as well as the Regulated Health Professions Act and the other pieces of legislation. Prior to a panel taking a case, they would familiarize themselves with the applicable legislation and the applicable college. Again, during their deliberations, they would also be reviewing that material.

Just to give you some idea, our files are usually a minimum of 1,000 pages. Our panel members are usually reviewing a file that can go anywhere from 300 pages and up to boxes, but I would say that usually we're looking at files that comprise 1,000 pages, which members are required to read, know and study in detail—and they do it.

Ms. Scott: That's a lot of briefing, 1,000 pages; that's incredible.

Just for my own interest, too, you did bring up end-of-life decision-making and the different cultural groups and customs that we have to accommodate. Did you receive a large amount of complaints in respect to end-of-life and cultural—

Ms. Lamoureux: I think generally, in a number of cases, we have communication challenges that people are experiencing. Usually, I would say that for the health care professionals and the families that they're dealing with, their whole focus is to do right by that patient and by that patient's family in terms of the provision of care. But again, because in Ontario the diversity is so broad, sometimes they do run into difficulties with communication.

However, we haven't tracked as a board the particular types of complaints necessarily that are coming forward. We've just introduced, again, as Abby mentioned earlier, a new case management system this year, and I hope we'll be able to obtain better information that will enable us to address concerns better. This includes, for example, where the party is travelling from and what their specific issues are, and being able to break down by college the particular issues that we need to address. We haven't captured that data in the past, but we will be doing so moving forward.

Ms. Scott: That would be a very quick turnaround time that you'd need, right? Because if it's end-of-life care in an intensive care unit—

Ms. Lamoureux: Oh, I see. Yes, we do have a process to expedite. I know that last year we had one case in particular where we had to expedite a matter for that particular reason, and we did so.

Ms. Scott: So there's accessibility for the public. It could be a fast turnaround.

Ms. Lamoureux: Yes, there is.

Ms. Scott: Okay, that's good. Communications internally, then—anyway to do that.

I'll take another tangent here and refer to a newspaper article in the Owen Sound Sun Times from February 15: "Informing Public of Misdeeds Not Dental Group's Job." It was in reference to the Royal College of Dental Surgeons, about a dentist who was handed a suspension. The dental college issued no news release about the penalties and no notice was posted to inform the patients

or the public of the misconduct or the suspension. The registrar of the Royal College of Dental Surgeons of Ontario then suggested that there should be a central website where penalties involving all members of the 21 regulated health care providers should be posted. I take it that the College of Physicians and Surgeons and the Law Society of Upper Canada routinely post news releases about disciplined members on their websites, but not all the health professions necessarily have the same routine of posting members who have had suspensions or who needed to be disciplined. I just wondered if you had any comment. Do you think the government should have a central website so that people can have more accessibility to know if there are suspensions occurring? Some of the dentists in this article have continued to practise even though they were suspended, so there wasn't the follow-up. I just wanted to know if you could comment generally about more public access to this information.

Ms. Lamoureux: I can't comment. One of the hallmarks of our board is that we are to provide an objective, independent decision-making body with respect to professional members, the college and the parties. We make decisions within the confines of the current legislation. We're not a policy-making board. So I regret that I can't answer your question.

Ms. Scott: It was just generally about public information, because you discussed in your presentation about making discipline boards or complaints more accessible to the public, so it was kind of following that theme. I just wondered if you had any comment on whether it might be a good idea involving—whether it would be better for public access to know what professionals had had disciplinary action.

Ms. Lamoureux: No, I can't comment on that.

Ms. Scott: Okay.

The Chair: Thank you very much, Ms. Scott. We'll move on. Ms. Martel.

Ms. Martel: I wanted to ask about the mechanism for the public to know that they have a right to appeal. Is it the responsibility of the college to make a member of the public who is a complainant aware of the potential for a second-level appeal if they are unhappy with the college's decision?

Ms. Lamoureux: Yes. In the colleges' letters, when they issue a decision, they indicate that there's a right of appeal to our board.

Ms. Martel: Does your board have any mechanism or any obligation to ensure that's happening?

Ms. Lamoureux: Legal obligation? No.

Ms. Martel: Okay. I wanted to ask about the complaints—

Ms. Lamoureux: Sorry, Ms. Martel. I'm going to consult with board counsel in case I've misled you in any way. Do we, David?

Mr. Jacobs: I actually don't think that there's anything express, but if it was brought to our attention that a college wasn't doing it, I am assuming that we would say something unpleasant to the college about it.

Ms. Lamoureux: I'm glad I asked him.

Ms. Katz Starr: I do have regular conversations with my staff counterparts at the colleges, and we look at whatever administrative issues there might be. So we do try to keep some open communication as well, ensuring that if we have new processes, they're brought to their attention, and the college tells us issues that they might have. Again, our presence in terms of ensuring that their letters always contain my name and the right to request a decision is always there, and we've talked about the wording of that. So we do have an informal way of managing that expectation.

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Mr. Jacobs: The statute provides that the college complaints committee has to provide the parties with notice of their right to request a review from the board. I suppose if they don't, if somebody later wanted to have a board review, we would take such a late request very seriously, given that we have an ability to extend time. But it certainly would be something the board would, I'm sure, comment about.

Ms. Martel: From the moment a complaint starts to be dealt with in a particular college to appearing before your board—I'll use a hearing instead of pre-conference—do you have any idea of what your averages are around timelines for people who are trying to use the system, trying to appeal?

Ms. Lamoureux: Abby, would you have numbers for the colleges? I can't comment on the colleges' process, but Abby might be more familiar with that.

Ms. Starr: I can't speak to how long it takes for a college. I can talk about our own process. But in terms of how long it takes a college to get through an investigation, it relies, I'm sure, relies on a number of different factors, including the availability of witnesses and information.

Ms. Martel: Sorry; I'm just referencing some material we have. In the legislation—I don't know, David, if you'll know this. Within each college, then, are there or are there not some timelines that are set out with respect to the time that it takes? Then, further to that, we were given to understand that HPRAC had made a recommendation or was thinking about a recommendation that would amend the health professions procedural code so that you could not make a request to the board for a hearing. So I wondered if you could comment on that, because the two seem to be tied in terms of timing and a college not meeting the timing that they were supposed to, I assume under law, and then how HPRAC thought that should be resolved, which was to put more of an onus on the college to comply with the timelines versus allowing people to have access to the board. I wondered if you had any views about that recommendation from HPRAC.

Ms. Lamoureux: No, I don't have any views about that recommendation. Again, we're not a policy-making organization; we apply the legislation. Until such time as the legislation is passed, I can't comment on that.

Ms. Martel: So the recommendations made by HPRAC in New Directions around this issue were done without any consultation with your board?

Ms. Lamoureux: We made representations around process to HPRAC because we were invited to, and we did so.

Ms. Martel: Was there any issue raised at the time from your board with respect to delays of cases—you know, that when they finally got to your board, they had been delayed for some time at a lower level—and how that could be dealt with?

Ms. Lamoureux: I can speak to our process currently. Under the legislation, investigations are required to be completed within a certain timeline. If they are not, the complainant has the opportunity to make an application to our board to look into that investigation. We have found in the majority of cases involving that particular section that our inquiry to the college usually gets the investigation back on track, if it is coming up for a decision shortly. I think in the history of the board we've only had to exercise our right to step in and take over an investigation on one occasion. In all other instances, those matters have been resolved.

I'm just going to ask, David, if you could add anything further to that.

Mr. Jacobs: Not really. The timeline for a college to dispose of a complaint is 120 days, which is a fairly tight timeline. So I'm not sure that all, or any, colleges actually manage to achieve that timeline. But as the chair said, the parties who are worrying about the length of time it's taking for a college to dispose of a matter can come to the board and request that the board in fact order the college to comply with the timeline or give the college a deadline or extend the timeline if necessary. Again, in the extreme case, the board can actually take over the investigation, and then stands completely in the shoes of the complaints committee, conducts a full investigation, and renders a decision. But I think the chair is correct that that's only ever happened once and the board has been able to deal with it by means of interim orders and so on. I notice that in the proposed bill, those powers of the board remain.

Ms. Martel: So the HPRAC recommendation around eliminating requests to the board where the complaint has gone on past 120 days doesn't appear in Bill 171? Is that what you're saying to me?

Mr. Jacobs: That's my understanding, yes.

Ms. Martel: Because, as you have just said to us, usually an intervention by your board, a phone call, will get things rolling again. If a complainant doesn't have that opportunity to even come to the board and raise that possibility, then some of those cases could just drag on and on.

Ms. Lamoureux: We've been satisfied with the results that we've experienced with our current legislative powers.

Ms. Martel: Okay. I just wanted to confirm that because I looked at it and I didn't really agree with the HPRAC recommendation and just wanted to know if you had had a sense of it. But if you're assuring us that it doesn't appear in the bill, then that's fine.

I wanted to ask about complaints again from the perspective of—and I don't know if you track this—a break-

down between college members coming forward with complaints and members of the public. We were given information that in 2005-06 complaints reviews—I think we had 356 new requests. Do you break down in any way, shape or form where that's coming from in terms of public members and college members?

Ms. Lamoureux: No. The gathering of statistics at a micro-level was not done. It will be done in the future but has not been done. So we actually don't have a lot of information to be able to provide you beyond the numbers as they stand. We do, though, get both. That certainly is the case. We do get both.

Ms. Martel: I assumed that. I was curious as to what that was and whether that was shifting; as the public becomes more aware of having rights, whether there were more public complaints that were being made versus member complaints. But I guess once you get a system up and running, you'll be able to track that and have some thoughts about that one way or the other.

Can I ask about the relationship between the college—I know you said that there's ongoing dialogue. Do the colleges, either a single one or as a group, have some specific concerns that they raise with you about board operations, timelines etc.?

Ms. Lamoureux: Actually, when I joined the board in late 2005, it came to my attention that the board had never met with the colleges, ever. I thought that was rather interesting given the public oversight requirement. So in October of last year I had a full meeting with all the colleges and their representatives to introduce them to the board, the vice-chairs, Abby for the first time, and our board counsel so that they knew where we were heading—much like the overview I provided to you—so they were aware of what our expectations were as an oversight body, to encourage that we have lines of communication open so that they could raise concerns with us as well, and to ensure that we're operating with the same commitment moving forward. We are going to have those meetings annually now, but on an ongoing basis we're encouraging discussions if a particular concern or issue arises.

The colleges take our decisions very seriously. It's my observation that if our decisions are well written and if we're providing appropriate direction, they do everything they can to comply with those decisions. So it's important that if there's a point of confusion or they feel they can't implement it—and I've encouraged them that even if they disagree with me, they're entitled to disagree with the board and its decisions simply because it opens up debate and discussion. It doesn't mean it will change the decision but the discussion is the important piece. So we are having those discussions.

As Abby indicated, it's important on a process basis that if someone has made a process error, as opposed to writing a series of letters and getting caught up in a bureaucratic nightmare, they pick up the phone and they say, "Do you know what? You shouldn't have done X." Sometimes we're getting, "Oh, gosh, you're right. I made a mistake. Let's fix it." Because that's in the best interests of the public we serve.

Ms. Martel: I don't think I have any more questions.

The Chair: All right. Thank you very much. Ms. Smith.

Ms. Smith: I just have one question. I do want to thank you for coming and providing us with such insight this morning. The one question I had actually stems from Ms. Martel's question about the length of time it takes for college decisions. There was some discussion about the length of time that it was taking your board. I know that some of it was addressed in the auditor's report of 1999, and I think you referred to more resources being given to the board in order to address those. But could you just speak to the issue of the length of time it takes for a decision to be reviewed and a decision made by your board? I recognize that when you spoke to Ms. Scott you talked about the thousands of pages, so there are reasons for some time to pass. But could you talk about why the process is fairly lengthy, but also whether or not you have had any progress in shortening the length for your decisions?

Ms. Lamoureux: Would you like me to address decisions specifically or the entire process at the board? I'd just like to clarify that.

Ms. Smith: Board decisions.

Ms. Lamoureux: Board decisions can take anywhere up to six months and sometimes longer, depending on—and that certainly, I think everyone at the board agrees, is much too long. We'd like to hit a lower target. We have established a performance target of three months. We're working very hard to achieve that goal. We're certainly not there yet. There are a number of reasons, such as the one I mentioned in terms of simply the length of file, the types of deliberations required in making a decision. Also, after a review there may in fact be further submissions made if a particular point arises or if the panel has requested further information. One of the steps we've taken is to ensure that all parties receive all information they're entitled to and have an opportunity to comment on that information.

In the deliberations that take place, we sometimes have difficulties, because our members are part-time, in being able to come together at the appropriate time and get the decisions out. So part of the education process, again, is ensuring appropriate support and education for decision-writing, support from board counsel as a resource where required to assist in that process, and ongoing support for our members to ensure that's done. Another thing we've done is provide them with laptops so that they don't have to come into the Toronto office; they can communicate with each other outside of that office as well. But, again, our decisions at the moment are taking longer than we would like and we're working very hard to reduce that timeline to address that.

Ms. Smith: Thank you. My understanding is, though, that the decisions were taking a lot longer than six months, maybe, two years ago, so you have actually had some success in reducing the time. Is that an accurate assessment?

Ms. Lamoureux: Yes. We have been able to reduce the time, I would say, by probably a month or two. The

time I referred to earlier was the time it took for the length of a review, from the time of a request to a review. Since I've joined we've managed to reduce that by an additional three-month time, and we are reducing the time to issue decisions as well. But we have not achieved the three-month target that has been set as a performance target, and I hope we are able to do that, keeping in mind that for those matters which we feel need to be expedited that I mentioned earlier to Ms. Scott, the issues where we have certain health care pressures or dealing with registration matters, we'd like to hit a shorter timeline.

Just recently, this month, we were able to accommodate a request of a health care professional who I think is actually moving out of country and needed a review done very quickly in order to accommodate a request. With the consent of all parties, we were able to hold that outside of the normal review week; we had members who volunteered their time outside of that week. And we'll have a decision issued, I think, within seven days to accommodate a business need.

Ms. Smith: Thank you.

The Chair: I believe neither of the opposition parties has any further questions, so I would like to thank you for coming here this morning and bringing us this information for our committee. It's very much appreciated.

Ms. Lamoureux: Thank you very much.

The Chair: The committee is recessed until 1 p.m.

The committee recessed from 1134 to 1304.

YEE HONG CENTRE FOR GERIATRIC CARE

The Chair: Good afternoon, ladies and gentlemen, and welcome to the standing committee on government agencies. I do apologize for starting late. We're going to begin, I believe, with the Yee Hong Centre for Geriatric Care, Ho Lai Oi Wan Centre, Amy Go. Welcome to the standing committee. You have 30 minutes in which to make your presentation. If there is time, then we will entertain questions from the various caucuses, leaving equal time.

Ms. Amy Go: Thank you very much for this opportunity to present to the committee. I'm Amy Go. I'm the executive director of the Yee Hong Centre for Geriatric Care. I also chair the board of directors of the CARE Centre for Internationally Educated Nurses.

Yee Hong Centre is a geriatric care centre. We provide a continuum of services to primarily Chinese-speaking seniors, but we also provide support to seniors from other cultural backgrounds. We are probably the largest non-profit geriatric care centre in Ontario. Through Yee Hong, I have worked with primarily internationally educated nurses. They form the majority of our workforce.

In the year 2000, we worked together with St. Michael's Hospital, Kababayan Community Centre as well as the Woodgreen Community Centre to form an agency called CARE Centre for Internationally Educated Nurses. The reason we did that was because there is a

critical shortage of nurses, which I'm sure you're aware of, from the perspective of providers, but we also know that there are many, many internationally educated nurses in Ontario who are experiencing tremendous difficulties in getting their licence in Ontario. That's why we formed this agency: to assist them in that licensing process and to secure employment for them.

Since we opened our doors in the year 2000, we have assisted over 500 nurses in getting their licences and who are now gainfully employed in the health care sector, some of them at Yee Hong Centre. We have actually gained a reputation as probably one of the most successful bridging programs in Ontario in the eyes of the Ministry of Citizenship and Immigration.

Working so closely with these nurses, I've really come to understand the barriers that they face, at a personal level and also at a systemic level. I'm sure you are very much aware of language and cultural barriers, but there are many other barriers, such as the lack of information and understanding of how the system works, the complexity of the rules and regulations, the inconsistency in interpreting those requirements, the lack of financial resources, and also the lack of support in navigating through the very complex system of licensing. So these barriers are tremendous, and I really admire their courage and their perseverance to reach their goals. After knowing all these barriers, I also have come to understand the importance of having an independent appeals process so that we can ensure that the process is accessible, that it's fair, that it's equitable. I also understand that the appeals body needs to have the tools and the power so that we do have an accessible and equitable process in place for everybody.

Let me talk about the importance of having this independent appeals body. In fact, both Yee Hong Centre and CARE Centre presented to the provincial committee on Bill 124, which is the Fair Access to Regulated Professions Act. We both argued that there is an important role, that an appeals process has to be separate and not just an internal review, so that all applicants for professional licences will have a fair chance of getting their licences. On the other hand, we also hear many arguments against this kind of independent appeal. Many professionals, including nurses whom I work with, are arguing that they are the experts in the field, they have the knowledge, and that lay people don't understand that process; lay people cannot really assess the decisions made by the regulatory bodies. They also have put forward arguments that individual complaints should be addressed by the regulatory bodies and not by an outside person or third party.

I'm sure you have heard all these arguments, for example, in our police services. I'm very pleased to know that the Ontario government actually spoke against these arguments when they introduced Bill 103, which amends the Police Services Act and establishes an independent police review director and a public complaints process. The rationale for Bill 103 and the reason for having an independent appeals process are the same: because we

want to protect the public interest—the public interest has to be upheld—and to ensure that the professional organizations are held accountable. It's so important that these health care professionals are governed by legislation, because they are critical to our health and well-being. If they are governed by regulations, by legislation, rules and boundaries, the same argument can be made that we need to have a government agency to oversee that they are not out of bounds.

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Now I come to some specific recommendations to improve this whole accessibility process. First of all, you have David and Goliath. Many of these internationally educated nurses don't know about the appeal process. Even if they know, they can't tell the difference between a review and an appeal. They have never been to a hearing room; they have never, ever made a presentation to a committee of any sort; and many of them don't even speak the English language that well. So it's a tremendously anxiety-provoking experience for them to go through this appeal. Then, when they go through that process, they are usually on their own. They don't have the resources. Don't forget that many of the CARE clients are on welfare. They have to apply for subsidies to even go through their courses in college to get their licence. They don't have the financial resources to hire a lawyer. So when they go to the hearing, if they so choose, they are facing the college with its Bay Street lawyer. It's a very intimidating process. I think the Health Professions Appeal and Review Board is trying its best to ensure that there is fairness, but the onus should not be on them, because they have to remain impartial, they have to remain objective. So I think it is critical that we have access to legal counsel for these individuals so that we don't have such an imbalance of power between the two parties. We have that system for criminal justice. There's no argument why we shouldn't have the same access to this kind of support for these individuals when they come before an appeal board.

The next issue I will talk about is the power of the appeal board in terms of ensuring that the person who meets all the requirements—right now, if they meet all the requirements, the appeal board has to find impropriety on the part of the regulatory assessment committee in order to exercise the power to order that the regulatory bodies would process and ensure that the appellant has the chance to meet all the requirements. But I think what I would try to say here is that it is very difficult to prove impropriety, it is extremely difficult, so I think we have to lower the bar a bit. We have to make sure that the board has that power so that it is easier, ultimately, for the person to get their licence.

The last point I want to make is about the newly formed, or to be formed, fairness commission that is established as part of Bill 124, the Fair Access to Regulated Professions Act. The fairness commission is a very welcome move from the perspective of community groups, including the Yee Hong, CARE Centre and many other advocacy groups. But because the Health

Professions Appeal and Review Board has such a wealth of information about the barriers that these individuals are facing when they try to get their licence, there is no reason why we cannot pull the two parties to work more closely together so that the information can be shared and so that ultimately the fairness commissioner, in his or her role to monitor that licensing process, can ensure and also recommend that systemic changes be made in the licensing processes.

Actually, I would also like to see the Health Professions Appeal and Review Board as well as the fairness commission—I know that's outside of its jurisdiction—have even more open dialogues and regular reports to the community groups, dialogues with the community groups, consultation with community groups so that we can have input, ultimately, on the systemic changes that would make the process a lot easier, more accessible and more fair for the applicants.

That concludes my presentation.

The Chair: Thank you very much. We have about five minutes per caucus. In this round, we will begin with the official opposition.

Ms. Scott: Thank you very much for appearing here before us today. I have to tell you that I had not heard of the CARE Centre before. I think that's wonderful. I was a nurse before I was able to achieve elected office. I come from a rural area, so we don't have as much exposure to newer Canadians coming in, but I did work in Toronto for a short time and was exposed mainly to Filipino nurses who came over from the Philippines.

When they come over, would you mainly deal with the types of nurses—how are they qualified? Are there many refresher courses?

Ms. Go: Since 2005, the College of Nurses of Ontario has changed the rules: You have to have a baccalaureate degree in nursing in order to get a licence. That really changed the scene for internationally educated nurses because they have to meet, first of all, that bar. Even from the Philippines, some universities are considered equivalent, some are not. That's why it's one area where we see inconsistency in terms of interpretation, because there is a lot of need to ensure that the prior learning assessment is done in an equitable manner and is based on evidence. Right now, there isn't really a real gauge, evidence-based research, in terms of prior learning assessment to really tell what equivalencies we should consider here in Ontario. So that's one whole area, a barrier that they are facing.

On top of that is language. In terms of the College of Nurses, there is a list of countries, and if you're from this country, you don't have to go through the language assessment. We all know they are educated in English in the Philippines, but they're not on that list. Other places are on that list and we don't know, in terms of the arbitrariness, what country goes on that list. They have to meet that additional language barrier, so that's another thing. Of course, they also have to meet the practice requirements and all those other additional things. So there are many, many barriers that they face in trying to

get their equivalency and in trying to get their accreditation assessed.

Ms. Scott: Do you see benefit in—first of all, I'm hoping the list is evolving and is being updated. I can be hopeful that it is, with input from different people.

Is there any value in going to the countries of origin themselves and qualifying before they come over to Canada? We hear a lot of stories that the expectations are very high, they come over and they can't work in their chosen field.

Ms. Go: Absolutely. Many, many immigrant settlement agencies, including CARE and Yee Hong, believe that there has to be a lot of pre-migration information, resources and support given, so that the immigrants, the potential applicants, have the knowledge, have the information about how the system and the licensing process works. Of course, we still have to make sure that the process is fair and equitable. But I do believe that a lot more resources also need to be put in place in pre-migration information and support.

Ms. Scott: We'd certainly encourage that too, doing the pre-screening.

Ms. Go: Absolutely.

Ms. Scott: For the internationally educated nurses, do you know what percentage is Chinese, Filipino—

Ms. Go: Yes, I asked that question because of post-2005. In the past, actually, the majority of graduates from CARE were from the Philippines, but post-2005 really changed that. Right now, we still have people from the Philippines, some from India, some from eastern European countries and Iran, so it really depends. Now there is no one group that dominates. There are many, many pockets in the experience of CARE right now.

Ms. Scott: Thank you very much for your valuable input and recommendations. I appreciate that.

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The Chair: Ms. Martel.

Ms. Martel: Thank you for your participation here today on this issue and many other health care issues. I actually want to focus on the appeal process. Have you been to one of the appeals? Have you acted as a representative on behalf of someone who was appealing a registration?

Ms. Go: No. The people who come to CARE and are eligible for CARE services are those who are deemed eligible to write the exam. But because of who we are, we get calls. We get calls from people who have been denied, who have failed the exam, who have tried many times and are not able to reach their goal. They come to CARE in a panic. So if they are CARE participants, we are able to help them; we navigate the system for them. But those who come to us in a panic situation—unfortunately, because of our mandate, we are not able to help them, and that's where we see the cracks. They fall in the cracks. They have nowhere to go; they have no individual advocates; they don't know how to navigate the system. Even though I have not personally attended—nor would our counsellors, because our mandate is not to do so—we get calls from so many of them who have failed,

and in fact they are in a more desperate situation than those who are eligible for CARE services, because they have tried and they just don't know where to go.

Ms. Martel: I was interested in having a sense of how many of the regulatory bodies would come to the hearing with a lawyer, because that would certainly intimidate someone who was sitting there without a lawyer. The people who call you: Is that an ongoing experience that the majority—

Ms. Go: For the people who call us, the main thing is that they just don't know the process.

Ms. Martel: Okay. So they're not even at that point yet.

Ms. Go: They don't even know, yes, and they don't even get to that, right? My understanding is that usually, even people who are defending themselves in front of the appeal board are represented by legal counsel, but individuals are not; the appellants are not. That's my understanding.

Ms. Martel: I'm trying to get a sense of numbers. You could always work with a system, as we do, for example, for appeals before the WSIB, where you actually have a funded Office of the Worker Adviser and a publicly funded Office of the Employer Adviser. It's not necessarily people who are lawyers, but people who have a certain expertise.

Ms. Go: To help them navigate, yes.

Ms. Martel: Okay. That's it, Chair. Thank you.

The Chair: Ms. Smith.

Ms. Smith: Thank you, Ms. Go. Mr. Duguid has some questions for you, but I just want to thank you for being here and for all your great work at Yee Hong. I spend a lot of time with the Yee Hong folks in my long-term-care role. Certainly you do great work as well as CARE, and I'm familiar with WoodGreen and St. Mike's and the work that you're doing there, so congratulations. Thank you for sharing your insight with us. Mr. Duguid now has a few questions.

Mr. Duguid: Thank you. Again, I'll repeat that: As somebody from Scarborough, Yee Hong Centre in Scarborough does amazing work in our community. I thank you for the incredible job that you do. In Markham, you're responsible for providing that community with a great level of service.

My first question—I've got a few—is regarding your comments on the power of HPARB around requirements for licensing. I just want to see if I can get some clarification from you. I don't fully understand this entire system, but as it is right now, if HPARB makes a positive recommendation, they refer it back?

Ms. Go: Yes. I think the key thing is that HPARB has to show improbity on the part of the regulatory body in order to order those positive actions on their part. That is the key issue, because it is hard to prove. How do you prove improbity? How do you prove that they do that intentionally? I think it is difficult. From our perspective, it's: How do we balance that? How do we empower it so that you don't necessarily have to show that in order to effect a positive outcome for the appellant?

Mr. Duguid: I'm just looking at your presentation and I'm trying to maybe see if I can get you to be more specific on what power you want HPARB to have. Here, it appears that they should have the power to order that the licence be granted. Is that what you're looking for, that they have the power to order without it going back with a referral?

Ms. Go: They have to refer back. Again, I'm not a legal expert in this area. My understanding is that they have to refer back to the regulatory body and to order the regulatory body to ensure that the appellant has an opportunity to meet the rest of the requirements: to write an exam, let's say, now that they have met all the accreditation to allow them to write the exam and all that. But again, the key is that, in order to do so, they have to show improbity. If they see that this person has met all the requirements in terms of accreditation, they still have to show improbity on the part of the regulatory body, and that is the key. So by granting them—and they don't necessarily have to do that—then I think that is empowerment of the appeal board.

Mr. Duguid: So you're looking at not only the powers of HPARB to make an order, but also what they can consider at the very outset?

Ms. Go: Yes, that's right.

Mr. Duguid: The second question stems from that: Are you aware of recommendations being made by HPARB that have not been followed by regulatory bodies?

Ms. Go: Sorry, I can't speak to that. I don't have the knowledge about that.

Mr. Duguid: Okay. Final question: In terms of foreign-trained professionals, particularly nurses but others if you are aware of them, do they have knowledge of HPARB? Is this something that they've heard of before? Do they know that this option exists for them?

Ms. Go: No. I think that's another thing. It's important. That's why CARE plays such a critical role in supporting the individual through their licensing process. Now that the Ontario government has established the access centre, which is to provide information and advice to help individuals who may not meet the criteria for CARE, I would hope to see that the access centre will also make the role of HPARB more understandable to the participants, to the applicants. I do think that there is a general lack of information about the difference between appeal and review. We really have to make sure that the applicant—whoever—who comes to the College of Nurses or the college of physicians understands the whole process from the beginning till the end. And if they so choose, if they do need that, they do need to know that there is an appeal process as well. So I do believe that we do have to also provide that kind of information, and that has to be provided, of course, by the regulatory bodies, but I also prefer that other people can also do that, because I do believe that fairness and objective data and information can be provided by various community groups and HPARB outside of the regulatory bodies.

Mr. Duguid: Thank you for your information today, and thank you for your incredible enthusiasm. It comes right through in your presentation.

Ms. Go: Thank you.

The Chair: Thank you.

COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

The Chair: I'd like to invite the representatives of the College of Physicians and Surgeons of Ontario forward.

Thank you very much for joining us and welcome to the committee. For the purposes of Hansard, I'd ask you to introduce yourselves. As you know, we have 30 minutes, and any time you leave will then be divided equally amongst the caucuses.

Dr. Rocco Gerace: Thank you very much. My name is Rocco Gerace, and with me is Dr. Patrick McNamara. I'm the registrar of the college and Patrick is the medical director of investigations and resolution.

As you know, the College of Physicians and Surgeons is the regulatory body for doctors in this province. We register doctors; we deal with complaints and reports about doctors; and, when necessary, we discipline doctors. We've had an extensive relationship with the Health Professions Appeal and Review Board. Indeed, according to their 2004 annual report, there were more matters dealt with by the board from the College of Physicians and Surgeons than all other health regulatory colleges combined.

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In my remarks today I'm going to try to cover four things. Firstly, I'm going to emphasize to you how valued HPARB is in providing an important role on behalf of all parties that appeal before them, especially the public. I'll relate some troublesome historic features and how recent innovations have dealt with those, and then I'll share with you one or two concerns with respect to some of the directions.

Let me start with the value. I think it's important to say at this point that HPARB is a valued component of the regulatory system in the province of Ontario. Indeed, this process is unique in Canada. It gives opportunity for parties who have concerns about various matters to be heard without expensive court proceedings, and this is especially valuable for members of the public. We believe that we have a right in Ontario as a medical profession to regulate ourselves, and with that empowerment has to come a measure of accountability and transparency. We all have to be accountable and we believe that HPARB helps us in demonstrating our accountability to the public.

One of the questions I would ask is, why is this process limited to health regulators and why doesn't this process exist for all regulators in the province? Indeed, Justice Thomson made that recommendation in a recent report, but this was not acted upon.

Historically, there have been problems with the board. In the past, they have been somewhat unresponsive to

input, slow, insular in their behaviour, with case delays occurring of up to two years. In some of these cases, doctors who potentially were a risk to the public were tied up in proceedings at the board and any attempt we made to discuss these issues on a general basis was rebuffed. There was simply an unwillingness to meet with us and address these issues. I must say that the changes that have occurred in the recent months, in the last year, have been very positive, and I give credit to the chair and the registrar of the board, who have been very receptive to talking to the college, to discussing issues, to understanding issues. While we don't always agree, and that's okay, the important feature is that we are talking about issues, and I think this is very positive.

In our submission we've outlined some of the recent concerns we've had with respect to the board, and I would preface my comments by saying that we're talking about them. So I see this as a work in progress.

One of the issues that concern us is privacy of information. As I've indicated, we are entirely supportive of being accountable, being transparent, but we have legislation that dictates what is private and what is not. Indeed, the changes that are contemplated in the legislation, Bill 171, continue to dictate what is confidential and what is not. We were concerned when we heard signals from HPARB that some of this information related to doctors was going to be made public. We think that if information is going to be made public, there should be a direction from the Legislature to indicate this, and this is not happening. So we would be concerned about this move. We would be concerned about complaints being lodged in order to obtain information and hope that the dialogue we have initiated will continue.

The second issue is around exercising professional judgment, and I say this in very isolated cases when there are experts that have already opined on a matter. I relate a case in particular of a clinical matter that was brought to the board. Some Internet information was brought to the board that had no basis in science, and this information was relied upon by the board to make a judgment. These are areas that we are talking about in general principles. I'm optimistic that we will be able to work out some of our concerns. I suspect that neither of us will be entirely happy with the resolution, but that may make it a good one.

Just to summarize, we support the concept of an arm's-length and independent appeal process and would again emphasize that we think this should be applied to all regulated professions. While there were concerns historically, these concerns have been addressed and we're pleased with the current direction of the board. We've left you with some current concerns that we look forward to addressing, but we look forward to collectively working with the board and others to ensure that the public interest is well served.

Those are my comments, and Patrick and I can answer any questions that anyone may have.

The Chair: Thank you very much, and in rotation we'll go with Ms. Martel, please.

Ms. Martel: Thank you for being here today. I want to focus on the recommendation that HPARB had made to HPRAC regarding changes in the act concerning the complaints, because their recommendation certainly was to consider prior complaints history when addressing the disposition of an individual complaint, and that HPRAC also concluded that a panel considering a complaint should have access to all relevant records and documents.

If I read this correctly, you've got a concern about that from the perspective of disclosure of personal information. Would that be correct?

Dr. Gerace: First of all, we are supportive of that change in the legislation. That change has been reflected in Bill 171. Our concern is that that is not public information. So our concern is, if that information is made public, is that not contrary to what the legislation says? If we're told to make all of that information public, we could do so, but the feeling is that there should not be an alternative route to make information public that is not contemplated to be public in the legislation. So we think HPARB should hear it, but we don't think that it should be heard publicly and we don't think, certainly, that it should be posted on the website.

Ms. Martel: Let me see if I understand this correctly. If an individual with a prior history of other indiscretions, or however you want to describe it—what you're saying is that that should not be made available to the public?

Dr. Gerace: What I'm saying is that currently the legislation does not allow that to be made available to the public, and we think that everyone should follow the same rules.

Ms. Martel: So if the rules were changed—

Dr. Gerace: They were not changed. Not even in Bill 171 is it contemplated that that information will be public. It remains private information.

Ms. Martel: Can I ask this question? How do you balance that against protection of the public, you know, with regard to making choices about a practitioner? How does the public make a decision, then, a reasonable and legitimate decision, about a practitioner if there's a prior history that they're unaware of?

Dr. Gerace: Currently in the legislation—and don't get me wrong. I'm not saying that it should not be made public. I'm saying that we should all follow the same rules. Should the legislation dictate that that information is public, then that's fine. My submission is that it should not be made public through another route when the legislation doesn't contemplate it being public.

Ms. Martel: It doesn't allow for that. Okay. So if it was clear that all colleges were following the same rules around that, then you of course would abide by that.

Dr. Gerace: We would think that HPARB should follow the same rules as we do, rules that are set by the Legislature.

Ms. Martel: Okay.

Ms. Smith: Thank you for being here. It's nice to see you again. I had some questions. One was just to follow up on what Ms. Martel was talking about. It's very murky for me, so I think I'm following up on what she

was talking about: the whole question around making information public. When I read your submissions, in contrast with what I was hearing—and I was trying to do both at the same time, so I'm not sure I got it all straight—you indicate that your concern is that they are going to be made public. Has this ever happened?

Dr. Gerace: I'm not sure that it has yet. This has been in discussions.

Ms. Smith: So this is a concern about a hypothetical that could happen.

Dr. Gerace: That is correct.

Ms. Smith: Okay; that I needed to know. Then, through Bill 171 we are addressing what information has to be given to the review panel, and your suggestion is that, even though that information may be given, it should not be made public in the decision. Is that your recommendation?

Dr. Gerace: That's correct.

Ms. Smith: Okay. Now, when we talk about history and the information of the history of the individual who's being reviewed, is it not relevant to know if there's a past history of—and I think this was what Ms. Martel was getting at as well—similar behaviour that's being reviewed in this case?

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Dr. Gerace: Certainly, and indeed the complaints committee considers that information. All information that the complaints committee considers is given to the board in the event of a review. We're not suggesting that they not see this information, because it is clearly relevant to the disposition of the complaint. What we're suggesting is that the legislation does not contemplate this information being public, and we think this should be continued through the appeal process.

Ms. Smith: Okay. Then I guess my question is, why the concern? If it has never happened before—the legislation doesn't contemplate it being made public—where is your concern arising around HPARB doing this?

Dr. Gerace: They told us.

Ms. Smith: Okay. Your second recommendation around the review by HPARB of other expert opinions: Isn't it true that at the college level you have public, non-medical people sitting on the review committees?

Dr. Gerace: Absolutely.

Ms. Smith: So why would they be in any better position to review an expert opinion than someone on HPARB?

Dr. Gerace: The expert opinion and the science is reviewed within the context of a combined public and professional panel. So when there are questions, the professional members of the committee are able to explain the issues in a way that is understandable, are able to share with the members of the public issues around how to interpret scientific data as it applies to medical care. I'm not sure that this expertise would exist as a matter of course on a lay panel at arm's length. So our submission is that, in the absence of that expertise, the judgment of a lay member should not be substituted.

Ms. Smith: Not to belabour the point, but most judges are not doctors and they often are asked to rule on medical malpractice cases. They look at expert evidence submitted by both sides in a case. I was a lawyer. I used to do some medical malpractice stuff, in a very junior way. I fail to see the difference between a judge's ability to review and someone who has been sitting as a member of HPARB.

Dr. Gerace: I'm sorry; I'm clearly misstating myself. It's not a question of reviewing expert reports; it's a question of reviewing raw literature, so unsubstantiated literature being presented is being reviewed and interpreted. I fully support the concept of experts providing opinions to the board. Experts help us in deliberating over some matters, and I think that's an important component of the process. So I apologize if I'm misstating. It's not expert reports but actually reviewing scientific literature in its raw form.

Ms. Smith: Do I have time for one more?

The Chair: Yes.

Ms. Smith: Okay. Just to end it on an upbeat note, you did say that there have been changes, and I think you've indicated in your report that the co-operation or discussions with HPARB—you have "excellent exchanges of information which are helping to create more opportunities to significantly improve our mutual processes." I just wanted you perhaps to elaborate. I think you referred in your submission to the fact that the change in direction through the new chair and the registrar has really been an important element in the improved relations between your college and HPARB, and you also, almost verbatim, said what the chair said this morning: Even though you may have issues where you don't agree, the discussion that ensues around those issues is very helpful for both sides. Could you just elaborate on that a little bit, please?

Dr. Gerace: I'm heartened to hear that perhaps HPARB feels the same way as we do in respect to these changes that have occurred. I think it important that issues at a higher level be discussed so that we understand each other's position; we understand factors that lead to positions. This is happening now. We've had two meetings. Further meetings are scheduled. There's a real interest on the part of HPARB to understand our complaints processes, so we've arranged for further meetings to occur. We've heard rationales for some of the issues that have been of concern to us. So it's working. I think it's a very positive relationship, notwithstanding that, when it comes to the actual case, we are sometimes not in agreement. But discussing it on a broad scale I think is important, and it's working.

Ms. Smith: I wouldn't expect that you'd always be in agreement with someone who's reviewing what you do, so that's great. Thank you very much for being here today.

The Chair: Ms. Scott.

Ms. Scott: Thank you very much for appearing before us today. Trying not to get too mixed up in the two conversations that happened before, when you gave the

example of HPARB reviewing a decision where the complaints committee obtained expert opinion, found the physician did not meet the standards, and then HPARB accepted an expert opinion submitted by the physician—just to use that, if that's going on with HPARB right there, is there place for a rebuttal, to say, "That's not considered an expert opinion, in our understanding, and that's why we chose the other"?

Dr. Gerace: The actual process is that the college is not a party to complaints reviews. We are there to provide information. I suspect that the doctor's counsel would probably raise that issue if they were likewise concerned. So there is that opportunity. Again, I've not been to a hearing.

Patrick, do you—

Dr. Patrick McNamara: I think that's correct. I think that if the judgment is substituted and the matter is sent back, then it just is a long delay, and in fact you could anticipate endless ping-ponging related to experts, of course, going back and forth, and the next one and the next one and the next one. I think there's ample opportunity for both parties, when the complaints committee is reviewing the matter, to provide expert opinions, if they so wish. Sometimes they surface at an HPARB hearing, when there was ample opportunity to provide it to the complaints committee. The expert opinion may have little or no value, depending on the substance of it. But that's our concern: that there really is almost essentially a re-fighting of the complaint all over again, rather than looking at the reasonableness of the decision or the adequacy of the investigation.

Ms. Scott: When the appeal has been heard and then it's ping-ponged back and forth, is there a time limit? You mentioned one case of up to two years that a decision has been—

Dr. McNamara: There is no time limit.

Ms. Scott: Would you consider that there should be some change in the time format for response, so that the lingering doesn't go on? I don't know if it happens in very few cases.

Dr. Gerace: The two years is historical, and I think it would be our view that, more recently, cases move much more quickly. Some of these cases are fairly complex, so I'm not a fan of time limits necessarily but that things move quickly if they can.

Ms. Scott: Okay. Just one last quick question: Is there any percentage of agreement or disagreement with HPARB?

Dr. McNamara: About 25% of our decisions are appealed to the board, but only around 5% of that subset are sent back for a new consideration or a new decision by the complaints committee. So they generally are supportive of the committee's decision.

Ms. Scott: Okay, good. Thank you very much.

The Chair: Ms. Martel, did you have any further questions?

Ms. Martel: I don't know that I want to go over the same ground again. I'm becoming more and more confused, but maybe if I read it again, it will become clearer to me.

The Chair: Ms. Smith?

Ms. Smith: We're done.

The Chair: Okay. Thank you very much for appearing here before us today.

Dr. Gerace: You're very welcome.

ROYAL COLLEGE OF DENTAL SURGEONS OF ONTARIO

The Chair: I believe we have representation from the Royal College of Dental Surgeons. Good afternoon, and welcome to the committee. For the purposes of Hansard, I need you to introduce yourself. As you know, there is an allotment of 30 minutes. You may use however much time you want of that, and any time remaining will be used by the caucuses for questions.

Mr. Irwin Fefergrad: Thank you very much for inviting me. It's a pleasure to be here. My name's Irwin Fefergrad. I'm the registrar of the Royal College of Dental Surgeons of Ontario, which has been the regulator for the dental profession since 1869, although clearly I have not been employed for that length of time with the college.

I thought I'd give you a touch of background about myself, because I think I might bring a bit of a different perspective. I'm not a dentist; I'm a lawyer. I practised in private practice for 27 years before I joined the college. I'm certified by the Law Society of Upper Canada as a specialist in health law as well as a specialist in civil litigation. I tell you that not to impress you—it impresses my mother—but because much of what I say probably is coloured and cultivated in a good way by that background.

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I have to tell you that structurally and institutionally, HPARB is a wonderful institution. It's an institution that our college supports in its entirety—and supports the work that it does. It provides access to the public and to the member—or an applicant, in the case of registration—without any bureaucratic impediment, without barriers. It's a user-friendly process, as it should be.

One of the things we do, as you've been told by my colleagues and will be told by other colleagues that are coming, is we have to be accessible—easily accessible; no-barrier accessible—to complainants who wish to access the process, and we are. The statute, as you know, makes it very simple to lodge a complaint with the college, and it should be equally simple for anybody who's in the process to review/appeal a decision of a complaints committee, and the act does that. HPARB does, in my view, a very special job in making sure that any applicant, anyone seeking a review, is given not only full respect, but is given an easy time.

Likewise, in appeals from the registration committee, where predominantly the appeals will be from foreign-trained applicants, it's important that that process be open, transparent and accessible.

From the points of view of the participants of the proceeding, there is a sense of transparency and fairness

that's very important. From the college's perspective, it's equally important to have this overseer body. We look very carefully at the reasons of HPARB in its decisions. Its reasons are educational to our panels, to our profession, and frankly to the parties to the proceeding, especially the one who's perceived to be a losing party. We use the decisions of HPARB as educational vehicles in our magazine. We do it on a no-names basis because the act requires confidentiality, but the lessons are profound.

I don't know if you've had a chance to look at some of the HPARB decisions. I didn't cherry-pick; I said to staff, "Hand me something I can look at when I'm there," "there" being here. The decisions are lengthy. They're not crafted on the back of an envelope; they go on anywhere from six to 20 pages. They outline what the case is about. They outline what the record of the investigation consists of. They outline what it is that was at issue before the complaints committee. They outline what it is that the committee found: What were the issues? Who did the committee believe? Why did the committee believe somebody on a certain point? And then they dissect each one of those.

It's a very detailed exercise that is an eye-opener for our panels. It keeps them accountable. As I say, it's a learning experience to the dentists in this province who need to know what an overseer body that doesn't have any professional on it has to say about the complaints process. It's very critical and they do a good job of it. At the end of the day, the committee makes its decision, agrees in part with the complaints committee or doesn't, and sets out its reasons as to why.

I think it's important to understand that it's not just a case of HPARB doing a review and deciding yea or nay. In our experience, every decision we've received—and they've not all been favourable—has an educational component. I have not heard from participants at the proceedings, the dentist and the complainant, that they have had short shrift at the HPARB level.

I agree with my good friend Dr. Rocco Gerace, who says there is a fresh wind at HPARB. Any organization must have at its helm a chair or a leader who has some vision and who has an ability to be comfortable, to meet and discuss issues. Certainly that has been the case with Linda Lamoureux, who is the current chair, and with the registrar of HPARB, who is very accessible and direct.

If you were to ask me, in anticipation, what could be the improvements, there are two that come to mind. There may be others, but two immediately come to mind.

(1) Because the decisions of HPARB are so vitally important, and because we're dealing with a legislative framework, and because I suspect that not everyone in HPARB—that God, I would say—is a lawyer, I think that the decisions of HPARB or the advice that HPARB receives should be legal advice in every case, just to make sure that the issues that are covered off are approached in a way that addresses the legal concerns that are in the statute.

(2) I think—and HPARB may be working on this—it would be very helpful for it to have a central database so

that anybody could access its decision-making. Why did it decide in such-and-such a case on such-and-such an issue this way? What were the competing values? What were the facts in that case? We're in an environment of transparency and openness and it seems to me that with that theme it would be important to let everybody know the decision-making that HPARB has undergone. I suspect the reason it isn't in existence is because it's a costly resource. I don't know that, but that's my suspicion.

I'm happy to take questions. I just wanted to lend my voice to those who say that in health, of the 23 regulators and 21 colleges, we have not only a unique appeal and review board but one that works and is a model that should be maintained and not tampered with, in my view.

Thank you. I'm happy to take any questions you may have.

The Chair: Thank you very much. I think we go to the Liberal caucus first.

Mrs. Mitchell: Thank you very much for coming and making a presentation today. It will be very hard to follow up your presentation. Clearly, what we heard from the government side is very much high praise for HPARB.

You made two recommendations and I wanted to expand a bit on that. I wanted you to speak specifically on how the Royal College of Dental Surgeons of Ontario uses their decisions. You talked about a central database and you talked about the decisions made and that they should be rendered as legal advice. But I would like to hear a practical application of how you use it within your college.

Mr. Fefergrad: Every decision that comes from HPARB is circulated to our complaints committee and to our staff. Our staff learns from it. There is at least one person who will offer a commentary that might say, "You know, we got this one wrong," or, "We got this one right and here's why."

We also circulate it to our panel members. We have nine members of the complaints committee, three of whom are public members and six of whom are dentists, and they sit in panels of three. They work in a vacuum. Unless they really know what is happening with their decisions, they won't get better at it or they won't continue to be good at it. So we use the decisions of HPARB, which are very lucid and very clear, to remind our panels, in future cases, if they've erred in one, that they learn from it and do not do it again.

From a staff perspective, we get reviewed by HPARB on the quality of the investigation, the adequacy of the investigation. That's a very important measuring stick, because nothing is more frustrating to a complainant or to a dentist than to find we have shortchanged somebody on an investigation. Frankly, the best review is an independent body like HPARB to say, "We've looked at the materials. We've looked at your disclosure. It's okay," or, "It's not okay. Maybe you should have interviewed this person," or, "Maybe you should have obtained that record." It's a very sobering kind of vehicle that we need. That's how we use it.

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It would be even more helpful if there were to be a central database of all decisions of HPARB, not only of our college. There would be, I think, a higher level of learning, a higher level of predictability perhaps. I think the central database would help. The legal advice to HPARB--in those few circumstances where they might get it right but they word the decision in such a way that might be a little fuzzy or a little contrary to statute, independent legal advice would help. Every college, at the discipline level, has the ability to have independent legal advice. Why? So that the discipline panel, the discipline committee, won't get into trouble. The independent lawyer is not making the decision. The panel is; the people who are empowered are. But the lawyer is helping to frame the decision into legalese that will be understandable and stand the test.

Mrs. Mitchell: Just to add a bit further on that, you talked about the decisions that are made and that it become legal advice. We also talked about composition of the board; we had a great deal of conversation about the composition. Are you looking for laymen and that type of thing? You talked about a vacuum for dental surgeons. Do you see that that gives multi-practices, I guess, or multi-experiences of life? What is it that you're looking for in the composition of a board?

Mr. Fefergrad: No, I'm very happy with—the board's composition, I think, should be as it is, devoid of the professionals who are involved in the appeal. I'm suggesting that, at every hearing, there be available to the board independent legal counsel. I'm sorry if I wasn't clear; I apologize.

Mrs. Mitchell: Thank you very much for clarifying that point. I really do appreciate it.

One of the concerns that we did hear addressed in the morning was that sometimes the process can slow down decision-making. I wondered if you wanted to share some of your experiences. I know that the board now is under a new vision, and you certainly spoke to that. But if you can talk to me about how the changes have happened and how you found it in the past.

Mr. Fefergrad: I wasn't so concerned about the time element then as I was about the lack of accessibility. I think time is a funny thing. People are busy and they want to get it right and they're going to do it right, and that's going to take time. All my communication with HPARB—and there has been a lot of it of late, in the last year or so—tells me that there's a real attempt to improve on churning out decisions a little faster. I'm not fussed about the time and neither is my college.

Mrs. Mitchell: Would you say generally that it has improved, though?

Mr. Fefergrad: I think it has improved, yes.

Mrs. Mitchell: You have seen an improvement. And you did talk about the vision, how you feel that there's strong support of the vision, of the direction of it, where they want it to go, how they're going to get there?

Mr. Fefergrad: No doubt.

Ms. Smith: Thank you very much.

The Chair: Ms. Scott?

Ms. Scott: Thank you very much for appearing here before us today. I didn't use your name but I actually quoted from the article in the Owen Sound Sun Times this morning, with the headline "Informing Public of Misdeeds Not Dental Group's Job." In it, I believe you called for one central website where penalties involving the members of the 22 regulated health care providers should be posted. Do you remember?

Mr. Fefergrad: I don't believe everything I read in the papers.

Ms. Scott: It's quoted in here; I just wanted to verify that that was the general direction.

You mentioned one central database where there's a description of why decisions were made. So you want one central website that says what penalties for the 21 regulated health care providers, and then you were also saying that you wanted a central site where there's the reasoning for the decisions that were made for HPARB.

Mr. Fefergrad: Two quite separate issues. The reporter was fussed because he didn't get a personal press release. I told him that our community in Ontario probably has 39 official languages and it's not our responsibility to issue press releases. But, that said, certainly in the discipline area it makes a lot of sense for the public, I think, to be able to access central databases to find out what are the terms, conditions and limitations on their health practitioner's certificate, if there has been relevant history that's on the public portion of the register. I think we're moving in that direction. I think Bill 171 addresses it. With respect to discipline hearings, Bill 171 is going to require all of the regulators to have a central database for each of its members. My point to the reporter was that sending out—no offence to the Globe and Mail, and I subscribe to it—a press release to the Globe and Mail isn't necessarily going to reach the public that might be the patient base of a particular dentist. I suggested that there might be an easier way to do it through a central registry with the ministry, perhaps.

But they are separate issues. With the HPARB matter, I'm simply suggesting that in order to have an understanding of the consistency or the thinking of HPARB across the 23 colleges, a central database would be useful. We at our own college now, frankly, do that for the HPARB decisions so that we can see where it's going, where its social policies are going, so we can be attuned to it and honour it, respect it.

Ms. Scott: Okay. Thank you for clarifying that. We are talking about public accessibility to information, so we're all talking from the same page. I'm happy to hear that you have a good working relationship with HPARB. Just with the database that you mentioned, with the reasoning for their decisions, are you saying everyone should access that or just the—

Mr. Fefergrad: Sure. Yes, of course. Why not?

Ms. Scott: So all the public should access that. Because you have a legal background, I was just going to ask you, do you see any privacy concerns or issues with that?

Mr. Fefergrad: I don't, because the Legislature doesn't. The Legislature has the HPARB decisions as being available and open. I think the issue that was discussed before as to relevant history is a touch of a different issue. My concern on that is this: Suppose you were a complainant against the health care provider five years ago. Whatever happened in that complaint, I'm not sure that you would want to have your name trotted out, without your knowledge, in a public portion of a relevant history. So from my perspective, I think what's important is the relevant history, but not necessarily the detail of a patient's name etc. That's really a decision for the Legislature to make.

Dr. Gerace was quite right. The Legislature, in the current iteration of the Regulated Health Professions Act and in Bill 171, which I think received first reading on December 8, addresses confidentiality, addresses secrecy, and draws a line and says, "At a certain point in time when there has been provability, when there has been some decision based on evidence, that could be public or should be public." Prior to that, the Legislature has said, policy-wise, that the fact of a complaint in itself may not be enough to become public; it may be damaging to a health care practitioner's reputation. That's been a policy decision. So the Legislature says in the statute that if a committee decides that a member, a dentist in our case, requires some courses, that is not necessarily going to be in the public portion of the register, and certainly the patient's name wouldn't be on the public portion of the register.

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So I think we need to be sensitive about what it is that people need in order to decision-make appropriately. In the case of HPARB, they likely need to know the history. They need to know what the nature was of the previous complaints. They don't need to know who the complainant was and they certainly shouldn't be getting a relevant history, in my view, that the committee hasn't had. It's an issue because a complaint is a one-patient activity. So if you're a complainant, the complaints committee needs to make a preliminary determination, based on the investigation, whether there's some merit to the complaint. If they say that there's no merit to the complaint, their previous history is not going to make that complaint any more meritorious. So it's critical to understand that when we talk "history," relevant history is important, and relevant history to where the particular complaints panel of the day is. It's a tough subject.

Ms. Scott: Thank you.

The Chair: To Ms. Martel.

Ms. Martel: That's probably where I want to pick up because you've talked a lot about HPARB and its importance and you've been very supportive. So I guess my question would be, why not be supportive of a request that would talk about the history of the practitioner involved if HPARB was looking at a review? You've been supportive of all the other elements of the board, so what's the dilemma with that one?

Mr. Fefergrad: I have no dilemma with relevant history. I have a dilemma with history. I wouldn't want a

history that's not relevant to what's at hand to be the subject matter of mischief or of taking HPARB on a tangent. There are probably procedural ways to deal with it. There are probably ways to develop procedural rules whereby somebody at HPARB could review the history and make a determination as to what is relevant to the particular complaint. But if it is a case, for example, on fraud, I'm not sure that a five-year-ago example of a broken crown is relevant to the matter before HPARB at hand.

So I'm supportive of HPARB getting all the information it needs to continue to do its fine work. I'd be much happier if it had some process to review the history and make a determination of what it thinks is relevant. It does it now with disclosure in some sense. We, for example, provide disclosure and we say, "We're giving you this. We think that this may be harmful, or we think it's not helpful for you to disclose this psychiatrist report to the world at large," and they would make a decision on how they'd want to treat it. So I would support giving HPARB that same kind of ability to have the history and then determine on its own what is relevant. I do not support, though, giving the full history and having that automatically be exposed without somebody taking a look at it to see that it's relevant to what's at hand.

Ms. Martel: As I listened to the presentation by CPSO, my understanding was that HPARB makes that a practice now, to request a complete physician history. Maybe I misunderstood him, but I'm reading from his page 5 and it seems to suggest that. Is that what happens with your college now? Following that, has there been a disclosure of relevant information that would lead you to have a position that, "We should discontinue that practice of providing a complete history"?

Mr. Fefergrad: They ask, and my assumption is that in asking that there are two answers and one of them may not be so pleasing to HPARB. We're in discussion. I take the view that they're not entitled automatically to the full history. They're certainly entitled to relevant history that the panel would have seen. They're entitled to everything the panel would have seen. I suspect that with goodwill we'll develop a mechanism where there can be a review of, as I said before, the history to determine what is relevant.

Ms. Martel: So is this a new practice?

Mr. Fefergrad: It has not been developed yet. We're struggling in this wind of discussion and change.

Ms. Martel: Is it in place with some colleges and not others, then?

Mr. Fefergrad: I can't speak for other colleges. I don't know.

Ms. Martel: Okay.

Mr. Fefergrad: I have been resistant to giving a full history just upon request.

Ms. Martel: So, as you see it, the amendment that's going to be made under Bill 171, because it would limit or restrict or put parameters around what's being requested, is a better way to do it rather than full disclosure.

Mr. Fefergrad: I believe so.

Ms. Martel: And that will probably have to be done by regulation, I would suspect.

Mr. Fefergrad: Probably.

Ms. Martel: Okay. You talked about, and correct me if I'm wrong, that at every hearing—and I'm assuming that's board hearings—Independent legal counsel should be available to board members who are—

Mr. Fefergrad: Yes.

Ms. Martel: I never thought to ask this to the board when they were here, but does counsel now have that opportunity to provide that if the board requests the board's own counsel?

Mr. Fefergrad: I don't know. I would assume yes, but I don't think that's necessarily good enough because I know that with our discipline committee, where there aren't lawyers, where there are lay people and dentists, they may not know what they don't know and there may be some legal issues that they miss or there may be some way that they structure their decisions where they might not get the legalese right. So it's easy if they're asking for help; that's an easy one. It's when they're not sure or they think they're okay and they're not okay. It creates some anxiety if, for example, there is a misstatement of what the law is or what the case law is. It's just a good idea to have all decisions quickly vetted—some will take a little longer than others—for legalese, not for the appropriateness of the decision or for the guts of the decision. Journalists do it; they give stuff to an editor.

Ms. Martel: That would probably be my concern, then, that the process you're hoping is more for lay people so that lay people can participate starts to become more and more legalistic. We've heard concerns already about people saying that if it's a college matter and a complaint from a member of the public or, as we've heard from the nurses before, coming to a hearing and there are lawyers there already is a very difficult issue. I'm not sure that the process would be less intimidating if you come and you have a sense that there is an independent lawyer there, even though you're assuring people that he or she is not there for one party or another. I just think that if it's a public process and there's a hearing and you've got a lawyer there, it just ups the ante for everybody.

Mr. Fefergrad: I don't think so. It's the only thing we're going to disagree on. I've been to HPARB and I've been at other discipline hearings at other places, and it's really a question of the personality of the lawyer, how the board uses the lawyer. In a perfect world with a good lawyer and a good panel, the lawyer shouldn't be noticeable; the lawyer is there as a resource and is not there stirring the pot or is not there actively involved; but is there as a resource.

Frankly, it may be that the lawyer doesn't have to be present. It may very well be that the simple solution would be in most cases to have the decision sent off to the lawyer just to review. It's safe and I think it gives an element of assurance that at least the legalese is covered. I don't mean "legalese" in terms of complicated lan-

guage; I mean “legalese” to make sure that it’s right within the context of the jurisdiction and mandate of the statute.

Ms. Martel: Thank you.

The Chair: I think that concludes the questions, so thank you so much for appearing here today.

CAROL KUSHNER

The Chair: I’d now like to ask Carol Kushner to come forward, please.

Welcome to the standing committee.

Ms. Carol Kushner: Thank you.

The Chair: As you know, we have 30 minutes. You can determine how much time you put on that and how much time you leave for questions.

Ms. Kushner: I want to begin by thanking you for the opportunity to participate in this consultation. I’m going to try not to take up more than about five minutes of your time.

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By way of introduction, my name is Carol Kushner. I work as a health policy consultant and media commentator on health issues. I’ve co-authored two bestselling books on health policy and numerous articles focused on improving the quality of care and ensuring that Canadians maintain access to care based on need rather than ability to pay. In other words, I’m very interested in how we go about protecting the public interest, and I believe that HPARB’s role in providing an avenue for appeal and review of decisions made by regulatory bodies representing the health professionals is a very important aspect of public protection.

I looked at the standing committee’s review of HPARB as an opportunity for me to address a particularly troubling issue, and that is the fact that some physicians in this province are charging patients block fees; that is, in effect asking them for a prepayment for uninsured services that they might not ever need—they might need them, but they might not.

I believe that there were some prior arrangements to have speakers address this issue more fully. I’ve been here all day and I haven’t heard them do so, but I was expecting a more elaborate discussion of this issue. I’m not prepared to go into much detail about the abuses of block fees, but there has been some documentation of the potential for abuse, for the harms that can occur to the physician-patient relationship when physicians demand block fees, and the extreme difficulty and high cost of monitoring the application of block fees to ensure strict compliance with the rules, because there are a number of rules that have been set out by the College of Physicians and Surgeons of Ontario.

Anyway, in reviewing materials about block fees in order to prepare this presentation, I came across what I think is an anomaly in Ontario regulation 856/93, amended to Ontario regulation 53/95 of the Medicine Act, 1991. As far as I know, this regulation is up to date as of two days ago, because I downloaded it from the Internet, and

it clearly defines professional misconduct, including the following: “Charging a block or annual fee, which is a fee charged for services that are not insured services as defined in section 1 of the Health Insurance Act and is a set fee regardless of how many services are rendered to a patient.” So if that regulation is still on the books, how is it that the College of Physicians and Surgeons of Ontario, charged with protecting the public interest, has a policy specifically permitting block fees? This is despite their own findings of violations around the rules governing block fees, including: doctors charging fees as a condition of being accepted into a practice—that’s against the rules; making patients pay for OHIP-covered services—that’s clearly against the rules; terminating patients who refuse to pay the block fee or not responding to telephone messages from patients who have refused to pay the block fee. All of these would be considered against the rules, as established by the CPSO.

Curiously, the government’s own Commitment to the Future of Medicare Act also endorses the practice of doctors charging their patients block fees for uninsured services. My question is, why doesn’t the government’s original regulation under the Medicine Act prevail? If the answer is that medicine is a self-regulating health profession, then we have to wonder why the CPSO permits block fees, given their potential for harming the public interest. I can readily understand why these fees are attractive to physicians, but I have trouble understanding what kind of appeal they would have to the vast majority of patients, and therefore I question their being in the public interest.

As I tried to move beyond newspaper clippings and anecdotal reports about how care was affected by charging block fees, I found very little, certainly no indication that there have been any major research studies done to document the incidence of application of block fees or the problems in access that they might cause patients. There are no studies reported in the Canadian Medical Association Journal and none in Canadian Family Physician. And there doesn’t appear to be any monitoring of potential harm at all with respect to the imposition of these fees, apart from that being done by the Medical Reform Group and, I believe, in addition, the Ontario Health Coalition.

This brings me back to HPARB. I looked through the annual report. The most recent available report online dates back to 2004, so something’s going on with the web page; I think they need to bring things up to date a bit. At any rate, I wanted to see if there were any indications of complaints made related to block fees, and I was surprised to see how sketchy the information was that’s available in the annual reports. There’s absolutely nothing about the subject matter of the complaints, only numbers about the cases reviewed and handled.

So again, why the anomaly between the regulation in the Medicine Act, 1991, and the CPSO policy? And what, if any, role has HPARB played in addressing the issue of block fees within its review and appeal process?

My own perspective is the same as that set out by the Medical Reform Group in 2004. I think that block fees

are counter to the public interest and should be banned, that regulatory bodies should define their use as professional misconduct consistent with the original regulation that I quoted earlier, 856/93, and that penalties for noncompliance should be stiff.

Thank you for your attention. I'm finished.

The Chair: Thank you very much. I believe, in rotation, we are looking at Ms. Scott.

Ms. Scott: Thank you for being here today. You've patiently waited, I think, through the entire presentations, since this morning.

Ms. Kushner: I was waiting to see what people said about block fees.

Ms. Scott: I don't think I have all the answers for you, but maybe in the course of conversation—I don't know.

I've only seen the block fees maybe once in my riding. I was going to ask you, do you know the percentage of doctors who do use block fees?

Ms. Kushner: I don't, and I don't know that the study has ever been undertaken.

Ms. Scott: But you've heard a lot about—

Ms. Kushner: I hear individual patients saying, "My doctor just sent me this letter. Do I really have to?" Of course, they don't really have to. They can opt to pay for uninsured services that the doctor might provide as their requirement comes up. But patients feel quite intimidated getting a letter from their doctor saying, "Pay now and avoid the hassle later. You'll have it all prepaid," so to speak. They feel a little intimidated by the process. So I hear about it from the patients' end, and I've had some copies of sample physician letters forwarded to me. They're usually very polite letters and they sound very reasonable, but the fact is that it does put some pressure on patients to cough up the money so as not to offend the doctors. If you think about it, the charges that are being imposed are somewhere around \$100 for a year's worth of coverage. If you've got 1,000 patients and every patient signs up, that's \$100,000 of income before the doctor fills in a form or does anything.

Ms. Scott: I just wondered how prevalent a practice it was.

Ms. Kushner: I really don't know. I've seen, for example, newspaper articles that suggest it's more and more prevalent, but I don't know what the base is.

Ms. Scott: You've never had a patient or anyone take it to the Health Professions Appeal and Review Board?

Ms. Kushner: I wouldn't know that, because I couldn't find any information about the actual matters being adjudicated by the board.

Ms. Scott: So you've never had someone actually take it farther than—

Ms. Kushner: Not that I'm aware of.

Ms. Scott: I mean, that would be the second tier that they'd go to. They'd go to the college first, right?

Ms. Kushner: They may well have, but I'm not aware of it.

Ms. Scott: Okay. I don't know what to say to that.

When you say you do policy consulting, is that for patients with doctors? Spend a little bit more—

Ms. Kushner: Oh, I'm sorry.

Ms. Scott: That's fine, just a little bit more background.

1430

Ms. Kushner: My consulting practice is very broad. It's sort of health policy writ large. I look at national policy, international policies, health systems in other countries, so it's not specific to Ontario. My clients are mainly other governments, but occasionally my clients might be a health organization or even, in a couple of instances, a regulatory body. But usually not. It's governments, usually.

Ms. Scott: Is there another province in Canada where you've looked at the policy in respect to block fees?

Ms. Kushner: This particular policy—I believe that, for example, charging such block fees is quite a common practice in Quebec. But again, mostly what I was drawing on to get my information were newspaper reports, not carefully conducted research studies. I'm sorry not to be able to bring you more. I thought there would be more information out there myself.

Ms. Scott: I'm sorry I don't have the answers for you, but thank you very much for appearing before us today and for giving us that information.

The Chair: Ms. Martel.

Ms. Martel: Thank you for your presentation today. The most recent case we had with respect to block fees, which we did forward to CPSO, certainly left the constituent with the impression that if they didn't pay it, they would not have a physician. It wasn't that the wording was so much like that; it was the mere fact that it was sent and a request was made. That was the point of the matter. They sent it to us and we sent it on to CPSO to say, "We're quite sure that the constituent does not have to pay this, but they would like to hear this from you, CPSO, the regulator, because they are quite concerned about the implications if they do not."

As I look at the board's current responsibilities, at least as was provided to us—and it was touched on a bit this morning—I'm not sure that there's a mechanism for the board to look at something like that under the responsibilities as they are outlined. It seems to be more—well, in one sense, registration, and that's pretty clear, if someone is not being allowed to register as a member. But the complaints part of it, I'm not sure how broad that is. You would get the sense that the complaint part of it is more with respect to not providing appropriate medical care or concerns about the care that was provided versus the request for a fee. I'm just not sure that it's that broad and I don't know whether or not the board has ever dealt with something like that.

Ms. Kushner: The reason I raised it was in the context of having something that appeared, at least at one point in time in Ontario, to be a fairly broad definition of what constituted professional misconduct that included the imposition of block fees. That's not the only way in which you can be considered unprofessional, but that was one of them. I'm not sure why that regulation is still—maybe that's just an error; I don't know. But it's still on the books, so it looks like it's still in force.

Ms. Martel: Yet the letter we got back from CPSO said very clearly it was from the—

Ms. Kushner: It's very clear that it's been amended somewhere, but there's no indication of that—that I could see, anyway.

Ms. Martel: Okay. Thank you.

The Chair: Thank you very much. Ms. Smith.

Ms. Smith: My understanding is that they can charge block fees for uninsured services, but they can in no way preclude treatment if you refuse to provide. So they can request them, but if you choose not to pay them, they cannot preclude you from having services. Certainly the government has moved on a number of high-profile cases where clinics were being opened to stop that kind of practice.

I think I'm struggling, along with some of my colleagues—maybe they're not struggling as much as me—with the link between your concern about block fees and HPARB. You were here today, so you know that we've been talking about the process: who comes before HPARB, what their process is, how they deal with the various colleges that they regulate. If you had had a concern about someone who had gone to the college and then was appealing that decision, I would understand the linkage, but I'm just not getting the link between your concern about block fees and what we're doing here today. Maybe you can enlighten me.

Ms. Kushner: The specific point with respect to HPARB is that I was unable to determine whether a complaint had ever gone through a college, been disputed by an appellant, and found its way before HPARB on the issue of the imposition of block fees. I wasn't aware of that, either because the block fee had been inappropriately administered—in other words, the suggestion was that they were going to be denied service if they didn't pay it. That would be a clear violation.

But my second question was: If, as a member of the public—and I am just a member of the public, after all—I go online and see a regulation on the books that looks like it's in force that forbids, that bans block fees, and then I see a policy under the College of Physicians and Surgeons of Ontario that says, "No, no, block fees are okay, and here are the rules under which they have to be provided," that creates real confusion about what the rules really are. I guess that's a concern not so much for HPARB as it is for the Legislature of Ontario.

How's that? Does that help?

Ms. Smith: Yes, I guess. I still don't see the link between HPARB, but yes, I understand you wanted to raise the question. That's fine.

Ms. Kushner: For me, the link was just to find out whether in fact the question of block fees, which is a contentious issue, had ever found its way before HPARB. I was unable to get any information, which suggests that HPARB is not as transparent as I would like it to be. Maybe that's clearer.

The Chair: I think we've exhausted the questions for you, but we appreciate your coming. Thank you very much.

I'm advised that our 3 o'clock appointment is not here yet, so we will take a brief recess until 3 o'clock, or until they arrive, whichever comes first.

The committee recessed from 1436 to 1451.

ONTARIO COLLEGE OF PHARMACISTS

The Chair: Welcome to the standing committee on government agencies. We're very pleased that you are able to join us representing the Ontario College of Pharmacists. For the purposes of Hansard, we'd ask you to introduce yourselves. We have 30 minutes in total. You may use as much of that time as you'd like for your presentation, and whatever time you leave will be divided equally amongst the three caucuses for any questions or comments.

Ms. Della Croteau: Good afternoon, everyone. My name is Della Croteau, and I'm the deputy registrar and director of professional development for the Ontario College of Pharmacists.

Ms. Chris Schillemore: I'm Chris Schillemore. I'm manager of registration programs at the Ontario College of Pharmacists.

Ms. Claudia Skolnik: I'm Claudia Skolnik. I'm the manager of investigations and resolutions at the Ontario College of Pharmacists.

Ms. Croteau: Thank you very much. We have a very short presentation today, but we thought it was an important presentation. So I'm not sure that we need 30 minutes, but we'll make our comments.

First of all, we appreciate the opportunity to be able to comment on the review, the mandate of the Health Professions Appeal and Review Board. Just to give you some background, the Ontario College of Pharmacists is the regulatory body that governs over 10,700 pharmacists, over 800 interns and students and 3,050 pharmacies within the province of Ontario. Each year, the registration committee reviews over 300 applications for member registration, and the complaints committee reviews approximately 160 complaints, which are investigated.

Very few of the Ontario College of Pharmacists cases actually end up in an appeal to HPARB. However, the right to request an appeal and the right to request a review by an independent body of the Ministry of Health is a very important part of our registration process and our complaints process. The right of an applicant to appeal, whether a member of the public or of the profession, inspires confidence in the fairness and the transparency of each process. HPARB is a critical piece in fulfilling our mandate to protect the public, and it ensures that the college carries out both the registration process and the complaints process in the public interest. When a member of the public, a pharmacist, a student or an intern does appeal a decision to HPARB, it serves as part of a quality assurance process for each committee. Both committees review the process, the information included and how a decision was made. The committees are informed

by the HPARB decision and have an opportunity to discuss whether future processes need to be amended.

The only challenge we have had with HPARB decisions was when the appeal board appeared to be evaluating and making decisions with regard to the standards of practice rather than with regard to the decision itself. A thorough orientation of the board members would ensure that they understand the extent of their mandate and that this does not happen. However, it is important to recognize that this college appreciates an appeal process heard by a board that is familiar with the unique issues arising from the health colleges. The Ontario College of Pharmacists supports the continued services of the Health Professions Appeal and Review Board as an integral part of the regulatory process for health professions in Ontario.

That is our submission. Thank you.

The Chair: Thank you very much, and I believe in rotation now we are with Ms. Martel.

Ms. Martel: Thank you very much for being here this afternoon. Can I just go to the comment you made with respect to the board making decisions on standards of practice. Was that some time ago? Have you seen some recent changes? I know there have been changes.

Ms. Croteau: Yes, that was some time ago. I don't believe that we have seen that recently at all.

Ms. Martel: Can I understand what the nature of that dilemma was?

Ms. Croteau: If the public looks sometimes at the standards of practice of a pharmacist, they may not understand why. I can't cite an actual case, but let me just give you an example. Medications aren't allowed to be returned to a pharmacy and reused. Sometimes, to the public—they would say, "Why not? They're expensive. Why can't we reuse them?" etc. versus a standard of quality pharmaceuticals. So there's a standard of practice that medications aren't allowed to be reused. So what sometimes would seem like a reasonable thing to the public is not in the standards of practice. Members of the board are members of the public, so sometimes those lines can get blurred. That's just an example. That is not an example of a case that happened, but I'm just trying to think of an example.

Ms. Martel: I was going to say, "Who?"

Ms. Croteau: Yes.

Ms. Martel: But in your opinion, your perspective, since there have been changes at the board and, as we heard this morning, an increase in training, do you have a sense that those kinds of issues are gone now, you're not seeing those in terms of the board decisions that are being rendered?

Ms. Croteau: Yes.

Ms. Martel: In terms of the decisions themselves, you said they were shared with both committees—was it discipline and complaint?

Ms. Croteau: No, the complaints committee would look at the complaints decisions. The registration committee would look at the registration decisions. Then the

committee would discuss them and they would inform, then, future decisions of the committee.

Ms. Martel: When you said 160, I think that I just missed it. There were 160 complaints to the board?

Ms. Croteau: There were 160 complaints to the college in a year.

Ms. Martel: To the college. And that's an average?

Ms. Croteau: Yes, an average.

Ms. Martel: Of those, of the 160, how many would proceed on, then, to the board?

Ms. Skolnik: I think there would be about an average of eight cases a year. Some of those cases don't actually proceed to a hearing or to a review because of frivolous and vexatious proceedings that stop it from proceeding to the next step, or the applicant for the review may withdraw. So, on average, about six to eight a year. I don't think that's a lot.

Ms. Martel: No, you're right, it isn't. I appreciate that answer. In terms of using what you learn as a quality assurance tool, how has that been effective among committee members? Has that resulted in, just off the top, additional training for committee members? On a practical level, how has that unfolded in terms of adding to quality assurance at the college?

1500

Ms. Croteau: The thorough discussion of the members and then actually taking that into further decisions, and every year both Chris and Claudia as managers, we also orient our board members, our committee members, about the kinds of decisions and past decisions, that kind of thing. So they're oriented to the process as well. If we have had something come back to us to say that we need to look at this again, then that would be the kind of information we'd provide our committee as well, that kind of feedback.

Ms. Martel: For the next time.

Ms. Croteau: For the next time; that's right.

Ms. Martel: I think that's all that I have. Thank you.

The Chair: Mr. Gravelle.

Mr. Gravelle: Welcome. Thank you very much for appearing before us. The bulk of the issues that come before you are registration issues; is that correct? I mean, in terms of complaints that may move on to HPARB, is it registration or is it—I'm not making the assumption; I really am asking the question, just to be clear about your—

Ms. Croteau: Actually, I was just looking at these data. I don't think we have any that went last year, but we normally have two or three, perhaps, that would go to HPARB from registration that actually get heard. Sometimes what happens is that the applicant, because they've got 30 days, would put in an appeal. These are applicants who are trying to meet the standards for registration. An example of that might be that the registration panel has denied their application because of fluency. They might put in an appeal because they've got 30 days. In the meantime, they've done a fluency examination. So in that time span they get their results and they've met the requirement, so then they withdraw their appeal. That

happens actually quite often with registration appeals, that the applicant has actually met the requirement before the case comes to be heard.

Mr. Gravelle: I presume you appreciate, obviously, the work that HPARB does and you receive a recommendation or decision from them. A previous group that appeared before us talked about how they use the decision and put it, actually, in their monthly paper or document in terms of trying to educate their members. How do you respond to the recommendations that are made? It's in some ways a follow-up to Ms. Martel's question too. Have your processes been adjusted in any fashion as a result of some of those recommendations or decisions?

Ms. Croteau: I can go way back here because I used to be the manager of registration, and I recall certainly one decision that came back to us and it was actually a fluency issue. We have a lot of requests for that kind of an appeal. The board had actually felt that we had really been severe in our decision and that we needed to look at sort of non-objective, I guess, measures of fluency, because it's very easy to say that you've got to do a test and get this objective evidence. On this one case, they had felt that there was all kinds of evidence, but they hadn't written the test and we really needed to look at that again. So that was really important, for us to step back and say, "Okay, what are the kinds of things that people could provide to the committee to show evidence of fluency besides having passed these tests etc.?" That would be an example of something that we have done.

Mr. Gravelle: Okay, I appreciate your candour on that. I think that's important because that's probably how it can be positively received, because these are difficult situations.

Something that has come up several times today, and the chair of HPARB, Ms. Lamoureux, was dealing with this this morning, is the time it takes to make a decision. They put in place measures to try to speed up that process of decision-making. Is there anything from the college's perspective that can be done to speed up the decisions that are made? Is there a role that your college can play in terms of that need to speed things up? Do you see anything from your position?

Ms. Croteau: Anything that we could do to speed up—

Mr. Gravelle: Not so much what you could do, or even your thoughts and recommendations. Obviously there's a real effort being made to do so and there's been some success in that regard. Is there anything that you would see in terms of helping speed up the decision? I understand that the college feels that if it were able to learn in advance or even more quickly of the decision that's coming down, it could respond somewhat differently. Is that a fair thing to say?

Ms. Skolnik: For clarification, you're asking our input with regard to expediting the decision-making process of HPARB?

Mr. Gravelle: Yes.

Ms. Skolnik: Not of our decision-making.

Mr. Gravelle: That's right.

Ms. Skolnik: I think the fact that HPARB has been triaging and screening cases to see whether they fit the criteria of frivolous and vexatious has been a very positive step in the right direction and it has created an opportunity for cases to be dealt with and disposed of earlier so that there is the ability to focus on the ones that warrant a further review. They have engaged in a process of pre-hearing conferences, which I'm sure you must have heard about today, which I think demonstrates an effort on their behalf to streamline some of the issues. I know from the other colleges that every college has a different experience. In the experience of our college, I'm not sure that has made a difference in terms of the resolution of the complaints or in terms of expediting the scheduling.

Mr. Gravelle: Just one last question, if I may. Certainly our government has been moving to try to help internationally trained professionals move into the professions. I presume that your college is also involved in some processes or programs to try to speed up that process as well. Can you just give us some insight into what role you've played in that regard in terms of internationally trained professionals?

Ms. Croteau: Certainly. I could spend the day.

Mr. Gravelle: Don't do that.

Ms. Croteau: Just to give you perspective, if we look at the register of the Ontario College of Pharmacists, a quarter of all the pharmacists licensed in Ontario are from outside of North America. So traditionally Ontario has licensed large numbers of internationally trained graduates. We have been advocates of a bridging program and were one of the first bridging programs to be developed in Ontario. Our international pharmacy graduate program has been a bit of a gold standard for bridging programs in Ontario, and we have collaborated with the faculty of pharmacy at the University of Toronto to provide that program. As with all regulators in this situation, it's a balance between ensuring that the people we license have the skills and the knowledge to practise in Ontario and also ensuring that that process happens as quickly as possible—balancing that. We don't want to set excessive barriers; on the other hand, we don't want to license people who aren't able to practise here. That's a constant balance that we're trying to achieve in our profession.

Mr. Gravelle: I appreciate that. Thank you very much.

The Chair: Ms. Scott.

Ms. Scott: Thank you very much for appearing before us here today. To follow up on Mr. Gravelle's questioning about the foreign-trained professionals coming into Canada and the screening and trying to get them up to our standards as quickly as possible, can you comment a little bit more about any type of pre-screening you'd like to do in their home countries before they come over, because of, as I said earlier today, high expectations and then the reality when they do get here? Would you like the opportunity to expand a little bit?

1510

Ms. Croteau: Certainly because of the international pharmacy graduate program, one of our colleagues at the faculty has done a lot of research and even publishing in this area, really looking at the barriers. The constant for pharmacists coming here is fluency. It's one of the main determining factors for whether they're successful in our international pharmacy graduate program. Because these are intelligent people, they have university degrees from other countries, their level of fluency as to whether or not they're able to assimilate all the knowledge and skills in English in order to be able to practise—do you have anything to add to that, Chris?

Ms. Schillemore: There is also the opportunity for them to have their documents evaluated by the Pharmacy Examining Board of Canada while they're still in their home country. They just have to send their documents to that organization. I think what we are seeing, though, is that people who are allowed to immigrate have an assumption that it's linked to the fact that they do have a profession and they suppose that they will be able to get licensed very quickly. I think there's some kind of disconnect in terms of the information that's available.

Now, we have been working with Immigration Canada; we've been working with MTCU, various other government organizations and other regulatory bodies to take a look and see what kind of information we can provide to people so that they're prepared when they get here. But I think that's probably one of the biggest issues for immigrants.

Ms. Scott: Absolutely. In providing information and looking at documents before they come over, are the language tests available that they can take before they're definitely involved?

Ms. Schillemore: Certainly the language tests are available. From experience and from some of the research, what we find is that people in their home country are not very focused on learning English as a second language until they actually get to Canada. You could even take classes; however, really it's through the practise and the use of the language that you really become proficient. That would be ideal, if fluency could be met before they got here, but from a practical standpoint, I think it's a difficult thing to do.

Ms. Scott: Just because we need to do more pre-screening and because of the use of the Internet of course, I don't know whether there were ever thoughts of, for example, the pharmacy association creating the tests for language, some type of educational opportunity that they could be taking online now. I don't know who comes from where—a quarter of your professionals are educated outside—but I just don't know if that's a possibility. It's a lot to ask in a way, but we're trying to attract.

Ms. Croteau: Online training in English is what you're saying?

Ms. Scott: English as a second language, yes.

Ms. Croteau: Well, again, from someone who has tried to learn another language, you have to speak the

language and listen to the language and read the language. You can certainly read online, but all of those other things—you've got to have an ear for language.

Our colleague at the faculty has now got a grant for looking at English skills for health professionals in general. One of the things to remember is that all the language tests test English fluency generally. Then, when you come here, you must learn all of the professional language. So it's not just being able to go to the grocery store and buy groceries, get on the bus and go downtown. It's, can you use medical terminology in English and then can you take that information and, when you're counselling a patient, translate it into lay language so that the patient understands it? Our own Canadian-born students find that's a skill they have to develop, so you can imagine if you're trying to do that in your second or third language. It's certainly something that we recognize, all the health professionals recognize, and they're really trying to put supports in place for people to gain those skills.

Ms. Scott: Because most of the dealings that you have with the review board would be with registration, and you mentioned fluency was the one thing.

I think that's really all the questions that I have for today. Thank you for appearing before us.

The Chair: Ms. Martel, did you have a further question? Okay.

Thank you very much for coming here today and providing us further information.

Ms. Smith: I just wanted to make one point around who is coming tomorrow etc. I know that HPARB were feeling, at least at the break, that they didn't need to come back tomorrow. One thing that was raised that I just wanted to address was that the previous presenter talked about a lack of transparency in their reports. The chair did say this morning that they were looking at better tracking systems for all the types of decisions that they make. I was just wondering if we could ask research to pull out that transcript in order to address that concern, because I think the concern was addressed by the chair this morning. I don't know that it would be the best use of anyone's time if the chair came back tomorrow to address that when she really already did this morning, as long as we have the transcript of it.

The Chair: Ms. Martel.

Ms. Martel: Can I just ask one other point, then, because I was—I'm not sure if "concerned" is the right word to use, but maybe it is, about the presentation by CPSO from the context of clearly understanding what it is that is being requested by the board that some of the colleges might object to. I'm not sure, if we can get unanimous consent, if we can just have that responded to, because I don't want to have somebody come back to explain that tomorrow. But if I can get some clarification of what it really is that's being requested—I don't know if it will take that long.

Ms. Smith: Madam Chair, because we have a few minutes, perhaps if I could just take a moment to talk to the chair, who is still here, and see if they're willing to respond to that question. Maybe we can preclude them

from coming back tomorrow, if everyone agrees to that. Can we just take a minute? Is that okay, Madam Chair?

The Chair: Yes. We can do a recess for five minutes. *The committee recessed from 1517 to 1520.*

HEALTH PROFESSIONS APPEAL AND REVIEW BOARD

The Chair: We're back in session. I think we're going to begin with Ms. Martel's question, and I think we all have a general understanding of where that goes. We appreciate the fact that you've been here all day and have heard comments, and certainly have a sense of the flow of what has taken place this afternoon.

Not to prolong this, but I just want to tell you simply that as this is a process that, as a committee, we have been sort of creating, this is why we find ourselves in the situation of having offered the opportunity to the individual agency or board to come back, and you can see from this why we think there's some legitimacy in having that avenue open to us.

We'll begin, then, by asking Ms. Martel to give us the sense of the question that she wants to ask.

Ms. Martel: Thank you to both of you for staying all afternoon until the other staff were here. As you can appreciate, this is probably backwards, because it's not you who have made the offer to us to come back and refute or rebut. It's me asking you to come back and clarify something, so I appreciate your generosity in agreeing to do that.

Here's the dilemma that I have. Truly, I did not understand entirely the concern that was being raised by CPSO and how valid it was. For example, their recommendation number 1 says, "We recommend that HPARB discontinue the practice of requesting the complete physician history from the college." I contrast that recommendation, then, with what we heard from the college of dental surgeons, which was that that's not being requested, if I heard him correctly. So can you just clarify for me what is being requested and what is the test that's being used by the board to protect confidentiality, but also to look at what is in the public interest, if having more disclosure to the board around past history impacts on public interest and patient safety?

Ms. Lamoureux: I hope I'm not going to confuse things. The board looks at complaints in two streams: Was the investigation conducted by the complaints committee adequate, and was the decision that they reached reasonable?

Under the legislation, we are to look at their record of investigation, which is a specific reference in the legislation, and the documents and things upon which they relied. So what we request is really fact-dependent. If, in the course, there appears to be a specific fact situation where a prior complaint history would be, in our opinion, relevant and was available at the time to the committee, yes, we would make that request to look at that information. So if you could just set that answer aside.

The other legal obligation, under the legislation, that the board has is to review all the material we receive

from the college to determine whether or not it can be disclosed legally within the bounds of privacy legislation—appropriate consent to determine what can and cannot be released. We do that when a file comes in—and I'm referencing those thousand pages or the huge files. So the board reads that file to determine what can be released. Often, when you're dealing with complex medical issues, you do see other patient names. We would redact that information: credit card information, home addresses, information of that nature. We have that obligation throughout the process, so if additional information comes in, if the party makes additional submissions in a review, we also review it to ensure that it's complying with our disclosure obligations and to ensure that the parties get everything they're legally entitled to.

We have some situations where, as I mentioned earlier, you do not have to be the patient who has received the service to complain. So you can imagine a situation where we have—I'll use a family situation. A number of siblings: one sibling doesn't like the care an elderly parent has received; the other siblings disagree. We cannot share the elderly patient's health care information without their consent, or if it's a situation where there's incapacity, without the person who has that power of attorney to release that information. It's first and foremost. That protection is built in throughout the process and that is our legal obligation. It's not the obligation of the college; it's the obligation of the board. It's a very unusual requirement that our board has and a legal obligation that we must fulfill when we're moving forward.

Actually, I think I've lost my train of thought with respect to your other question, if you can forgive me. There was no chocolate at lunch, or even coffee, so I think that's part of my problem.

When we're doing this, we're very mindful of that fact.

The other aspect where we also take information into consideration is when the college has requested the report of an independent expert to provide information to assist the committee with their decision. That's the complaints committee. Very often, that information—who the expert was and their credentials—is kept confidential by the college. However, when it reaches the board, we have a legal obligation to determine whether or not the name of that expert and/or their qualifications are relevant to the ultimate disposition and would impact the decision as to whether or not the investigation was adequate, the decision was reasonable, or if the health care professional needed that information in order to appropriately respond to the question. Sometimes we would make the decision that that should be kept confidential. So the panel gets everything but the parties do not necessarily get everything. It's very much fact-dependent.

David, do you have anything further to add?

Mr. Jacobs: Yes. Ms. Lamoureux started off by saying she hoped she wouldn't be confusing. I don't think she has been confusing, but people often think lawyers' jobs are to be confusing.

Ms. Lamoureux: That's not a good start.

Mr. Jacobs: I'll try not to be confusing.

We receive, as Ms. Lamoureux said, the record of investigation and the documents and things upon which the complaints committee based its decision in every single case. In every single case we have to sift through all of that information and the board has to make a determination as to whether to disclose all of that information or part of that information to both or either party. That's step one in the process.

It may be that there's confidential information in there that we would decide can't be disclosed to either party—things in the nature of psychiatric reports, people's home addresses and so on. But that's not the end of the matter. Before it gets to review, either party or the board on its own motion can decide that notwithstanding the fact that possibly all of the information has been disclosed to the parties, the information is too sensitive to come out in public—names of children involved and so on.

At that point in time, the board can decide to issue a publication ban banning publication of all or part of the information, and could also, in fact, close all or part of the review to the public. So there are a series of layers of protection for confidentiality.

There is no blanket admonition to us in the act: All of such-and-such information will be confidential. So for example, a physician's history may or may not be confidential, depending on the type of case, or may or may not be redacted for names of third party patients who are not present before the board and so on. It's very much, as the chair said, a completely fact-driven situation. It is an open process. We have to be mindful, on the one hand, of the need for privacy and confidentiality in certain matters, but on the other hand, it is an open process. Justice must be seen to be done. The parties who are dealing with serious matters—complaints against professionals and so on; the protection of the public interest—need to be able to have the tools and the information at hand in order to make their cases. It's a delicate balance, but in each case, it's a case-by-case situation. I don't think there's any blanket rule on the board that, "You

mustn't disclose everything" or "We're going to make public everything."

I hope that's clear enough, or obscure enough.

Ms. Martel: That's very helpful. Thank you.

The Chair: Ms. Smith, you had something else to add.

Ms. Smith: Yes. I just wanted to clarify. We heard a presentation this afternoon from Ms. Kushner, who was concerned about the transparency of the annual reports of HPARB and in particular was talking about block fees, wanting to know if the board had ever looked at the issue of block fees. She was unable to do so, given the present format of your annual reports. I think this morning you talked about a new tracking system that you've been developing. Could you just expand on that and whether or not that will address Ms. Kushner's concerns?

Ms. Lamoureux: Yes. There are two things I referenced this morning. One is that we've put in place a case management system which will provide us with better information about the nature of complaints coming before the board and the colleges so that we can perhaps start doing some trend analysis in identifying any systemic concerns as part of our role in protecting the public interest.

The second part is putting our decisions online so that they are accessible to the public as well, so they can read those. They're currently available in binder format. The presenter could appear at the board—unfortunately, it would be a paper review—to determine what it is. We have not until this point tracked to the detail that she is requesting, but we'll be doing so in the next fiscal year.

Ms. Smith: Great; thank you.

The Chair: Thank you. I think we've covered off the issues. We really appreciate your attendance here all day and the opportunity to have this further clarification. Thank you very much for being able to do that for us.

I'll just remind the committee that there is a change in the schedule for tomorrow, so this committee stands adjourned until 10:30.

The committee adjourned at 1532.

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