

Sexual Abuse Task Force Recommendations: Why All Professional Regulators Should Pay Attention

October 27, 2016

On September 9, 2016, the Ministry of Health and Long-Term Care (Ministry) released the recommendations of the Minister's Task Force (Task Force) on the Prevention of Sexual Abuse of Patients and the *Regulated Health Professions Act, 1991* (RHPA) and a press release regarding the actions the government intends to take in response. While the recommendations of the Task Force and the government's response are of particular importance to the health regulatory Colleges, other professional regulators would also be well advised to pay attention to these developments. In addition, all professional regulators need to understand what ultimately the implications would be, should the government implement the Task Force's recommendation to establish an independent body to investigate and adjudicate complaints of sexual abuse.¹ **Recommendations of the Task Force** The Task Force's report was almost 300 pages and made 34 recommendations. Included among these recommendations are the following:

- to define "patient" and to specify clear boundaries and a time period during which sexual contact between regulated health professionals and their former patients is prohibited.
- to expand the current list of specific acts of sexual abuse that will result in mandatory revocation of a certificate of registration of a regulated health professional.
- to prevent a health regulator from being able to impose gender-based restrictions on a regulated health professional's ability to practise after there has been an allegation or finding of sexual abuse.
- to establish a new authority that is independent of health regulators to investigate complaints of sexual abuse, and a tribunal that is independent of health regulators to adjudicate sexual abuse complaints.
- to increase fines payable by health care institutions and corporations providing health services for failure to make a mandatory report of alleged sexual harassment, sexual misconduct, exploitation or abuse to health regulators.
- to require that the register of every health regulator include disciplinary decisions in which a regulated health professional was found to have committed an act of sexual abuse/misconduct/impropriety.²
- to require that the register of every health regulator and the proposed new authority contain information regarding any requirements imposed on a regulated health professional related to a complaint of sexual abuse of a patient and an indication of whether the requirements were discipline panel decisions or determinations through other means.

Ministry's Response At the same time as the Task Force's recommendations were released, the Ministry issued a press release indicating the actions it intends to take. The Ministry indicated that, in the fall of 2016, the government would bring forward legislative amendments that would:

- Add to the list of acts that will result in the mandatory revocation of a regulated health professional's license.
- Remove the ability of a college to allow a regulated health professional to continue to practise on patients of one gender after an allegation or finding of sexual abuse.
- Increase fines for regulated health professionals and organizations that fail to report a suspected case of patient sexual abuse to a college.
- Increase transparency by adding to what colleges must report on their public register and website.

- Clarify the time period after the end of a patient-provider relationship in which sexual relations are prohibited.
- Fund patient therapy and counselling from the moment a complaint of sexual abuse is made.

The press release also stated that the government would bring forward further measures by the winter of 2017 to:

- Identify more ways for patients to participate in the complaints, investigation and discipline processes at health regulatory colleges.
- Enhance knowledge and education among the public, patients and health professionals.

Lessons for Professional Regulators The government has not yet introduced the legislative amendments that the Ministry indicated would be brought forward. Notably, the Ministry has not indicated an intention to establish a new independent authority to investigate complaints of sexual abuse nor an independent tribunal to adjudicate sexual abuse complaints. However, sexual abuse of patients, clients, students and children by regulated professionals is not restricted to regulated health professionals and therefore, is a concern for all professional regulators. Professional regulators should consider the following questions:

1. Should any finding of sexual abuse or impropriety result in revocation of a regulated professional's certificate of registration or license? For what period of time should a regulated professional whose certificate of registration or license has been revoked for sexual abuse be prohibited from applying for reinstatement? If the governing legislation does not provide for mandatory revocation and restrictions on applying for reinstatement, should the professional regulator consider a prosecutorial policy to address these matters?
2. Where there have been findings of sexual abuse, sexual misconduct or sexual impropriety, are there certain types of restrictions on practice (such as gender-based restrictions) that would leave the public at risk of harm if they are imposed? Does the professional regulator have the resources to monitor that a member is complying with such restrictions on practice? Have appropriate steps been taken to ensure that members with restrictions on practice are compliant?
3. Does the professional regulator make sufficient information about its members available to the public? Should information about members, where requirements have been imposed but there has been no finding of sexual abuse, be made publicly available?

Professional regulators should also consider the implications if the government feels compelled to remove the investigation and adjudication of complaints of a sexual nature from professional regulators. Professional regulators realize that a complaint of sexual abuse or impropriety rarely if ever involves the investigation of allegations solely related to the acts of sexual abuse. Rather the complaint gives rise to additional concerns about failing to maintain standards of practice, acting in a disgraceful, dishonourable or unprofessional manner, and other defined acts of professional misconduct. Were the government to remove the investigation and adjudication of complaints of a sexual nature from professional regulators, it would:

- be tantamount to a statement that the public can't trust professional regulators.
- create a situation where victims of sexual abuse may be involved in a prosecution of the sexual abuse allegations before an independent tribunal and then be required, in order to protect the public, to also be a witness at a discipline proceeding of the professional regulator.

Therefore, it is important that professional regulators consider these and other matters regarding how they handle complaints of sexual abuse by their members and take proactive steps to address these matters. Otherwise, professional regulators may find that the government takes its own action, which could include the establishment of an independent body to investigate and adjudicate complaints regarding sexual abuse, sexual misconduct and sexual impropriety. [1] The government has not, to date, indicated a willingness to implement that recommendation. [2] The Health Professions Procedural Code, Schedule 2 of the RHPA, currently requires every health regulator to post on its register the result, including a synopsis of the decision, of every disciplinary proceeding unless the panel made no finding. *Information contained in this publication is strictly of a general nature and readers should not act on*

the information without seeking specific advice on the particular matters which are of concern to them. WeirFoulds LLP will be pleased to provide additional information on request and to discuss any specific matters.

WeirFoulds^{LLP}

www.weirfoulds.com

Toronto Office

4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110

Fax: 416.365.1876

Oakville Office

1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110

Fax: 905.829.2035

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