Introduction to the Regulated Health Professions Act (RHPA)

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Characterizing the RHPA

Most innovative, complex, exhaustive and distrusting regulatory statute since the *Income Tax Act*

- High ideals:
  - eradicate sexual abuse
  - universal quality assurance program
  - client relations program

- Combined with very directive provisions:
  - mandatory revocation for some sexual abuse
  - mandatory reporting of all offences
Important Historical Context

Pre-1970's
- Acts almost like private statutes

1970's
- Healing Arts Commission → Health Disciplines Act

1980's
- Health Professions Legislation Review

1990's
- CPSO Task Force on Sexual Abuse of Patients

Dec. 31, 1993
- RHPA proclaimed

2000's
- Two HPRAC reviews

2007
- Fairness Commissioner amendments

2009
- Major amendments (June 4) and AIT amendments
UK: deregulation of doctors and lawyers
Australia: same trend
US: State Boards (same)
Canada is unique (and envied)
preserving self-regulation lies in a broad conception of service in the public interest, openness to competition, and greater accountability and transparency (Toronto Star)
Everyone wants it, despite the cost
Context of the RHPA

Professional self-regulation
• Social contract
  • Quasi-monopoly, title and status
  • If you effectively regulate in public interest

Explicit “objects” for Colleges to serve and protect the public interest
# Major Themes of the RHPA

**Accountable public interest**
- E.g., sheer number of oversight bodies

**Public access**
- E.g., expanded public register on College website

**Patient choice**
- E.g., controlled act scheme

**Eradication of sexual abuse**
- E.g., mandatory reports and penalties

**Equity**
- E.g., access for internationally trained, French language services

**Proactive regulation**
- E.g., quality assurance program, client relations program
Terminology

- College as a regulatory institution
- Patient vs. Client
- Council vs. Board (of Directors)
- Sexual abuse means any sexual conduct towards patient
  - Unless it is appropriate clinical activities
  - Spousal exception for some professions
- Reports
- The Ministry
- Acronyms: ICRC, OFC, HPARB, HPRAC, CNO
Legal Structure

Statutes ➔ Regulations ➔ By-laws ➔ Case Law ➔ Guidance Documents
(e.g., standards and guidelines)
Legal Structure

Types of Statutes:

- **Overriding Statutes**
  - Charter of Rights and Freedoms
  - Ontario Human Rights Code

- **Direct Statutes (e.g., RHPA)**
  - Each College’s profession-specific statute

- **Amending Statutes**
  - RHP Statute Law Amendment Act, 2009
  - Ontario Labour Mobility Act, 2009
Legal Structure

Related Statutes:

- **Statutory Powers Procedures Act**
  - Hearing Procedures

- **Personal Health Information Protection Act**
  - Authorizes practitioners to voluntarily share personal health info with the College without patient consent

- **MoH Appeal & Review Boards Act**
  - Appeal Board Jurisdiction (for complaints and registration)
Legal Structure

Structure of RHPA itself:

- **RHPA Main Part**: Deals with matters external to Colleges
- **Schedule 2 of RHPA**: Health Professions Procedural Code
- **Deals with matters internal to Colleges**
- **Profession Specific Acts**: E.g., *Midwifery Act, 1991*
- **Matters specific to each College**
Examples of Provisions

- Controlled acts and authorized acts (*RHPA*)
- Protected titles (*Midwifery Act, 1991*)
- Mandatory reporting requirements (*Code*)
- Confidentiality provision (*RHPA*)
- Provisions authorizing College programs and activities (*Code*)
  - Registration
  - Public register
  - Complaints, discipline and fitness to practise
  - Quality assurance
  - Patient relations
Legal Structure

- Regulations
- Minister’s regulations
  - Health professional corporations
  - Controlled acts
  - Amounts for funding for sexual abuse
- College specific regulations
  - Registration requirements
  - Definition of professional misconduct
  - Quality assurance program
  - Designated drugs
Regulations

• Making of College regulations:
  • Reviewed by Council first
  • Circulation to membership and others
  • Council enacts (recorded vote)
  • Ministry of Health policy and legal review
    • COI policy, advertising policy, currency consequences
  • Legislative Counsel review
  • Cabinet review and approval (intubation regulation)
  • Publication in Ontario Gazette

• Minister’s regulations by-pass Colleges:
  • Generally still consult with Colleges
Legal Structure

- By-laws
- Mostly internal or administrative matters:
  - Elections
  - Committee composition
  - Conduct of meetings
  - Public register
  - Fees
  - Banking
By-laws

Making of by-laws:

- Reviewed by Council first
- Usually circulated to profession and others
  - Some by-laws do not require this
- Approval of Council
- Publication to profession and copy to Minister
- No need for Ministry approval
Legal Structure

• Case Law

  • Interprets statutes, regs & by-laws

  • Require “fairness” and “natural justice”
“Soft Law” documents

- Guidelines
- Policy Statements
- Position Statements
- Standards of Practice
  - Description of existing standards
  - Enforceable if expert evidence that standard widely accepted, which partly explains extensive consultation
- So long as not a bootleg regulation – *Ainsley v. OSC*
Hallmarks of the RHPA:

• Checks and balances – limits on who can do what
• Genuine debate during 1980’s whether professions should remain self-governing
• No other area of self-regulation has this degree of public accountability
• Reflects a need to maintain public confidence
  • E.g., sexual abuse issue
  • E.g., access to information about members concerning conduct
Accountability

• **Forms of accountability**
  • Structural (e.g., public members)
  • Political (to the Minister)
  • Internal (governance)
  • External review of individual decisions
  • Program scrutiny (e.g., by the Fairness Commissioner)
  • Direct to the profession
  • Direct to the public
Regulatory Activities

- Restrictive regulation (e.g., registration)
- Reactive regulation (e.g., complaints and discipline)
- Proactive regulation (e.g., quality assurance)
- Transparent regulation (e.g., public register)
Entry to Practice

Process:
- Application form and documents
- If meets requirements, Registrar registers
- If doubt, Registrar refers to committee
- Applicant given notice
  - Opportunity to make submissions
- Registration Committee decides
- Applicant has right of review to HPARB
ICRC, Discipline & Fitness

- Reactive, individual enforcement
- Complaint v. Registrar’s Investigation
- Screen file, see if should take action
- If take formal action, must:
  - Notify member
  - Disclose all relevant College information
  - Hearing
  - Burden of proof lies on the College
  - Decision and reasons
  - Appeal to courts
ICRC, Discipline & Fitness

Different bodies for different issues

1. Professional misconduct (bad) = ICRC to Discipline
2. Incompetence (unskilled) = ICRC to Discipline
3. Incapacity (impaired) = ICRC makes inquiry
   (ICRC may then refer to Fitness to Practise)

ICRC = Inquiries, Complaints & Reports Committee
Different investigative powers:

1. Complaints and investigations
   A section 75 investigator, with power to:
   • Enter premises and inspect records
   • Summons documents and witnesses
   • Obtain a search warrant (rare)

2. Incapacity
   • Informal and voluntary inquiries
   • Mandatory specialist health examination
Hearing committees and processes:

1. Discipline (misconduct, incompetence)
   - Public hearing
   - Formal court rules (e.g., civil rules evidence)
   - Make corrective orders

2. Fitness to Practise (incapacity)
   - Private hearing
   - Informal rules, often just medical reports
   - Make protective orders
Proactive Measures

Goal is to make systemic changes:

- Larger impact than individual action
- Can be non-punitive and even supportive
- Can focus on excellence rather than minimal standards

Programs:

- Quality assurance program
- Client relations program
- Member education
Quality Assurance Model

- Engagement
  - Best QA model is voluntary
- Environment
  - No fault
- Enhancement
  - Striving for constant improvement
Proactive Measures

Quality Assurance Program

• Mandatory for all Colleges

• Typically involves:
  • Self-assessment and CQI
  • Peer and practice assessments
  • Monitoring of compliance with program

• Cooperation is mandatory (failure to comply can result in ICRC investigation)

• Separation of QA and ICRC as of 2009
Proactive Measures

Patient Relations Program:

• Must involve sexual abuse prevention measures:
  • Education programs
  • Sexual abuse prevention plan
  • Council, staff and consultant training
  • Public education of boundaries & rights

• May also involve other matters:
  • Client communications
  • Public awareness of profession & College
Proactive Measures

**Education of members:**

- Can be part of quality assurance program
- Typically involves:
  - Newsletter, with practice advice issues
    - Updates on recent developments (e.g., law changes)
  - Published standards of practice, guidelines etc.
  - Websites with resources and links
  - Self-education tools
  - Practice advisory service by telephone & email
Transparency Requirements

• Website explaining processes and policies
• Annual reports to the Minister
• OFC filings and reports
• Public Council meetings and discipline hearings
• Public register about members
  • Mandatory minimum set out in the Code
  • Can add to it by making register by-laws
Public Register

Grounds to withhold public register information:

• Safety of an individual would be jeopardized
• Information is obsolete and no longer relevant
• Would disclose personal health information
  • About a member, unless public interest to disclose
  • About any one else (absolute)
• “Pardon” option for minor discipline after 6 years
Internal Confidentiality

- Internal confidentiality obligations are less intuitive
- Questions often asked:
  - Aren’t Council or committee members entitled to know everything?
  - How can Council perform its oversight role if Council members have restrictions on their access to information?
Two separate principles governing internal confidentiality

1. Access to information is always on a need-to-know basis (privacy) based on s. 36 of the RHPA
2. Involvement in any issue may → appearance of bias (fairness) Based on principles of Natural Justice

Both principles must be satisfied

Privacy Code
Questions?