

Consultation Sessions on the Issue of Mandatory Revocation Provisions and Treatment of Spouses by Regulated Health Professionals

Toronto

Note:

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Health Professions Regulatory Advisory Council (HPRAC)



Session 1 – For General Public/Public Organizations

Respondent: Participant #1

The speaker is a spouse of a dentist. The speaker emphasized that sexual abuse should never be tolerated, however she did not feel that the provision of dental services should be equated with sexual abuse.

The speaker is in need of a full mouth reconstruction and is frustrated that current sexual abuse provisions in the legislation have removed her right to choose her spouse as her health provider. She noted that this is an infringement on her rights as a Canadian.

Alternatives:

The speaker suggested that the ability of RCDSO to investigate complaints on a case-by-case basis should be restored.

She would also like to see an amendment to the legislation that would allow dentists to treat their spouses without a mandatory 5 year license revocation.

Respondent: Participant #2

The speaker is a spouse of a dentist and pointed out that she would consider herself to be a professional and competent individual who is capable of making decisions about her health care.

Although the speaker was in agreement that sexual abuse should be eradicated, she did not agree that the provision of dental services to a spouse would be considered sexual abuse. The speaker feels that the legislation is draconian and labels all health providers as sexual abusers.

She further noted that each health profession is different and should not all be treated the same. Also, patients are educated and understand the risks associated with boundaries and professional conduct.

Alternatives:

The speaker felt that the RCDSO should be given the authority to review complaints on a case-by-case basis.

In addition, a staff should always be present when a spouse is being treated.

Respondent: Participant #3

The speaker is a spouse of a dentist. She felt that although the current sexual abuse provisions may be necessary in some medical professions, dentistry was not one of them. She pointed out that the dentistry profession does not provide psychotherapy services or deal with patients in a vulnerable state.

She also noted that the 5 year revocation of a health provider's license for spousal service will not only negatively impact the practitioner's career but will also affect patients and staff.

Alternatives:

The speaker suggested that the legislation should be amended to allow dentists to treat their spouses.

Further, the RCDSO should have the ability to review complaints on a case-by-case basis.

Respondent: Participant #4

The speaker is a spouse of a dentist. She pointed out that the legislation has prevented her spouse from treating her and she did not want to seek treatment from another dentist. The speaker would like to have the right to choose her health care provider.

Alternatives:

The speaker suggested that the RCDSO should be able to investigate complaints on a case-by-case basis.

It was also the opinion of the speaker that the RCDSO would be the most suitable body to handle sexual abuse complaints.

The speaker did not feel that the suggestions noted above would pose any harm to the public.

Respondent: Participant #5

The speaker started by noting her extreme phobia of receiving dental care and shared some of her childhood experiences. She also noted that despite her extreme phobia, she was able to develop a trusting professional relationship with her husband.

The speaker expressed her dissatisfaction with current sexual abuse provisions as it paints her husband as a sexual abuser if he provides her with dental care. She also felt that the legislation infringes on her rights to choose her health care provider.

Further, the speaker noted that the 5 year mandatory revocation of her husband's license would negatively affect her family financially and emotionally.

Alternatives:

The speaker noted that the zero tolerance policy as it relates to the treatment of spouses by dentists is a mistake and it should be corrected.

Respondent: Participant #6

The speaker is a spouse of a dentist.

Although the speaker agreed that the Ministry has a role in protecting the public, in her view there was no harm inflicted on the public if a dentist provided services to his or her spouse. She further noted that if no harm has been done, then a penalty should not be applied.

The speaker felt that the current sexual abuse provisions may provide the opportunity for a third party to make a malicious complaint against a health provider for personal gain.

The speaker also pointed out that she was not aware of any dentist who has been accused of sexually abusing his or her spouse within a therapeutic relationship. She felt that this law did not allow for inquiry to assess whether harm has occurred. She further noted that her civil liberties under the Charter have been sacrificed as she is unable to choose her health care provider.

Alternatives:

Allow RCDSO to investigate complaints on a case-by-case basis.

Respondent: Participant #7

The speaker is a spouse of a dentist. She expressed her dissatisfaction with the current law as it prohibits her husband from treating her even when he is the most suitable person to be providing her with the care that she requires.

The speaker also noted that in small towns, spouses of regulated health providers may have to travel far distances to receive the care that they need. This, in her opinion, would lead to undue hardship and as a result harm the public.

Finally, the speaker noted that she has not come across any literature which indicates there is harm in providing care to a spouse.

Respondent: Participant #8

The speaker is a wife of a dentist and is also a registered pharmacist. The speaker noted that she cannot receive dental services from her husband even though she trusts him to provide her with quality care.

The speaker also felt that the current law was discriminatory against spouses of regulated health professionals.

Respondent: Participant #9

The speaker's partner is a dentist. The speaker pointed out that as a Canadian, he valued that his rights are protected under the Charter. He noted that as a member of the gay community, it could sometimes be difficult for him to find a health practitioner. However, despite his sexual orientation, he has found a dentist, who happens to be his partner, to provide him with quality care.

The speaker felt that as an openly gay man, he is being re-discriminated against as his freedom to choose his health provider has been taken away. He does not understand how the provision of dental treatments could be equated with sexual abuse.

Alternatives:

The speaker would like the ministry to better examine the negative consequences of this legislation. He would also like to see the current legislation amended to allow dentists to treat their spouses.

Session 2 – For Health Care Professional/Organizations

Respondent: Participant #1

The speaker is the C.E.O of the Ontario Chiropractic Association. The speaker started by noting that the sexual abuse provisions give the RHPA strength. He also recognized that the legislation has done a good job in establishing zero-tolerance for sexual abuse.

He further noted that the law was established to protect parties from predatory health practitioners. However, the Leering Case, in the speaker's opinion, did not involve the sexualisation of a patient-provider relationship. The speaker felt that it could be argued that the Leering case was unjust, and this was problematic in a society where fairness is a hallmark of justice.

Alternatives:

The speaker noted that in cases where the personal and sexual relationship pre-dates the patient-provider relationship, the college's discipline committee should have the discretion to determine appropriate penalty. The speaker did not feel that this would pose any harm to the public.

Further, he noted that if regulatory colleges would like to prevent members from sexual abuse of a spouse, there are other mechanisms in place such as professional misconduct statutes that could support that.

Respondent: Participants #2 and #3

The speakers were the president and past president of the Ontario Dental Association.

The following points were made during the presentation:

- The intention of the sexual abuse provisions in the RHPA was discussed. It was never meant to prevent dentists from treating

their spouses.

- The speakers found it difficult to correlate dental treatment with sexual abuse.
- The negative consequence of a 5 year revocation of a health provider's license would be detrimental to the health provider's hard earned career. Ontario is the only provincial jurisdiction in Canada where such a harsh punishment exists.
- Taking away a health provider's license in rural Ontario would result in negative outcomes for the entire community as patients would be left without a health care provider.

Alternatives:

The speakers noted there are reasonable alternatives that could be implemented without causing any harm to the public.

The RCDSO is capable, and should be given the authority to exercise discretion on a case-by-case basis when dealing with sexual abuse complaints. An example of this could be achieved through the college's standards of practice.

The speakers also felt that it was too narrow to focus on the minister's question on whether there should be alternatives to the mandatory 5 year revocation policy. A more fulsome discussion of all provisions that speak to sexual abuse in the RHPA is required. Dentists should not be labelled as sexual abusers for treating their spouses.

As a point of illustration, the speakers also noted that under the *Retirement Homes Act, 2010*, the government recognized that sexual abuse did not include consensual touching between a resident and staff member if the personal relationship preceded the professional relationship.

Respondent: Participant #4

The speaker is a general practitioner. The speaker questioned why we trust our health professionals to deliver the care that patients require, yet they are automatically presumed to be dangerous to their spouse in a therapeutic relationship. He also questioned why those practitioners that have no contact with the public (i.e. dental technologists) would have their license revoked for simple therapeutic acts for their spouses.

He further noted that the idea that someone is innocent until proven guilty should also be applied to health providers. The revocation of a health provider's license for 5 years would disable a career.

Alternatives:

The speaker felt that the legislation should be rescinded and all health professionals should be exempted from the sexual abuse provisions.

Respondent: Participant #5

The speaker is a Dentist. He feels that the current sexual abuse provisions could be harmful to the public.

He expanded by saying that as a result of the Leering case, the public is encouraged to report sexual abuse when a health provider is treating his or her spouse, even where there is no evidence of sexual abuse. This may cause the public to become apathetic and diminish the relevance of the legislation.

The speaker pointed out that the reverse may also happen. The public may not report sexual abuse when a health provider is treating their spouse and become desensitised to the issue, thereby ignoring cases of sexual abuse where evidence exists. Again this may dilute the importance of the legislation.

The speaker felt that this law was illogical.

Alternatives:

It was suggested by the speaker that spousal treatment should be exempted from the legislation.

Respondent: Participant #6

The speaker is a dentist who is also involved with projects associated with bioethics in health care. The speaker questioned the definition of sexual abuse in the legislation and discussed the government's intention in the 1990's to provide clarification to the sexual abuse provisions through the development of regulations.

The speaker felt that the legislation affects health professionals beyond dentists. A nurse who was caring for his or her spouse at home would also be considered a sexual abuser under the current legislation. This, according to the speaker, is in contrast to the care that was commonly provided by nurses to their spouses, particularly during the Second World War. The speaker noted that historically families have treated family members – this prevented an overburden on the health care system.

Alternatives:

The speaker felt that it was important to review the history and intent of the legislation, as well as the social context of the family unit in order to seek a better solution to the current law and its interpretation.

Respondent: Participant #7

The speaker is a Dentist. The speaker did not support the current sexual abuse provisions as it restricts the right of his spouse to choose her health care provider.

Alternatives:

The speaker suggested that an amendment to the RHPA to allow dentists to treat their spouses should be made. Also, colleges should have the authority to determine whether it is appropriate for their members to treat their spouses.

Further, the speaker noted that the RCDSO has a great record of upholding public safety and should be able to review complaints on a case-by-case basis.

The speaker felt that the above suggestion would improve public protection as dentists would be more inclined to serve smaller communities without having to refuse their spouse as a patient. Also, spouses would be provided with the option to choose a health provider of their choice.

The speaker would also like the ministry to reconsider the one size fits all approach as each profession is inherently different. Dentistry for example is not the same as the psychotherapy profession.

Respondent: Participant #8

The speaker is a dentist.

Alternatives:

The speaker is suggesting that the minister exempt spouses from the legislation and allow individual colleges to determine whether their members should be able to treat their spouses.

Also, the speaker felt that the RCDSO should be able to look at complaints on a case-by-case basis.

The speaker felt that the alternatives suggested above would benefit the public as it will allow spouses the right to choose their health care provider. The speaker also noted that the right to choose was particularly important for individuals belonging to minority or gay communities. Particularly individuals belonging to a gay community may fear further discrimination because of their sexual orientation, and their rights to choose a health care provider should be protected. In the view of the speaker, the mandatory revocation policy is a leap backwards for gay rights.

He further noted that the gay community is very small which makes it more difficult to find a health provider with the same sexual orientation. Currently his partner cannot receive dental care from him for fear of having his license revoked.



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