



VISION COUNCIL OF CANADA • CONSEIL DE VISION DU CANADA

December 9, 2009

Mr. Brian O'Riordan
Executive Coordinator
Health Professions Regulatory Advisory Council
55 St. Clair Avenue West
Suite 806, Box 18,
Toronto, Ontario M4V 2Y7

Dear Mr. O'Riordan:

The Vision Council of Canada appreciates this opportunity to comment on the submissions made by stakeholders in response to the questions posed by HPRAC in its current review of interprofessional collaboration in the eye care section.

It is encouraging to note that virtually all responders, including the College of Optometrists, agree that interprofessional collaboration between eye care professionals will greatly increase with the removal of the College's current restrictions on association.

That said, we find the College's statement that it has attempted, for fifteen years, to amend the regulation to permit collaboration to be, at best, disingenuous. Had the College truly wanted to amend what it, itself, calls an 'outdated' regulation, we suggest it could have taken any number of steps to do that over the course of the last twenty years. Instead of making a concerted effort to change the regulation, the College has prolonged the process while selectively enforcing the outdated rules. Many members of the College ignore aspects of the conflict regulation with impunity, as acknowledged by the Ontario Association of Optometrists.

Conflict of Interest

The College's position on 'situational' conflicts is also questionable. The College maintains that an optometrist who works in association with an optician and/or an optical retail company is in greater jeopardy of a conflict than one who prescribes and sells eye care products (we note that several responders referenced this inherent conflict). This position requires rebuttal and we can think of no better response than that put forth by Justice Lowry of the British Columbia Supreme Court in the 1998 Costco decision:

“In my view, quite apart from the wealth of unchallenged evidence mounted against it, the fact that optometrists have long been selling the optical appliances they prescribe completely undermines the Board's ability to demonstrate that the impugned Rules can be justified as furthering the Board's objective by addressing conflicts of interest, real or apparent.

“The feared conflict, or appearance of conflict, is said to arise through the blurring of diagnostic and dispensing roles in which optometrists could be, or, more importantly, appear to be, motivated by profit or pressure to over prescribe optical remedies. Yet the Board has to accept that to be the norm in respect of the practices of many, if not most, of the optometrists practising in this province who purchase what they prescribe from the manufacturers of optical appliances and then sell it to their patients. In contrast to the petitioners, who have allegedly been compromised by a relationship with optical retailers, the average optometrist is directly compromised, to as great if not a greater degree, by virtue of both prescribing eyeglasses and contact lenses and selling what he or she prescribes as a retail distributor.

“Simply put, the Board cannot have it both ways. It cannot be heard to say that an apparent conflict of interest arises in one instance but not in the other. Nor can it say that it is necessary to prohibit the conflict in one instance to achieve the objective of a high professional standard to best serve the public interest but not in the other. Dr. McRoberts says that whether an optometrist elects to sell the optical appliances he or she prescribes is "a matter of individual choice, and is not the subject of concern for the Board". Why there should then be a concern sufficiently great to prohibit an optometrist from associating with an optician or an optical company selling what is prescribed defies explanation.

“Counsel for the Board does yeoman service in attempting to establish a distinction. He says that the practices of what are referred to as dispensing optometrists who sell eyewear could be subjected to greater regulation if that was thought necessary to address any misconduct, but I am left wholly unconvinced that the same cannot be said of non-dispensing optometrists who may be associated with opticians or optical companies.

“Given the history of optometrists purchasing optical appliances and selling them to their patients, I consider the contention that the impugned Rules prohibiting association address a conflict of interest in a manner that furthers the Board's public interest objectives to be quite hollow. And the evidence strongly suggests that restrictions like those imposed on optometrists in this province with respect to associating with non-optometrists engaged in the retail distribution of eyeglasses and contact lenses do not advance the public interest which the Board is statute-bound to serve.”

And, while the College continues its position that corporate entities will put undue pressure on optometrists to ignore their fiduciary responsibility, it offers no substantiated proof of this claim. Rather the College maintains that corporate entities and independent opticians are driven only by “profit motives”. All health care practitioners, including optometrists, are expected to profit from their services. Absent the ability to profit, they could not stay in practice.

Opticianry:

The College of Opticians goes to great lengths to point out the similarities in what opticians, optometrists and ophthalmologists do. Opticians “involve patients in decisions regarding their individual health”; they assist in navigating the health care system; they manage patients; “an Optician’s dispensary is often the first place where members of the public will go when they believe they are experiencing visual problems.” The College’s attempt to exaggerate the role of opticians in health care reflects its inability to accept its own role in regulating a minor health profession in a largely retail context.

The College refuses to acknowledge the difference in the potential for harm in the fitting of contact lenses (which should be controlled) and the dispensing of eyeglasses to adults, which poses no significant risk of harm. It references the Health Professions Legislation Review in support of this position. In fact, the Review found that while “dispensing” should not be completely deregulated (because of contact lenses) it required appropriate definition and expected that this would happen quickly. Indeed, one of HPRAC’s first consultations (on May 20, 1993, prior to proclamation of the RHPA) was to explore “what can or should be done to clarify the definition of “dispensing” through regulation¹.”

The College also maintains that the Red Tape Commission “concluded that dispensing eyewear constituted a risk of harm to the public and should remain a controlled act.” This is incorrect. The Commission found “it illogical that the dispensing of eyewear is interpreted differently by the three professions authorized to perform it.” In the Commission’s view, the dispensing function should be regulated consistently and provide no advantage, however slight, to one profession over another.” It further stated “that only acts with the potential for harm should be regulated and that the degree of regulation should be proportionate to the potential for harm.” It went on to recommend that the Ministry do what is necessary to develop “common principles and practice standards for the dispensing of subnormal vision devices, including a consistent definition of dispensing and common rules for the delegation of dispensing functions to be used by physicians, optometrists and opticians.”²

None of the cases of “unauthorized practice” that the College pursues so diligently appear to come from actual complaints from the public about inferior quality eyewear or service – indeed, we are not aware that any stem from public complaints at all. The College’s submission speaks to the harm in dispensing, but offers no substantiated proof of harm in dispensing eyeglasses to adults.

We note that both the College of Optometrists and the College of Opticians seek added regulatory authority over dispensaries. We find it ironic that these two Colleges, whose history of regulating their members in the public interest is questionable at best, are seeking additional powers. The Vision Council maintains its position that there is no compelling public interest in regulating optical premises.

Finally, Mr. Khan appears to be waging a battle that ended some thirty years ago. Imperial Optical has long since ceased to exist. The regulations and rules governing competition today go a long way to ensure that what happened in the seventies cannot happen again.

¹ April 14, 1993 letter to Vision Council of Canada from HPRAC Chair Christie Jefferson

² *Cutting the Red Tape Barriers to Jobs and Better Government*, Final Report of the Red Tape Review Commission, January 1997

The Vision Council of Canada hopes that HPRAC will seize on these issues and once and for all propose recommendations that are grounded in sound, evidenced-based public policy, not anecdotal or apocryphal warnings. It is time to put these issues to rest in a way that protects the public and fosters appropriate and cost-effective access to eye care professions, services and products.

We look forward to next steps and HPRAC's recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrea Belanger". The signature is fluid and cursive, with a large, stylized initial "A" and "B".

Andrea Belanger
Executive Director