HPRAC

HEALTH PROFESSIONS REGULATORY ADVISORY COUNCIL

REPORT TO THE MINISTER OF HEALTH

PRIVACY REFERRAL

October 1995

HEALTH PROFESSIONS REGULATORY ADVISORY COUNCIL
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Referral Question

Should the public have unrestricted access to the business addresses and business telephone numbers of regulated health professionals? Would this access compromise the privacy and safety of regulated health professionals?

The Referral

The former Minister of Health, Ruth Grier, asked the Advisory Council to consider privacy concerns vis-à-vis public access to "business information" contained in College Registries as per sections 23(2)(a) and 23(3)(1) of the *Regulated Health Professions* Code *(HHPC or Code)*. See Appendix 1 for the complete Referral and attached correspondence.

These concerns were initially raised by the Office of the Information and Privacy Commissioner in correspondence between Ann Cavoukian, Assistant Commissioner and the former Minister. Ms. Cavoukian's concerns centered on the public's access to information identifying the health care professional's place of business through the "business address" and "business telephone number" contained in a College registry.

This issue was brought to the attention of the Privacy Commissioner's Office following receipt of a number of letters.

The Assistant Commissioner believed that such "business information" should not be immediately or directly available to the public but should remain in control of the College, with the College acting as a "go-between" where necessary. In taking this position Ms. Cavoukian expressed concern for the safety of health care professionals from patients who misunderstand the patient/health care professional relationship or from estranged spouses/partners who may use the College registry as a means to track down the individual health care practitioner.

Rationale for Relevant Sections in the Code

It is the Advisory Council's understanding, based on Ministry correspondence provided with the Referral, "that the intent of the provisions under s. 23 of the *HPPC* is to facilitate access to information about regulated health professionals and to increase accountability of College proceedings".

The Statutory Provisions

Section 23(3) of the Health Professions Procedural Code, (*HPPC*), Schedule 2 of the Regulated Health Professions Act, (*RHPA*) provides, in part:

23.—(1) The Registrar shall maintain a register.

(2) The register shall contain:

(a) each member's *name*, *business address* and *business telephone* number;

(b) each member's class of registration and specialist status;

(c) the terms, conditions and limitations imposed on each certificate of registration;

(d) a notation of every revocation and suspension of a certificate of registration;

(e) the result of every disciplinary and incapacity proceeding;

(e.1) where findings of the Discipline Committee are appealed, a notation that they are under appeal;

(f) information that a panel of the Registration, Discipline or Fitness to Practise Committee specifies shall be included; and

(g) information that the regulations prescribe as information to be kept in the register.

(2.1) When an appeal of findings of the Discipline Committee is finally disposed of, the notation added to the register under clause (2) (e.1) shall be removed.

(3) A person may obtain, during normal business hours, the following information contained in the register:

(a) Information described in clauses (2) (a) to (c).

1. Information described in clause (2)(d) relating to a suspension that is in effect.

2. The results of every disciplinary and incapacity proceeding completed within the six years before the time the register was prepared or last updated,

   i. in which a member's certificate of registration was revoked or suspended or had terms, conditions or limitations imposed on it, or

   ii. in which a member was required to pay a fine or attend to be reprimanded or in which an order was suspended if the results of the proceeding were directed to be included in the register by a panel of the Discipline or Fitness to Practise Committee.

3.1 For every disciplinary proceeding, completed at any time before the time the register was prepared or last updated, in which a member was found to have committed sexual abuse, as defined in clause 1(3)(a) or (b), the results of the proceeding.

3.2 Information described in clauses (2)(e.1) related to appeals of findings of the Discipline Committee.

4. Information designated as public in the regulations.

(6) The Registrar shall provide to a person, upon the payment of a reasonable charge, a copy of any information in the register the person may obtain.

HPRAC'S Understanding of the Statutory Context

HPRAC considered the meaning and significance of the terms "business address" and "business telephone number".

HPRAC understands that the term "business address" would ordinarily refer to the place where one carries on a business or in the case of health care providers, professional practice. However, is the term "business address" general enough to include places of employment? One restrictive interpretation of "business address" would relate only to a place where an individual runs a business. Employees would not have "business addresses", rather "employment addresses" Another view would broadly construe "business address" to include a "place of employment".

Assuming the latter interpretation, would it be sufficient for an individual to provide the address of one's employer, e.g. a nurse employed by Correctional Services of Canada (CSC) in Kingston, rather than the specific institution where he/she works e.g. Beaver Creek Institution in Muskoka. Alternatively, is a self-employed health care professional, e.g. a psychologist on contract to CSC and whose "place of business" is his/her home, required to reveal their home address or could the individual use a "post box" instead?

As the *RHPA* does not expressly define the terms "business address" and "business telephone number", HPRAC examined the jurisprudence surrounding the general judicial interpretation of the term "business".

A review of the reported case law does not reveal a specific definition being given to the terms in question in the context of the *RHPA*. However, the rules of statutory interpretation as applied in the case law[1] do suggest a methodology for the construction of these terms, i.e. by looking at all the relevant factors and context surrounding their use. In addition, the case law indicates that the term "business", per se, mean any activity, the sole object of which is gain, profit or livelihood, and that "business" may be regarded as synonymous for "employment".

Given our understanding of the relevant case law and principles of statutory construction, it is HPRAC's view that a plausible reading of the terms "business address" and "business telephone number" in s. 23 of the *HPPC* would include individuals who are either employees or self-employed. The Advisory Council also believes that this interpretation of "business" is consistent with the legislature's intent to enact policies which promote accountability, openness and professional self-government.

Having reached the above understanding with respect to the meaning of "business address/telephone number", HPRAC reviewed s. 23 of the *Code* in order to determine the College Registrars' statutory requirements to place information on the register and provide access to that information.

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[1] See, generally: *Rideau Club v. Ottawa (City)* (1907), 15 O.L.R. 118 at 122 (C.A.), *per* Osler, J.A.; and *Ontario Regional Assessment Commissioner v. Caisse populaire de hearst Ltee*, [1983] 1 S. C. R. 57 at 65-66.

The Advisory Council believes that s. 23 of the *HPPC* places a strong legal obligation on all Registrars. The legislation clearly states that a member's name, business address and business telephone number *shall* be contained in the register; that a person *may* obtain this information during normal business hours, and that the Registrar *shall* provide to an individual, upon payment, a copy of information in the register he/she may obtain.

HPRAC notes that there is no authority for regulatory bodies to develop mechanisms for the use of discretion and/or implement procedures enabling case-by-case decisions to be made about what information may be released to the public. Furthermore, the legislation does not allow members to designate a "business address/telephone number", and any such practice may be considered statutorily deficient and likely open to challenge.

The Colleges' Experiences and Perspectives

Notwithstanding, HPRAC's view of the legislative requirements surrounding the provisions of "business address/telephone number", the Advisory Council appreciates that the practice required by the information contained in s. 23 of the *HPPC* potentially places the safety of health care professionals at risk from either estranged spouses/partners or angry patients/clients. To determine the degree of concern around the statutory requirements, the Advisory Council asked the Colleges to respond to a number of questions concerning their experiences and any policies or protocols implemented to deal with safety/privacy concerns. Twenty of the twenty-one Colleges responded. (See Appendix 2 – HPRAC's letter and Appendix 3 – a table outlining Colleges' responses.)

With the exception of one College, the majority of Colleges to date, have received very few complaints or expressions of concern from either the public or their members about the relevant sections. The one College has received multiple concerns from members via telephone, through letters and orally during 100 Information Sessions held around the province during 1992 and 1993.

With respect to individual requests by members asking that their business addresses/telephone numbers not be made public, four Colleges have each received one request. In response to the requests: one College deleted the member's business address/telephone number; two Colleges did not remove the member's business address from the register as in one case no safety/privacy concern was established and in the other case the request was based on financial difficulties; and one College agreed to inform the member of any requests for information about them prior to release of that information.

A fifth College has received several requests from members asking that their business address/telephone numbers not be made public. These members provided documentation supporting their concern that disclosure of their business location would place them at risk. The requests were accommodated using College protocols.

Fifty percent of the responding Colleges stated they would not recommend putting into place any mechanisms to respond to safety/privacy concerns. Many Colleges

noted that the public could have access to their members through a variety of sources in addition to the register, e.g. yellow pages. One College stated that a court order would be the only mechanism to persuade them to withhold a member's "business information".

However, a few concerned Colleges have implemented protocols for dealing with potential safety/privacy concerns. For example:

One College requires all inquiries (other than registration information) to be put in writing. The Registrar reviews all requests, and seeks direction from legal counsel should there be a doubt or concern with regard to the request. Another College allows members to designate a "business address/telephone number" to appear on the register, when documentation supporting the reasons for the request has been provided and understanding that all material sent to the member will be received by the member at the designated address. Members may also use a pseudonym at work which is not the same as the name on the register providing that the employer is aware of the pseudonym and the College is able to identify the member through the employer.

A third College requires that the Registrar handle all requests for member information. Requests for business addresses/telephone numbers are screened to determine a service related rationale for the request and the information is not provided if there is no service-related basis for the request, e.g. a member of the public attempting to locate a member they have lost track of over the years.

The Advisory Council found the Colleges' accounts of their experiences and perspectives insightful and useful.

The expressed concerns surrounding member safety/privacy, appeared to be limited to a few primarily female dominated Colleges and a small number of individual health care professionals. Given, the low degree of interest in this matter, from the College/member perspective, and in the absence of any concern from the general public, HPRAC decided not to conduct a full public consultation. HPRAC believed that a public review would yield little additional relevant information and therefore was not warranted. Rather, the Advisory Council felt it more important to focus on the principles underlying the issue and to explore possible options for change.

The Issue

The Advisory Council notes that the three College actions described above are problematic, because there is no statutory authority for these procedures or the discretion which is a necessary component of these procedures.

On the one hand, HPRAC believes that regulated health professionals must appreciate and accept the need for public accountability and access to information about their status and services. On the other hand, the Advisory Council is concerned that the safety/privacy of individual health care professionals could be jeopardized by statutory provisions which are not flexible enough to account for the wide variety of health care practice settings and the specific risks to which particular practitioners may be vulnerable, e.g. stalkers and violent patients/clients.

Given these important yet competing interests HPRAC believes that a mechanism(s) needs to be considered that ensures accountability and access but is flexible enough to protect the safety/privacy of individuals where required.

Options

There are a range of options for legislative amendment. For example:

1. Legislative Amendment

a) Section 23 of the *HPPC* could be amended. Any amendment should be as specific and uncomplicated as possible. For example, s. 23 could be amended to include the following clause:

> Information described in clause (2)(a) relating to a member's business address and business telephone number shall not be disclosed where the College Registrar has reasonable grounds to believe that disclosure of the information would endanger the member or constitute an unreasonable invasion of the member's privacy.

In this suggested example, the College Registrar would be responsible for making a determination regarding non-disclosure.

b) Section 23 of the *HPPC* could be amended to allow each College to prescribe in regulation the criteria against which public access to the "business address/telephone number" could be denied. For example, s. 23 could be amended to include:

> Information described in clause 2(a) relating to a member's business address and business telephone number shall not be disclosed where the Registrar is satisfied that the criteria prescribed in regulation have been met.

In addition to amending sec. 23 of the *Code*, this option would also require sec. 95 of the *Code* to be amended to include the authority to prescribe the criteria by which public access to the "business information" will be denied. The criteria would address situations where disclosure would endanger the member or constitute an unreasonable invasion of the member's privacy.

c) Section 23 of the *HPPC* could be amended so that the requirement to disclose "business address/telephone number" is deleted.

d) Section 23 of the *HPPC* could be amended to give the College Registrar complete discretion as to what he/she will disclose.

2. Non-Legislative Actions

If a statutory amendment is not possible, members of the professions currently have it within their own ability to somewhat protect their safety/privacy interests while still complying with the statutory requirements.

Self-employed professionals practising out of their homes can have a separate telephone line, restricted to business, installed. In a similar fashion those professionals who are independent consultants working out of their homes could utilize a post box address as their legitimate business address in addition to a separate telephone line.

With respect to employees, using pseudonyms in the workplace is a practical means of ensuring an employee's safety/privacy while at the same time providing for accountability.

Colleges might explore using the mechanisms of designated "business addresses/ telephone numbers" for members whose safety/privacy is at risk, but only after considering the legal concerns previously discussed.

Colleges could also consider instituting practices whereby requests for "business addresses/telephone numbers" are put in writing and members are informed of requests for information about them prior to the release of that information.

Conclusion and Recommendations

The Advisory Council feels compelled to bring to the Minister's attention the various issues underlying this Referral, as well as the implemented practices of some Colleges that are, in HPRAC's view, contrary to the *RHPA*. However, given the importance of member safety/privacy, the Minister and Ministry may wish to take appropriate steps to effectively reconcile these legitimate yet competing interests.

If a legislative amendment is deemed desirable, the Advisory Council believes that neither Option 1(c) nor Option 1(d) is appropriate. Clearly the public policy principle of accountability and access to information must be maintained. However, to ensure that individual health practitioner's safety/privacy is not risked, HPRAC recommends Option 1(a). This option would involve less regulation and promote flexible practices by individual Colleges.

If a legislative amendment is not possible or desirable at this time, the Advisory Council recommends that the Minister and Ministry work with concerned Colleges to implement various mechanisms to address safety/privacy concerns that are not in conflict with the *RHPA*.