


# TRANSPARENCY INITIATIVE AT THE RCDS – THE TIMES THEY ARE A CHANGIN’


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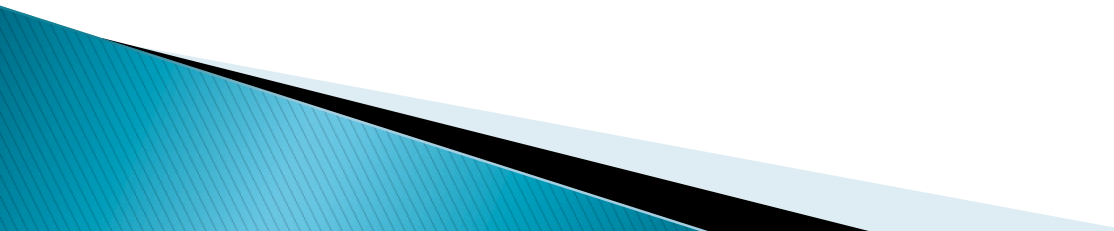
# Ontario Minister of Health's Transparency Initiative

- ▶ On Saturday, October 4, 2014 at 3:55 p.m., all the Health Care Regulatory Colleges in Ontario received a letter from Dr. Eric Hoskins, the Minister of Health, requesting that each College take concrete steps to develop and establish measures to increase transparency in College processes.
  - ▶ The next day, Sunday, October 5, 2014 the entire text of Minister Hoskin's letter appeared in the Toronto Star.
  - ▶ The Minister's letter and transparency initiative is clearly politically motivated.
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The following is an excerpt from the October 4, 2014 letter:

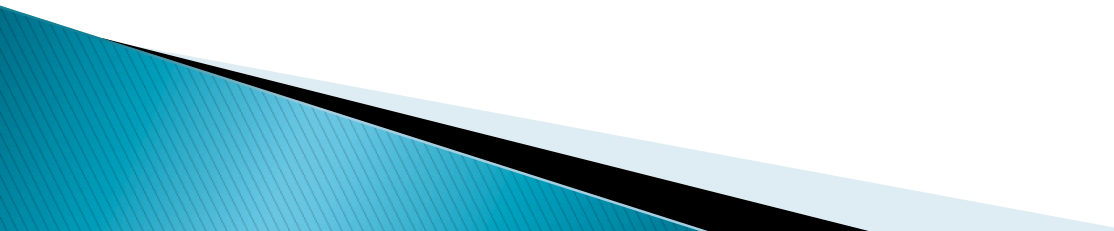
- ▶ My hope is that we can work collaboratively to implement these steps as we work together to maintain the public's trust in our health care system.
  - ▶ However, as Ontario's Minister of Health and Long-Term Care, my ultimate responsibility is to the people of Ontario. I reserve the right to take any and all necessary measures to ensure that the public interest remains paramount, including exercising the powers reserved to me under the subsection 5(1) of the RHPA including the ability to require Councils to do anything that, in my opinion, is necessary or advisable to carry out the intent of the RHPA and the health professions Act.
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# The RCDS transparency Initiative

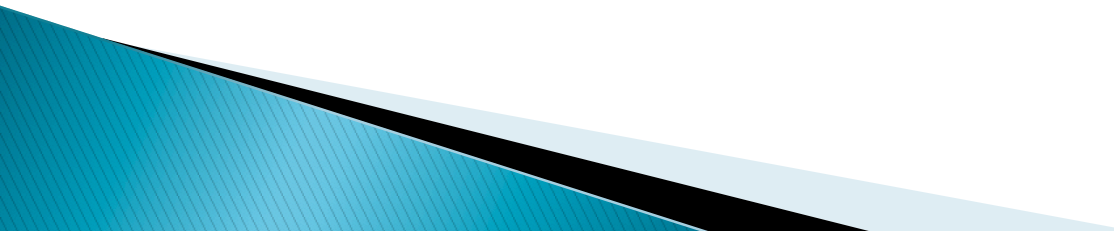
- ▶ The Minister's salvo prompted the RCDS to complete its previously drafted amendments to its internal By-Laws to encourage transparency.
  - ▶ In 2012, the RCDS had joined with several other Ontario Health Colleges in advancing its own transparency initiatives, and by the time of the Minister's letter the RCDS had already drafted the By-Laws which I am here to discuss.
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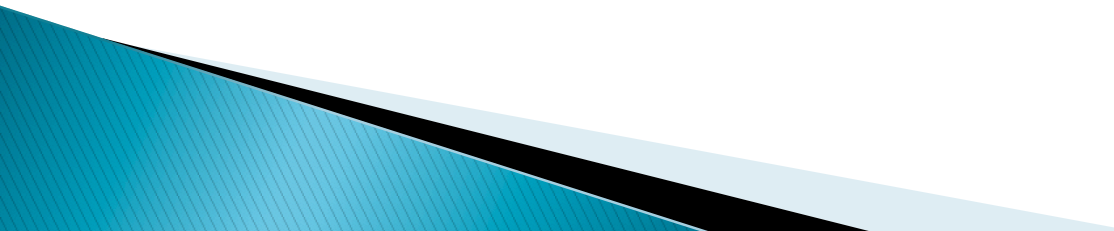
# Effect of By-Law amendments

- ▶ Several of the By-Law amendments will directly impact those dentists who are currently responding to complaints before the Inquiries, Complaints and Reports Committee (ICRC) of the RCDS.
  - ▶ The amendments will result in information being disclosed on the Public Register in circumstances where past such dispositions would not be available to the Public.
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# Significance of By-Law Amendments

- ▶ In order to place the significance of the By-Law amendments in proper context, we must understand the current complaints and discipline structure at the RCDS.
  - ▶ In broad terms, there are three potential dispositions of a patient complaint matter at the RCDS.
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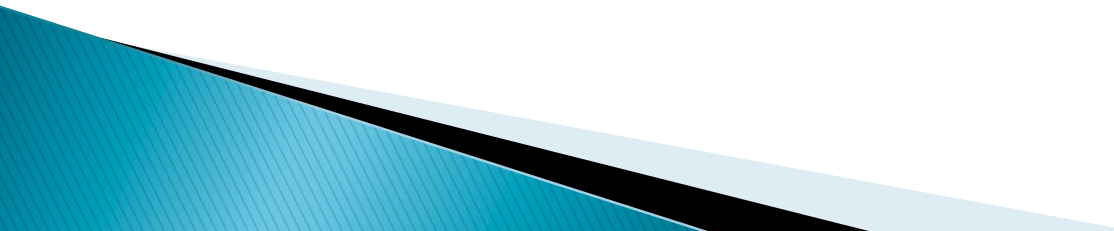
# Disposition 1

- ▶ A Patient complaint is dismissed by the ICRC without any action being taken. This disposition typically does not result in any information being placed on the RCDS Public Register.
  - ▶ The dismissal of a complaint, without any action being taken, would ensure that the complaint is kept confidential, and that information concerning the complaint is not accessible to patients searching for information about the dentist.
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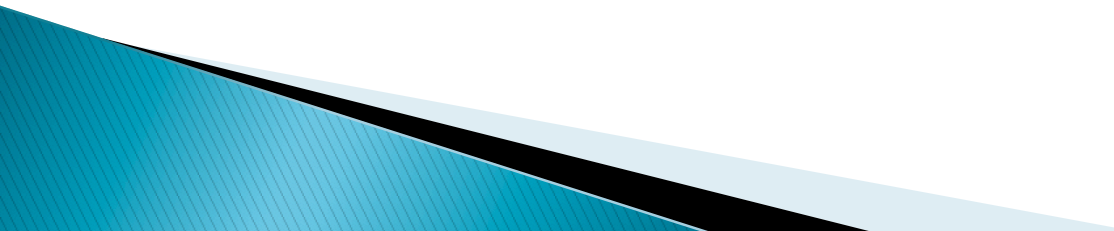
# Disposition 2

- ▶ Prior to the By-Law amendment, the second most common disposition of complaints arose where the ICRC had concerns about the dentist's clinical skills.
  - ▶ These concerns would routinely be addressed by the ICRC proposing a voluntary undertaking to the dentist to take a course or courses, to address the clinical deficiencies identified by the complaint.
  - ▶ The RCDS would also impose practice monitoring for 24 months.
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## Disposition 2 cont.

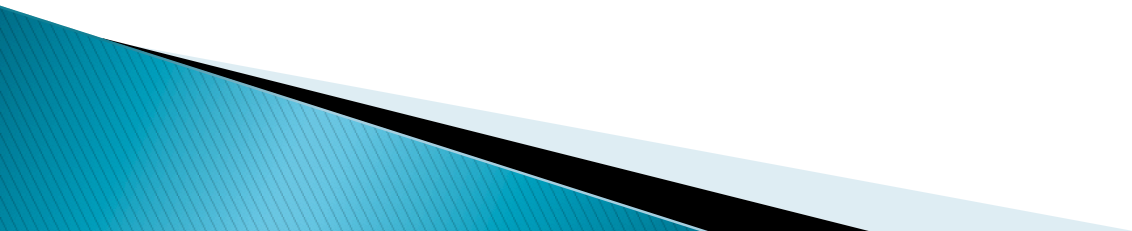
- ▶ Occasionally, the ICRC would also require the dentist to attend personally to be orally cautioned, in order to express the ICRC's displeasure with that dentist's conduct.
  - ▶ The majority of ICRC complaint decisions identifying clinical dentistry deficiencies have been resolved through this type of voluntary undertaking.
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## Disposition 2 cont.

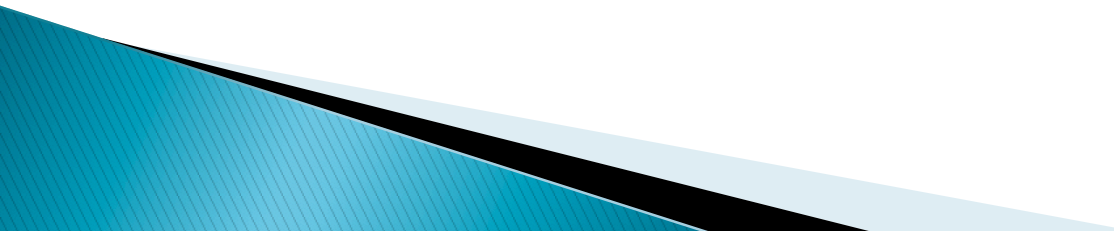
- ▶ The signing of a voluntary undertaking to take courses and to have practice monitoring, and an oral caution did not require such a disposition to be disclosed on the Public Register.
  - ▶ Effectively the resolution of a complaint by the dentist signing a voluntary undertaking ensured that the subject matter of the complaint would be kept confidential.
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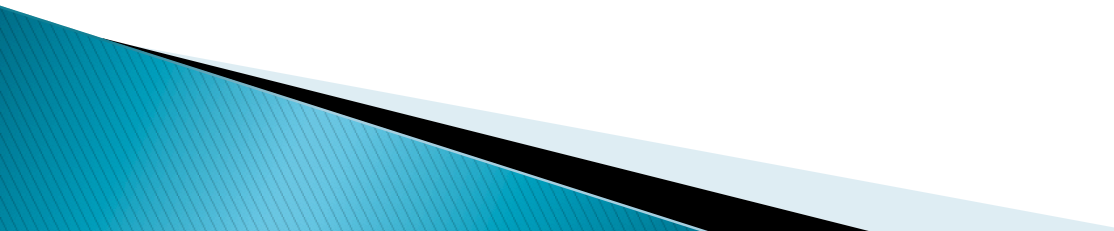
## Disposition 3

- ▶ The third and most serious disposition of a patient complaint by the ICRC, was to refer a matter to the Discipline Committee. When a complaint is referred to the Discipline Committee, the RCDS is obliged to disclose a brief summary of each specified allegation, and the anticipated date of the hearing, on the Public Register.
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# Disclosure now required in respect of oral cautions

- ▶ The By-Law amendment provides that, where a decision of the ICRC requires that the dentist attend before the ICRC to be cautioned, the following must be posted on the Public Register:
  - ▶ A notation of the fact that a caution was issued, including a summary of the caution; and
  - ▶ The date of the Panel's decision.
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# Disclosure now required in respect of oral cautions cont.

- ▶ This change in procedure is significant because of social media issues. If a dentist receives an oral caution as a result of an ICRC decision, that oral caution will now be posted on the Public Register, and may be available to any individual who Googles the dentist's name.
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# Disclosure now required in respect of oral cautions cont.

- ▶ The ICRC will issue a caution to a dentist where the ICRC wishes to deliver a message to the dentist that it does not approve of that dentist's conduct.
  - ▶ In the past, such oral cautions were regularly ordered.
  - ▶ The fact that an oral caution was made was not required to be disclosed by the RCDS on the Public Register.
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# Disclosure now required in respect of oral cautions cont.

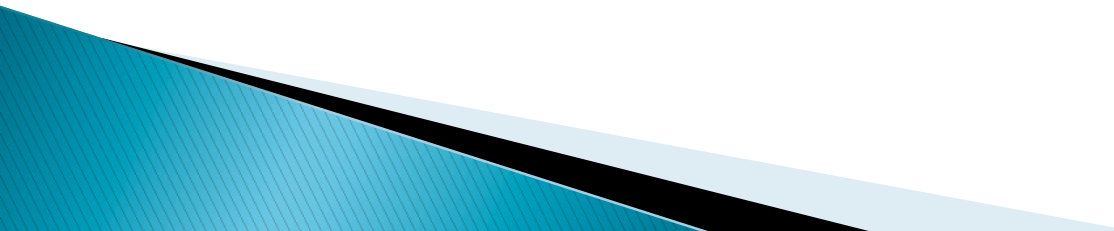
- ▶ After October 15, 2015, the fact that the caution is issued, and the contents of the caution, will need to be disclosed.
  - ▶ This may result in the ICRC choosing to issue less oral cautions.
  - ▶ However, dentists should be aware that if an oral caution is part of a complaint disposition, there will be disclosure on the Public Register.
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# Dentists will be ordered to take courses

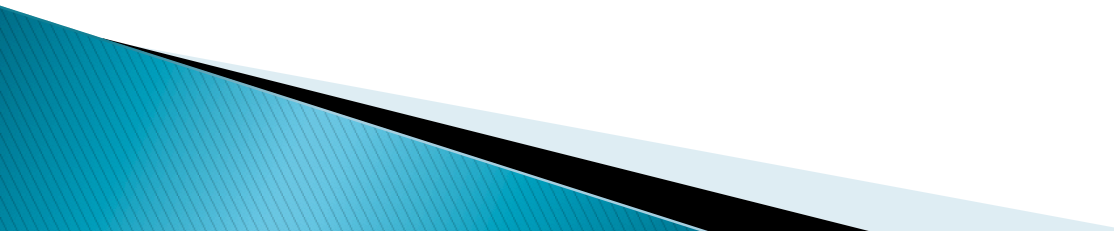
- ▶ The second significant amendment provides that if the ICRC orders the dentist to complete a Specified Continuing Education or Remediation Program (commonly known as a SCERP) the RCDS must post on the Public Register a notation of that fact, including a summary of the continuing education or remediation programs.
- ▶ Many complaints were previously resolved by the ICRC proposing a voluntary undertaking to the dentist to take specified courses. This practice will no longer continue.



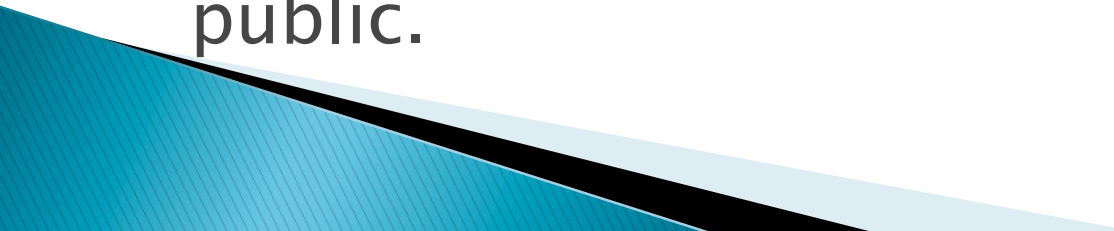
# No more voluntary undertakings

- ▶ The Toronto Star has characterized the use of voluntary undertakings by the College of Physicians and Surgeons of Ontario as “backroom deals”.
  - ▶ It is our impression that the Ontario Health Colleges will be reluctant to use voluntary undertakings in the future in complaint matters.
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# No more voluntary undertakings cont.

- ▶ If the ICRC determines that the factual issues addressed by the complaint support a finding that the patient was put at risk, then the ICRC will order clinical courses to be taken by the dentist.
  - ▶ The fact that the dentist has been ordered to complete specified courses will now be posted on the Public Register.
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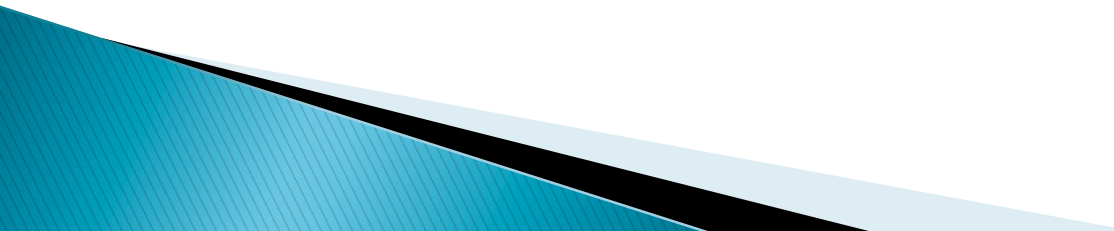
# Paradigm shift

- ▶ These amendments will have a significant impact on those dentists who receive a complaint decision from the ICRC that requires either an oral caution, or the completion of SCERP courses.
  - ▶ Either of these dispositions by the ICRC will mandate disclosure on the Public Register, and the details will become information that is readily accessible to members of the public.
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## Paradigm shift cont.

- ▶ We expect that the ICRC will continue to exercise its right to order dentists to take clinical courses, as a disposition in any given complaint matter.

## Paradigm shift cont.

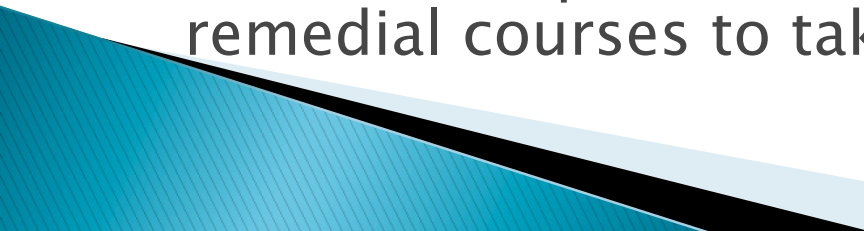
- ▶ The third change under the proposed By-Law, is that the RCDS will now be obliged to disclose a brief summary of each specified allegation that has been referred to the Discipline Committee, the date of the referral, the status of the Discipline Hearing, and a copy of the Notice of Hearing, which contains a summary of the allegations against the dentist.
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## Paradigm shift cont.

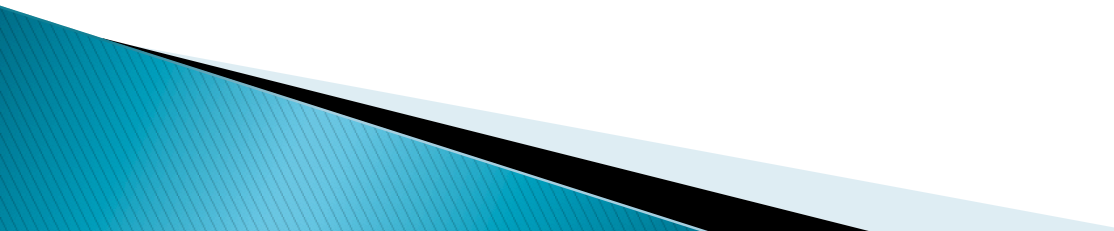
- ▶ The By-Law amendment requires fuller disclosure than previously required by the RCDS. However, the fact that specified allegations concerning a dentist were being referred to the Discipline Committee, was previously posted on the Public Register.




# What can a dentist do to avoid negative outcomes? Cont.

- ▶ If a complaint alleges that a dentist performed a root canal treatment unnecessarily, and caused the patient pain and suffering, then the best approach may be for the dentist to enroll in a course in Endodontics.
  - ▶ In this way, when the matter reaches the ICRC, if the dentist has already taken a course or courses to address the clinical deficiency, then this lessens the risk that the ICRC will order that dentist to take such courses.
  - ▶ The RCDS has advised that it is prepared to act as a resource to provide direction to dentists as to which remedial courses to take.
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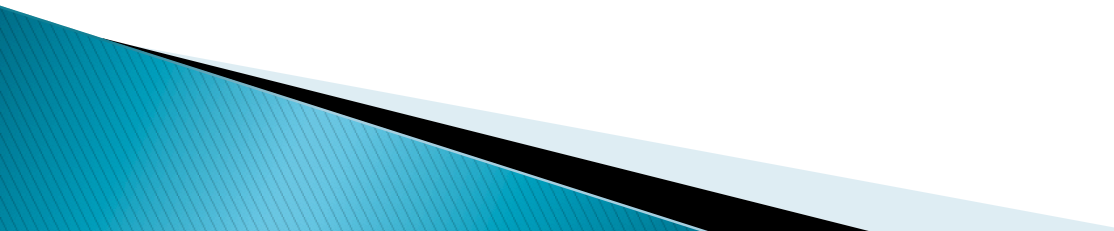
# Concept of Patient Risk

- ▶ The concept of patient risk will become much more important, and will govern the potential dispositions by the ICRC. Those dentists who have a prior complaint history suggesting previous allegations of clinical deficiencies in a specific area are most at risk. Under the scheme that will be in place after October 15, 2015, a dentist's prior complaint history may have more serious ramifications than in the past.
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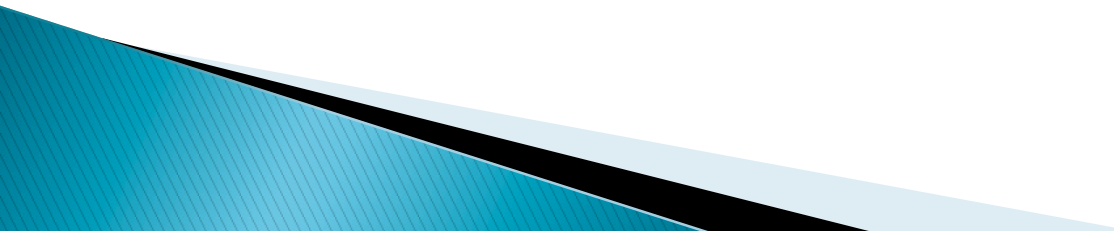
# Concerns with transparency

- ▶ It is our opinion that the Ontario Ministry of Health's transparency initiative ignores the reality that the *Regulated Health Professions Act* serves two purposes, to protect the public interest, but also to regulate the practice of each profession.
  - ▶ It should be understood that in regulating the standards of practice of each health profession, that the health professional must be afforded fairness and natural justice.
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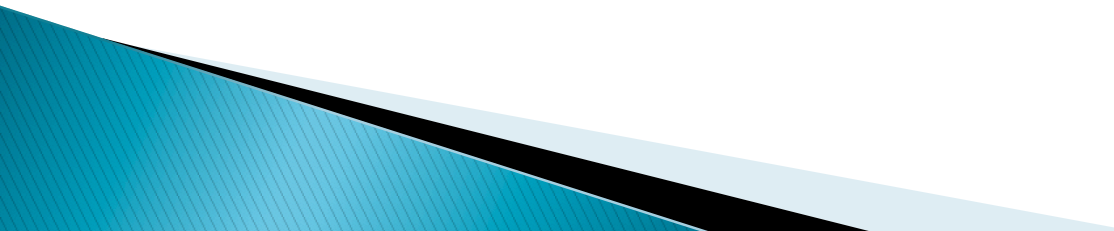
## Concerns with transparency cont.

- ▶ Recent media coverage with respect to transparency at the Ontario Health Colleges ignores the rights of health professionals to be treated fairly.
  - ▶ Not all debates with respect to disclosing complaints should be based solely on arguments focusing on the public interest.
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## Concerns with transparency cont.

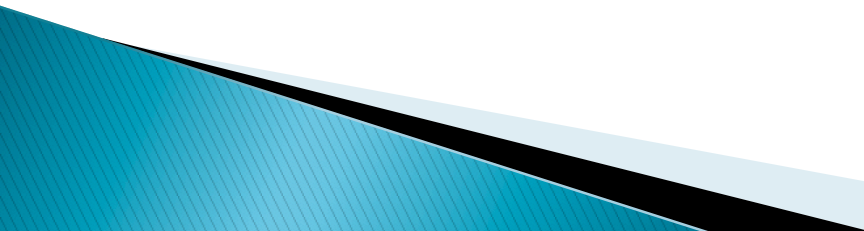
- ▶ The case law is clear that the regulation of health professionals must be administered in a manner that provides procedural fairness to the health professional.
  - ▶ My concern about the RCDS By-Law amendments is that there will now be significant prejudice to those dentists whose names and complaint particulars must be disclosed on the Public Register.
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## Concerns with transparency cont.

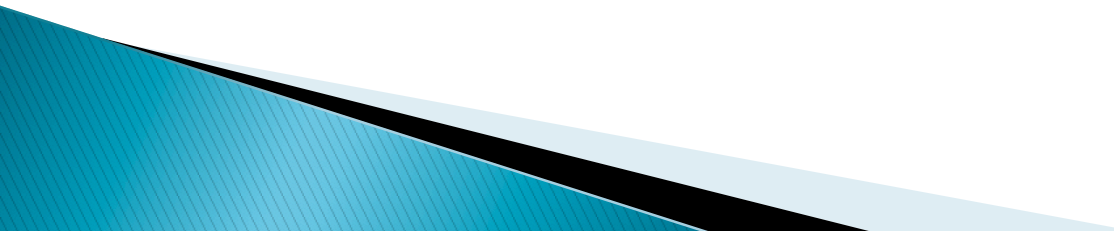
- ▶ A dentist who has not been convicted of professional misconduct, and has not been afforded an actual hearing, or found guilty of standards of practice misconduct, will still suffer the stigma of his or her name appearing on the Public Register.
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# Concerns with transparency cont.

- ▶ The reputational damage caused by the publicity arising from a misconduct finding is considerable.
  - ▶ The unfortunate reality is that patients will not readily differentiate between a dentist who has been ordered to take courses by the ICRC arising from a complaint, and a dentist who has been convicted of professional misconduct.
  - ▶ To members of the public, both dispositions may seem equivalent, both suggesting that the dentist is lacking in competence.
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# Concerns with transparency cont.

- ▶ Many patients now utilize Google as a method of choosing dentists, and investigating the dentist's background.
  - ▶ Information posted on the RCDS Public Register with respect to a dentist's clinical deficiencies will negatively impact that dentist's practice.
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# Concerns with transparency cont.

- ▶ This is most unfortunate, given that the ICRC isn't technically making a finding of professional misconduct.
  - ▶ Yet, the stigma from adverse publicity will be as bad as if the dentist was convicted of professional misconduct.
  - ▶ Dentists who have a complaint matter at the ICRC are entitled to a limited level of procedural fairness.
  - ▶ There is no right to an oral hearing, and there is no right to cross-examine your accuser.
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# What can be done?

- ▶ Stay a Member of the CDPA!
  - ▶ Dentists will need the expertise of experienced lawyers to determine how best to manage a complaint matter.
  - ▶ The political climate is changing in Ontario, and dentists are unfortunately being swept up in this process.
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