


# Recent Developments at the RCDS


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# Increase in Public Complaints

- ▶ The RCDS forecasts that the number of complaints in 2011 will be double the number of complaints in 2008.
  - ▶ The upcoming annual report for 2010 will reveal that there were 461 letters of complaint in 2010, 366 of which became formal complaints.
  - ▶ The RCDS has been obliged to create eight separate panels of the Inquiries, Complaints and Reports Committee in order to deal with the large volume of complaints. In former times, there was only one panel.
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# Possible Reasons For Increase in Complaints

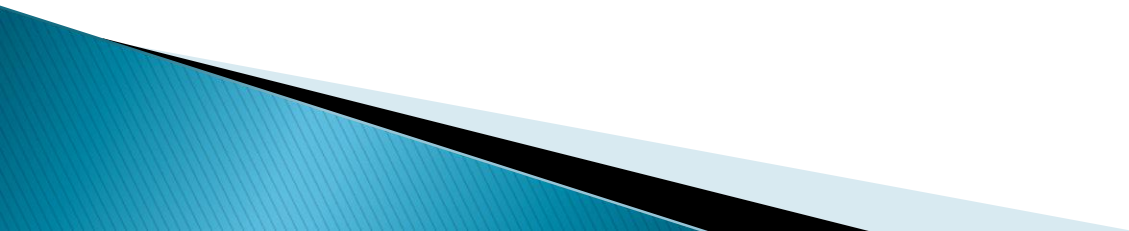
- ▶ Patients are more aware of their ability to complain;
  - ▶ The Internet has given the patient ready, instant information about how to complain, and emails make it easier and quicker to complain;
  - ▶ The old adage that you can complain for the price of a stamp is no longer accurate, since many of the complaints are now by email;
  - ▶ Society is becoming increasingly blame oriented.
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# Alternate Dispute Resolution Process

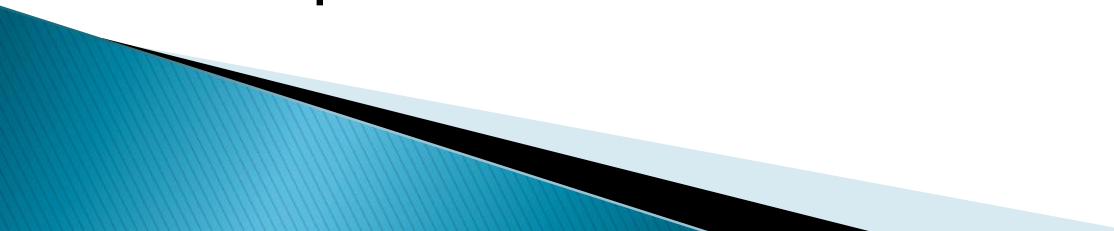
- The RCDS has targeted a certain percentage of the complaints as appropriate for alternate dispute resolution. These are typically less serious complaints, or ones concerning communication issues or money.
  - The Registrar estimates that approximately 125 complaints a year may be directed to ADR. ADR is a voluntary and confidential program for the resolution of complaints by a negotiated settlement, as an alternative to the formal investigation process.
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# How does ADR work?

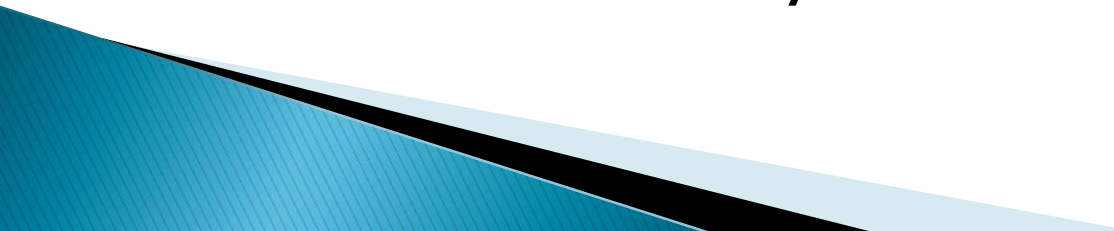
A facilitator will meet with the patient and the dentist in a respectful and confidential way, at the RCDS to attempt to reach a settlement.



# Strategies at ADR


- ▶ The RCDS recently changed their procedures so that matters going to ADR will not require a formal written response from the Dentist.
  - ▶ The CDPA covers legal fees for their members to attend ADR, if approved.
  - ▶ The results at ADR can vary widely depending on the sophistication of the patient, and the facts.
  - ▶ Negotiated resolutions don't necessarily involve the payment of money, although this is most typical.
  - ▶ If a dentist pays money, the patient will have to provide a release that will operate to prohibit the patient subsequently suing the dentist for malpractice.
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# Benefits of ADR

- ▶ ADR is usually much faster than the complaints process
  - ▶ There is less correspondence and documentation involved.
  - ▶ There is no right of appeal for the patient concerning the final settlement.
  - ▶ Most importantly from a legal standpoint, the ICRC will never make a decision on the merits of any complaint which raises clinical dentistry issues.
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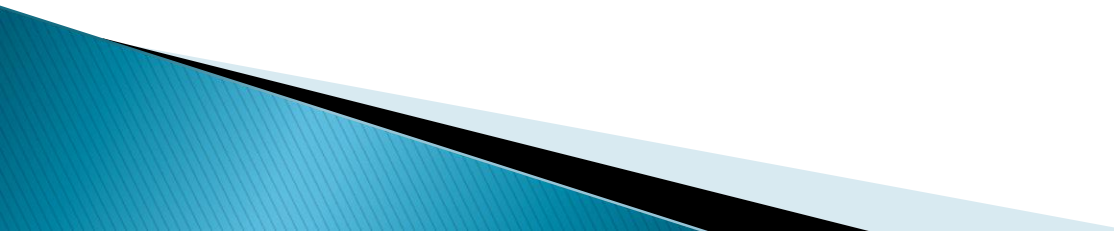
# Benefits of ADR

con't.


- ▶ Given the ICRC's right to review prior histories, it is essential that dentists take every step possible to avoid having any prior ICRC decisions, even if the decision is favourable to the dentist.
  - ▶ Although a dentist may be of the opinion that he or she did nothing wrong in respect of a complaint, it is possible that the ICRC may spot a dental issue, and order that the dentist take courses and have practice monitoring. If the matter can be resolved at ADR, this risk is avoided.
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# How is the ICRC dealing with prior complaint histories?

- ▶ In June of 2009 the *Regulated Health Professions Act* and Health Professions Procedural Code were amended to require the ICRC to consider prior RCDS decisions.
  - ▶ Typically this means that where there are prior Complaints Committee decisions concerning that dentist, the ICRC may in the appropriate circumstance review the prior history.
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# How is the ICRC dealing with prior complaint histories? Con't.

- ▶ We are advised that the current process at the RCDS is if the ICRC panel is not going to take any action in respect of a complaint, it will not review the prior history.
  - ▶ However, if the ICRC is considering making an order either cautioning the dentist or ordering the dentist to take courses or to have practice monitoring, or contemplating a referral to the Discipline Committee, then the ICRC can review the prior history.
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# Risks arising from Prior History

- ▶ For those dentists who have numerous prior Complaints Committee decisions, even decisions that dismissed their complaints, there is always the risk that the ICRC will form the impression that the current complaint may have merit, or may reflect problems previously identified by other Complaints Committees.
  - ▶ In one notable instance, the ICRC reviewed a prior undertaking that the dentist had signed, and proposed a resolution of a complaint that would require the dentist to stop practicing entirely pending a global assessment of the dentist's skills.
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# Risks existing from Prior History con't.

- ▶ One could only conclude that the ICRC in that instance was very troubled by the prior history, even though the prior history did not involve a referral to the Discipline Committee.

# Benefits arising from Prior History

- ▶ In another recent case the ICRC actually used the prior history in the dentist's favour. A dentist had undergone a previous ICRC complaint process which required that dentist to take courses in endodontics.
  - ▶ When a new complaint arose involving endodontics, the ICRC criticized the dentist's endodontics. However relying on the prior history, the ICRC noted that the dentist had recently taken a course in endodontics and there was no sense in making the dentist do the course again.
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# Emerging Trends at the ICRC

- ▶ As you are aware the RCDS elections recently took place, so that there are numerous new panel members on the ICRC.
- ▶ There has been a more benevolent approach taken with dentists recently.

## Examples:

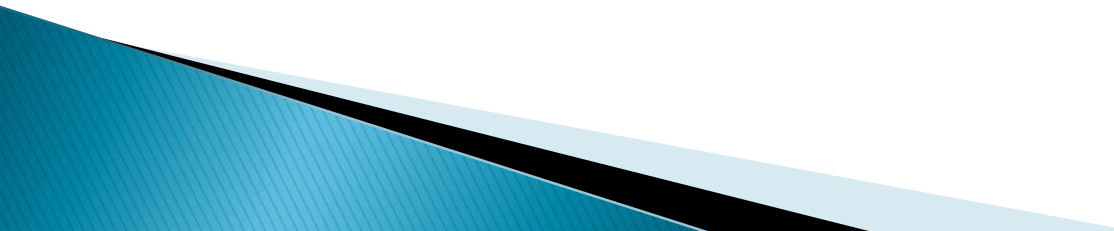
- Wrongful administration of medication leading to allergic reaction.
- Poorly completed endodontic procedure.
- Removal of wisdom teeth by an oral surgeon without an endo consult.
- Previously, these types of findings would have resulted in a disposition requiring the dentist to take courses, and practice monitoring.

# Recent Developments with respect to the issues of dentists treating their spouse

What are the new developments?

- ▶ The February, 2010 Leering Decision of the Ontario Court of Appeal confirms that a Regulated Health Professional in Ontario cannot have a sexual relationship with a patient, even his or her spouse, no matter what the context.

# Recent Developments with respect to the issues of dentists treating their spouse con't.

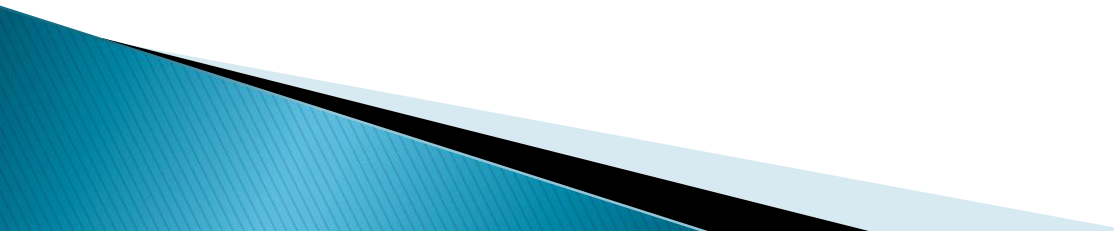
- ▶ Previously, the Ministry of Health had written a letter to the RCDS in 1995 confirming that the Ontario Ministry of Health would not consider Dentists treating their spouses a violation of the *Regulated Health Professions Act*. This letter resulted in the RCDS taking the position that a dentist treating his or her spouse was acceptable.
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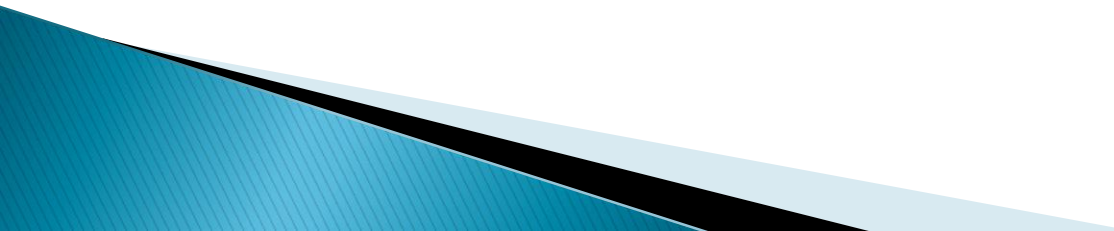
# Recent Developments with respect to the issues of dentists treating their spouse con't.

- ▶ This “amnesty” is now over, and as a result of Leering, the RCDS will have no discretion if it receives a complaint, to prosecute Dentists who are found to be treating their spouse and having a concurrent sexual relationship with their spouse.

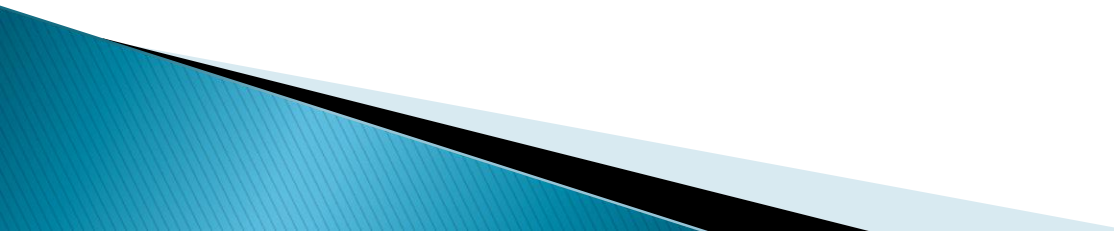
# Why is the Leering Decision relevant to Ontario's Dentists?

- ▶ *Regulated Health Professions Act* and Health Professionals Procedural Code applies to all regulated health professionals.
  - ▶ i.e. Dentists, physicians, psychologists, chiropractors, dental hygienists and nurses.
  - ▶ Ontario Court of Appeal analysis and reasoning in Leering will apply to any cases involving dentists because same legislation applies to dentists as well.
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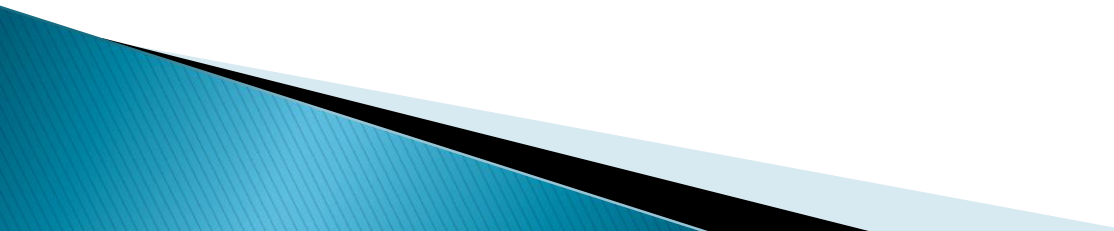
# Leering – The Facts

- ▶ The respondent was a chiropractor in Waterloo, Ontario and a member of the College since 1997. He and the complainant met in December 2004 and began a personal relationship, which became a sexual relationship. They moved in together about mid-March 2005.
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# Leering

- ▶ In April 2005, the complainant switched chiropractors and commenced regular chiropractic treatments with the respondent. She received 28 treatments between April and October 2005, both at the clinic and at home. He billed her, and although she did not pay, he marked her bills as paid and she submitted them to her insurer for reimbursement. When she received the money from the insurer, she would pass it on to the respondent.
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# Leering

- ▶ When their personal relationship ended in October 2005, the respondent attempted to collect the balance owing for his chiropractic services of \$567.00 from the complainant. When she refused to pay, he referred the account to a collection agency on November 17, 2005. When counsel for the complainant was unable to resolve the account matter with the respondent, she complained to the College. It was the College that determined that the respondent should be charged with sexual abuse.
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# What are the dentists' lobby groups doing?

- a) The RCDS has contacted the Ontario Minister of Health who has agreed that the Sexual Abuse Provisions in the Regulated Health Professions Act will be referred to the Health Professions Regulatory Advisory Council for further review of the zero tolerance provisions.
  - b) The RCDS will attend at HPRAC and make submissions that there should be an exemption for dentists treating their spouses.
  - c) The ODA has enlisted all dentists in Ontario to lobby their Provincial MLA candidates. The ODA promises to continue efforts to advocate for their members with respect to the zero tolerance issue.
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