

Bill 21 – *An Act to Protect Patient*



By [Jim Casey, QC](#) and [Katrina Haymond](#)

In June of 2018, Alberta Health issued a Discussion Document indicating that the Government was considering amendments to the *Health Professions Act* (HPA) to better protect patients from sexual abuse by health professionals. The Discussion Document requested specific information from each college relating to how complaints alleging sexual abuse are handled, and listed a number of potential “strategies” that it was considering as part of the legislative review. Many of the strategies appeared to have been “borrowed” from Ontario’s *Regulated Health Professions Act* (RHPA) where extensive provisions have been enacted with respect to sexual abuse.

Following this very short consultation process, the Minister of Health introduced Bill 21 – *An Act to Protect Patients* in the legislature on October 30, 2018. The Bill was quickly passed on first and second reading. It is unknown when third reading will occur.

Based on the Discussion Document, many colleges were deeply concerned that some of the strategies that were being considered were ultimately not in the best interests of patients, and may create serious difficulties in managing complaints. Some of the concerns that colleges identified included:

- The adoption of a single definition of “sexual abuse” which would mean that all misconduct of a sexual nature would fall into one category, regardless of whether the conduct consists of inappropriate sexual remarks or physical contact;
- Adopting a fixed definition of “patient” in the legislation, which would mean that the same rules would apply to all relationships between regulated members and patients, regardless of the nature and degree of the power imbalance; and
- Increasing the quorum requirements for public members to 50%, which would deprive the hearing tribunal of valuable expertise needed to assess issues that frequently arise in cases where sexual misconduct is alleged, such as whether touching that occurred was part of necessary treatment.

In addition, some colleges were concerned that the legislation would go even further than the provisions in the RHPA, by requiring complaints relating to sexual abuse to be investigated and adjudicated by an independent agency. This was largely seen as

practically unworkable, given that it is rare for sexual abuse allegations to exist in isolation, and there are typically competence related issues that are coupled with allegations of sexual abuse. Moreover, these types of provisions would be a significant intrusion on self-regulation.

Key Features of Bill 21

Given these concerns, colleges have been anxiously awaiting the introduction of Bill 21, to determine how it will impact the unprofessional conduct process established in Part 4 of the HPA. Overall, the provisions in Bill 21 are consistent with the policy objectives indicated by Government, which are two-fold: to create enhanced transparency, and to create additional measures to protect patients from sexual abuse by regulated members of the health professions. In addition, the Government did not implement the provisions addressed above that generated concerns by Colleges.

While a full description of the proposed amendments is beyond the scope of this article, some of the key features of Bill 21 include:

- All applicants seeking registration as a regulated member must provide a criminal records check, and must provide additional information if they have been registered as a regulated member in another jurisdiction (e.g. previous findings of unprofessional conduct).
- When any complaint is investigated, the investigator (or Complaints Director) must interview the complainant (subject to limited exceptions).
- There are separate definitions for “sexual abuse” and “sexual misconduct”. Sexual abuse relates to physical acts, and sexual misconduct consists of objectionable conduct, behavior or remarks.
- Where the allegations relate to sexual abuse or sexual misconduct, the hearing director must appoint at least one member to the hearing tribunal that has the same gender identity as the patient.
- If the hearing tribunal finds that the member has engaged in sexual abuse, the hearing tribunal must order cancellation.
- If the hearing tribunal finds that the member has engaged in sexual misconduct, the hearing tribunal must suspend the investigated person’s practice permit (but has discretion to determine the length of the suspension).
- Hearing tribunals cannot impose gender based conditions following a finding of sexual abuse or sexual misconduct.
- If the regulated member is found guilty of sexual abuse in another jurisdiction, the Registrar must cancel the registration and practice permit. If the regulated member is found guilty of sexual misconduct in another jurisdiction, the Registrar must suspend the member’s practice permit (but has discretion to determine the length of the suspension).
- Increased information must be included in the college’s register, and published on the college’s website, in a manner that is easily accessible.
- Regulated members may request correction of information on the college’s public register.
- Colleges must develop standards of practice regarding (1) who is considered to be a “patient”, (2) when there can be a sexual relationship between a regulated member and a former patient; and (3) when a spouse may also be a patient. These standards of practice must be approved by the Minister.
- Colleges must develop a patient relations program, and must make funding available to complainants for counselling, if they allege that they have been the victim of sexual abuse or sexual misconduct.

While Bill 21 is generally consistent with the Government's policy objectives, there are some significant drafting issues that may be problematic for colleges if the legislation is proclaimed in force as currently worded. For example the definition of "sexual abuse" states that the conduct must be of a sexual nature, and must have "caused or is likely to cause physical or psychological injury or harm to the patient." This provision makes it difficult to establish sexual abuse, where the regulated member and the patient have engaged in a so-called "consensual" relationship. While the college may be able to establish that one of the prohibited acts occurred, the college may not be able to establish harm or likely harm, in which case the hearing tribunal must find that the allegation is not proven.

There are other concerns with respect to some of the provisions in Bill 21 as currently drafted, which may create difficulties for the colleges in interpreting and applying the legislation.

Transitional Provisions and Coming into Force

Bill 21 states that complaints that are not "fully disposed of" before Bill 21 is proclaimed in force must be dealt with in accordance with the current provisions in the HPA.

Most of the amendments are expected to be in force on April 1, 2019. However, some of the provisions will come into force on other dates.

Implementation Plan

Bill 21 is by far the most significant set of amendments to the *Health Professions Act* in its 17 year history. Bill 21 will have a very significant impact on every college regulated under the HPA, including those which do not receive many complaints alleging sexual abuse or sexual misconduct. Colleges need to immediately start developing a plan to comply with Bill 21 since most (but not all) of the legislation comes into effect April 1, 2019. Each College should develop an implementation plan. Here are some of the steps that are necessary to implement and comply with Bill 21:

- **Analysis:** Conduct or obtain a detailed analysis of Bill 21 and assess the impact on your college.
- **Amendments to Bill 21:** If your college wishes to suggest any potential amendments to Bill 21, then you need to do so very, very quickly. The window on any potential amendments is quickly closing. The Bill has already passed second reading. We do not know if there will be amendments to Bill 21. If there are, assess the impact.
- **Standards of Practice:** one of the positive aspects of Bill 21 is that it does not attempt to establish a standardized set of rules for all the professions concerning sexual relationships with former patients/clients and providing health services to spouses. Instead, each college is required to develop Standards of Practice in this area. Colleges need to urgently start work on the standards of practice since the issues are complex and the standards of practice must come into effect on or before March 31, 2019, and must be developed following a consultation with membership, stakeholders, and the Minister. These standards of practice require approval of the Minister.
- **Patient Relations Program:** Colleges will need to start developing a

Patient Relations Program that complies with the legislation.

- **Funding for Treatment and Counselling:** Colleges must provide funding for treatment and counselling for those who file complaints alleging sexual abuse and sexual misconduct or meet the requirements in the Regulations. The details of the funding program will be in the Regulation which is currently being developed. Colleges need to engage with the Government to ensure that a workable program for funding treatment and counselling is developed.
- **Training:** The Patient Relations Program must include a training program for college staff, Council, and members of hearing tribunals. Training must focus on measures to prevent and address sexual abuse and sexual misconduct. In addition hearing tribunal members will need to be trained on the specifics of the legislation as it affects hearings concerning sexual abuse or sexual misconduct. Field Law's Professional Regulatory Group is currently assessing how it can assist with the required training.
- **Registration and Renewal Information:** One of the policy directions of Bill 21 is to increase the amount of information on the public register concerning criminal records, discipline history, and civil claims. Review your application and renewal process to ensure that you will start collecting the required information on the date this section comes into effect.
- **Discipline Processes:** Change your discipline processes once Bill 21 comes into effect to address the new processes for sexual assault and sexual misconduct cases and to address the new processes that apply to all types of complaints.
- **Transition of Discipline Cases:** Colleges need to develop plans to clearly identify which complaints are covered by current provisions and which will be covered by the new provisions in Bill 21.
- **Reporting Obligations on Employers:** Employers (as broadly defined in the HPA) need to put processes into place to comply with the expanded reporting obligations with respect to sexual abuse and sexual misconduct. Colleges should consider developing a communication plan to advise employers of the new obligations.
- **Self-Reporting:** Colleges need to communicate to their members about the obligations to self-report.
- **Reporting Other Health Professionals:** Colleges need to communicate to their members about the legal obligation to report other health professionals concerning sexual abuse and sexual misconduct. There is some ambiguity in the section on when precisely reporting is required but the membership will require practical advice about when they need to report.
- **Websites:** One of the policy objectives of Bill 21 is to transform College websites into an effective public portal where a significant amount of substantive information can be easily accessed. Bill 21 contains detailed requirements for College websites and mandatory provisions concerning the information that must be included on the website. Colleges need to review the provisions in Bill 21 and ensure that the College can launch the new

information on their website on the required date.

Field Law's [Professional Regulatory Group](#) can assist colleges with all aspects of implementing Bill 21. Contact [Jim Casey](#) or [Katrina Haymond](#) or any member of our Professional Regulatory Group for information. In addition, we are developing a half day workshop to be presented to the staff of individual colleges to help them develop an implementation plan that works for their college. Contact Jim or Katrina for more information.

New Workshop: Fundamentals of Governance - An Introduction for Council

Effective governance is one of the great challenges for professional regulatory organizations. In order to assist regulators, our Professional Regulatory Group has developed a half-day workshop to provide governance training for members of Council. The workshop is presented at an introductory level and addresses the 10 key principles of good governance for Council. Regulators interested in discussing the workshop are invited to contact Jim Casey.

Please [click here](#) for information on other training offered by our Professional Regulatory Group, and view our [website](#) for a schedule of upcoming and available webinars.

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