

# MILLER THOMSON LLP

Barristers & Solicitors  
Patent & Trade-Mark Agents

This Presentation is provided as an information service to our clients and is a summary of current legal issues. The Presentation is not meant as legal opinions and readers are cautioned not to act on information provided in this document without seeking specific legal advice with respect to their unique circumstances.

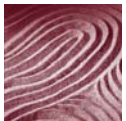
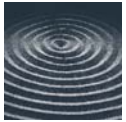
## The New Complaints and Investigations Process under the RHPA

Janela Jovellano



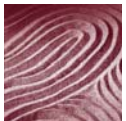
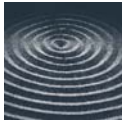
December 5, 2007

# Presentation Overview



- Bill 171 – *Health Systems Improvement Act, 2007*
- Functions of the new Inquiries, Complaints and Reports Committee
- Changes under Bill 171
- Access to Information on Members
- Q&A

# Bill 171 – *Health Systems Improvement Act*



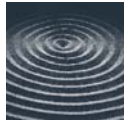
- Achieved Royal Assent in June 2007
- Objectives of Bill 171
- Amendments to over 40 statutes including RHPA
  - Why are changes being made to the RHPA?

# The New Complaints and Investigations Process

- Reasons for changes to complaints process
  - Communication to complainants
  - Varied administration of complaints process



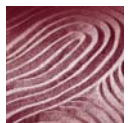
# Functions of the ICR Committee



- Creation of the Inquiries, Complaints and Reports Committee (ICR)



- Functions of the ICR Committee formerly belonging to the Executive Committee



- ICR Committee as single entry-point of all information



# Functions of the ICR Committee

- ICR Functions

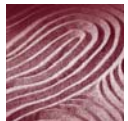
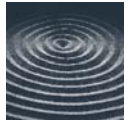
- receives all member-specific complaints and reports
- conducts initial investigations re: inquiries, complaints and reports
- conducts practice assessments
- requests Registrar to appoint investigator, receives report
- facilitates informal resolution, approves settlements
- disposes of inquiries, complaints and reports by dismissal, resolution or referral to Discipline Committee or Fitness to Practice Committee
- accepts voluntary undertakings and may require members to undertake specified continuing education or remediation activities
- makes interim suspension and practice limitation orders
- provides information, status reports and decision to complainant, reporter and member
- monitors and evaluates and reports on ICR process, compliance and outcomes



# Powers of the ICR Committee

- Powers related to a range of issues
- Interim orders
- Assessments: Physical, psychological, practice-related
- Imposition of terms, conditions or limitations on a member's certificate

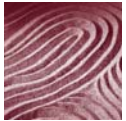
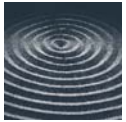
# Investigations



- Panel for Investigations
  - Investigates complaints or considers reports
  - Composition of Panel
- Notice of Complaint to Member
- Member may make written submissions



# Investigations



- Initial investigation by ICR includes:
  - Obtaining statements from witnesses
  - Obtaining copies of relevant documents
  - Obtaining information from the Register
  - Obtaining a patient's chart
  - Obtaining professional's billing information
  - Approaching the member's colleagues, staff or other person
  - Conducting a practice assessment
  - Other information gathering

# Investigations

- After investigating a complaint or considering a report and considering the submissions of the member the ICR Committee may:
  - Refer the member to a panel of the ICR Committee under section 58 for incapacity proceedings;
  - Require the member to appear before a panel of the ICR Committee to be cautioned; or
  - Take action it considers appropriate that is not inconsistent with the health profession Act, the Code, the regulations or by-laws.

# Investigations

- ICR Committee may choose one of the following dispositions:

- Dismissal of the matter
- Facilitation of a resolution
- Approval of informal resolutions, settlement or agreements
- Cautioning a member
- Disposal of the matter (including accepting undertakings or remediation)
- Request the Registrar to appoint an investigator
- Referral to the Discipline Committee
- Referral to the Fitness to Practice Committee

# Investigations

- Notice of Decision

- For Complaints

- Copy of decision to complainant and member and reasons if member cautioned or panel took action it considered appropriate

- For Reports

- Member receives copy of decision and copy of reasons if cautioned or panel took action it considered appropriate

# Investigations

- Timing of Investigations
  - 14 day requirement for College to notify members of a complaint
  - Expansion of time for college to investigate a complaint from 120 days to 150 days



# Health Professions Appeal and Review Board

- Board may
  - consider written reasons for delay
  - conduct an investigation
  - may appoint an investigator
  - exercise review powers if requested by ICR Committee

# Changes Under Bill 171

- Mandatory Reporting Obligations
  - Reporting of members who are incompetent or incapacitated significantly enough to require restrictions to practice
  - Report must be filed within 30 days unless there is an urgent need for intervention, in which case the report must be filed immediately
  - Increased Fines for Non-Reporting

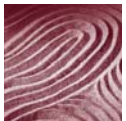
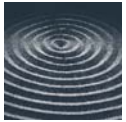


# Changes under Bill 171

- Self-Reporting Obligations
  - Members must report
    - Any findings by a court of having committed a criminal offence
    - Findings of professional negligence or malpractice must also be reported
  - Mandatory reports must be made as soon as reasonably practicable after the member receives notice of the finding made against him or her

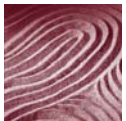
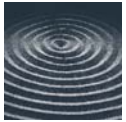


# Changes under Bill 171



- ADR Process Now Formalized
  - Initiated by the Registrar
  - Requires consent of both complainant and member
  - ICR has power to reject resolution and continue with its investigation
    - If at any point in the process a settlement cannot be reached, the normal processes of the ICR Committee commence
  - Discussions are without prejudice and must be kept confidential from all other processes both within and outside of the college

# Changes under Bill 171



- Applications to Superior Court of Justice
  - College permitted to apply for an order made by a panel of the Discipline Committee on the grounds of professional misconduct
  - Order would direct the Registrar to:
    - revoke, suspend or impose terms, conditions or limitations on a member's certificate to take effect immediately despite any appeal if the conduct of the member exposes or is likely to expose his or her patients to harm or injury and urgent intervention is needed



# Access to Information on Members

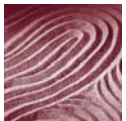
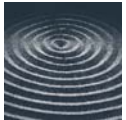
- College Websites
  - Any information prescribed by the Minister, including:
    - Findings of malpractice and professional negligence against one of its members
    - Any findings of professional misconduct
    - All matters referred to its discipline committee and result of findings by the Discipline Committee and Fitness to Practice Committee (including synopsis of the decision)
    - Every suspension or revocation of a member's certificate of registration
    - Reprimands, fines and suspended orders are also required to be recorded
  - Exception to information on website: information that might jeopardize the safety of an individual



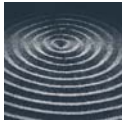
## Access to Information on Members

- Information accessible to public must be made available to any person during normal business hours
- Health colleges now have freedom to confirm publicly whether a member is under investigation where the public may be at risk

# Conclusion



- Provisions do not take effect until June 4, 2009 or on an earlier date proclaimed by the Minister
- Effect of changes
  - Greater ministerial oversight over individual Colleges
  - Having single body conduct all investigations will ideally reduce chances of inconsistent and uncoordinated handling of concerns
  - Increasing transparency and accountability of Colleges re: access to information



Questions?  
THANK YOU