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COMMUNIQUÉ
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BILL 8: AN ILLUSIONARY ACCOUNTABILITY?

Kathryn Frelick
Toronto
Tel. 416.595.2979
kfrelick@millerthomson.ca

Joshua Liswood
Toronto
Tel. 416.595.8525
jliswood@millerthomson.ca

Catharine Schiller
Toronto
Tel. 416.595.8638
cschiller@millerthomson.ca

Bill 8, the *Commitment to the Future of Medicare Act, 2003* is currently being debated before the Standing Committee on Justice and Social Policy. There is growing criticism in the health industry about the scope and mandate of the Bill and the manner in which it purports to achieve its stated goals. The objectives are laudable: to support the five key principles of the *Canada Health Act,* to enshrine a sixth principle of accountability and to preserve the public health care system. There is little question that most Canadians cherish these values.

Unfortunately, the Bill as drafted simply does not achieve these goals and could seriously undermine the very objectives it seeks to attain. On February 16, 2004, George Smitherman, the Minister of Health and Long-Term Care (MOHLTC) opened the public hearings on Bill 8 by acknowledging that a number of changes must be made to this Bill. Some of these "potential changes" have been shared with stakeholders, however, the actual wording of these proposed amendments has not yet been provided.

It is our view that even with the acknowledged changes, certain portions of the Bill, and in particular Part III (which deals with accountability) and Part II (which deals with physician funding agreements) are so fundamentally flawed as to be unworkable. A full analysis of the legislation is beyond the scope of this *Communiqué*. However, from a policy perspective, this legislation appears to be directly contrary to the existing principles upon which accountability is enshrined. It fails to recognize the strengths of our system and to enhance and build upon those strengths, and in particular:

- The need to preserve and enhance voluntary corporate governance models which have built-in accountability structures and to ensure that the roles of management and governance are separate and distinct. The proposed model seriously undermines long-standing and accepted roles of the governing board and management.

- Recognition of the existing oversight mechanism under the *Public Hospitals* Act that allows the MOHLTC to intervene in the "public interest" in certain circumstances. Bill 8 does not require the MOHLTC to act in the public interest and, in fact, gives the Minister *carte blanche* authority to direct a health service provider to do or refrain from doing anything.

- The need for two-way, mutual accountability. The legislation contemplates that the health industry will be accountable to the MOHLTC. It does not reflect a collaborative or negotiated process, but rather, allows the MOHLTC to unilaterally direct health service providers to enter into vaguely defined accountability agreements and further, to issue broad compliance directions. Accountability agreements should truly be negotiated, not compelled by legislation.

- While the MOHLTC is taking on greater responsibility in directing the performance and actions of the health industry, liabilities of existing organizations continue to exist. In contrast, the MOHLTC is statutorily immune from liability. The net effect is less accountability to the public for decisions and decision-making. Further, with board members continuing to be responsible for matters which are outside their control, the ability of the health industry to attract and retain qualified voluntary directors could be seriously impacted.

- CEOs and Executive Directors are directly accountable to their Boards and are increasingly subject to performance reviews on a voluntarily basis. In our view, the unprecedented provisions which allow the government to unilaterally interfere in independent contractual relations with CEOs, including the ability to reduce their compensation, is draconian and unnecessarily punitive. Further, these provisions potentially place such individuals in a position of conflict and could undermine the ability of the health industry to recruit and retain qualified executive leadership.

Our office attended yesterday's committee hearings which included submissions from the Ontario Hospital Association, among other organizations, and we have been following the submissions from various stakeholders. We recognize that many organizations are in a somewhat untenable position as "health resource providers" who receive government funding. Further, many of them are currently in the process of "negotiating" with the Ministry of Health and Long-Term Care on key issues. Having said this, it was our impression that a number of submissions simply did not go far enough to address the deficiencies in this legislation.

In terms of steps that the health industry can take, written submissions will be accepted by the Committee up until March 5, 2004. On March 9, 2004, the Bill is scheduled for clause by clause consideration, at which time the Committee will consider and finalize proposed amendments. Individuals and organizations are encouraged to make submissions during this legislative process. While certain provisions may well be subject to legal challenge, we note that it can be very difficult to challenge such provisions after the fact.

As always, we would be pleased to discuss the implications of this Bill and to assist you with any of your advocacy efforts.

ABOUT THE AUTHORS:

Kathryn Frelick, Josh Liswood and Catharine Schiller are lawyers practicing in our Health Industry Practice Group.

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REGIONAL CONTACTS

Toronto/Markham
Joshua Liswood
jliswood@millerthomson.ca

Kathryn Frelick
kfrelick@millerthomson.ca

Waterloo-Wellington
Gregory P. Hanmer
ghanmer@millerthomson.ca

Calgary
Bryan R. Ede
bede@millerthomson.ca

Edmonton
Brian Curial
bcurial@millerthomson.ca

Vancouver
David Martin
dmartin@millerthomson.ca

Miltom Consulting Inc.
Dr. Isser Dubinsky
idubinsky@miltomconsulting.com