



THE
COLLEGE
OF
PHYSICIANS
AND
SURGEONS
OF
ONTARIO

Remarks by the College of Physicians and
Surgeons of Ontario to the Justice Policy
Committee on Bill 115, the *Coroners
Amendment Act*

March 12, 2009

- Thank you for this opportunity to appear before the committee. I am Ray Koka, President of the College. I have practised psychiatry for more than 20 years. With me today are Dr. Rocco Gerace, Registrar, Carolyn Silver, Counsel and Amy Block, Counsel.
- We are pleased to attend today to present on behalf of the College on Bill 115, the *Coroners Amendment Act*.
- The College of Physicians and Surgeons of Ontario agrees with the principles behind the Bill and supports the legislation. However, we believe that the Bill could be improved in a few discrete areas and I will outline these shortly.
- As Minister Bartolucci said when he introduced the Bill, the purpose of the legislation is to enhance oversight, accountability and transparency in Ontario's coroners system, consistent with the Goudge report.
- When releasing his report, Commissioner Goudge said that it is "vital that major changes be made in the institutional arrangements within which forensic pathology is practiced in Ontario. This is necessary if there are to be proper structures for oversight and accountability." We agree.
- Commissioner Goudge recognized that the tragic story of pediatric forensic pathology in Ontario was not just a story of the failings of one pathologist; it was equally the story of failed oversight. As Commissioner Goudge noted, the oversight and accountability mechanisms that existed were not only inadequate to the task but were also inadequately employed.
- As you know, enhanced communication between the Coroners Office and the College to ensure adequate regulatory oversight of coroners and pathologist was among the very important recommendations of the Goudge report.
- The College believes that enhanced communication is an important part of transparency and that timely information-sharing amongst key players in the system will promote accountability and reduce the likelihood of system failure.
- Bill 115 strengthens oversight of the Coroner's Office. The proposed legislation creates a new body, the Death Investigation Oversight Council. The new Oversight Council would oversee the work of the Chief Coroner and the Chief Forensic Pathologist and hold them accountable for the quality of death investigations in Ontario.
- Bill 115 also creates a new complaints committee. As we understand it, the committee will generally refer complaints about coroners to the Chief Coroner and complaints about pathologist to the Chief Forensic Pathologist. It will

deal with complaints about the Chief Coroner and the Chief Forensic Pathologist and will review complaints handled by them where the complainant is not satisfied with the outcome. The complaints committee will also refer complaints about coroners and pathologists to the College of Physicians and Surgeons where it is of the opinion that it is more appropriately dealt with in that manner.

- The College supports this new oversight structure. The Oversight Council and the complaints committee go considerable distance in advancing Commissioner Goudge's recommendations.
- However, we believe that other provisions in the legislation need to go further in order to promote communication, transparency and ultimately—effective oversight.
- In particular, we are asking the committee to amend Bill 115 in two areas. Both amendments are designed to enhance communication between the College and the Coroner's Office.
- The first proposed amendment would ensure that legal confidentiality requirements do not unduly inhibit information-sharing between the Coroner's Office and the College.
- The second proposed amendment would require the Coroner's Office to notify the College where it has reasonable grounds to believe that a coroner, pathologist or any other member of the College (acting under powers or duties under section 28) has committed an act of professional misconduct, is incompetent, or is incapacitated.

First Amendment: Disclosure Permissive

- The first amendment relates to the general duty to maintain confidentiality that is set out in proposed section 8.3(1)(1). This provision requires every member and employee of the Oversight Council and of the complaints committee to keep confidential all information that comes to his or her knowledge in the course of performing his or her duties.
- A narrow exception is outlined in section 8.3(2) and permits disclosure only for the purposes of administration of the *Coroners Act*.
- We are concerned that the broad requirement for members and employees of the Oversight Council and complaints committee of the Coroner's Office to maintain confidentiality may unintentionally inhibit the sharing of important information between the Coroner's Office and the College.

- We are concerned that there may be circumstances where disclosure required for the administration of the *Regulated Health Professions Act* would not fall within the exception in section 8.3(2).
- In such circumstances, the Oversight Council and complaints committee may be prohibited from sharing potentially vital information with the College. The inability to disclose important information could be contrary to the public interest and lead to the type of outcome that Bill 115 and the Goudge Report were intended to prevent.
- To ensure that the Coroner's Office is able to share such information with the College, we recommend that the legislation be amended. We have attached specific wording of the amendment to proposed section 8.3(2) which we believe would remedy this shortcoming of the legislation to our presentation.
- In simple terms, our proposed amendment would permit disclosure for the purpose of administration of both the *Coroners Act* and the *Regulated Health Professions Act*.
- The College is also under a duty of confidentiality under the *Regulated Health Professions Act*. One of the exceptions permitting disclosure is "as may be required for the administration of the ... Coroners Act". Our proposed amendment to Bill 115 mirrors this.

Second Amendment: Positive Obligation to Disclose

- Our second amendment relates to the positive obligation to share information between the Chief Coroner, the Chief Forensic Pathologist and the College.
- We are concerned that there is nothing in the legislation that imposes a positive obligation on the Coroner's office to report to the College when there are reasonable grounds to believe a coroner, pathologist or any other member of the College of Physicians and Surgeons of Ontario acting under powers or duties under section 28 has committed an act of professional misconduct, is incompetent, or is incapacitated.
- Disclosure to the College in these circumstances should not only be permissible, but in the College's view, and in the spirit of Commissioner Goudge's findings, disclosure should be required. There should be a positive obligation on both the College and the Coroner's Office to disclose information to each other in these circumstances.
- As the legislation is presently drafted, there is a positive obligation on the College to disclose information to the Coroner's Office. Section 3(3) of the

Coroners Act requires the College to forthwith notify the Chief Coroner where the license of a coroner for the practice of medicine is revoked, suspended or cancelled.

- Bill 115 will impose the same reporting obligation on the College for pathologists.
- However, there is no positive obligation on the Chief Coroner, the Chief Forensic Pathologist or the complaints committee to disclose information to the College.
- Accordingly, the College recommends that Bill 115 be amended to impose a requirement on the Coroner's Office to notify the College where the Chief Coroner, the Chief Forensic Pathologist or the complaints committee have reasonable grounds to believe that a coroner, pathologist or any other member of the College acting under powers or duties under section 28 has committed an act of professional misconduct, is incompetent, or is incapacitated.
- Under our proposed amendment, the Coroner's Office would also have a duty to notify the College where the duties of a coroner, pathologist or any other member of the College acting under powers or duties under section 28 are restricted, or where he/she is subject to supervision or has been terminated as a result of concerns regarding his/her clinical or professional activities or conduct; or where he/she resigns in the course of an investigation into his/her clinical or professional activities or conduct.
- Under our proposal, the College would have a "mirror" duty to notify the Coroner's office where it had reasonable grounds to believe that a coroner, pathologist or any other member of the College acting under powers or duties under section 28 had committed an act of professional misconduct, was incompetent or incapacitated or had resigned in the course of an investigation into his/her clinical or professional activities or conduct.
- We believe the College's proposed amendments are in the public interest and are consistent with the purpose of Bill 115 and the Goudge report.
- Thank you for the opportunity to present to the Committee. We would be pleased to answer any questions you may have.

PROPOSED AMENDMENTS TO BILL 115, THE CORONERS AMENDMENT ACT

Amend proposed section 8.3(2) to read as follows:

An individual described in subsection (1) may disclose confidential information for the purposes of the administration of this Act and of the *Regulated Health Professions Act*, 1991, S.O. 1991, c. 18.

Add a new section to Bill 115 as follows:

The Chief Coroner, the Chief Forensic Pathologist and the complaints committee shall forthwith notify the Registrar of the College of Physicians and Surgeons of Ontario where:

- (a) the Chief Coroner, the Chief Forensic Pathologist or the complaints committee have reasonable grounds to believe that a coroner, pathologist or any other member of the College of Physicians and Surgeons of Ontario acting under powers or duties under section 28 has committed an act of professional misconduct, is incompetent, or is incapacitated;
- (b) the duties of a coroner, pathologist or any other member of the College of Physicians and Surgeons of Ontario acting under powers or duties under section 28 are restricted, subject to supervision or terminated as a result of concerns regarding their clinical or professional activities or conduct; or,
- (c) a coroner, pathologist or any other member of the College of Physicians and Surgeons of Ontario acting under powers or duties under section 28 resigns in the course of an investigation into their clinical or professional activities or conduct.

Add a new section to Bill 115 as follows:

The Registrar of the College of Physicians and Surgeons of Ontario shall notify the Chief Coroner and the Chief Forensic Pathologist where:

- (a) the Registrar of the College of Physicians and Surgeons of Ontario has reasonable grounds to believe that a coroner, pathologist or any other member of the College of Physicians and Surgeons of Ontario acting under powers or duties under section 28 has committed an act of professional misconduct, is incompetent, or is incapacitated;
- (b) a coroner, pathologist or any other member of the College of Physicians and Surgeons of Ontario acting under powers or duties under section 28 resigns in the course of an investigation into their clinical or professional activities or conduct.