



February 8, 2007

Ms. Julia Munro
Chair
Standing Committee on Government Agencies
Room 1405, Whitney Block
99 Wellesley Street West
Toronto, ON M7A 1A2

Dear Ms. Munro:

**RE: Review of the Operation of Various Ontario Agencies, Boards and Commissions,
including the Health Professions Appeal and Review Board**

Thank you for the opportunity to provide input during your review of certain government agencies, boards and commissions. I am writing today to address the issue of access to the Health Professions Appeal and Review Board (the Board) and the difficulties that individuals must overcome in order to participate fully in the appeal process. Our comments, although specific to the Health Professions Appeal and Review Board, are applicable to all government agencies, boards and commissions that exclusively hold their hearings in Toronto.

The correlation between poverty and mental illness is well established and many of our clients have low or fixed incomes and fail to achieve an adequate standard of living. When one of our clients launches a complaint against a regulated health professional, and that complaint reaches the Board, our client may be unable to participate in the hearing in person due to their financial circumstances. The Board provides no financial assistance to those who cannot afford to attend in person, which contributes to a power and resource imbalance because the other party is usually present at the hearing and frequently represented by legal counsel. Given the importance of the work of the Board, it is essential that clients are able to participate to the extent that they wish and are able to do so.

We suggest that the Standing Committee review this unfair practice against:

1. The requirements established in the *Regulated Health Professions Act (RHPA)*;
2. The review process itself; and
3. Legislative requirements to remove barriers to participation for Ontarians with disabilities, including those with mental illness.

We will now discuss each of these points in more detail.

1. *Regulated Health Professions Act*

Section 3 of the *RHPA* sets the standard that individuals be treated with sensitivity and respect in their dealings with health professionals, the Colleges and the Board. The power imbalance between regulated health professionals and those whom they serve is well recognized and has, in

fact, led to the development of processes that seek to bring balance to those relationships. We would argue that individuals may not be treated sensitively when they are unable to appear in person at the Board due to their financial circumstances.

We would also argue that our absent clients will not be afforded equal respect as that garnered by a regulated health professional, who can afford to hire a lawyer (or may even have a lawyer funded through their College) and pay travel costs. To offer our clients the opportunity to connect to the proceedings via teleconference is in and of itself unequal access to full participation in the process. Not being present in the room when the Board is considering the matter serves as a disadvantage and a further barrier to full participation. Individuals need to be financially supported to appear at the Board, which will, after all, afford one of their last opportunities to resolve their complaint.

2. The Review Process

According to the *Health Professionals Procedural Code*, parties requesting a review before the Board can comment on both the adequacy of the investigation that was conducted by the College and the reasonableness of the decision. The other party then has the opportunity to respond. Our clients are at an automatic disadvantage by their absence. The power imbalance that already exists between professionals and vulnerable patients may become more unequal where the client is unable to mount their argument in person. It begs the question as to whether both parties are truly equal if one is present but the other is not and one has a lawyer but the other does not.

3. Removing Barriers to Participation for Ontarians with Disabilities

The *Accessibility for Ontarians with Disabilities Act, 2005* and the *Ontarians with Disabilities Act, 2001 (ODA)* both promise to remove barriers to access and encourage full participation for all Ontarians. The *ODA* defines a barrier as “anything that prevents a person with a disability from fully participating in all aspects of society because of his or her disability, including a physical barrier, an architectural barrier, an information or communications barrier, an attitudinal barrier, a technological barrier, a policy or a practice.” Unfortunately, the current policy and practice of this Board in fact continues to replicate inequities, impose barriers to full and fair participation and potentially be in violation of the *ODA*. Some believe that the current practice is discriminatory to those who have disabilities, and are economically disadvantaged and unable to travel to Toronto to participate fully in the process that is intended to protect their rights.

For the review process to be respectful of those it serves, it must be sensitive to their specific accommodation needs, supporting their equitable participation in the process. Clients need to be afforded the opportunity to be physically present with others who are able to attend in person before the Board; this will allow them to fully engage and interact with other attendees and Board members. Participation by means of teleconference restricts communication solely to verbal content, where face-to-face communication encompasses the exchange of a far broader range of emotional and visual information. The inability to communicate in person can only serve to further disadvantage clients who will not have access to the same information as other participants who are able to communicate face-to-face. In the end, this disparity may skew the proceedings and undermine a client’s ability to effectively present submissions or arguments before the Board.

As part of your review, we recommend that you consider requiring agencies, boards and commissions that exclusively hold their hearings in Toronto to be responsible for assisting parties with travel costs so they can participate fully in the process. Such a “travel grant” or financial subsidy would address power imbalances, allow for in person attendance at proceedings and not contribute further to the financial hardship that many of the most vulnerable and marginalized individuals in our society face. If those who have limited or fixed incomes cannot participate fully in the process, they have a lower standard of rights protection than those with the financial and legal resources to attend hearings in person. While our comments have been directed to one board, as you can see, our recommendation is directed to all agencies, boards and commissions who operate in a similar circumstance.

Failure to respond adequately to legitimate complaints fails not only the wronged person but the public, the regulated professions and the government who must all have faith and confidence in the current review and appeal process.

Should you have any questions, please contact me at (416) 327-7004.

Sincerely,

A handwritten signature in black ink that reads "David Simpson". The signature is written in a cursive, flowing style.

David Simpson
Director (A)

c.c. Dawn Ogram, Assistant Deputy Minister, Corporate and Direct Services, MOHLTC