

## **Report of the Ad Hoc Committee for Alternate Dispute Resolution Final Draft – July 15, 2008**

This ad hoc committee was struck by P.A.M. Council after its October 30, 2007 Town Hall Meeting, during which some members raised concerns about what they viewed as limitations in the current Complaints process. In particular, members suggested that the process was often unsatisfying for complainant and psychologist alike, and wondered whether there were alternatives to the largely adversarial nature of the process.

Following the Town Hall Meeting we were asked by PAM Council to explore the potential for P.A.M. to implement some form of Alternate Dispute Resolution process when members of the public expressed concern to P.A.M. about Psychologists' actions. The committee was to determine, and make recommendations to P.A.M. Council about, whether certain types of public/psychologist disputes might be resolved without resort to the Adversarial Complaints process, but without compromising P.A.M.'s fundamental responsibility for protecting the public, or interfering with members of the public actually laying complaints against psychologists.

### **❖ Membership of the Committee**

- Initially, members of the committee were Dr. Jule Henderson (Chair), Dr. Elizabeth Adkins, Dr. Neal Anderson, Dr. Bailey Rayter, Dr. Dell Ducharme, and Dr. Jennifer Frain. Drs. Rayter and Frain provided input during early meetings and withdrew. Dr. Ducharme contributed a great deal to early meetings, but his travel schedule kept him away from later meetings.
- This report is therefore the work of Drs. Henderson, Adkins, and Anderson, who thank the others named above for their valuable contributions.

### **❖ Process**

- The ADR Committee met six times between February 9, 2008 and May 23, 2008, and consulted with key P.A.M. members on June 10 and June 20, 2008.
  - Drs. Jaye Miles (Chair, Discipline Committee), Dr. Joe Rallo (then outgoing Registrar), and Alan Slusky (then outgoing P.A.M. President and incoming Registrar) attended our March 7, 2008 meeting and answered specific questions we'd developed about P.A.M.'s Complaints Process as it currently operates, and about the current role of the P.A.M. Registrar, who stands as the Association's first point of contact for the public.
- During early meetings, we developed a set of tasks aimed at information gathering. We agreed that our recommendations needed to be based upon an extensive and as thorough as possible collection of information:
  - About the process through which P.A.M. currently manages complaints,
  - About how other professional bodies in Manitoba and elsewhere manage concerns or complaints, and
  - About some of the advantages and disadvantages of the various approaches.
- We developed a set of initial recommendations which we set out in a first draft.
- With this first draft as a reference, we consulted with Dr. Jaye Miles on June 10, 2008 and, on June 20, 2008, with Dr. Alan Slusky. We consulted in order to have the opportunity to run our thoughts by the people most closely involved with Discipline at P.A.M. and to consider their respective feedback before we finalized a report. We met

separately with Drs. Miles and Slusky because their schedules and ours did not allow for a single meeting. We were unable to arrange a meeting with Dr. Rallo.

- The final report you are reading takes into account the feedback we received in meetings with Drs. Miles and Slusky.

## Tasks

- **To clarify the mandate of the Complaints Committee** with respect to concerns or complaints about the conduct of psychologist members:
  - The central priority of the Complaints Committee, as part of a self-regulating profession, is to protect the public through the appropriate address of concerns about Psychologists' actions brought to P.A.M. by members of the public:
    - The Registrar receives complaints from the public and forwards them to the Complaints Committee; and
    - The Complaints Committee reviews and investigates complaints, laying charges against Psychologists where appropriate, dismissing complaints, etc.
  - As we understand it, P.A.M. drives the complaints process, as it were: the process is aimed at addressing allegations of inappropriate conduct by P.A.M. members as a means of protecting the public.
    - Customer satisfaction, as it were, is not a major priority of the complaints process, and it is not the central task of the Complaints Committee or P.A.M. to satisfy a complainant or his or her family, etc.
    - Nor is Psychologists' satisfaction with the Complaints process a central priority of P.A.M.
    - Although Psychologists against whom complaints are made, or a complainant, may feel more or less satisfied or dissatisfied with the outcome of a complaint process, best protection of the public is the central task of our Complaints process.
- **To clarify our understanding of how P.A.M.'s Complaints process currently operates**, and the opportunities for ADR currently available.
  - As mentioned above, Drs. Jaye Miles, Joe Rallo, and Alan Slusky attended an early meeting of this committee and answered questions about P.A.M.'s current Complaints Process, and about the current role of the P.A.M. Registrar.
  - We learned that the role of the Registrar is currently very limited with respect to his or her ability to provide input or opinion to members of the public who call with concerns about the alleged conduct of a Psychologist.
    - Often by telephone, the Registrar:
      - ◆ Listens to the general concern held by the member of the public;
      - ◆ Makes an initial determination around jurisdiction and if appropriate, informs the caller that P.A.M. has no jurisdiction with respect to the concern and directs the caller elsewhere as possible and appropriate;
      - ◆ Asks the caller whether he or she has discussed the concern directly with the psychologist and lets the caller know that such discussion may be helpful;
      - ◆ Asks the caller whether he or she wishes to make a formal complaint;
      - ◆ Receives a complaint from the member of the public should the person opt to make a formal complaint; and
      - ◆ Forwards the complaint to the Complaints Committee.

- Currently, the P.A.M. Registrar:
    - ◆ Does not facilitate communication between a potential complainant and a Psychologist, except to advise the potential complainant that such discussion may be useful;
    - ◆ Does not clarify with a potential complainant what kind(s) of resolution the complainant is seeking or believes is appropriate;
    - ◆ Does not contact the Psychologist with respect to a (potential) complainant's concern(s);
    - ◆ Does not indicate to a potential complainant that the concern raised is not grounds for a complaint;
    - ◆ Does not dismiss any complaint.
    - ◆ Although we initially understood Dr. Rallo to say that the Registrar never lays a complaint, and that the only way in which a complaint could ever be laid was if a member of the public laid it, we were corrected on the point by Dr. Slusky at our June 20 meeting. In Dr. Slusky's view, the P.A.M. Registrar most certainly can initiate a complaint against a Psychologist based upon information provided by someone else.
    - ◆ As we understand the current process, the role of the Registrar is essentially to make it as easy as possible for any member of the public to lay a complaint against a Psychologist should he or she wish to do so:
      - ◆ The Registrar does not discourage, and works to avoid the appearance of discouraging, a member of the public from lodging a complaint.
  - Mediation between complainant and psychologist has recently been added to the range of possible options for the Complaints Committee to consider during its deliberations around complaints, and this is obviously relevant to us as a committee looking at ADR.
  - We note that mediation has yet to be used by the Complaints Committee.
  - We took from meeting with Drs. Rallo, Slusky, and Miles on March 7, 2008 a general openness on the part of P.A.M. Council, Registrar, and Complaints Committee, to considering adjustments to the current ways of handling complaints.
- **To identify possible limitations of the current process**
- One consequence of the current process is that it provides no alternative to a concerned member of the public beyond laying a formal complaint, trying to speak with the Psychologist on his or her own, or not pursuing their concern.
  - **Timeliness:** Concerns about timeliness have been raised by both complainants and psychologists, and all involved with the work of this committee have agreed that it takes a long time for complaints to be dealt with and files closed.
  - **Flexibility:** There appears to be very little flexibility to the process as it currently stands. We have reviewed the current limits of the role of Registrar as we understand them, and we add that there is little flexibility built into our processes once a complaint has been reduced to writing and submitted to the Complaints Committee.
    - It has been suggested that it would be better not to apply the same formality to all complaints, insofar as perhaps not all complaints warrant such an approach.
  - **Exclusively Adversarial process:** It has been suggested that, to the extent the complaints process is essentially an adversarial process from the moment a complaint is filed, that opportunities for problem-solving, straight-forward acknowledgement of errors by psychologists, giving and receiving of education to improve practice, and

other methods of dispute resolution are lost to increasingly entrenched and positional argument.

- We wonder about the extent to which the current exclusively adversarial process actually *creates* controversy. Collaborative Divorce processes in Family Law assume that attempts to resolve differences between divorcing spouses through an adversarial or positional approach often only deepens disagreement, entrenches the respective sides, and even traumatizes participants.
- As mentioned above, the current process allows for mediation between Psychologist and Complainant, but this option arises late in the Complaints Process and after investigation of a complaint by the Complaints Committee. It seems likely to us that, given its timing so late in the process, mediation as it currently stands is unlikely to be helpful. At this late stage, both complainant and Psychologist have had time and good reason to become solidly enough entrenched in their positions that it is unlikely they will be able to use mediation well.

➤ **To gather information about ADR approaches used in other (especially Canadian) Psychology regulatory jurisdictions, as well as in other self-regulating professions (Law, Medicine, etc.) especially in Manitoba.**

- We have surveyed complaints processes used in Psychology in all Canadian Provinces and Territories, where information has been available. We have also reviewed the approaches used in Law and Medicine in Manitoba.
  - We have been especially interested in the approaches of the College of Psychologists of Alberta, and the Manitoba College of Physicians and Surgeons.

❖ **Recommendations:**

- We recommend that P.A.M. Council consider making two changes to the current Complaints process. Both involve the use of alternate forms of investigation and resolution of complaints, and provide opportunities for flexibility and informality to our processes.
  - We'll note here that we are *not* recommending greater referral to Mediation for resolving complaints.
    - We view the increased use of a formal mediation process as placing inappropriate emphasis onto finding satisfaction for the complainant or Psychologist (see above).
    - We see power imbalances between complainant and psychologist within a mediation process as potentially problematic.
    - Given what we have learned, we see it as likely that use of mediation between a member of the public and a Psychologist would cause more problems than it would resolve.
  - We see much more merit in P.A.M.'s:
    - (1) Creating a position of Director of Complaints, and
    - (2) Increasing the flexibility or discretionary power of the Complaints Committee.
  - Dr. Slusky brought to our June 20, 2008 consultation information about Draft Legislation around Complaints with the larger Provincial Government Omnibus Legislation for Health Care Professionals.
    - ◆ Recognizing that what Dr. Slusky presented was only draft legislation and that he was not at liberty to provide us with copies of the draft but only overview the draft with us, we realize that Provincial legislation around

Complaints may be highly relevant to what P.A.M. Council is actually able to do with our recommendations, assuming Council saw merit in them.

- ◆ A couple of points within the draft legislation seem especially important:
  - That complaints enter the Complaints process of a health care profession through the office of its Registrar; and
  - That all complaints brought to the self-regulating health care professional body be addressed by its full Complaints Committee.
    - We take it that the Province's draft legislation fairly closely matches our current Complaints process, and that the Province's proposed legislation might complicate or preclude P.A.M.'s acting upon some of our recommendations.
    - However, we also understand that the Province's draft legislation, should it become law, would be very much at odds with the process in place in the Manitoba College of Physicians and Surgeons, especially around the provision that all complaints be addressed by that College's full Complaints Committee.
      - As has been mentioned, and will be related further, we've been impressed by features of the Discipline process of the Manitoba College of Physicians and Surgeons.
      - And we also understand from Dr. Slusky that, even as the draft legislation was being presented to stake-holder health care professional bodies, the possibility of an exemption for the Manitoba College of Physicians and Surgeons was already being considered.
      - We therefore see both legal and political issues at stake as we make our two central recommendations.

**1) We recommend development of the position of Director of Complaints (DoC) for P.A.M.**

- Our central recommendation is that a person designated by P.A.M. be made responsible to review written concerns raised by the public, and to take specific actions upon reviewing a concern.
- We will refer to this person as the Director of Complaints (DoC), following the College of Alberta Psychologists, although the name of the office could be something other than DoC.
- In recommending development of something like a DoC role, we follow the College of Alberta Psychologists, the Manitoba College of Physicians and Surgeons, and also the Manitoba Law Society.
- In Alberta, a relatively powerful Complaints Committee Chair is the first point of contact for members of the public concerned about the actions of a psychologist. In Alberta therefore, the Complaints Committee Chair serves as what we are referring to as the DoC.
  - ◆ The Manitoba College of Physicians and Surgeons has a similar officer. As discussed at the 2008 P.A.M. AGM, the Manitoba Law Society also does.
- The DoC becomes the first office at P.A.M. to engage actively with the member of the public concerned about the conduct of a P.A.M. member.

- ◆ We have thought that the DoC would take over from the Registrar as the first point of contact for a member of the public but, especially considering the proposed Provincial legislation around Discipline, we have rethought this.
  - With Dr. Slusky at our June 20, 2008 meeting, we do wonder why the DoC and Registrar could not be the same person (and whether the responsibilities of the DoC could not be taken on by the Registrar:
    - This would possibly bring P.A.M. into line with the Province's thinking about the Registrar standing as the first point of contact for the public;
    - However, this would also require:
      - A significant revision of the Registrar's duties
      - Adoption of a much more active stance on the part of the Registrar within the Complaints process (see our discussion of the Registrar's current position, above), and
      - Probably a good deal more work for the Registrar.
  - Alternately, the DoC position could be separate from the office of the Registrar. In this scenario, the DoC might:
    - Receive complaints from the Registrar, should the Registrar's involvement be important to the Province; or
    - Be the first point of contact for the public.
    - We leave it to others to determine whether taking this approach would require some exemption from parts of Provincial Legislation.
  - In any event, the person undertaking the tasks of the DoC, whether the Registrar or another person, would need to be someone with considerable knowledge of, and practical experience in dealing with, complaints to P.A.M.
  - We leave it to others to decide whether a sitting Chair of the Complaints Committee or another current Member of the Complaints Committee could serve as DoC, or whether this would lead to any conflict of interest (between DoC and Complaints Committee roles).
    - Again, we understand that in Alberta, what we are referring to as the DoC function is served by the Chair of the Complaints Committee.
- ◆ Tasks of the DoC:
  - The DoC receives information from the complainant. This would probably need to be in written form.
  - The DoC discusses the situation with the complainant as required.
  - The DoC clarifies jurisdiction (as the Registrar also does), referring the member of the public to the correct body should P.A.M. not be the correct body.
  - The DoC may also refer a complainant to the P.A.M. Standards Committee, depending upon the issues raised.
  - Assuming P.A.M. has jurisdiction, the DoC fairly quickly (within 30 days – see below) takes one of several actions. Each complaint is considered by the DoC on its merits and the DoC has three main options:
    - The DoC may dismiss the complaint (if the DoC views the issue as outside of the College's jurisdiction, or if the DoC does not see the issue as meriting further attention by the College).
      - ◆ It may be wise to use a term other than “dismiss.”

- ◆ In the event the DoC dismisses the complaint, the complainant retains the right to complain formally to the Complaints Committee nonetheless. (We assume that submission of the complaint in this event could be via the DoC or the Registrar, or that the complainant could go directly to the Complaints Committee, but leave this procedural point to Council and its legal advisors.)
- ◆ Where the Manitoba Law Society dismisses a complaint initially, the complainant may appeal to a "Complaints Commissioner," whose job it is to determine whether the process of dismissing the complaint was fair.
- The DoC may refer the complaint to the Complaints Committee.
  - ◆ Serious matters would be forwarded directly on to Complaints.
- Third, the DoC may deal with the issues raised informally, in an effort to resolve a dispute between a complainant and psychologist.
  - ◆ The DoC may or may not choose to contact the Psychologist directly and to discuss the complaint raised by the member of the public, but is entitled to do so.
  - ◆ Where possible and appropriate, the DoC will facilitate a resolution of the complaint.
  - ◆ The DoC does not do formal mediation between Psychologist and complainant, and we would not suggest that this take place.
  - ◆ Dr. Miles has suggested that a DoC should have the authority to censure or to do all other things that the Complaints Committee can currently do, including writing letters of guidance or educational letters.
  - ◆ A record of the complaint and its resolution through the DoC are kept by P.A.M., and for the purpose of this document, we have assumed that the DoC reports to the Complaints Committee Chair.
- An unsuccessful informal resolution would be an informal process that failed to address main concerns of the complainant or psychologist. Presumably, an informal resolution would also be considered unsuccessful if the DoC was uncomfortable, on ethical grounds, with some part of a resolution proposal.
  - ◆ The DoC would then have the option of referring the matter on to Complaints, dismissing the complaint, etc.
- Informal resolution must happen within a short period: this is 30 days for the Manitoba Law Society.
- ◆ In the view of Alberta's Complaints Committee Chair, complainants are often satisfied for being heard and for something concrete being done quickly about their complaint.
  - Kristin Dangerfield (Law Society of MB) seems to indicate that the Law Society investigates about 10% of complaints and "only the most

serious of matters," in her words. This is slightly higher than the percentage given by the College of Alberta Psychologists.

- As we understand it, whether the DoC is involved with the complaint is not the choice of the complainant. The DoC is involved in all matters brought before the College (except presumably where they place him or her in a conflict of interests)
- The energy and resources of the Complaints Committee are reserved to a greater extent for dealing with potentially very serious matters, as other matters are dealt with by the DoC.
- More about the position of DoC:
  - ◆ The DoC position is a highly interactive one: listening, explaining and educating, and facilitating are core activities. It seems important that there be a balance between informality (so that the work of the DoC doesn't get bogged down unnecessarily in minutiae) and accountability and transparency on the other.
  - ◆ As mentioned, the DoC role would need to be filled by someone very familiar with the kinds of complaints received by P.A.M. Dr. Miles has suggested that ideally, an experienced Complaints Committee Member would leave Complaints to take over the DoC position.
  - ◆ The DoC would be free to consult as needed, and taking privacy issues appropriately into account, with other experts as part of his or her decision-making activities.
  - ◆ Work needs to be done to clarify the kinds of issues that the DoC must transfer directly to Complaints and what kinds of issues may be dealt with informally or dismissed.
    - The Alberta DoC has made a general (and, we think, useful) distinction between issues of practice and issues of ethics, the former being issues appropriately addressed informally and the latter being referred to the Complaints Committee.
  - ◆ It seems reasonable that, in setting up a DoC position, P.A.M. would allow for as extensive training as necessary with people who have experience in that role (for example, the Alberta Complaints Chair).
  - ◆ Work needs to be done to clarify the formal relationship of the DoC on the one hand, and the Complaints Committee and Registrar on the other.
    - For example, should a complaint initially addressed by the DoC end up being referred to the Complaints Committee, what information from the DoC's previous work is forwarded to Complaints?
    - To what extent is the informal or facilitated resolution process an in camera process?
    - Also to be clarified is the issue of what, when, and to whom the DoC reports. We have assumed for the purposes of this report that the DoC files reports with the Complaints Committee.

## 2) **Make Changes to the Formal Complaints process**

- In our view, it should be possible for the Complaints Committee to deal with Complaints laid formally in more ways than it currently appears able to.
- We recommend that Complaints Committee be freed up to actively facilitate resolution or to dismiss a complaint without requesting the formal response of the Psychologist (and the

- counter-response of the complainant. Once a complaint has been laid, it must be dealt with properly, but we question whether proper handling of the complaint necessarily involves so involved a process as it currently does.
- We recommend that complainants be informed of the actual average time involved with the formal complaints process.

Respectfully submitted,

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