Canvassing the Canadian complaints landscape

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The lack of transparency regarding the complaints process is reflected in the confusion most patients experience when they first look to provincial college websites for information.

The Finnish concept of *valituskuoro* has taken Europe by storm as people learn the value of hiring "complaints choirs" to publicly sing their frustrations, as opposed to continuing to relentlessly bang their heads against intractable walls of red tape.

Canadians frustrated with the performance of their doctors might well consider the use of such choirs to make their concerns heard, given that a *CMAJ* canvas indicates there is a complex array of procedures used across the country to make complaints or report publicly on the findings of investigations.

Such confusion surrounding the complaints process and its lack of transparency are among a host of reasons that health care observers advance while calling for significant reforms to the system to ensure patient safety and protect patient rights.

It's hard to argue that the process is efficacious or effective when it's difficult to even access and, in many instances, all but impossible to discover the outcome of previous investigations and disciplinary measures, the observers argue.

The beleaguered complaints process must be overhauled if it's to continue to serve as a legitimate means of determining a doctor's fitness to practice, argues Robyn Tamblyn, scientific director of McGill's Clinical and Health Informatics Research group.

"Licence to practise is considered to be endless until you die, and the only mechanism for determining that you are still fit is a process that I determine is flawed," Tamblyn adds. "You're asking consumers to refer back to their experience ... [but] you don't know how much you're missing or if it's the same across the board for everyone."

There's such nationwide variability in the complaints process that patients often have difficulty even knowing where to start if they have concerns about their doctor's behaviour or actions, adds a health care advocate who believes the system is structured to protect the interests of doctors, rather than patients.

Canadian Health Coalition National Co-ordinator Michael McBain casts the system as 1 in which patients are in 1 corner and everyone else in another.

"To me, the doctors, the hospitals and the drug companies are all in this symbiotic relationship and have the same law firms defending them," McBain says. "An injured patient has a small chance of getting help in the system. We have the medical elites backed up by the legal elites, and the whole system is geared against the process and geared against professional accountability."

Finding a balance between patient safety and the profession's authority to self-regulate lies at the core of most provincial legislation that enables provincial colleges of physicians and surgeons to oversee standards of practice, the complaints process and disciplinary measures for those who commit acts of misconduct or incompetence.

A survey of enabling legislation indicates that most colleges are mandated to, as Ontario's legislation says, "protect and serve the public interest."

Technically, though, each provincial college has the authority to establish its own methods for dealing with physician scrutiny, so the exact processes are predictably checkerboard.

In the case of the Northwest Territories (NWT) and Nunavut, their respective governments, rather than colleges, oversee the process, while in the Yukon Territory, the independent Yukon Medical Council is the caretaker of health matters.

At their core, the complaints processes are essentially the same in all jurisdictions, although the ease of use and level of transparency varies wildly.

In all 10 provinces, colleges ask patients to fill out a complaints form or submit a letter describing the incident and the desired outcome. Complaints are then reviewed by investigative staff, who contact and interview the physician. The doctor responds in writing, and the patient is informed of the response. If the patient is not satisfied, the investigation passes to a hearing

committee, which takes testimony and passes judgment. An appeal committee can review the matter at the request of the patient and, in some cases, the physician.

That process appears standard for all provinces and territories, although Newfoundland and Labrador's college does not appear to articulate its procedures on its website. In other instances, even when procedures are listed, finding them is difficult, and a reflection of the overall lack of transparency. In fact, most college websites are a mishmash of information, featuring confusing links, almost as if designed to prevent patients from making complaints.

Information about the outcomes of investigations is even more difficult to access, with findings typically unavailable or scattered almost willy-nilly in several areas, as if to prevent patients from finding out if a doctor was previously subject to disciplinary measures.

In Newfoundland and Labrador, nothing is articulated beyond blithely informing patients to submit a letter to the College outlining their concerns.

Meanwhile, Nunavut's Department of Health and Social Services website does not even acknowledge the existence of a complaints process, which makes it altogether difficult for patients to even know where to begin. Registrar Ben Van Den Assem believed the procedures were available on the web but couldn't identify where they might be located. Complaints are referred to the President of the Medical Board of Inquiry at the University of Calgary, currently Dr. Martin Atkinson.

That's also the case for the NWT. It's a function of the fact that there are so few doctors in both territories that they would essentially be investigating each other if they had to deal with complaints, says Van Den Assem.

"Nunavut is too small," he says. "We have only 200 doctors registered. A dozen are on the ground here and the rest are in locums. It's too small a locum to ensure due diligence, and that the process would have integrity. We couldn't examine ourselves."

The NWT Department of Justice website provides a link for patients to obtain information about the complaints procedure but that's not available on the complaints page of the main government website.

By contrast, the Yukon Medical Council has an entire web page devoted to the process and a phone number that patients can call to discuss the process.

The relative lack of information that various jurisdictions have on their websites bothers McBain. "It is not transparent at the moment, and it's extremely weak accountability in this self-regulating process."

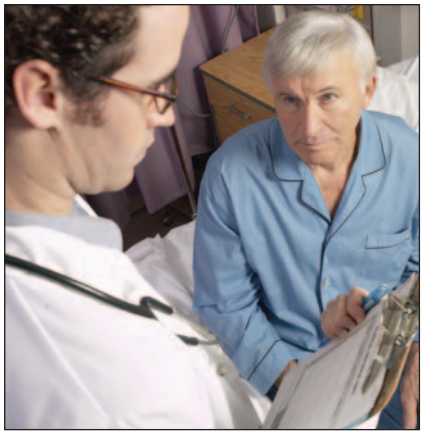
"I'm not a big fan of self-regulation in this area," he adds. "We may need to look at some independent agent or over-viewing of physician processes. I just don't think it's working."

That lack of transparency is particularly apparent with respect to reporting the final outcome of complaints.

If a complaint reaches a disciplinary hearing and the committee overseeing the process rules that the physician was at fault, his or her name is published in only 5 provinces: Alberta, Manitoba, Newfoundland and Labrador, Ontario and Quebec.

That's in part because disclosure of findings of misconduct or incompetence is fraught with legal complexities, says University of Toronto Professor of Bioethics Ross Upshur, explaining that some jurisdictions don't mandate disclosure, while it's often problematic to reveal cases in which a physician has been found to be fault unless a legal standard of culpability has been met.

"Those are plea bargains done in court, so one can't have a process that goes against the law," Upshur says. "Once there is a ruling, it can be quite devastating if there is significant publication of the hearing, and you have to work on the assumption that the media behave responsibly with that information. But it's not always the case."



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Patient frustration about the complaints process compels some experts to call for a national ombudsman or auditor-general to assist them.

"It's the typical balance between the right of the public to know and the right of the individual. Once you have been found guilty, you lose some of your privacy considerations."

Alberta is the most transparent. Its college website lists all doctors found to be at fault during the past 10 years, including links to the College publication detailing what happened. It also pledges to provide older records as needed, and provides details on the number that go to appeal annually, and the status of unresolved complaints.

Manitoba also publishes records of its disciplinary hearings on its website as Adobe Acrobat files, which must first be downloaded by patients.

Nunavut, the NWT, Prince Edward Island and the Yukon provide no public record of their disciplinary hearings.

"I haven't come across a time when it's gone to that point where a disciplinary action needed to be made public, except for the parties involved," says Cindy Loverin, the coordinator of the Yukon Medical Council.

"We're a small jurisdiction and we only get 3 complaints a year. In Ontario, they probably get 3 complaints an hour."

Van Den Assem says no complaint has yet reached the level of a disciplinary hearing in Nunavut, so the government hasn't yet established a disclosure policy.

"I'm not sure," he says. "I'd have to consult with our legal counsel if we had a situation like this in terms of where we stand. I don't see the [Medical Profession] Act having any information as to whether there is publication or not."

Prince Edward Island's college only recently migrated to the web. Office Manager Melissa MacDonald is uncertain whether hearing decisions will ultimately be posted.

The websites of the colleges in British Columbia, New Brunswick, Nova Scotia and Saskatchewan display the results of disciplinary hearing decisions but don't name the doctors.

"It's only in the rarest of circumstances where it goes that far ... it might be part of the agreement, or plea bargain, not to publish the name," says New Brunswick Registrar Dr. Ed Schollenberg.

But such decisions to withhold names — especially when used as a tool to bring doctors in line — places a greater onus on colleges to track the performance of doctors because the public cannot, says Tamblyn. "They are now responsible, and they decided this person had a problem, and do they feel that they can assume the responsibility of assuring the public? Because it is their job to do so."

The lack of national harmonization of the complaints process is all but unique to Canada and the United States, says Tamblyn, lead author on a recent study indicating that doctors who perform poorly in patient communication tests tend to receive more complaints (*JAMA* 2007;298[9]:993-1001).

That study had to be confined to Ontario and Quebec, in part because of the lack of harmonization, Tamblyn says. By contrast, the United Kingdom's government handles complaints, so there's less opportunity for "variability."

Upshur says the variability may be beneficial, as evolution itself favours different ways of achieving the same end.

Yet, there's no scientific evidence supporting the efficacy and effectiveness of any of the processes used across the country, he adds. Nobody has tracked the complaints process from beginning to end, province to province and territory to territory, and compared each jurisdiction to see if similar results ensue, or if 1 system is superior to another.

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Only 5 provinces disclose the outcomes of disciplinary investigations.

"Prima facie it may seem having different processes lead to different ends, but the reverse may be true."

"Different processes may lead to similar ends ... in which case, there's no need to get worried. But if there is markedly different and unjust outcomes from this lack of homogeneity, then something should be done about it," Upsher says.

McBain says a national solution is needed. The provinces could still handle their own complaints, but in the event of a problem, patients should have recourse to an auditor-general of sorts. "[We need] some kind of an ombudsperson, some kind of a professional role that breaks out of this cartel. I don't mean one individual, but some kind of a commissioner, kind of like a privacy commissioner, with a budget and a mandate and a process to investigate wrongdoing. An agency where an individual can go to file a complaint and expect some independent investigation."

Although many doctors say privately that the current complaints process must be fixed because it is heavily skewed towards protecting the interests of a few miscreant physicians, colleges in several provinces defend their current processes for handling complaints as both adequate, accessible and transparent.

Registrar Dr. Rocco Gerace says Ontario's complaints process is "part of a good system" for physician accountability. In addition to disciplinary hearings and procedures that doctors face if accused of malpractice, Ontario has a program subjecting doctors to review by peers to improve their practices.

"It is seen to be an educational exercise, and I think it would be better to expand on that program as part of the regulatory framework," says Gerace. Complaints "serve a useful purpose [in] the complaints system, but that just forms a small part [of the process]."

In addition, a Health Professions Review and Appeal Board composed of laypeople appointed by the provincial government will examine any cases where the complainant or physician feels a disciplinary hearing decision should be appealed, says Gerace.

Similarly, the registrars of both the Alberta and Manitoba colleges say their processes are fair and accountable.

"It's very simple. All they need to do is write a letter of complaint ... They'll be directed to speak to 1 of our patient advocates and explain the process and help them with framing their issues," says Alberta's Dr. Trevor Theman.

"We have a reasonable and available process in Manitoba," says Dr. William Pope. "It's a structure that does respect patients. It gives patients a series of opportunities. For example, in Manitoba when a physician responds to a complaint, it is sent to the patient before it is sent to the complaints committee."

Saskatchewan's Registrar, Dr. Dennis Kendel, calls the province's system inherently "fair."

"Timeliness is one struggle that we have. Most members of the public feel it is too protracted and want to see more rapid turnaround, but if you want to be fair it takes a number of steps to reflect what a party has said, and the other side, and ask for input."

Patients in Saskatchewan are also hampered by the fact that the college doesn't have the financial wherewithal to provide them with "patient advocates," as is the case in some provinces like Manitoba and Alberta, Kendel adds. Physicians, meanwhile, can draw on the Canadian Medical Protective Association for expertise and aid. — Elizabeth Howell, *CMAJ*

This article, surveying the basic landscape of the complaints process, is the first in a series examining physician self-regulation and the efficacy of mechanisms now used to handle acts of incompetence or misconduct, both within Canada and abroad. The issue will be addressed from the perspective of both doctors, who often say the system is burdensome, incoherent and needs fixing, as well as patients, who typically say it is simply ineffective and designed to protect physicians, rather than ensure safety. Among forthcoming articles are ones on the regulation of cosmetic surgeons, international comparisons, legal liability and complaint outcomes.

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