



# GREY AREAS NEWSLETTER

A COMMENTARY ON LEGAL ISSUES AFFECTING PROFESSIONAL REGULATION

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## Addressing Gender-Based Violence

by Rebecca Durcan  
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While Canadian [politicians spar](#) over whether gender-based violence, particularly intimate partner violence (IPV), is an epidemic, regulators are assessing their role.

Regulators of professions, particularly in the [health](#) and [law enforcement](#) domains, treat IPV in a registrant's private life as serious professional misconduct. While important, questions arise as to whether regulators can and should do more.

In 2022, a Renfrew County inquest looked into the 2015 murders of three women, making [86 recommendations](#). None were directed specifically at regulators of professions (although some recommendations aimed at educating service providers to perpetrators or survivors of IPV apply to practitioners of some professions). However, some of the recommendations might be adapted by regulators when dealing with registrants with the potential, or reality, of gender-based violence, including the following:

- Using “a trauma-informed approach to interacting and dealing with survivors and perpetrators”;

- “Explore incorporating restorative justice and community-based approaches in dealing with appropriate IPV cases to ensure safety and best outcomes for survivors”;
- Sharing of information with law enforcement agencies in appropriate cases;
- Safety planning for survivors;
- Professional education and training for staff and investigators dealing with IPV matters, including risk assessment training, trauma-informed practices, indicators of IPV, and crisis management coaching;
- Guidance for registrants who support survivors or counsel, treat or otherwise intervene with perpetrators;
- Track and study decisions made in matters involving IPV for relevant information including on “longitudinal studies for recidivism, violence escalation, and future victims”; and
- Policies for monitoring and responding appropriately to non-compliance with terms, conditions, and limitations imposed on a

perpetrator, such as non-participation in counselling.

In contrast, the Nova Scotia Mass Casualty Commission [report](#) specifically addresses professional regulators. The Commission investigated Canada's worst-ever mass casualty crime spree that lasted 13 hours and resulted in 22 deaths.

The perpetrator was a dentist who had faced discipline for various billing and angry interactions with clients. During the process, the perpetrator also verbally attacked a member of the complaints screening committee and an expert witness who had filed a report critical of his work. Eventually there was a joint submission to the discipline panel that included a requirement to attend counselling, which he apparently completed. Unbeknownst to the regulator at the time, the perpetrator had engaged in a pattern of behaviour involving financial, emotional, and sexual abuse of several vulnerable and marginalized patients.

Many of the recommendations of the Commission related to police and emergency services. However, several recommendations relate to community entities that might have identified "red flags" and perhaps intervened to enhance community safety. Some of those recommendations are applicable to regulatory bodies. One, in particular, is directed specifically at regulatory bodies:

Recommendation C.19  
PROACTIVE MONITORING BY  
PROFESSIONAL LICENSING BODIES

The Commission recommends that  
All professional licensing bodies should:

- (a) Monitor their members proactively to better ensure the safety and well-being of their licensees' clients/patients;
- (b) Through careful monitoring, track and proactively demand accountability when discernible patterns of

unethical or illegal behaviour are uncovered; and

- (c) Take steps to promote awareness of complaints mechanisms, including by requiring that licensees prominently display the Code of Ethics and information about the complaints process in their offices/clinic and online.

Implementation points:

- Practice audits and quality control systems can assist in proactive monitoring
- Professional licensing bodies should:
  - acknowledge that marginalized communities face barriers to reporting concerning behaviour; and
  - take steps to minimize these barriers through engagement with these communities.

In addition, recommendation V.14 states that:

(b) Non-governmental bodies, including learning institutions, professional and trade associations, and business, declare gender-based, intimate partner, and family violence to be an epidemic that warrants a meaningful and sustained society-wide response.

The Mass Casualty report ([vol. 4, p. 501](#)) also commented favourably on the [changes that the College of Nurses of Ontario has made](#) to address nurses who intentionally harm patients (which is not limited to gender-based violence) through raising awareness and developing a risk assessment process for complaints and reports.

The Commission did not, however, provide much guidance on how regulators can access external resources if they identify red flags.

Raising awareness of its role and providing alternative methods of communication

(besides a formal written letter of complaint) in a safe space is consistent with initiatives by several regulators in recent years. For example, in our July 2023 issue of Grey Areas we discuss efforts being made by regulators to engage with Indigenous communities as part of redressing anti-Indigenous racism.

These recommendations also tie in with risk-based regulation activities of many regulators. Identifying the most serious (as well as the most frequent) forms of harm to the public helps regulators focus on activities that matter. For example, enforcing compliance with continuous professional development requirements and advertising rules might be accorded lesser regulatory resources, even if they are not completely abandoned, compared to abuse and violence concerns. Risk-based regulation also contemplates a proactive and multi-pronged approach to these risks (e.g., identifying registrants at risk of causing harm and proactively engaging with them, often with supportive measures). Risk-based regulation also involves providing support to vulnerable registrants and complainants or witnesses.

These recommendations will have to contend with competing considerations. For example, the concept of gathering all available information to look for “red flags” is not entirely consistent with a regulator’s tendency to only rely on reliable and relevant evidence. For example, recently a tribunal held that complaints investigators can reasonably choose to not look at online internet ratings of registrants: [Complainant v.](#)

[College of Physicians and Surgeons of British Columbia \(No. 1\)](#), 2023 BCHPRB 48 (CanLII). While the trustworthiness of such information is doubtful, it can still provide some data that, combined with other data, might be able to identify registrants who are at risk and who might warrant special attention, as recommended by the Mass Casualty report. [Research has shown](#), and the example provided in the Mass Casualty report indicates, that a prior history of complaints is a fairly reliable predictor of future concerns.

Similarly, procedural fairness requirements, including full disclosure of evidence about reporters of concerning behaviour, may pose challenges for regulators.

Another challenge for regulators is that their intervention with a potentially violent registrant might provoke the very behaviour that is sought to be addressed. Regulators may not have the expertise to mitigate that risk effectively.

Fortunately, the work of regulators in analogous areas of concern (e.g., sexual abuse, discrimination, and abuse of colleagues) will provide significant synergies in addressing gender-based violence by registrants.

*Disclosure: One of the SML team was a Commission Counsel for the Nova Scotia Mass Casualty Commission. The opinions expressed in this article are those of the author and not of the Commission.*

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