

**SUBMISSION TO THE MINISTER OF HEALTH AND LONG-TERM CARE
RESPONSE TO HPRAC “CRITICAL LINKS” REPORT**

Joint Submission by the:

College of Medical Laboratory Technologists of Ontario (CMLTO) and



Canadian Society for Medical Laboratory Science (CSMLS)



February 27, 2009

Proponents' Response to HPRAC Recommendations Relating to the Scope of Practice of Medical Laboratory Technology¹

Introduction

In response to an unsolicited invitation from HPRAC dated April 22, 2008 to be one of six professions participating in scope of practice reviews, the CMLTO, OSMT and CSMLS² prepared a written submission in time for the June 30th deadline. In the follow-up to the formal invitation the HPRAC Chair asked that we "stretch" our thinking with respect to the MLT scope of practice.

The submission consisted of three components:

- 1) Substantial revisions to the scope of practice statement and additional authorized acts in the *Medical Laboratory Technology Act, 1991* and necessary or incidental amendments to other legislation.
- 2) Proposed amendments to Regulation 682 under the *Laboratory and Specimen Collection Centre Licensing Act* to require that anyone employed as a "laboratory technologist" under that Regulation be a member in good standing of the CMLTO.
- 3) A proposal to regulate Medical Laboratory Assistants and Medical Laboratory Technicians ("MLA/Ts") as a separate class of members by the CMLTO. The Proponents did not recommend that MLA/Ts have access to any controlled acts.

CMLTO and CSMLS³ Response

General

HPRAC is at least inferentially critical of the Proponents for a lack of consultation with stakeholders on the proposals advanced in the Proponents' submission.⁴ With respect to the scope of practice/authorized acts component of the Submission and as indicated above, HPRAC's invitation to participate in the scope of practice review came as a surprise to the Proponents and (as was repeatedly stated in the Submission) the nine weeks given to develop the response provided insufficient opportunity for effective

¹ "Review of Scope of Practice of Medical Laboratory Technology", Critical Links: Transforming and Supporting Patient Care, HPRAC, Chapter 5, January, 2009.

² College of Medical Laboratory Technologists of Ontario (CMLTO); Ontario Society of Medical Technologists (OSMT), the provincial voluntary professional association; and the Canadian Society for Medical Laboratory Science (CSMLS), the national voluntary professional association.

³ The OSMT decided not to respond to the HPRAC report. CSMLS also intends to submit a separate response to "Critical Links".

⁴ "Review" op cit. p. 121.



stakeholder consultation. In addition, the CSMLS' new competency profile for MLTs⁵ that is directly germane to the scope of practice discussion and that will be implemented in 2010 was the focus of widespread consultation before it was released in 2005. With respect to the proposed amendments to Regulation 682, this has been the subject of bilateral consultations between the CMLTO and the Ministry for well over a dozen years. In relation to the proposal to regulate MLA/Ts, the CMLTO reached out to more than two dozen key stakeholders in 2005 while preparing for its HPRAC referral request that was submitted to the Minister in November of that year.

It is also clear that HPRAC engaged in a number of bilateral consultations with stakeholders and that whatever HPRAC heard therein strongly influenced its findings and recommendations. The Proponents regret not being invited to participate in those consultations. The Proponents would have liked to have been at least informed of the stakeholders' objections and been given a chance to respond before the HPRAC report was finalized. Doing so may have addressed some of the misunderstandings and misapprehensions that appear in HPRAC's report.

HPRAC also refers at several points in the Chapter to the distinct lack of enthusiasm from MLT educators, if not outright opposition, to the proposed scope of practice changes. The position attributed to the educators by HPRAC came as a huge surprise to the Proponents because it is very different from what the educators have said to the Proponents. Nonetheless, the Proponents leave it to the educators to correct the record to the extent they deem necessary.

HPRAC notes at several points that Ontario's current educational programs for MLTs do not provide the requisite competencies to perform some of the controlled acts put forward by the Proponents. The Proponents fully acknowledge that only a minority of current practitioners have the requisite competencies and only those practitioners would be authorized to perform the proposed authorized acts. As indicated in the Submission, however, the new CSMLS competency profile will begin to deliver most of the competencies required by 2010. Nonetheless, HPRAC's position raises the persistent Catch-22 as to whether educational institutions should assume the risk of putting educational programs in place before scopes of practice changes are implemented; or simply respond to scope of practice changes.

HPRAC indicated that it was a "matter of some concern" that

*"The qualifications of many individuals currently working in Ontario's laboratories exceed the competencies and qualifications set for entry into practice by the CMLTO and the CSMLS certification process."*⁶

In the first place, it's difficult to reconcile this "concern" with statements elsewhere in the Chapter that MLTs do not have the competencies to perform the additional authorized acts the Proponents proposed. In the second place, this is not something that is unique to the MLT profession. For example, a substantial number of Physiotherapists in extended

⁵ CSMLS, Competency Profile; General Medical Laboratory Technologist, May 2005.

⁶ Ibid. p. 128.



practice have competencies that significantly exceed the entry-level requirements set by the College of Physiotherapists. Podiatrists and some Chiropractors who practise in Ontario have competencies that far exceed the entry-level competencies set by the College of Chiropractors of Ontario. This represents normal professional evolution. In the MLT profession, reconciliation will occur when the CSMLS competencies are implemented through the first national examination in 2010.

This "concern" led HPRAC to admonish the CMLTO to

*"...consider advancing the scientific, technical and technological competencies for members...,"*⁷

The CMLTO is confident that the CSMLS' competency profile establishes appropriate competency levels for MLTs to function safely and effectively within their current scope of practice and authorized acts. It would be difficult in the extreme to justify the imposition of expanded or additional competencies to MLTs, their employers and to the healthcare delivery system generally in the absence of scope of practice changes. Nonetheless, the Proponents will enter into discussions with HPRAC to ascertain HPRAC's views with respect to where such competencies might be "advanced".

HPRAC concluded from its jurisdictional review that some of the proposed authorized acts do not constitute part of the MLT scope of practice "except in Québec". Particularly with the prospect of enhanced practitioner interprovincial mobility under the Ontario-Québec Accord, and the need to attract additional MLTs to address growing human resources shortages in Ontario, the Proponents thought HPRAC would have found Québec's approach more compelling. Furthermore, from a public policy perspective, it would be instructive for the regulatory Colleges to know whether Ontario aspires to a leadership role in healthcare professional evolution, or wishes only to follow in the wake of other provinces.

Finally, at several points HPRAC refers to the "many systemic issues that present barriers"⁸ to the effective and efficient provision of laboratory services in Ontario. The CMLTO is but one player among many in terms of addressing the systemic issues that apply in the laboratory sector, including those identified by HPRAC. Nonetheless, the CMLTO urges the Ministry to convene a task force consisting of representation from the CMLTO and the other major stakeholders to identify these issues and develop a collaborative plan for their resolution.

Scope of Practice and Authorized Acts

In making their recommendations to expand the scope of practice of Medical Laboratory Technology, the Proponents had four major objectives or considerations in mind:

- Allow MLTs to contribute to Ontario's healthcare delivery system to the full extent of their competencies, particularly in under-serviced areas, consistent with the

⁷ Ibid.

⁸ Eg. Ibid. p. 122.



central vision expressed by HPRAC on page 1 of its report.⁹

- Authorize MLTs to do directly what they are now doing indirectly via medical directives, protocols and other forms of delegation. This is entirely consistent with HPRAC’s “Central Response” that “laws should reflect the day-to-day practice environment”.
- Help address the growing and universally-acknowledged human resources challenges within the MLT profession by making the profession more attractive in terms of career selection and retention. These challenges were canvassed in the submission and confirmed by HPRAC in its report.
- Enhance the ability of the CMLTO to regulate the profession effectively and efficiently in the public interest.

The Proponents' recommendation for an additional authorized act to allow MLTs to perform reflex or follow-up testing is a case in point. As HPRAC notes at several points, MLTs currently perform follow-up testing pursuant to medical directives, algorithms and protocols. Those medical directives, algorithms and protocols are developed by and pertain to individual facilities. Obviously, therefore the system acknowledges that MLTs have the knowledge, skill and judgment to perform follow-up testing safely and effectively within the current framework. The Proponents' request was simply to recognize in legislation the situation that applies *de facto*. Doing so would address several systemic shortfalls:

Under the current framework, the medical directives, algorithms and protocols relating to follow-up testing are established by each facility, often by the Laboratory Director, and sometimes in consultation with other professionals, perhaps including MLTs. The CMLTO as the statutory, professional regulatory body, however, has no role in their development, implementation or enforcement. Furthermore, those administrative measures are known to vary materially across the range of laboratory facilities that operate in Ontario. As a result, the administrative framework can be expected to be very different for an MLT working in one facility compared to an MLT with the same competencies working in another facility. This situation significantly erodes the ability of the CMLTO to fulfill its statutory mandate to regulate the profession effectively and consistently, regardless of practice venue or circumstance. Explicit legislative recognition of the authority of MLTs to perform follow-up testing would have enabled the CMLTO to issue Standards of Practice, Policies and Guidelines to ensure consistent, transparent, effective and accountable regulation of the profession in its performance of follow-up tests.

⁹ “HPRAC is working toward a regulatory system that enables each of Ontario’s thousands of health professionals to contribute to patient care to the full extent of their training and abilities, to collaborate with each other so that the efforts of all are deployed to produce the best possible results for patients, and to respond with up-to-date skills and a deep sensitivity to the rising expectations of today’s health care consumers.” [Critical Links, p. 1]



Amendment of Regulation 682

HPRAC concluded that the Proponents' request to amend Regulation 682 does not constitute a scope of practice issue. The Proponents agree. Nonetheless, during discussions with the Ministry over the past dozen or so years, the Ministry has raised concerns that the CMLTO's desire to ensure that all individuals employed as Laboratory Technologists pursuant to Regulation 682 are members of the CMLTO is a scope of practice issue. The Laboratory Services Branch of the Ministry indicated concerns that the CMLTO is trying to impose "exclusivity" on the MLT scope of practice. Hopefully, HPRAC's conclusions will assuage the Ministry's reservations in this regard and some progress can finally be made.

Regulation of MLA/Ts

HPRAC concluded that the Proponents' proposal to have MLA/Ts regulated by the CMLTO does not constitute a scope of practice issue and urged the CMLTO and CSMLS to make a separate referral request to the Minister. Notwithstanding HPRAC's conclusion, the CMLTO and CSMLS are heartened by HPRAC's confirmation of and seeming support for the Proponents' rationale for regulating MLA/Ts.

Postscript

The human resources situation within the MLT profession is one of the most serious challenges facing Ontario's medical laboratory system and the CMLTO at this time. The situation was described and documented in the Proponents' submission and reinforced in HPRAC's report.

A traditional response to human resource short-falls within a profession or occupation is to maintain the status quo in terms of the profession's or occupation's scope of practice, so that scarce resources are not spread even more thinly over a wider scope of practice. That traditional response seems to be the one articulated by the stakeholders to which HPRAC listened. The CMLTO's and the other Proponents' response to the challenge is completely different: Utilize the existing competencies of the profession to their absolute maximum; and push the profession to enhance its competencies and to "push the envelope" in terms of scope of practice - all of course within the framework of the public interest and public protection. Doing so will make the profession more attractive in terms of recruitment and retention. In the Proponents' view, the MLT HR challenge will be resolved not by limiting what MLTs do, but by making what they do more varied and interesting.

The Proponents' approach has been bolstered by the release of "Ontario in the Creative Age"¹⁰. The document, commissioned by the Ontario Government, points out that if the Ontario economy is going to maximize its productivity and attract and retain the best

¹⁰ The Martin Prosperity Institute, University of Toronto Rotman School of Management (February, 2009).



people, we have to encourage professions and occupations to use their knowledge, skills and judgment to the maximum and also maximize the application of analytical skills, as opposed to the performance of routine functions.

The CMLTO and CSMLS would also like to take this opportunity to comment on HPRAC's proposals in "Critical Links" for general application I set out in Chapters 2 through 4.

Proposal to Establish the Council on Health Professions Regulatory Excellence (CHPRE)

We completely agree with HPRAC's conclusions in this and previous reports that the existing regulation-making system is in need of extensive remedial action. Nevertheless, we believe that the solution lies in fixing the current system, rather than establishing another body that risks duplicating the functions of the Ministry of Health and Long-Term Care, the office of the Fairness Commissioner, the Health Professions Appeal and Review Board, the Courts and others. In fact, it is at least an arguable proposition that a problem with the current framework is the existence of too many oversight bodies with overlapping mandates.

We have other concerns with the CHPRE:

We believe, as did the originators of the RHPA, that HPRAC's existence as an independent, advisory body to the Minister plays an invaluable role. We are concerned that the assumption of additional "operational" functions risks deflecting HPRAC from not critically important advisory role and also creates an inherent conflict of interest between providing independent advice and performing important operational or approval functions within the regulatory framework. The proposed CHPRE creates the potential for self-initiated reviews that may not be of relevance or importance to the Minister.

We are also concerned that in practice and over time CHPRE would inevitably begin to intrude upon the independent self-governance of the professions and begin to tilt our regulatory framework towards *de facto* government regulation.

Finally, it is difficult for us to conceive how CHPRE could acquire the necessary profession-specific expertise it would need to perform effectively all the roles recommended by HPRAC. Unless, of course, CHPRE develops an empire unto itself, thereby duplicating the expertise and functions of each of the RHPA Colleges.

In sum, we believe that at least one more serious attempt should be made at fixing the problems in the current system, before launching yet another oversight body.

Uniform Advertising and Conflict of Interest Regulations

We support HPRAC's recommendations on a fair and neutral process for developing core conflict of interest and advertising regulations for application to all health professions,



with the proviso that individual Colleges may supplement those core provisions with those necessary in the public interest to adapt to the unique circumstances and requirements of each profession. We understand that the Minister has very recently asked HPRAC to look into what Colleges do in the COI and general professional ethics areas and look forward to participating in those discussions.

Standards of Practice

The CMLTO and CSMLS support HPRAC's wish to enhance interprofessional collaboration when Colleges develop standards of practice and also supports legally-binding standards of practice. Nevertheless, we urge the Ministry to carefully and clearly define "standards of practice" in legislation in order to avoid administrative and legal ambiguity later on and different interpretations among Colleges.

We also believe that it must be clear that the interprofessional Standards Committees, that each College is proposed to establish, must be advisory only; that each College has ultimate responsibility and accountability for the Standards of Practice put forward.

We also wish to avoid the situation where a Standard of Practice becomes the interprofessional standard simply because it was in place first. While conflicts and inconsistencies among standards of practice relating to the same controlled act should be avoided, standards of practice need to evolve and also need to reflect the legitimate circumstances of each profession.

We also have concerns about the "negative option" authority to which HPRAC recommends the Minister be restricted (i.e. a proposed Standard of Practice is submitted to the Minister and CHPRE and if no written objection is made within 60 days, the standard of practice is deemed to be established). We wonder how such a "negative option" approach would work within our system of ministerial responsibility. Furthermore, unless the objection had to be accompanied with an explanation of what needed to be done to resolve the objection, we fail to see how the recommended approach would represent an improvement on the *status quo*.

This concludes the CMLTO and CSMLS' response to HPRAC's "Critical Links". We hope that our comments are of some use to you as you formulate the legislation.

