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## A COMMENTARY ON LEGAL ISSUES AFFECTING PROFESSIONAL REGULATION

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### Investigating and Prosecuting Sexual Abuse Cases

Cases involving allegations of sexual abuse cases raise unique issues and challenges for investigators and prosecutors.

There are rarely witnesses to sexual abuse, and that is particularly true in the professional discipline context where interactions between practitioners and patients are private and confidential. The result is that there is often a heightened need to rely on the testimony of a complainant who alleges sexual abuse.

The Law Society of Upper Canada recently released a *Guide for the Provision of Legal Services in Cases Involving Claims of Sexual Abuse*, which arose in part because of a recommendation following the *Cornwall Public Inquiry* that self-governing professional bodies whose members may be in contact with persons who may have been sexually abused promote education in this area and amend guidelines and standards relating to professional conduct.

The Law Society guide includes practical advice that is relevant to other professional regulatory bodies and specifically to

investigations and prosecutions of sexual abuse cases.

First, the guide notes the importance of recognizing the unique needs of and demands on claimants of sexual abuse. Victims of sexual abuse may be particularly vulnerable, may be dealing with complex mental health issues, and may have experienced a betrayal of trust and loss of power and control. These and other factors may contribute to complainants having difficulties telling their stories confidently, consistently, and effectively both to investigators and during testimony in the context of a hearing.

It is also important to be sensitive to the possibility that the complainant may have had to recount their experience many times in other forums, and to the psychological impact that reliving a traumatic experience may have.

Investigators and prosecutors would benefit from learning about how persons who have been sexually abused may process and remember the experience. This may include understanding how and why progressive disclosure may occur, and how traumatic memory recovery of events that occurred long before may be possible. This applies

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### FOR MORE INFORMATION

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**Grey Areas** is also available on our website: [www.sml-law.com](http://www.sml-law.com). Some back issues are also available.

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equally to complainants and to other witnesses (e.g., similar fact witnesses).

The guide also notes the importance of ensuring that communications with complainants are non-judgmental, respectful, sensitive, clear, and as accessible as possible. This may include an investigator or prosecutor clearly identifying himself or herself when contacting the complainant and explaining the purpose of any meeting. Holding interviews and meetings in person, especially early in the process, may be particularly beneficial.

For some complainants in sexual abuse cases, the decision to initiate a complaint may have been a difficult one. Potential complainants should understand the potential invasion of their privacy that may occur during an investigation and hearing, including disclosure of personal health information, which may be particularly unpleasant in sexual abuse cases, as well as of the protections of privacy that may be available such as a publication ban. It may be helpful for individuals contemplating initiating a complaint with a regulatory body to have an opportunity to speak anonymously with someone within the regulatory body regarding the complaints and disciplinary process prior to formally filing a complaint.

A potential complainant should also be aware that a regulatory body can proceed to prosecute a complaint even if the complaint is withdrawn, though as a practical matter it may be difficult to prove allegations if the only prosecution witness is unwilling to testify. Many regulatory bodies will not summons a complainant in a sexual abuse matter to testify against the person's will.

Once the complaints process has been initiated, investigators and prosecutors can assist by making it clear what the complainant can expect throughout the process.

It is also important for investigators and prosecutors to ensure that complainants have personal and professional supports in place during what may be a lengthy and emotionally taxing adjudication process, and be prepared to provide appropriate referrals, for example to crisis centres and other social services that may be available. Where appropriate, complainants should also be advised of their right to seek counsel to protect their interests.

A copy of the *Report of the Cornwall Inquiry* can be found at:

<http://www.attorneygeneral.jus.gov.on.ca/inquiries/cornwall/en/report/index.html>.

A copy of the Law Society guide can be found, starting at page 63, at:

<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147486532>.