

Subscribe

Share ▼

Past Issues

Translate ▼

RSS

# THE COMMENTATOR

**CMLTA**  
COLLEGE OF  
MEDICAL LABORATORY  
TECHNOLOGISTS  
OF ALBERTA

Volume 3, Issue 1 - February 2014

## COUNCIL'S CHRONICLES

### FROM THE PRESIDENT'S PEN

The Honour of Self-Regulating Regulation under the *Health Professions Act* (HPA) in Alberta came into effect March 1, 2002 for Medical Laboratory Technologists (MLTs). The purpose of the HPA is to protect members of the public when accessing specific health services, and in our case specifically, diagnostic laboratory services. Regulation under the HPA means the College of Medical Laboratory Technologists of Alberta (CMLTA) is required to have a Council to govern its actions, a registration and competence process, and a disciplinary process.

The HPA also makes an allowance for the College to set its own fee for registration and an MLT Practice Permit. This legislation defines MLTs as a health profession and directs us to act accordingly.

Another piece of legislation which guides our practice is the *Medical Laboratory Technologists Profession Regulation*. This legislation was written by government in consultation with medical laboratory professionals in Alberta *for* medical laboratory professionals in Alberta. It outlines the responsibilities of each Member of this College. To have been so active in defining our own legislation is an indicator of trust by members of government, public, and health professions alike.

Previous leaderships and Councils of the Alberta Society of Medical Laboratory Technologists (ASMLT), Alberta College of Medical Laboratory Technologists (ACMLT), and CMLTA have demonstrated a concerted effort in public protection, professional improvement, and regulation for practicing MLTs. They have participated on committees; poured over legislation; reviewed feedback, legal opinion, and current affairs;

### IN THIS ISSUE

- [Council's Chronicles](#)
- [Meeting Highlights](#)
- [Questions to Council](#)
- [Executive Director's Exchange](#)
- [Renewal Information](#)
- [The CMLTA's Responsibilities Under the HPA](#)
- [Publication of Discipline Decisions](#)
- [Award Recipients](#)

### NOMINATIONS

[click here for details](#)

### AWARD OF DISTINCTION

**DEADLINE: June 1, 2014**

[Click here for details](#)

### AWARD OF MERIT

**DEADLINE: June 1, 2014**

[Click here for details](#)

### BURSARY AWARD

**DEADLINE: December 31, 2014**

[Click here for details](#)

drafted policy; and supported professional practice. With their vision and plan for the future of medical laboratory science, these leaders have brought us to where we are today. Where is that? It's in a professional regulatory College that is prepared to meet the demands of a rapidly changing world of health, science, and technology.

Consider a moment what our College processes may look like without the honour of self-regulation. Our Council, staff, and disciplinary committees could be made up of any combination of other health professionals (physicians, physiotherapists, nurses, dentists, etc.) or of politicians or members of the public of any profession as appointed by government oversight. Our Bylaws, Competency Profile, Code of Ethics, and Standards of Practice would be created, enforced, and maintained by this group. Members undergoing disciplinary action would be heard and/or censured by this group. Costs of doing business would escalate as registration would still be required to protect the public interest. We, as medical laboratory professionals would have a smaller interest and voice in directing our own professional activities.

I mourn the loss of ASMLT and ACMLT member services deeply. I do however; understand that a regulatory College that offers such services is in a continually conflicted state, unable to perform at its best in the role of public protection. I also understand that the public and political trust we have earned as a profession must be protected. With that said, I applaud our leadership of the past, present, and future for making difficult but well informed decisions; leaving us a legacy of quality and excellence as well as the continued opportunity to participate in our own regulation. I invite you to join me in this endeavour. Please look not only at what has been lost, but what has been built and improved. Look not to complain, but to understand. When you do, I believe you will recognise that we are an accomplished profession in the healthcare community and leaders in the realm of self-regulation. It is my hope that we will continue to be in our position of trust through many more seasons of change.

– Jodi Luckwell, 2014 CMLTA President

---

## MEETING HIGHLIGHTS

College Council convened on Saturday, November 16, 2013 for a regularly scheduled Council meeting. The following are highlights from the meeting:

- Approved the 2014 Council and Committee meeting schedule.
- Approved the 2014-2016 budgets.
- Approved the 2013 Annual General Meeting (AGM) minutes for membership review and approval at the 2014 AGM.
- Approved the 2013-2015 Strategic Plan.
- Re-appointed Marlene Cairney and Christine Choma and appointed Dan Woods to the Legislation Sub-Committee.
- Approved revisions to College policies: MLT Registration and Bursary Award.
- Conducted Council and Executive Director/Registrar/Complaints Director annual evaluations.

---

## QUESTIONS TO COUNCIL

### **Member Question: I am going on a maternity leave. Do I need to submit a Notice of Non-Practice?**

A Notice of Non-Practice form is only required if you are not renewing your registration and MLT Practice Permit. The duration of a leave of absence from professional practice may assist an individual in determining the best course of action for their professional status with the College. If you will be working even one day in a given year, it is advisable to maintain registration and an MLT Practice Permit without interruption as opposed to changing status various times throughout a registration year. If an anticipated absence is greater than one full registration year, maintaining registration would not be required for that registration year. The individual would need to submit a Notice of Non-Practice and should consider acquiring a voluntary, non-practicing membership with the College. Please see [Renewal Information](#) in this issue of *The Commentator* for more info on voluntary memberships.

### **Member Question: What happens if I do not obtain a voluntary membership and return to MLT employment after a year LOA?**

If an individual is absent from professional practice for more than one registration year, the individual is required to reinstate their MLT registration. An example of a reinstatement is an individual with registration in 2013 who submits a Notice of Non-Practice for a parental leave, does not renew as an associate for 2014, and then returns to professional practice in 2015. In this example, an individual would be required pay an additional \$125 reinstatement processing fee and would not be eligible for the early bird \$50 discount given to current renewing Members. A

reinstating individual must complete a hard-copy reinstatement application, submit all required documentation requested on the application, and must meet current minimum entrance to practice requirements which may have changed due to updates in legislation.

College Council welcomes all questions and comments. Please email [info@cmlta.org](mailto:info@cmlta.org). Responses will be emailed and published.

---

## NOMINATIONS

Council is currently accepting nomination forms for the following positions:

- 2015 – 2017 President Elect
- 2015 - 2017 Councilor
- 2015 - 2017 Councilor

If you are interested, please submit a nomination form which is available on the College [website](#). The deadline is May 31, 2014.

---

## EXECUTIVE DIRECTOR'S EXCHANGE

In each newsletter, I assume the role of the Executive Director for the CMLTA and write an article on a topical subject to provide information and/or clarification, but I felt it prudent to put on my Complaints Director hat and examine recent complaints of unprofessional conduct.

The College has received five new complaints of unprofessional conduct in 2013. The number of complaints is not alarming, as this trend has been evidenced since 2008 when the number of complaints increased significantly from years past. What is disturbing is the nature of the complaints, as four complaints pertain to breaches of patient confidentiality and privacy through the unauthorized access of patient files and/or medical records. Some of the allegations in the complainants' letters refer to numerous and repeated accesses to multiple patient medical records, specifically laboratory test results.

It has been over five years since I worked in a technical laboratory environment, but I recall even years prior to this, Information and Technology (IT) departments performed systematic audits and reviewed any suspicious or flagged activities. One can postulate that with the expansive technology advancements, the number of IT audits and their complexity has also increased

exponentially. In light of this, it is very surprising that some MLTs take the risk and continue to access their own personal medical records and those of family, friends, and other patients for their own personal use. They are not accessing Netcare results "in the line of duty" to assess the validity of laboratory test results in correlation with a patient's clinical picture and previously reported results, but rather out of simple curiosity or other more sinister purposes.

Each organization has policies specific to the access and use of patient records required by an individual's job position and confidentiality and privacy legislation (e.g. PIPA, PIPEDA, HIA) all employees must adhere to. Furthermore, organizations usually require all employees to review these documents annually and sign off that they understand and consent to abide by them.

Let this article serve as a reminder for all MLTs to be mindful of an organization's policies and legislation when accessing medical records. I do not intend to insult an MLT's professionalism, but with four complaints of unprofessional conduct due to allegations of the unauthorized and inappropriate access of patient medical records, it needs to be brought to the forefront. If found guilty of unprofessional conduct as defined by the *Health Professions Act*, a Member can face at a minimum, a permanent blemish on their professional record. A Member may also be required to pay fines and/or all or a portion of the costs of the investigation and/or Hearing Tribunal process (~\$30,000), complete coursework, and/or adhere to any other terms, limitations, or conditions a Hearing Tribunal imposes on their MLT Practice Permit.

---

## RENEWAL INFORMATION

**Did you know that it is a Member's responsibility to notify the CMLTA when a change in employment status results in the non-renewal of a registration and an MLT Practice Permit?**

When an MLT is anticipating retirement, a temporary leave of absence, or a permanent departure from professional practice, pursuant to section 24 of the *Medical Laboratory Technologists Profession Regulation*, the Member **must** advise the College by submitting a completed [Notice of Non-Practice form](#).

Notification of the College is imperative as the College is

required by Alberta Health to maintain an accurate real-time record of practising MLTs in the province for the [Alberta Provider Registry](#).

Once a Notice of Non-Practice is received by the College, the Member is removed from the MLT register roster (subject to date indicated in the Notice of Non-Practice) and can no longer present herself/himself to Alberta employers or the public as a regulated Member. Individuals submitting a Notice of Non-Practice are encouraged to submit any outstanding Continuing Competence Program requirements (e.g. a hard-copy completed Learning Plan for the current registration year) as it will be required prior to returning to professional practice in Alberta.

Non-practicing individuals are encouraged to obtain a voluntary, non-practicing membership. The College offers two types of voluntary memberships: associate and retired (if applicable). Associate and retired memberships do not afford the right to the protected MLT title or MLT employment. Individuals are exempt from participation in the Continuing Competence Program. Voluntary memberships do provide a continuous communication link with the CMLTA, and moreover, in the event a voluntary Member returns to professional practice mid-year, additional reinstatement/processing fees are not in effect and the previously paid voluntary membership fee is credited towards registration and MLT Practice Permit dues. Voluntary forms are available by contacting [info@cmlta.org](mailto:info@cmlta.org).

---

## THE CMLTA'S RESPONSIBILITIES UNDER THE HPA

**The *Health Information Act* and the CMLTA: The College's Self-Regulation and Public Protection Role by Blair Maxston, BA, LLB, College Legal Counsel**

### Creation of Professions

By way of background, all professions including the ones governed by the *Health Professions Act* (HPA) are "created" by government. This "self regulation" is a delegation of government's authority to the Members of a profession who have the clinical knowledge and experience to create appropriate registration, annual licensure, continuing competence, and discipline processes as well as Standards of Practice and Codes of Ethics to ensure safe, competent, and ethical practice by Members of the profession.

The legislation governing a profession sets out the nature

and extent of the legal authority and powers that have been delegated to a profession. For the College of Medical Laboratory of Alberta (CMLTA), that is found in the HPA and the *Medical Laboratory Technologists Profession Regulation*.

Importantly, self regulation is a privilege granted by government that can be revoked. In fact, Sections 135.1 to 135.4 of the HPA allow the Minister of Health to revoke self regulation from any HPA College and appoint government "administrators" to govern a profession.

Finally, one automatic consequence of establishing a profession is to create a monopoly over who can practice in that field. That in turn confers distinct financial benefits on Members of the profession.

### **Self Regulation and the CMLTA's Public Protection Role**

Canadian case law has evolved over time to clearly emphasize the importance and centrality of College's public protection mandates. In 2006, the Supreme Court of Canada reinforced the importance of the functions that are performed by bodies such as the CMLTA when it stated:

"The importance of monitoring competence and supervising the conduct of professionals stems from the extent to which the public places trust in them. Also, it should not be forgotten that in the client-professional relationship, the client is often in a vulnerable position... The primary objective of those orders is not to provide services to their members or represent their collective interest. They are created to protect the public...The privilege of professional self-regulation therefore places the individuals responsible for enforcing professional discipline under an onerous obligation. The delegation of powers by the state comes with the responsibility for providing adequate protection for the public. [Prior case law] confirms the importance of properly discharging this obligation and the seriousness of the consequences of failing to do so."

In summary, Canadian case law has clearly established that self regulation is based on an overarching duty to protect the public and serve the public interest.

### **The CMLTA, Public Protection, and the HPA**

In addition to court cases, the public protection role of professional regulatory bodies is often described in legislation. That is the case for the CMLTA. Specifically, Section 3 of the HPA states:

3(1) A College

- (a) must carry out its activities and govern its regulated members in a manner that protects and serves the public interest,
- (b) must provide direction to and regulate the practice of the regulated profession by its regulated members,
- (c) must establish, maintain and enforce standards for registration and of continuing competence and standards or practice of the regulated profession,
- (d) must establish, maintain and enforce a code of ethics;
- (e) carry on the activities of the college and perform other duties and functions by the exercise of the powers conferred by this Act; and
- (f) may approve programs of study and education courses for the purposes of registration requirements.”

Section 3(1) reinforces the principle set out by the Supreme Court of Canada that the primary purpose of self-regulation is public protection.

As well, if a College engages in activities that do not fall within its legislation then those activities may be outside the College’s jurisdiction and could be declared by a court to be null and void.

### **Member Services and Association Functions**

In contrast to the public protection role of Colleges, professional associations or member services organizations are typically focussed on representing the economic and professional advancement interests of their Members.

Generally, professional associations carry out functions such as holding conferences, seminars and workshops, lobbying government and other stakeholders for the interests of their Members, negotiating preferential rates for their Members for products and services, maintaining job boards, and publishing information of interest to its Members.

Typically, membership in the member services organization is voluntary. That is in sharp contrast to membership in professional regulatory bodies which is mandatory.

In many places where the size and resources of a profession make it possible, there are two separate and distinct professional organizations: a professional regulatory College (created by government) and a member services association (created independently by Members of the profession). In Alberta, a Medical Laboratory Technologist member services organization could be created under the Societies Act of Alberta.



## **Colleges and Associations**

While there can be acceptable areas of overlap between Colleges and member services associations (such as support of the profession generally and for the provision of competent and ethical care), typically those two organizations “serve different masters”. Colleges serve the public interest and are primarily, if not exclusively, accountable to government and the public in terms of performing their legislative functions.

This is reflected in the increasing trend to require the appointment of Public Members to College Councils and committees to ensure that the public perspective is represented and the public interest is served and can also include such things as required Annual Reports to government and having discipline and other processes that are open to the public. Significantly, all of those are included in the HPA.

In contrast, member services associations serve the interest of their Members and they are accountable only to their membership. As well, the objectives of a member services association are not created or imposed by government or legislation. Instead, they are established by the membership and can be independently changed from time to time by the membership. As well, associations advocate for their Members on professional and public policy matters and that advocacy may diverge from the broader public interest.

The table below summarizes differing roles, responsibilities, and characteristics of regulatory bodies as opposed to member services organizations.

Issues can arise where there is divergence or conflict between the roles and functions of a College on the one hand and a member services association on the other.

## **Summary Comments**

The distinction between the public protection function of a licensing body like the CMLTA and the private function of a separate voluntary membership association is now widely recognized in legislation and by many courts. Although the CMLTA’s legislated role is vitally important for protecting the public, an independent member services association can also indirectly serve the public interest by engaging and involving those who practice in the profession. In short, having an organization that represents the unique viewpoints and interests of the Members of the profession can also serve the broader public interest.

	ASSOCIATION	COLLEGE
Creation	Privately Incorporated per Societies Act	Statutorily Created or Continued under HPA
Role	As Per Objects (Usually Professional Advancement)	Govern Profession and Serve Public Interest (s. 3 of HPA)
Reporting Obligations	Annual Return filed at Corporate Registry, Financial Statements, CRA Filings	Annual Report to government (s. 4 of HPA), CRA Filings, and Financial Statements
Committees and Personnel	Per Bylaws	HPA Required and Optional
Membership	Voluntary	Required (for Regulated Members per s. 46 of HPA)
Membership Criteria	Discretionary	HPA and Profession-specific Regulation Requirements (for Regulated Members)
Licensure Responsibilities	None	Registration and Practice Permit Issuance
Jurisdiction over Members	Voluntary. No Enforcement Authority.	Statutorily Established and Enforceable.
Discipline	Discretionary. No Enforcement Authority.	Statutorily Prescribed and Enforceable.
Continuing Competency	Discretionary. No Enforcement Authority.	Statutorily Required (Necessary to Practice)
Information Management	PIPA (Unless Not Engaged in "Commercial Activity")	PIPA and HPA
Name Use	Discretionary	Only College May Use (s. 128(2) of HPA)
Outside Oversight	N/A	Minister of Health and Office of the Ombudsman

---

## PUBLICATION OF DISCIPLINE DECISIONS

### PUBLICATION OF DISCIPLINE DECISIONS A-OK, SAYS ALBERTA'S TOP COURT

#### *Zakhary v. College of Physicians and Surgeons of Alberta*, 2013 ABCA 336

On October 3, 2013 the Alberta Court of Appeal upheld the decision of the College of Physicians and Surgeons of Alberta (CPSA) to publish information about a discipline decision involving a doctor, and provided needed interpretation and insight into s. 119 of the *Health Professions Act* (HPA).

In this case, Dr. Kristina Zakhary admitted to repeatedly failing to respond to a CPSA investigator and admitted that this constituted unprofessional conduct. She made a Joint Submission with the Complaints Director on penalty for a reprimand and payment of costs of the hearing. The CPSA's Hearing Tribunal accepted the Joint Submission on the penalty. No one appealed, and after the appeal period expired, the CPSA temporarily published the conviction and penalty.

Dr. Zakhary sought Judicial Review of the CPSA's decision

to publish information about her professional discipline. The CPSA relied on s. 119(1)(f) of the HPA to justify publication:

"119(1) If under Part 2 or Part 4 a regulated member's practice permit is suspended or cancelled, or if conditions are imposed on a regulated member's practice permit or a direction is made under section 118(4), the registrar ... (f) subject to the by-laws, may publish or distribute the information referred to in this subsection and information respecting any Order made by a Hearing Tribunal or counsel under Part 4."

Part 4 of the *Act* is the part dealing with professional conduct.

Dr. Zakhary argued that s. 119 only permitted the Registrar to publish the decision if the Hearing Tribunal issued a suspension or cancellation, which was not the case here.

The Court of Appeal upheld the CPSA's decision and held that s. 119(1)(f) of the HPA can reasonably be interpreted to permit a regulator to publish results of discipline hearings, even if the Tribunal did not order suspension or cancellation.

In a concise and well-reasoned decision, the Court confirmed that regulators under the HPA have expertise in interpreting their own legislation.

In addition to the specific interpretation of s. 119 of the HPA, the Court of Appeal reconfirmed the importance of transparency in this regulatory scheme. It noted that the previous governing legislation for physicians contained repeated presumptions of privacy for the members, but that the HPA does exactly the opposite: "Its scheme is openness" (para. 23).

The decision is important to regulators for a number of reasons, since it establishes that:

1. Publication of discipline decisions protects the public by providing information about past misconduct. This enables consumers (i.e. patients) to make informed choices about their care.
2. Publication of discipline decisions, including reprimands, is consistent with the overall scheme of the HPA.
3. A professional reprimand is a public form of punishment. Without publication, a reprimand ceases to be a reprimand and is simply advice.

Regulators may find comfort in this decision, which reconfirms the importance of professional regulation, and

provides authority for publication, without reference to privacy legislation. Rather, the focus is on the intent and wording of the HPA, which requires openness and contemplates publication in the discipline process. The full decision is referenced as *Zakhary v. College of Physicians and Surgeons of Alberta, 2013 ABCA 336*.

---

## HARPER GOVERNMENT ADOPTS NEW BLOOD REGULATIONS

[Rules further strengthen the safety of Canada's blood supply](#)

---

## AWARD RECIPIENTS

The College recognizes the following recipients of the College Student Endowment Awards:

- Lulinda Mbotwa, UofA MLS program
- Amy Lee, UofA MLS program
- Joseph Piedimonte, SAIT MLT program

*The College of Medical Laboratory Technologists of Alberta (CMLTA) is a recognized leader in the regulation and governance of medical laboratory services. As a trusted partner in healthcare regulation, the CMLTA acknowledges self-regulation is a privilege and endeavors to enhance public protection and patient safety, promote high standards for professional practice, and contribute to the overall wellness of Albertans. The CMLTA protects the public by regulating Medical Laboratory Technologists (MLTs) and fostering excellence in professional practice.*

*The Commentator e-newsletter is the CMLTA's primary communication vehicle and is distributed February, May, and October. It provides MLTs and the public with current and timely information about CMLTA programs, services, and topics relevant to MLTs and which may have an impact on the healthcare continuum.*

You are receiving this email as you are affiliated with the CMLTA.  
Copyright © 2014 College of Medical Laboratory Technologists of Alberta. All rights reserved.

***All regulated members are responsible for receiving The Commentator and being aware of its contents.***

**Our mailing address is:**  
College of Medical Laboratory Technologists of Alberta  
301-9426 51 Avenue NW  
Edmonton, Ab T6E 5A6  
Canada

[Add us to your address book](#)