

Justice Delayed is Justice Denied: A Critical Assessment of a Lack of Access to Justice for Dentists Accused by Public Health Officials

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Access to Justice is of vital importance to enjoy human rights. Access to Justice means different things to different people. In its narrowest sense, it represents only the formal ability to appear in court. It engages the broader social context of our court system and the systemic barriers faced by different community members. Retributive Justice seeks to punish wrongdoers objectively. Procedural Justice refers to implementing legal decisions by fair and unbiased processes. Justice is one of the most important moral values in the spheres of law and politics.

How do dentists access justice when battling Public Health officials who claim to be doctors who are superior to actual doctors who practice medicine? An allegation against a dentist by Public Health who uses the media as a tool to fear monger is the same as issuing an interim order against a member's licence. At the time of an inspection the author recommends to audio record all communications with the inspector as with Peterborough Public Health, their health inspector Kerry Wong was criminally charged with extortion on small businesses. Additionally, in this case discussed below, Health Care Lawyer Matthew Wilton hired an infectious disease expert, asked all staff to leave the practice as is, and had Dr. Kevin Katz conduct a contemporaneous inspection invalidating the findings of the public Health inspector leading to a rescission of the closure order. Issuing an interim order is an extraordinary measure, not least because it can have significant consequences on a member's reputation and livelihood before there is any adjudication of the professional misconduct allegations against them. Public Health

Media campaigns have the same effect as an interim order and denies the dentist access to justice.

The role of counsel for Public Health in a dentist public health dispute is that of a prosecutor. Thus, when engaged as a prosecutor, the lawyer's prime duty is not to seek to convict but to see that justice is done through a fair trial on the merits. The prosecutor exercises a public function involving much discretion and power and must act fairly and dispassionately. The prosecutor... should make timely disclosure to defence counsel or directly to an unrepresented accused of all relevant and known facts and witnesses, whether tending to show guilt or innocence.

In Public Health Infection control cases against dentists, the right to full answer to defence is unavailable as the dentist does not receive disclosure or even proof that an actual complaint prompted the entry to the clinic. Often the entry to the clinic is done while the entire dental team is treating patients and scrambling to balance patients needs and to cooperate.

This author was born to teenage parents, was temporarily blind as a toddler, raised in government housing, and wrongfully convicted two decades ago. During the 2002 prison- strike at the barbaric and medieval Toronto Don Jail, this author was stabbed in his face with a sharpened toothbrush, breaking his eye socket. After prison, the author obtained an MBA, an ICD designation for board governance, won the Top 40 under 40 people in business award, a well- regarded Philanthropist, a verified influencer on Instagram with 150,000 followers and is an activist living in Toronto's Bridle Path. In 2009, this author married Dr. Rita Kilislian, an endodontist who practices in Toronto and Peterborough. Together, the couple has a 7-year-old daughter, who is a student at Toronto French School.

In 2015, as the political landscape started to shift against Public Health officials, more public health Medical Health officers turned to media fearmongering as a tool to gain support for their political platforms. Frankly, allowing themselves to be called “Top Doctors” in a community should be considered an act of professional misconduct by the regulator College of Physicians and Surgeons. According to a publicly posted decision at HPARB, a medical health officer from Durham complained to the Royal College of dental surgeons about Dr. Rita Kilislian. An internet search of the Durham Public Health Unit lists Dr. Robert Kyle as its Medical Health Officer.

His meritless and malicious complaint on behalf of two medical officers of health, against Dr. Kilislian asked the registrar of the RCDSO to accept his expertise in public Health to have Dr. Kilislian investigated and punished. The public decision states that the medical health officer of Durham advised the Royal College of dental surgeons that his wife, also a Medical Officer of Health, contracted a liver abscess through a routine endodontic procedure performed by Dr. Rita Kilislian. The two Medical Officers of Health both advised the Royal College of dental surgeons, and the health professionals appeal and review the board that they believed an infection control lapse caused the liver abscess. In response to these absurd assertions, which show complete incompetence on the part of the complainants, Toronto Health Care lawyer Matthew Wilton adduced an expert opinion from Dr. Mueller, an infectious disease expert at St. Michaels Hospital. In short, the expert concluded that bacteria caused the liver abscess pre-existing in the medical health officer's mouth.

Vindicating Dr. Kilislian took two years, hundreds of hours of preparation, and was an expensive undertaking. Just after the Health Board decision vindicated Dr. Rita Kilislian, employees connected to the Medical Health Officers. Public health nurses began a campaign of

harassment against clinics connected to the endodontist. These same medical officers of Health who believed the bacteria in her mouth was because of an infection control lapse, started SWAT team like searches of dental practices and began closing dental offices in the Kawartha, alleging that failure to adhere to Public Health inspection checklists can cause the spread of HIV and Hep C.

A nurse employed by the complainant MHOS allowed herself to be the “anonymous” complainant to a third Medical Officer of Health, Dr. RS. It is this author’s opinion, based on this, Peterborough Public Health entered the practice without legal authority. When they refused to identify themselves correctly, confidential patient information, including sterilization records, were not turned over. As a result, a closure order was issued. The author complained to Dr. RS about the sexist and unprofessional conduct of the newly hired Health inspector. The former health inspector of Peterborough was terminated for criminal extortion. At the same time, other employees of Peterborough Public Health were being criminally prosecuted for falsifying records.

Three days later, and after the author demanded to see the inspection report, the inspector testified at a recent hearing that he prepared it 72 hours later from memory. The checklist contains almost 100 highly technical items, which allow for 300 or more possible outcomes. He prepared the checklist from memory after a complaint was registered against him.

In August 2019, the Health Board determined that Dr. Kilislian could not dispute the closure order as in law, it was moot since Peterborough Public Health rescinded the order. Essentially Dr. Kilislian was left with no forum, legal or otherwise, to prove the closure of her clinic was without legal justification. The next day on learning the Health Board would not give Dr. Kilislian an avenue to vindicate herself; the Medical Health Officer issued a section 13 order

demanding Dr. Kilislian violate her patient's rights to privacy and turn over her patient list to the very people who have filed several malicious complaints against her. On her behalf, the author appealed the order to the Health Services Appeal and Review Board.

The respondent MHO agreed to stay order of patient notification. That said, they usurped the stay order and wrote to dentists who referred to Dr. Kilislian demanding they give the patient names. The MHO, Dr. RS, then went to the media, including 5 minutes on global news, and advised that the complainant was a member of the public, where originally stated the complainant was a patient. The MHO also stated that patients seen at the clinic should be tested for blood-borne viruses.

The Health Board must hear this sort of appeal within 15 days. Yet the respondent MHO delayed and delayed the ultimate hearing. One such delay tactic was bringing a motion to have Dr. Kilislian's right to appeal quashed because of all things, her husband having a past record of offenses, and her husband's social media. Before the board was an affidavit from Dr. Kilislian stating that she does not condone, support, or follow her husband's social emails nor support her husband's activist views. Rather than accept Dr. Kilislian's affidavit evidence, the board allowed Dr. Kilislian's husband to be discriminated at the hearing, and then even worse, Vice-Chair Michael Bossoin examined Dr. Kilislian's lawyer and asked him to provide evidence on the record to the panel about his opinion on Dr. Kilislian's husband's social media. This contradicts the rules of professional conduct 5.1-1. Vice-Chair Bossoin prefaced his question to Dr. Kilislian's lawyer, stating that he didn't want to put Kilislian's lawyer in a sticky position because Dr. Kilislian's husband was sitting next to the lawyer, however, he then asked the lawyer to answer for the panel whether he thought the messaging from Kilislian's husband was vexatious. This conduct of the board denied Dr. Rita Kilislian her right to counsel or right to

representation and solidified a reasonable apprehension of bias by the panel members. The panels conduct denied Dr. Rita Kilislian access to natural justice and therefore, the board usurped its own jurisdiction by denying the applicant procedural fairness. Section 10 of the SPPA guarantees a dentist a right to representation. As a result, to intentionally put the representatives of that dentist in a “sticky situation” with one another is procedural unfairness.

At this point in the procedural history with the Health Board, the board knew that at least two medical officers of Health had improperly accused Dr. Kilislian of causing a liver abscess. They knew the MHO violated the stay order and were testing patients not just of the practice they inspected, but tested patients of any of Kilislian’s practices, even the ones that other medical officers of Health had cleared as exceeding the standards for IPAC.

At one of the case conferences, the author had a kidney stone attack minutes into the case conference and requested that Dr. Kilislian’s lawyer drive him to Sunnybrook Hospital. To highlight how much the author was being unfairly treated the Health Board forced the author to turn over his own medical records proving in fact he had a kidney stone, which shows, this board was not prepared to treat Kilislian’s husband fairly. No administrative tribunal has ever demanded medical records of an agent for the appellant when the appellants agent declared they had a medical emergency requiring a 24-hour indulgence.

Lastly, the Health Board had heard evidence that the MHO had falsely claimed there were five epidemiologically linked cases to the clinic, and through this, were seeking to infer that the Hep had a causal link to the practice. It is common knowledge that every dental practice has some patients that will test positive for Hep C. To infer there is a causal link to the practice is improper and dangerous to the confidence patients would have with dentists.

Even though the MHO wanted to breach the privacy of the patients and protect the privacy of the complainant, presumably because the complainant's identity establishes the authors argument. The MHO had also made complaints to various regulatory bodies to harass Dr. Kilislian, the Health board decided to write a decision attacking the proprietary of the endodontists husband's social media. They failed to critique the proprietary of the media blitz was violating Kilislian right to natural Justice.

From a legal standpoint, HSARB forces the parties involved in an appeal to participate in various "without prejudice" case conferences. HSARB guarantees the parties through an undertaking that nothing discussed in the case conference, or the case conference memos will be provided to the panel who will preside at the final hearing.

In this case, the panel with who was procedurally precluded from presiding at the final hearing, was the same panel who knew or ought to have known they couldn't preside. The reasons they were precluded were not limited to they had access to all the case conference memos. The same now also biased board members who were publicly critical of the endodontist's husband's social media and asked Kilislian's lawyer to give his opinion on whether social media was vexatious. Their decision overstepped their authority as they lacked jurisdiction to address whether Dr. Kilislian's husband's views on social media were appropriate, as one could only know if they were if there was a court determination on the allegations Kilislian's husband asserts within his personal social media.

These were the board members who were presiding at a motion where: Kilislian's husband's past relationships and record of offenses were put on trial. The respondent MHO counsel asked the panel to determine whether Kilislian's husband's conduct 20 years ago should be used to influence the panel to determine whether patients should be tested for blood-borne

viruses because of an IPAC violation allegation 20 years later. Dr. Kilislian was not even married to the author until 10 years after the record of offenses. What possible reason or jurisdictional authority could the Health Services Appeal and review board have to make findings on the spouses of dentist's social media or personal life. This was an infection control lapse allegation by disgruntled MHOs and an order to notify patients. Even so, was an entire day hearing over Dr. Kilislian's husband's life from 20 years earlier. Shockingly, the panel would not allow the author to admit evidence that demonstrated the original convictions were not sound, and judicial decisions current undermined the decision the respondent's counsel was trying to poison the board members minds with.

HSARB is supposed to be a panel with expertise, not a forum for a soap opera with ad-hominem attacks against dentists' spouses. On the day of the hearing, the respondent MHO counsel provided the panel with what she called a personal investigation into the author and provided them with litigation cases the author is involved in. That litigation case outlined the author suffered extensive mental turmoil. The respondent counsel was advised countless times, that her personal attacks at case conferences and during hearings would render the author incapable of representing anyone at the hearing. Furthermore, the "prosecutor" intentionally sought to using collateral and irrelevant materials from internet searches. This was done to further poison the minds of the panel members presiding.

Shockingly, the MHO produced a so-called expert report from a retired general dentist who only ever taught restorative dentistry, which advised the panel that her expert opinion was that patients in that case should be tested for blood-borne viruses.

The author is not a health care practitioner and need not be to know that a recommendation to a patient to be tested for blood-borne viruses is a medical opinion and outside the scope of practice for a general dentist. Furthermore, a dentist giving a medical opinion, conflicts with the regulated health professions act, the very act HSARB/HPARB is mandated to be the stewards of.

Discrimination in employment based on a past record of offenses is a human rights violation. HSARB allowed the discrimination by Peterborough Public health to continue unabated throughout the process and overstepped its authority by making a finding of the personal social media of an Instagram verified influencer: Nothing on an influencer's account is violent or offensive. HSARB sought to put Dr. Kilislian's lawyer in a conflict and improperly examined him as if he were a witness and they were a party to the proceeding. On knowing full well, they were conflicted from presiding at the hearing this panel presided at the hearing knowing they should not have. Based on their participation in a quasi pretrial and having had access to this prejudicial information i.e., Kilislian's husbands past record of offenses unrelated again this was an IPAC allegation, this panel had a duty to recuse themselves for conflict.

Finally, saving the best for last, the so-called expert panel relied on an opinion from a restorative dentist calling herself an expert, and the opinion ultimately was outside her scope of practice and gave an opinion that was a medical opinion. The respondent counsel did not accommodate a request from the IPAC lead for Kilislian to testify on the opening of the hearing, thereby denying Dr. Kilislian's witness evidence from having a chance to be given viva voce. A dentist need not provide oral evidence at the Health Services Appeal and review Board. The rules of practice specifically state that affidavit evidence is preferred. It is then up to the respondent MHO counsel to request to cross examine on that affidavit and this can be done through a court

reporting facility on times convenient to the party. The panel in these cases will again usurp its own rules and push the affidavit evidence of the dentist off the table in favor of the MHOs even though the MHO counsel chose not to cross examine the dentist, presumably because the dentist was telling the truth. Additionally, the MHO's counsel aka the prosecutor knew of the existence of the Dr. Kevin Katz opinion which trumped the health inspector's findings. To sufficiently confuse everyone at the hearing, the MHO lawyer advised the author that the issue to be dealt with was not disputing the closure for the IPAC allegation. Rather, it was to address the reasonable and probable grounds for a section 13 order, where the relief being sought was granted by the media release.

Moreover, if the findings as alleged on the checklist by the health inspector were bona-fide, why would the MHO and her counsel go to such great lengths to investigate the dentist spouse and his alleged conduct 20 years prior, and the personal social media of family members of the dentist?

In most cases, an individual in a real or perceived conflict of interest will be considered to have a reasonable apprehension of bias. An individual can be found to have a reasonable apprehension of bias for reasons other than a conflict of interest. When someone is biased, they look for support to bolster their bias. This included pushing the expert opinion of Dr. Katz MD off the table in favor, of Dr. Mazurat DDS, who was offering up an expert opinion outside her scope of practice which frankly was unconscionable. At both hearings, Chair of the panel Beth Downing refused to allow the author to introduce the video reporting which included the Dr. Kevin Katz report to support the Dr. Rita Kilislian affidavit. How does a dentist access justice in that case? The author submits that the only way dentists will prevent one another from experiencing this sort of unrelenting harassment is to stand together united and lobby to stop it today and not allow themselves to be bullied by Public Health and this flawed process anymore.