

***Memorandum***

**Robertson Stromberg LLP**

To: College of Dental Surgeons of Saskatchewan

From: Robertson Stromberg LLP

Date: November 3, 2023

File No: 6130.153

**Subject:** **Denturist Scope of Practice**

Further to your recent inquiries, we have considered the issue of whether the scope of practice of denturists under *The Dental Disciplines Act*, S.S. 1997, c. D-4.1, (“*Act*”) includes services in relation to screwed-in dental implants.

Subsection 23(3) of the *Act* describes the scope of practice of a denturist as follows:

(3) A denturist is authorized, subject to the terms, conditions and limitations of that person’s licence, to make, repair, reline, alter, replace or furnish a removable dental prosthesis, and for that purpose carry out non-surgical intraoral procedures, including the taking of impressions that are necessary to make, repair, reline, alter, replace or furnish a removable dental prosthesis.

We understand that an issue has come to the attention of the CDSS in recent months concerning the delivery by denturists of services in relation to prosthetics over dental implants. CDSS has asked us to consider whether such activity would support a prosecution for carrying on dental practice without being authorized to do so (specifically under s. 23(1)(g) – to fit or dispense a dental prosthesis).

As indicated, only “removable” dental prostheses would appear to be within the denturist’s scope of practice.

We understand that in general, there are two potential options for patients utilizing implants with their dentures. In the “fixed denture” or all-on-four (or all-on-six) options, the denture itself is screwed onto the implant, such that it cannot be removed by the patient. We do understand that such dentures could, nonetheless, be removed by a professional. In other circumstances, the denture is designed to be removed from the implant with some regularity by the patient, although such removal may involve the use of a dental tool.

**Principles of Statutory Interpretation**

Similar issues have been raised in the context of other professional practices. Although professional regulators have often argued that limitations on scope of practice are for the sole purposes of the protection of the public, the courts have generally indicated that these types of limits have the effect of creating professional monopolies, and accordingly, will be strictly construed.

Reference is made, for example, to the decision of the Saskatchewan Court of Queen’s Bench in *R. v. Windrum* (1994 CarswellSask 271). There, the defendant had been charged with practicing medicine without a license. The Court stated:

[36] Although the purpose of provincial legislation governing the medical profession and the practice of medicine in Canada has been the subject of judicial debate over the years, the Supreme Court of Canada in *Laporte* and *Pauze* have set out certain principles. These cases clearly establish that as these statutes create professional monopolies sanctioned by law, access to which is controlled and which protect their members in good standing who meet the required conditions against any competition, they must be strictly applied.

In *Windrum*, the court found that despite this strict application of the restriction on medical practice, the defendant, who had assessed, diagnosed and treated the patient had indeed committed the offences with which he was charged.

Reference is made as well to the decision of the Saskatchewan Provincial Court in *R. v. Ryan* (2006 SKPC 80), which was a prosecution by the Saskatchewan Veterinary Medical Association wherein it was alleged that an individual providing “equine dental services” was practicing veterinary medicine contrary to the regulatory requirements. Throughout its decision, the Court referred to the need to strictly construe the provisions of the legislation. However, as in *Windrum*, above, the court did ultimately conclude that the conduct of the defendant had strayed into the protected practice of veterinarians. Notably, the Court declined to determine whether dentistry itself was within the definition of “veterinary medicine” – it was not necessary to do so as the defendant had engaged in the practice of veterinary medicine by (1) diagnosing the animal, and advising a drug to prevent bodily injury; (2) administering a drug to prevent bodily injury; and (3) performing a surgical operation on an animal.

From the foregoing and similar cases in other regulated professions, we would expect that a court tasked with reviewing the *Act* in the course of a prosecution would apply a strict interpretation to the provisions which protect the scope of practice of dentists under the *Act*.

**Cross-Canada Review**

We have next considered how the matters of dental implants are regulated elsewhere in Canada. We can advise as follows:

* In British Columbia, a “complete denture” is one which is not attached to or supported by natural teeth or implants and which is removable by the patient. “Implants” are separately defined to mean a device inserted into, over, through or under the jawbone for the purpose of supporting a dental prosthesis, while an “overdenture” is defined as a dental prosthesis which is attached to or supported by natural teeth or implants. A denturist is authorized to dispense or fit an overdenture, but only for the purpose of implementing a prescription. A denturist is expressly prohibited from cutting, grinding, scaling, cleaning, restoring, altering or polishing implants.
* In Alberta, a denturist may prescribe or fit a fixed or removable implant supported prosthesis which replaces two or more teeth, and may perform an invasive procedure on body tissue below the mucous membrane or in or below the surface of teeth if the procedure does not alter natural dentition. This may be contrasted with dental technicians, who are authorized only to fit implant-supported prostheses.
* In Manitoba, it appears that the implant itself must of course be installed by a dentist, but it is common for a denturist to provide the prosthesis, regardless of whether the prosthesis is regularly removed.
* In Ontario, denturists are authorized to design, construct, repair, alter, order and fit removable dentures. The Denturist Association of Ontario indicates that this includes “removable implant retained dentures”.

**Analysis**

As noted above, the distinction between a prosthesis which may be furnished by a denturist and that which must be furnished by a dentist is whether the prosthesis is removable. As the legislation creates a professional monopoly for dentists, even to the exclusion of other dental professionals, the protected scope of practice for dentists will be strictly construed. Given that there is some ambiguity on what is a “removable dental prothesis”, this will make it more difficult to convince a court that a denturist has strayed into the protected scope of practice of dentists.

We note that in some other provinces, removable dentures are distinguished from fixed dentures (we note, however, that it would appear that other provinces authorize denturists to undertake work in both respects). Nonetheless, given the strict interpretation described above, we would expect that a Saskatchewan court, considering whether a denturist has stepped outside of their scope of practice would find that on a strict construction of the *Act*, as the prosthesis furnished by a denturist, even in a fixed denture scenario, can still be removed, a denturist who provides such services has not engaged in conduct contrary to the *Act*.