



**FIRST REPORT  
OF THE  
SELECT COMMITTEE ON HEALTH CARE**

**Second Session**

**Fifty-fifth Legislative Assembly**

**of the**

**Province of New Brunswick**

**April 27, 2005**

**MEMBERS OF THE COMMITTEE**

Mr. Williams, Chairman

Mr. Sherwood, Vice-Chairman

Mr. C. LeBlanc

Mr. Holder

Mr. Stiles

Mr. Carr

Mr. Malley

Mr. Albert

Mr. R. Boudreau

Mr. Kennedy

Mr. V. Boudreau

Ms. Weir

April 27, 2005

To The Honourable  
The Legislative Assembly of  
The Province of New Brunswick

Mr. Speaker:

I have the pleasure to present herewith the First Report of the Select Committee on Health Care for the Session.

The Report is the result of your Committee's deliberations on Bill 60, *Health Charter of Rights and Responsibilities Act*, which was introduced in the Legislative Assembly during the Fifth Session of the Fifty-fourth Legislature and referred to your Committee for its consideration by the Minister of Health and Wellness during the current Fifty-fifth Legislature.

The Report outlines your Committee's recommendation on the issue of legislating certain rights and responsibilities for New Brunswickers with respect to the health care services offered in the province.

On behalf of the Committee, I wish to thank the presenters who appeared at the public hearings and those individuals and groups who submitted written briefs.

In addition, I would like to express my sincere appreciation to the members of the Committee for their contribution in carrying out our mandate.

And your Committee begs leave to make a further report.

Respectfully submitted,

Claude Williams, M.L.A.  
Chairman

April 27, 2005

To The Honourable  
The Legislative Assembly of  
The Province of New Brunswick

Mr. Speaker:

Your Select Committee on Health Care begs leave to submit this their First Report of the Session.

On April 8, 2003, during the Fifth Session of the Fifty-fourth Legislature, Bill 60, *Health Charter of Rights and Responsibilities Act*, was introduced in the Legislative Assembly by the Honourable Elvy Robichaud, Minister of Health and Wellness. The proposed legislation attempts to balance the rights and responsibilities of New Brunswickers within the health care system. Among the rights accorded to New Brunswickers in the proposed Act are the right to timely access of health care services, the right to make informed decisions on health care, the right to receive relevant health care information and the right to the investigation of complaints. Some of the individual responsibilities are for New Brunswickers to participate in their own health care decisions, to use health care services in a reasonable manner and to engage in healthy lifestyle choices. To ensure the health charter is applied and respected, the proposed Act creates the office of the Health and Wellness Advocate. The advocate's office is designed to enhance New Brunswickers' access to and communication with the health care system. It will address questions, issues, concerns and complaints in all services under the scope and mandate of the Department of Health and Wellness and the regional health authorities, as well as issues with health professionals.

On April 9, 2003, by Resolution of the House, consideration of Bill 60 was referred to the Select Committee on Health Care. On May 10, 2003, a proclamation dissolved the Fifty-fourth Legislature and ordered the issue of writs of election for June 9, 2003. Accordingly, Bill 60, and its referral to the Select Committee on Health Care, died on the Order and Notice Paper.

Following the provincial election and the appointment of a new Select Committee on Health Care by the Legislative Assembly, the Committee met in an organizational session on August 5, 2003. On motion of Mr. Malley, Mr. Williams was elected Chairman, and Mr. Sherwood was elected Vice-Chairman.

By letter dated December 4, 2003, the subject matter of Bill 60 was again referred to the Select Committee on Health Care by the Honourable Elvy Robichaud, Minister of Health and Wellness. This referral forms the basis of your Select Committee on Health Care's First Report to the Second Session of the Fifty-fifth Legislature.

On February 19, 2004, your Committee was briefed on the subject matter of Bill 60 by representatives from the Department of Health and Wellness. Your Committee held further meetings on the Bill on November 12 and December 1, 2004, and February 17, 2005. Your Committee

determined that members of the public should be invited to provide input and advice to the Committee with respect to the issues raised by Bill 60. Public hearings were held on February 22, March 1, 2, and 3, 2005, in the following locations: Miramichi, Dieppe, Saint John, and Fredericton. A total of 34 written submissions were received by your Committee.

Your Committee expresses appreciation to the presenters who appeared at the public hearings and to those individuals and organizations who submitted written briefs.

## **SUMMARY OF FINDINGS**

Your Committee has reviewed the provisions of the *Health Charter of Rights and Responsibilities Act* and considered the written submissions received and the presentations made at the public hearings. As a result of its review, your Committee has determined that the following issues should be addressed: Scope of the Act; Rights and Responsibilities; and Health and Wellness Advocate.

### **Scope of the Act**

The rights and responsibilities accorded by Bill 60 apply to the New Brunswick health care system, which includes the health care services provided by the Department of Health and Wellness, the regional health authorities, and medical practitioners and other health care professionals who are paid for by the Department of Health and Wellness. However, the Bill also states that it does not limit the authority of the government to determine what health care services will form part of the New Brunswick health care system, nor does it limit the authority of the government to determine when, where or to what extent those services will be provided.

Respondents expressed apprehension over the discretion provided to the government to determine what health care services will form part of the New Brunswick health care system, and when, where or to what extent those services will be provided. Respondents were of the opinion that this discretion is contrary to the Report from the Premier's Health Quality Council, and appears to limit the rights contained in the Bill. Many respondents believed that the government should not have the discretion to modify or take away rights, which is how these respondents interpreted the discretionary provision.

Respondents noted that the rights and responsibilities set out in the Bill are subject to the financial, human and material resources available. Respondents expressed concern that this would absolve a regional health authority from any responsibility if the rights of an individual were not reasonably adhered to.

In addition, respondents submitted that nursing homes and long term care residents should specifically be included in the application of the Bill. Respondents also suggested that the government consider the inclusion of home and residential care in the Bill.

## **Rights and Responsibilities**

Bill 60 provides the following rights to New Brunswickers: the right to timely access of health care services; the right to receive relevant health care information; the right to make informed decisions on health care; the right to safe, comfortable and considerate attention; and the right to the investigation of complaints.

The Bill contains the following responsibilities for New Brunswickers: a responsibility to use health care services in a reasonable manner; to learn about and make healthy lifestyle choices; to share appropriate health information with health care providers; to inform health care providers of communication requirements; to participate actively in health care decisions and to communicate those decisions; to treat others with courtesy and consideration; and to use complaint mechanisms appropriately.

Respondents were generally of the opinion that a charter of rights and responsibilities in the health care system is a positive step forward in ensuring that New Brunswickers receive the health care system they deserve, while acknowledging that everyone has a responsibility to use the system in a reasonable manner. However, respondents submitted that the Bill could go further in protecting the rights of New Brunswickers and could be less onerous when it comes to the responsibilities of New Brunswickers, particularly seniors, or those unable to adequately participate in their own health care decisions.

### **A. Rights**

Respondents submitted that the Bill should include a right to receive health care services in an individual's preferred official language. While the Bill does make reference to the *Official Languages Act* in the preamble, respondents suggested that this important right warrants inclusion in the main body of the Bill.

Respondents noted that the preamble of the Bill makes reference to the five principles outlined in the *Canada Health Act*, namely, public administration, comprehensiveness, universality, portability, and accessibility. Respondents suggested these principles should be incorporated into the main body of the Bill. In particular, respondents suggested that the Bill should ensure universal health care for all New Brunswickers and address the privatization of certain health care services.

Some respondents who appeared before your Committee took this opportunity to express their concerns with respect to their perception of the current status of the health care system in New Brunswick. These respondents were generally of the opinion that the health charter may be beneficial if it improves the health care system for all New Brunswickers. However, some respondents questioned whether the right to timely access of health care services is being adhered to under the current health care system. These respondents were of the opinion that there is a shortage of physicians and nurses in the province, a shortage of beds and unreasonable waiting times in hospitals, and a lack of emergency and ambulance services in rural areas. These factors, it was

submitted, conflicted with the right to timely access of health care services and should be addressed in the Bill.

Respondents noted that the right to timely access to health care services includes the right to have primary health care services accessible at all times. Respondents suggested that a more detailed definition of “primary health care services” may be required to avoid any confusion or ambiguity.

Respondents noted that the right to receive relevant health care information includes the right to receive copies of a patient record on payment of a reasonable fee. These respondents suggested this is contrary to the Report from the Premier’s Health Quality Council, which provides the right to access health records at no cost. In addition, respondents submitted that it is not clear who would be responsible for providing the relevant health care information.

Respondents questioned whether the right to safe, comfortable and considerate attention is being adhered to under the current health care system. Respondents cited examples of male and female patients being required to cohabitate in the same hospital room, and other patients having to wait for rooms to become available. These respondents were of the belief that these circumstances conflicted with the right to safe and comfortable attention and should be addressed in the Bill.

Respondents questioned whether the right to the investigation of complaints was being adhered to under the current health care system. These respondents were of the opinion that patients, particularly seniors, are often afraid to make complaints, or are discouraged by hospital staff from registering complaints. These respondents were of the belief that these circumstances conflicted with the right to the investigation of complaints and should be addressed in the Bill. In addition, respondents submitted that the Bill should require a uniform policy on how all regional health authorities respond to complaints across the province.

Respondents expressed the belief that if the rights outlined in the Bill are recognized and enforced, then the Bill would have a beneficial effect on the quality of care provided by the health care system. Respondents agreed that all New Brunswickers deserve access to appropriate health care services, relevant health care information, and informed decision making.

## **B. Responsibilities**

Respondents expressed concern over the responsibility to learn about and to make healthy lifestyle choices. Respondents felt this responsibility was vague and were wary of any possible repercussions for individuals who do not adhere to this responsibility. Similarly, respondents expressed concern over the provision in the Bill that allows for the failure of an individual to meet his or her responsibilities to be taken into consideration when deciding whether the individual’s rights have been properly recognized.

Respondents expressed concern over the responsibilities to communicate and participate actively in health care decisions. Respondents were concerned that seniors with diminished mental capacity, and those individuals physically or mentally ill, mentally incapacitated, or with literacy or

communication difficulties may not be able to meet these responsibilities. Respondents submitted that these issues should be clarified in the Bill. In addition, respondents specifically made reference to situations where the patient and attending physician do not speak the same official language and the resulting difficulty placed on the patient to communicate his or her health care decisions.

Respondents noted that the responsibility to communicate health care decisions includes a responsibility to designate a substitute decision-maker when appropriate. Respondents submitted that in order to avoid any ambiguities or legal difficulties the term “substitute decision-maker” should be clearly defined, particularly the inclusion of any age requirements. Respondents also questioned whether a power of attorney should be provided for in the Bill and suggested that the Bill should specify who may be allowed access to health care records on behalf of an individual.

### **Health and Wellness Advocate**

Respondents viewed the appointment of a Health and Wellness Advocate as a positive initiative if it aids in the recognition and enforcement of the rights and responsibilities outlined in the Bill. Respondents were also in agreement that the independence of the advocate is preferable to the current situation where an advocate is employed by their respective regional health authority. In addition, all respondents agreed there is a need for a provincial advocate. However, some respondents suggested that there may also be a need for an advocate assigned to each regional health authority, while other respondents felt the provincial advocate would suffice. In addition, the Office of the Ombudsman appeared before the Committee and suggested that it could perform the duties of the advocate, which, it was submitted, may result in a more efficient use of expenditures.

Respondents submitted that the advocate’s duties should not only include the promotion of measures to improve the health and wellness of New Brunswickers, but it should also include the promotion of preventative measures to limit the risk of unhealthy environments. In general, respondents were of the opinion that the advocate’s duties appear to be limited.

Respondents noted that the advocate is required to submit an annual report to the Legislative Assembly and suggested it may be beneficial to require a government response to the advocate’s report.

Respondents expressed concern over the advocate’s investigatory powers when attempting to resolve a complaint. In particular, respondents suggested that the advocate be provided with the ability to obtain information similar to that provided to the Auditor General in the *Auditor General Act*, which grants the authority to access all documents that the Auditor General considers necessary to conduct an investigation. In addition, respondents suggested that the advocate should not only have the authority to investigate individual complaints, but the advocate should also have the authority to investigate community or group complaints.

Respondents questioned whether the advocate would have enough authority to adequately enforce the Bill once enacted. Respondents submitted that the Bill does not appear to contain any serious sanctions if the Department of Health and Wellness or a regional health authority refuses to follow

the advocate's recommendations, nor are there any remedies available to the complainant. Respondents noted that the complainant may apply to The Court of Queen's Bench for a declaration, but submitted this is often an expensive process and suggested a more inexpensive alternative, similar to what is followed in the *Right to Information Act*.

## RECOMMENDATION

**Your Committee therefore recommends that the Legislative Assembly urge the government to consider the advisability of introducing a revised version of the *Health Charter of Rights and Responsibilities Act* taking into consideration the comments and submissions of New Brunswickers summarized in this Report.**

## CONCLUSION

Your Committee gave serious consideration to the advice and input received through the public consultation process. Your Committee believes that any legislation enacted to provide certain rights and responsibilities with respect to the health care services offered in the province must be clear and comprehensive, and fair for all New Brunswickers. Your Committee believes that the comments and submissions summarized in this report will assist in achieving that result.